Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 57,177-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA Appellee

versus

MARCELL LAMAR BARR Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 407,888

Honorable Donald E. Hathaway, Jr., Judge

* * * * *

LOUISIANA APPEALS AND
WRIT SERVICE
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* * * * *

Before COX, STEPHENS, and MARCOTTE, JJ.

STEPHENS, J.,

This appeal arises from the First Judicial District Court, Parish of Caddo, State of Louisiana, the Honorable Donald E. Hathaway, Jr., Judge, presiding. The defendant, Marcell Lamar Barr, pled guilty to two counts of battery of a dating partner with child endangerment, violations of La. R.S. 14:34.9(I), and one count of battery of a dating partner with serious bodily injury, a violation of La. R.S. 14:34.9(N). On May 7, 2026, the date of the sentencing hearing, Barr made an oral motion to withdraw his guilty plea which was denied by the trial court without a separate hearing. The trial court then sentenced Barr to eight years at hard labor for battery of a dating partner with child endangerment, and three years for each remaining count. The sentences were ordered to run concurrently and were to be served without the benefit of probation, parole, or suspension of sentence. Additionally, Barr was given credit for time served. Barr appealed, urging error in the trial court's denial of his motion to withdraw his guilty plea and excessiveness of the sentences imposed by the trial court. Also, the defendant pointed out an error made by the trial court in imposing sentence that needs to be addressed. For the reasons set forth below, we affirm the defendant's convictions and sentences but remand the matter to the trial court for correction of the minutes and Uniform Commitment Order.

FACTS/PROCEDURAL HISTORY

Barr was charged by bill of information on May 7, 2025, with two counts of domestic abuse battery including child endangerment, violations of La. R.S. 14:35.3(I), and one count of domestic abuse battery with a dangerous weapon, a violation of La. R.S. 14:35.3(P), in Docket No. 407,888.

On March 13, 2026, Barr was charged by bill of information with 15 counts of violation of a protective order, violations of La. R.S. 14:79, in Docket No. 415,353. The State also filed a supplemental discovery response on March 13, 2026, to which it attached an interoffice victim's assistance memorandum detailing a conversation had by the victim, Sharlarreka Jackson, with D.A.'s Office personnel regarding her desire to recant prior statements about the domestic incident charges against Barr. On March 26, 2026, the State filed a "Forfeiture of Wrongdoing" notice in which it alleged that Barr had contacted Ms. Jackson in violation of a court protective order to secure the absence or false testimony of two subpoenaed witnesses.

On April 9, 2026, the State filed a second amended bill charging Barr with two counts of battery of a dating partner with child endangerment, violations of La. R.S. 14:34.9(I), and one count of battery of a dating partner with serious bodily injury, a violation of La. R.S. 34.9(N). Also on April 9, 2026, after a colloquy, Barr pled guilty as charged to all three counts, with sentencing left to the discretion of the trial court. In exchange, the State agreed not to file a habitual offender bill and to dismiss the charges for violation of a protective order in Docket No. 415,353.

During the colloquy, the State offered the following accepted factual basis for Barr's plea:

> The State charges that on or about April 4th, 2025, Mr. Barr did get into a verbal altercation with the victim, Ms. Sharlarreka Jackson, that escalated and turned physical. I believe that she was struck with a glass bottle. She had two cuts on her arm that required stitches. She also was dragged down the stairs in the presence of her two children, A.A. and M.B. Both of those two children were under 13 at the time of this incident with the facts occurring in Caddo Parish.

The sentencing hearing was held on May 7, 2026. Barr made an oral motion to withdraw his guilty plea at the outset of the hearing, claiming that he had received new discovery the day after his plea. The trial court denied the motion without taking evidence and proceeded to sentencing. The trial court sentenced Barr to eight years' imprisonment at hard labor on Count One and three years' imprisonment at hard labor on each of Counts Two and Three, with each sentence to be served concurrently. The trial court further ordered that the sentences on all three counts were to be served without the benefit of probation, parole, or suspension of sentence.

