

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 0505

STATE OF LOUISIANA

VERSUS

KENNETH M. WELLS

DATE OF JUDGMENT: SEP 14 2009

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
NUMBER 22,277, DIV. D, PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE A. J. KLING, JR., JUDGE AD HOC, AND
HONORABLE JANE TRICHE-MILAZZO, JUDGE

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State of Louisiana

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Counsel for Defendant-Appellant
Kenneth M. Wells

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED; COUNSEL'S MOTION TO
WITHDRAW GRANTED.

KUHN, J.

Defendant, Kenneth M. Wells, was charged by bill of information with one count of attempted second degree murder, a violation of La. R.S. 14:27 and 30.1. Defendant initially entered a plea of not guilty and proceeded to trial before a jury. However, after the State and defense rested their cases, but prior to submission of the matter to the jury for a decision, defendant agreed to a plea bargain. In accordance with the plea bargain, defendant pleaded guilty to the lesser charge of attempted manslaughter, a violation of La. R.S. 14:27 and 31, with a sentencing cap of ten years.

Following the presentence investigation, the trial court sentenced defendant to a term of eight years at hard labor. Defendant filed a pro se motion to vacate his sentence, which was denied. Defendant then filed a pro se motion to reconsider his sentence, which also was denied by the trial court.

On appeal, defense counsel asserts there are no non-frivolous issues and no ruling of this court which arguably supports an appeal; therefore, counsel requests this court conduct a review for error under La. C.Cr.P. art. 920(2).

FACTS

On August 4, 2007, Donovan Elder was at the Burnside Daiquiri Shop with some friends. While there, Elder was repeatedly approached by defendant who persisted in asking Elder if he remembered him. After Elder replied that he did not, defendant attempted to persuade Elder to go outside with him. When Elder eventually left the bar, defendant, who was already outside, approached Elder and asked him if he remembered hitting him in the head with a bottle on a prior occasion. Elder denied any such action, whereupon defendant brandished a gun

and began shooting at Elder. Elder fled without sustaining any wounds. Six spent shell casings were recovered from the parking lot.

DISCUSSION

Appellate counsel for defendant filed a brief in this court containing no assignments of error but requesting a review for error on the face of the record. This approach is similar to an “Anders” brief, as utilized in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In her brief and motion to withdraw, appellate counsel asserts that after a conscientious and thorough review of the record, there are no non-frivolous issues and no ruling arguably supporting an appeal. Appellate counsel requests a review of the record for any errors under La. C.Cr.P. art. 920(2). Defendant was informed of his right to file a pro se brief; however, no such brief has been filed.

In accordance with the procedure utilized in *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990), this court has reviewed the pleadings filed in district court, all minute entries of the district court proceedings, the bill of information, the jury sheets, and all the transcripts contained in the appeal record. After reviewing the record, we find defendant was properly charged by bill of information, which was signed by the assistant district attorney. Defendant was present and represented by counsel at arraignment, pretrial and trial proceedings, jury selection, pleading, and sentencing. During his plea, defendant was fully informed of his rights. The sentence imposed on defendant is legal in all respects. Our independent review reveals no non-frivolous issues or any ruling that would arguably support this appeal.

DECREE

Accordingly, we affirm defendant's conviction and sentence and grant counsel's motion to withdraw her representation of defendant, Kenneth M. Wells.

CONVICTION AND SENTENCE AFFIRMED; COUNSEL'S MOTION TO WITHDRAW GRANTED.