Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

No. 52,685-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA Appellee

versus

RAHEEM SINGLETON Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 352,625

Honorable Katherine Dorroh, Judge

* * * * *

LOUISIANA APPELLATE PROJECT Counsel for Appellant
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Before MOORE, STONE, and McCALLUM, JJ.

MOORE, J.

Raheem Singleton appeals his conviction of third degree rape and his sentence of 25 years at hard labor, without benefits. His appointed counsel has filed a motion to withdraw, with a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So. 2d 241, urging that there are no nonfrivolous issues on which to base the appeal. We affirm Singleton's conviction and sentence and grant counsel's motion to withdraw.

FACTS AND PROCEDURAL HISTORY

In early October 2016, the victim, 11-year-old AD, told her mother that she had been raped by Singleton while she was spending the night at her babysitter's house. Singleton was the babysitter's daughter's boyfriend. AD's mother called the police, who took AD to University Health for examination by a SANE nurse; however, the nurse found no physical evidence of trauma on AD, and a perineal swab taken from her showed no trace of male DNA.

The next day, AD gave a videotaped interview at Gingerbread House. In this, she described staying at the babysitter's overnight, lying down on the couch to watch cartoons, when Singleton asked her to come to the bathroom with him; she declined and turned her back to the TV, but Singleton came over to the couch, pulled down AD's shorts and panties, touched her "privacy part," and then inserted his penis in it.

Sgt. Michael Jones, of the Shreveport Police Department, testified that officers were not able to find Singleton until nearly a year later, in late September 2017. However, Singleton consented to come to the police

station, where he waived his *Miranda* rights and gave a videotaped statement. In this, he first maintained that nothing happened between him and AD, but he eventually admitted that he had been at the babysitter's house, in Queensborough; the babysitter was his girlfriend's mother; he touched AD "in the wrong spot" while she appeared to be asleep; he then pulled down her panties, put on a condom, and inserted the tip of his penis into her vagina; and this lasted about five minutes. He also said he stopped because he knew it was "not right."

The following day, AD, by then 12 years old, instantly and confidently picked Singleton's picture from a photo lineup.

The state charged Singleton with first degree rape, La. R.S. 14:42 A(4), in which the victim was under the age of 13. At a pretrial hearing in March 2018, the court found that AD's Gingerbread House interview complied with La. R.S. 15:440.1-440.6 and that Singleton's statement to police was freely and voluntarily given. Both videos were admitted at Singleton's trial, in July 2018. In addition, various witnesses testified as outlined above. The 12-member jury found Singleton guilty of the lesser included offense of third degree rape, La. R.S. 14:43. At sentencing, in August 2018, the court noted the statutory range of up to 25 years at hard labor, all without benefits, but found that the jury had "compromised," the evidence actually proved first degree rape, and several aggravating factors applied. The court sentenced him to the maximum, 25 years at hard labor, without benefits. The court denied a motion to reconsider.

Singleton took this appeal, and counsel from the La. Appellate Project was appointed to represent him. In this court, counsel filed a motion to

supplement the record with the transcript of the March 2018 hearing, and several motions for extension of time, all of which were granted.

DISCUSSION

As noted, appellate counsel filed an *Anders* brief asserting that after a thorough review of the entire record, no nonfrivolous issues remain for appeal. *Anders v. California*, *supra*; *State v. Jyles*, *supra*; *State v. Mouton*, 95-0981 (La. 4/28/95), 653 So. 2d 1176; *State v. Benjamin*, 573 So. 2d 528 (La. App. 4 Cir. 1990). The brief outlines the procedural history of the case and includes a detailed and reviewable assessment for both the defendant and this court as to whether the appeal is worth pursuing. Counsel also verified that he mailed copies of his brief and motion to withdraw to Singleton. Singleton has filed no brief; the state also declined to file a brief.

Counsel has outlined the essential facts of the case as they relate to sufficiency of the evidence to convict, *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979). Singleton was charged with first degree rape, which is defined, in La. R.S. 14:42, in pertinent part:

> A. First degree rape is a rape committed * * * where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances: * * *
>
> (4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

Notably, first degree rape carries a mandatory sentence of life in prison, without benefits. La. R.S. 14:42 D(1).

Singleton was convicted of third degree rape, which is defined, in La. R.S. 14:43, in pertinent part:

> A. Third degree rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the

> lawful consent of a victim because it is committed under any one or more of the following circumstances: * * *
>
> (4) When the offender acts without the consent of the victim.
>
> B. Whoever commits the crime of third degree rape shall be imprisoned at hard labor, without benefit of parole, probation, or suspension of sentence, for not more than twenty-five years.
>
> C. For all purposes, "simple rape" and "third degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of simple rape is the same as a reference to the crime of third degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "third degree rape".

Counsel summarizes the trial evidence: AD testified that while she was sleeping on the couch at her babysitter's house, Singleton pulled down her pants and inserted his penis into her vagina; although there was no physical evidence of the assault, trial counsel did not question or cast any doubt on AD's account; police were unable to locate Singleton for almost a year; when they did, he voluntarily gave a videotaped statement that essentially confirmed AD's testimony, adding only that she was asleep during part of the assault and that he used a condom. The record also supports the district court's admission of the Gingerbread House interview and of Singleton's statement to the police. We agree that on this record, there is no nonfrivolous basis to challenge the sufficiency of the evidence.

As to sentencing, counsel concedes that the district court considered the applicable aggravating and mitigating facts, under La. C. Cr. P. art. 894.1, and found that Singleton had no prior criminal record. The prominent fact, however, was that the evidence would have supported a conviction for first degree rape, R.S. 14:42, but, in an apparent compromise to avoid the mandatory life sentence for that offense, the jury entered the responsive

verdict of third degree rape. This was a valid consideration in imposing the maximum sentence for the offense of conviction. *State v. Houston*, 40,642 (La. App. 2 Cir. 3/10/06), 925 So. 2d 690, *writ denied*, 2006-0796 (La. 10/13/06), 939 So. 2d 373; *State v. Holland*, 544 So. 2d 461 (La. App. 2 Cir. 1989), *writ denied*, 567 So. 2d 93 (1990). We agree that on this record, there is no nonfrivolous basis to challenge the sentence as excessive.

Finally, we have reviewed the entire record and find nothing we consider to be error patent. La. C. Cr. P. art. 920 (2).

CONCLUSION

For the reasons expressed, we affirm Raheem Singleton's conviction and sentence, and grant counsel's motion to withdraw.

CONVICTION AND SENTENCE AFFIRMED; MOTION TO WITHDRAW GRANTED.