On May 14, 2026, Barr filed a "Motion to Correct Sentence" in which he pointed out that the sentence for Count One only carries a maximum sentence of three years vs. the eight-year term imposed. The trial court denied this motion, then filed an "Order" issued May 20, 2026, admitting that the court had inadvertently transposed the numerical count designation and had mistakenly referred to the conviction for "Battery of a Dating Partner with Serious Bodily Injury" as "Count One" rather than "Count Three." The trial court further clarified that Barr's sentence for his conviction for "Battery of a Dating Partner with Serious Bodily Injury" was eight years at hard labor, with the three-year sentences being imposed on the two convictions for "Battery of a Dating Partner with Child Endangerment."

A motion for reconsideration of sentence filed by Barr on May 29, 2026, was denied by the trial court on June 8, 2026. This appeal ensued.

THE DEFENDANT'S ARGUMENT

Whether the trial court erred in denying the defendant's motion to withdraw his guilty plea.

According to Barr, the trial court erred in dismissing his motion to withdraw his guilty plea cursorily, without holding a hearing. He claims that his motion to withdraw his guilty plea was timely pursuant to La. C. Cr. P. art. 559(A), which provides that "[u]pon motion of the defendant and after a contradictory hearing, which may be waived by the state in writing, the court may permit a plea of guilty to be withdrawn at any time before sentence." Barr claims that his motion was urged at the "earliest possible setting," at the beginning of the May 7, 2026, hearing, prior to the imposition of sentence. The grounds set forth were that the day after his plea he received legal mail containing new discovery "supporting his innocence, including that the complaining witness allegedly gave a statement to the district attorney's office and to victim assistance personnel recanting her allegations."

Barr claims this information constitutes *Brady*[1] material that bears directly on the knowing and intelligent character of his plea which makes his plea a proper candidate for withdrawal under C. Cr. P. art. 559. *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). According to the trial court, however, Barr, who had been *Boykinized*, indicated that he understood his rights and "don't get to just take it back. If you've got new evidence, you can bring that up in your appeal."

According to Barr, the trial court was wrong for several reasons. First, a completed colloquy does not do away with the trial court's authority

[1] *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); *Giglio v. United States*, 405 U.S. 150, 373 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

under art. 559(A), which presupposes a completed plea. Next, the court's suggestion that the new evidence could be presented for the first time on appeal is wrong, since appellate review is confined to the record, and the claimed discovery and recantation are, by definition, outside of the record. Thus, what the trial court did in its ruling was to simultaneously refuse to hear the evidence and consign the defendant to a forum wherein the evidence cannot be considered.

Because the denial of Barr's motion without an evidentiary hearing was an abuse of discretion, he asks this Court to remand the matter to the trial court for a contradictory hearing pursuant to La. C. Cr. P. art. 559(A) for the trial court to review the additional discovery and witness statement "in an informed manner."

The State first points out that:

- The defendant has no absolute right to withdraw a previously entered guilty plea under La. C. Cr. P. art. 559.
- The discretion to allow the withdrawal of a guilty plea under La. C. Cr. P. art. 559 lies with the trial court, and this discretion cannot be disturbed absent an abuse or arbitrary exercise of that discretion.
- A defendant does not have an absolute right to withdraw a previously entered guilty plea under La. C. Cr. P. art. 559.
- In general, the denial of a defendant's withdrawal of a guilty plea will not be reversed on appeal when the record shows the defendant was advised of his rights and the consequences of the plea, and that the plea was entered voluntarily.

In this case, there was a standard guilty plea colloquy. The record reflects Barr answered affirmatively to his understanding that he was:

- pleading guilty to the amended charges of two counts of battery of a dating partner with child endangerment and one count of battery of a dating partner with serious bodily injury;
- waiving his right to a jury trial;

- waiving his confrontation rights;
- waiving his right to compulsory process; and
- waiving his rights against self-incrimination.

