

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0510

STATE OF LOUISIANA

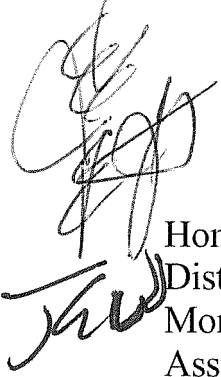
VERSUS

ISAAC JOHNSON

DATE OF JUDGMENT: November 3, 2006

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 04-04-0042), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE ANTHONY MARABELLA, JUDGE



Hon. Doug Moreau
District Attorney
Monisa L. Thompson
Assistant District Attorney
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
State of Louisiana

Prentice L. White
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Isaac Johnson

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

**Disposition: CONVICTIONS AFFIRMED; SENTENCE ON COUNT 2 AFFIRMED;
SENTENCE ON COUNT 1 AMENDED AND, AS AMENDED, AFFIRMED; REMANDED
WITH ORDER. MOTION TO WITHDRAW GRANTED.**

KUHN, J.

Defendant, Isaac Johnson, was charged by grand jury indictment with second degree murder (count 1) and attempted second degree murder (count 2), violations of La. R.S. 14:30.1 and 14:27. Defendant, represented by counsel, pleaded not guilty. Prior to trial, defendant informed the trial court that, pursuant to a plea agreement, he wished to withdraw his not guilty plea and enter a responsive plea of guilty of manslaughter, a violation of La. R.S. 14:31, for count 1 in exchange for a forty-year sentence at hard labor, and a plea of guilty as charged for count 2 in exchange for a fifteen-year sentence at hard labor with the sentences to run consecutively. Following a *Boykin* examination of defendant, the trial court accepted his guilty pleas and sentenced him to forty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on count 1 and fifteen years imprisonment at hard labor on count 2 with the sentences to run consecutively. This appeal follows.

FACTS

On April 19, 2003, Aaron Miller and his brother, Michael, were sitting in a vehicle in the Lucky Food Mart parking lot on Greenwell Springs Road in Baton Rouge when defendant approached them. After a brief conversation, defendant pulled out a weapon and fired approximately five shots into the vehicle. Michael was hit and injured but survived. Aaron was hit and later died from his gunshot wound.

ISSUES PRESENTED

Defense counsel has filed a motion to withdraw from the case. In accordance with the procedures outlined in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967); *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241 (per curiam); and *State v. Benjamin*, 573 So.2d

528 (La. App. 4th Cir. 1990),¹ defense counsel has filed a brief indicating that, after a conscientious and thorough review of the record, this case presents no non-frivolous issues for appeal.

A copy of defense counsel's brief and motion to withdraw were sent to defendant. Defense counsel has informed defendant of his right to file a supplemental brief on his own behalf. Defendant has not filed a *pro se* brief with this court.

This court has performed an independent, thorough review of the pleadings, minute entries, indictment, and transcript of the *Boykin* examination in the appeal record. Defendant was properly charged by grand jury indictment with violations of La. R.S. 14:30.1 and La. R.S. 14:30.1 and 14:27, and the indictment was signed by the grand jury foreman and an assistant district attorney. Defendant was present and represented by counsel at arraignment, the *Boykin* examination, and sentencing. See *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

SENTENCING ERROR

In reviewing the record, we have discovered a sentencing error which requires us to amend the sentence to delete the restriction on parole eligibility. For the manslaughter conviction (count 1), the trial court sentenced defendant to forty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. Louisiana Revised Statutes 14:31(B) provides that a person convicted of manslaughter shall be imprisoned at hard labor for not more than forty years. Thus, the denial of parole eligibility on defendant's sentence for manslaughter is unlawful.

¹ In *State v. Mouton*, 95-0981, p. 2 (La. 4/28/95), 653 So.2d 1176, 1177 (per curiam), the Louisiana Supreme Court sanctioned the procedures outlined in *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990), for use by the appellate courts of Louisiana. See *State v. Jyles*, 96-2669 at p. 1, 704 So.2d 241.

Accordingly, we amend defendant's sentence to delete that portion providing that the sentence be served without benefit of parole, probation, or suspension of sentence. Re-sentencing is not required. Because the trial court sentenced defendant to the maximum possible period of imprisonment, it is not necessary for us to remand for re-sentencing after removing the parole prohibition. However, we remand the case and order the district court to amend the commitment and the minute entry of the sentencing accordingly. *See State v. Benedict*, 607 So.2d 817, 823 (La. App. 1st Cir. 1992). *See also State v. Miller*, 96-2040, p. 3 (La. App. 1st Cir. 11/7/97), 703 So.2d 698, 700-701, *writ denied*, 98-0039 (La. 5/15/98), 719 So.2d 459.

Our independent review reveals no non-frivolous issues that arguably support this appeal. Accordingly, defendant's convictions and sentences are affirmed. Defense counsel's motion to withdraw is hereby granted.

CONVICTIONS AFFIRMED; SENTENCE ON COUNT 2 AFFIRMED; SENTENCE ON COUNT 1 AMENDED AND, AS AMENDED, AFFIRMED; REMANDED WITH ORDER. MOTION TO WITHDRAW GRANTED.