

Judgment rendered January 26, 2011.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

NO. 45,771-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

JOANN JENKINS

Appellant

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Appealed from the
Fifth Judicial District Court for the
Parish of Franklin, Louisiana
Trial Court No. 2009-478F

Honorable Terry A. Doughty, Judge

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Appellant

JOANN JENKINS

Pro Se

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Counsel for
Appellee

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Before WILLIAMS, STEWART and PEATROSS, JJ.

WILLIAMS, J.

The defendant, Joann Jenkins, pled guilty to one count of forgery with an agreed sentence of six years' imprisonment. Defendant's appellate counsel has filed a motion to withdraw with a brief asserting that there are no non-frivolous issues to raise on appeal. *See State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990). On August 5, 2010, this Court issued an order rescinding the previously fixed pro se briefing schedule and notifying the defendant of the applicable deadlines for filing a brief and requesting the appellate record in this matter. Defendant has neither requested the record nor filed a pro se brief. For the following reasons, we grant the motion to withdraw and affirm the defendant's conviction and sentence.

DISCUSSION

The defendant was charged by bill of information with 17 counts of forgery, in violation of LSA-R.S. 14:72. Pursuant to a plea agreement, defendant pled guilty to one count of forgery with an agreed sentence of six years' imprisonment. In exchange, the state agreed to *nolle prosequi* the remaining 16 counts. Subsequently, the district court sentenced the defendant to serve six years at hard labor, with the sentence to run concurrently with any other sentence previously imposed. Defendant's motion to reconsider sentence was denied. This appeal followed.

After the appeal was filed, this court noted on its own motion that the plea colloquy transcript did not unequivocally reflect defendant's understanding that the six-year sentence agreed upon would be served at hard labor. However, in a brief filed by counsel, the defendant waived the opportunity to assert any potential assignments of error arising from that

aspect of the record.

Subsequently, the defendant's appellate counsel filed a motion to withdraw and an *Anders* brief, which alleges that he could find no non-frivolous issues to raise on appeal.¹ *See 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; *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So.2d 1176; *State v. Benjamin*, *supra*. Counsel's brief outlines the procedural history of this case, notes that defendant's guilty plea complied with the *Boykin* requirements and contains a detailed assessment for both the defendant and the appellate court of whether the appeal is worth pursuing in the first place. *Jyles, supra*. Defense counsel verifies that he has mailed photocopies of the motion to withdraw and his brief to the defendant, in accordance with *Anders, Jyles, Mouton, and Benjamin, supra*.

We note that the defendant cannot appeal her sentence, which was imposed in conformity with the plea agreement. LSA-C.Cr.P. art. 881.2. In addition, we have reviewed the record for error patent and found none. Accordingly, we find there are no non-frivolous issues to raise on appeal.

CONCLUSION

For the foregoing reasons, appellate counsel's motion to withdraw is granted, and the defendant's conviction and sentence are affirmed.

MOTION TO WITHDRAW GRANTED; CONVICTION AND SENTENCE AFFIRMED.

¹Defendant's original appellate counsel filed an *Anders* brief in July 2010. However, said counsel was allowed to withdraw and new counsel was enrolled by this court's December 2010 order. Defendant's new counsel filed his *Anders* brief in January 2011.