The minimum and maximum penalties for the offenses of conviction, La. R.S. 14:34.9(I) and (N), were explained by the trial court. The trial court pointed out that there were no agreed-upon sentences. Barr agreed that the factual basis stated by the State was true and correct. Barr also acknowledged that his counsel had explained the charges and associated elements and acknowledged that he was not forced or coerced to enter his guilty plea.

The trial court found that Barr's plea and waivers were made knowingly and voluntarily. The defendant was adequately informed of his statutory and constitutional rights under both La. C. Cr. P. art. 556.1 and *Boykin*, *supra*, and its progeny.

Despite Barr's claim that his motion to withdraw was denied by the trial court "without a contradictory hearing," the State claims that the transcript from May 7, 2026, shows that the judge allowed Barr to argue his case. The State admits that the trial court did not receive any evidence but did not abuse its wide discretion in denying the motion. According to the State, this was not an abuse of discretion. The State further points out that this Court has held that "[w]hen a motion to withdraw a plea is made prior to sentencing, a court may hold an evidentiary hearing, but it is not required to do so." *State v. Hart*, 50,295 (La. App. 2 Cir. 11/18/15), 183 So. 3d 597.

The State decries as false Barr's claims that it failed to disclose "Brady material" favorable to him (Ms. Jackson's statement to the D.A.), and that this omission affected the voluntariness of his plea. According to

the State, the record shows that this material was provided to Barr about four weeks before his guilty plea. It was disclosed in discovery as supplemental discovery and made part of the record at R. pp. 141-42. Barr's claim that he did not know of this information "borders on the utmost levels of incredibility."

On January 13, 2026, Barr called the victim, Sharlarreka Jackson, from jail ***on a recorded line*** and discussed how to secure the absence, silence, or false testimony of subpoenaed witnesses. On February 23, 2026, Ms. Jackson met with D.A.'s Office personnel and recanted her previous "highly specific" statements she had made to law enforcement officers following Barr's attack. This conversation was provided to the defendant and made part of the trial record via the State's "Forfeiture by Wrongdoing" notice filed on March 13, 2026. This was also disclosed by the State 18 days later in a supplemental discovery response.

Barr knew of the victim's statement because it contained information he supplied her through illegal communications. He also received notice through the "Forfeiture by Wrongdoing" motion filed by the State which asked the trial court to allow introduction of Ms. Jackson's prior statements into evidence based on her recantation of her statement, as well as through the State's supplemental discovery response providing him with copies of the victim's updated communications with the D.A.'s office. The State urges that this claim is meritless "on the face of the record." Accordingly, there was no abuse of the trial court's discretion in this case.

Upon motion of the defendant and after a contradictory hearing, which may be waived by the state in writing, the court may permit a plea of guilty to be withdrawn at any time before sentencing. La. C. Cr. P. art.

559(A); *State v. Hart*, 50,295 at p. 10, 183 So. 3d at 604. A guilty plea is invalid when the defendant is induced to plead guilty by a plea agreement or by what the defendant reasonably believes is a plea agreement and the terms of the bargain are not satisfied. *State v. Hart*, 50,295 at p. 9, 183 So. 3d 603; *State v. Holmes*, 475 So. 2d 1057 (La. 1985); *State v. Banks*, 49,767 (La. App. 2 Cir. 4/15/15), 163 So. 3d 895; *State v. Jones*, 546 So. 2d 1343 (La. App. 3 Cir. 1989).

When a defendant seeks to withdraw a guilty plea and the record establishes that he was informed of and waived his rights to trial by jury, to confront his accusers and against self-incrimination, the burden shifts to the accused to prove that, despite this record, his guilty plea was involuntary. *State v. Hart*, 50,295 at p. 10, 183 So. 3d at 603-04; *State v. Wooten*, 49,710 (La. App. 2 Cir. 4/15/15), 164 So. 3d 937; *State v. Martin*, 48,045 (La. App. 2 Cir. 5/15/13), 115 So. 3d 750. Where a defendant's misunderstanding is not induced by or attributed to representations made by the district attorney or the trial court, there are generally no grounds for withdrawal of the plea. *State v. Hart*, *supra*, 183 So. 3d at 604; *State v. Hall*, 26,006 (La. App. 2 Cir. 5/4/94), 637 So. 2d 645, *writ denied*, 94–1373 (La. 9/30/94), 642 So. 2d 868.

The discretion to allow withdrawal of a guilty plea under Article 559(A) lies with the district court and such discretion cannot be disturbed unless an abuse or arbitrary exercise of that discretion is shown. *State v. Calhoun*, 96–0786 (La. 5/20/97), 694 So. 2d 909; *State v. Hart*, *supra*; *State v. Harris*, 43,069 (La. App. 2 Cir. 3/19/08), 980 So. 2d 174; *State v. Cook*, 32,110 (La. App. 2 Cir. 6/16/99), 742 So. 2d 912. A defendant has no absolute right to withdraw a guilty plea. *Id*. Generally, the denial of withdrawal of a guilty plea will not be reversed on appeal when the record

shows the defendant was informed of his rights and the consequences of the plea and that the plea was entered voluntarily. *State v. Harris*, *supra*. However, when ruling on a motion to withdraw a guilty plea, the district court can look beyond the *Boykinization* and consider all relevant factors, such as the breach of a plea bargain, inducement, misleading advice of counsel, strength of the evidence of actual guilt, or the like. *State v. Hart*, 50,295 at pp. 10-11, 183 So. 3d at 604; *State v. Harris*, *supra*; *State v. Burnett*, 33,739 (La. App. 2 Cir. 10/4/00), 768 So. 2d 783, *writ denied*, 00–3079 (La. 11/2/01), 800 So. 2d 864. The benefit a defendant receives from a plea bargain is a relevant factor in the context of a motion to withdraw the plea to determine whether the plea was knowingly and intelligently entered. *State v. Hart*, 50,295 at p. 12, 183 So. 3d at 615; *State v. Cook*, *supra*; *State v. Curtis*, 28,309 (La. App. 2 Cir. 8/21/96), 679 So. 2d 512, *writ denied*, 96-2322 (La. 2/7/97), 688 So. 2d 496. The defendant's change of heart does not usually render a guilty plea involuntary. *Id*.

This assignment of error is meritless. Barr's phone calls to his victim from jail in violation of a protective order were on a recorded line. The State filed 15 additional charges against Barr as a result of his threats and intimidating actions. Not only did the defendant have prior knowledge of Ms. Jackson's statement to the D.A. recanting her statement, Barr coerced or intimidated the victim into making it. For Barr to turn around and claim that Ms. Jackson's statement exonerated him is diabolical, especially in light of the fact that the recordings document that Barr also told the victim to make sure the other witnesses against him would not talk. The benefits gained by Barr from his plea bargain are three-fold: he avoided a trial on the merits of the three battery charges with a potential sentencing exposure of 16 years'

imprisonment at hard labor, a second trial on the violation of protective order charges, and habitual offender proceedings. It would have been well within the discretion of the trial court to have acquiesced to the defendant's motion to withdraw his guilty plea and let him actually face the consequences of his actions. This is one of those times a defendant should be glad he did not receive what he asked for.

Whether the sentences imposed by the trial court are excessive by constitutional standards.

In his second assignment of error, Barr contends that his sentences were excessive. Additionally, as he noted in his motion to reconsider sentence, which was denied by the trial court, the aggravating factors relied upon by the trial court "impermissibly restated elements of the offenses."

Barr points out that the trial court imposed the statutory maximum sentence on every count—eight years' imprisonment at hard labor for battery of a dating partner with serious bodily injury and three years' imprisonment at hard labor for each count of battery of a dating partner with child endangerment. Barr asserts that maximum sentences weren't warranted in this case as he is not the worst of offenders, and these weren't the worst of offenses. The aggravating circumstances relied upon by the trial court were the elements of the offenses of conviction: deliberate cruelty, a risk of harm to more than one person, and the use of harm to more than one person. According to the defendant, the core elements of an offense are not, "properly construed," aggravating since they already form the basis for that offense's sentencing range. Furthermore, urges Barr, the trial court compounded its error by failing to consider any mitigating circumstances, such as Barr's "ready acceptance of responsibility."

Also exacerbating the sentences' excessiveness, claims Barr, is the terms of their execution, i.e., that they were imposed without benefit of probation, parole, or suspension of sentence. The 53-year-old Barr will serve "every day of eight years" with no incentive-based path to an earlier supervised release since the parole bar transforms this maximum term into a flat term. He acknowledges that the full-term denial of parole is authorized by La. R.S. 34:9 but contends that the choice to impose the harshest available combination on every count renders the total sentence "grossly disproportionate." Barr urges this Court to vacate his sentences and remand the matter for resentencing.

The State asserts that the trial court adequately complied with La. C. Cr. P. art. 894.1. The record shows that the trial court considered both aggravating and mitigating factors prior to imposing sentence. The sentencing transcript and the trial court's sentencing memorandum reflect consideration of Barr's personal history, criminal history, and the seriousness of the instant offenses. Just because the trial court did not find a mitigating factor ***applicable*** in this case does not mean the judge did not consider them, urges the State.

Additionally, there was no abuse of the trial court's discretion, suggests the State. Barr intentionally struck Ms. Jackson with a glass bottle, causing cuts which required stitches. He also struck her and dragged her down a flight of stairs in the presence of her two minor children. Barr's criminal history is lengthy, spanning three decades. The State points out that the instant offenses are felony convictions four, five, and six for this defendant. More troubling, though, these convictions are not the first ones involving Barr's physical assault of Ms. Jackson. He has been arrested on

three separate occasions for domestic abuse battery of Ms. Jackson, with a total of five domestic violence arrests. The State also notes that Barr benefited in this case from having 15 counts of violation of a protective order dismissed.

In reviewing a sentence for excessiveness, an appellate court uses a two-pronged approach. First, the record must show that the trial court used the criteria set forth in La. C. Cr. P. art. 894.1. *State v. Andrews*, 56,402 (La. App. 2 Cir. 8/27/25), 419 So. 3d 432; *State v. Harper*, 54,173 (La. App. 2 Cir. 1/12/22), 332 So. 3d 799; *State v. Scroggins*, 52,323 (La. App. 2 Cir. 9/25/19), 280 So. 3d 841. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of art. 894.1. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Andrews*, *supra*; *State v. Harper*, *supra*; *State v. Couch*, 53,956 (La. App. 2 Cir. 6/30/21), 321 So. 3d 541. The important elements that should be considered are the defendant's personal history, prior criminal record, seriousness of the offense, and the likelihood of rehabilitation. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Harper*, *supra*; *State v. Couch*, *supra*.

Where a defendant has pled guilty to an offense which does not adequately describe his conduct or has received a significant reduction in potential exposure to confinement through a plea bargain, the trial court has great discretion in imposing even the maximum sentence possible for the pled offense. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. Andrews*, *supra*; *State v. Harper*, *supra*.

Second, the court must determine whether the sentence is excessive by constitutional standards. *Id*. A sentence violates La. Const. art. I, § 20 if

it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. *Id*. For a sentence to be considered excessive by constitutional standards, a reviewing court must find that the penalty is so grossly disproportionate to the severity of the crime as to shock the sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and, therefore, is nothing more than the needless imposition of pain and suffering. *State v. Griffin*, 14-1214 (La. 10/14/15), 180 So. 3d 1262; *State v. Andrews*, *supra*.

La. R.S. 14:34.9(A) provides that battery of a dating partner is the intentional use of force or violence committed by one dating partner upon the person of another dating partner. La. R.S. 14:34.9(I) provides for an additional penalty of imprisonment at hard labor for not more than three years when the State proves, in addition to the elements of the crime of battery of a dating partner as set forth in subsection (A), that a minor child 13 years of age or younger was present at the residence or scene at the time of the commission of the offense. La. R.S. 14:34.9(N) provides in part that if the offender intentionally inflicts serious bodily injury, the offender, in addition to other penalties imposed pursuant to this section, shall be imprisoned at hard labor for not more than eight years.

This assignment of error is without merit. The record shows that the trial court complied with La. C. Cr. P. art. 894.1 in sentencing Barr by considering all relevant factors. The facts of this case are quite troubling, as noted by the trial court, and when considering them together with the defendant's lengthy criminal history, specifically, his history of battering the same domestic victims, we cannot say that the sentence imposed by the trial court is excessive by constitutional standards. Although each sentence

imposed was the maximum term allowable for each count to which Barr pled guilty, those sentences were nonetheless ordered to be served concurrently. The defendant also obtained significant reduction in his sentencing exposure by his plea bargain with the State, which agreed to drop the pending violation of protective order charges and not to instigate habitual offender proceedings against him.

Whether the sentencing transcript and minutes which transpose the count designations constitute an error patent that requires correction.

In the second amended bill of information, the State charged the defendant with battery of a dating partner with child endangerment as Counts One and Two and battery of a dating partner with serious bodily injury as Count Three. Thereafter, at sentencing, the transcript shows that the trial court imposed the eight-year sentence for "Count One, battery of a dating partner with serious bodily injury," and three-year sentences for "Counts Two and Three, battery of a dating partner with child endangerment." The minute entry continues this error, reciting an eight-year sentence as to "Count #1" and three-year sentences as to "Count #2 and Count #3." In fact, the trial court acknowledged the error. In its written reasons as set forth in its order denying Barr's "Motion to Correct Sentence" on May 20, 2026, the trial court explained that it "inadvertently transposed the numerical count designations during the oral pronouncement of sentence," and that the eight-year term was imposed for the serious bodily injury conviction (Count Three) while the three-year terms were for the child endangerment convictions (Counts One and Two).

Barr suggests that this Court remand the matter with instructions to amend the minutes and issue/correct the Uniform Commitment Order to

reflect the proper sentences in conformity with the sentencing transcript as construed and further detailed by the trial court's written reasons.

The State acknowledges that although the trial court clarified the error in sentencing in its reasons issued on May 20, 2026, no decretal language was included to correct the minutes, which still reflect an eight-year sentence on Count One and three-year sentences on Counts Two and Three. The State insists that this Court can order the First JDC Clerk of Court to correct the minutes to reflect the May 20, 2026, language set forth in the "clarified" sentencing order rather than remanding the matter to the trial court.

As noted by both Barr and the State, the trial court's reference to the incorrect count numbers in sentencing Barr, although unintentional and harmless, found its way to both the minutes of the sentencing as well as the UCO. *See*, *e.g.*, *State v. Monceaux*, 22-28, pp. 16-17 (La. App. 3 Cir. 6/1/22), 340 So. 3d 201, 213. Both the minutes and UCO are still in need of correction to accurately reflect the trial court's clarification of sentencing as reflected in its written reasons of May 20, 2026, since there was no decretal language set forth in its order of the same date denying Barr's motion for correction of this exact issue.

We therefore will remand this matter to the trial court with instructions to the trial court to correct the minutes of sentencing and amend the Louisiana Uniform Sentencing Commitment Order to reflect the correct sentences. *State v. Monceaux*, *supra*.

Error Patent Review

We have reviewed the record for errors patent and have found none.

CONCLUSION

For the reasons set forth above, the convictions and sentences of the defendant, Marcell Lamar Barr, are affirmed. This matter is remanded with instructions.

AFFIRMED; REMANDED WITH INSTRUCTIONS.