

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

NO. 14-KA-63

VERSUS

FIFTH CIRCUIT

ERROL VICTOR, SR.

COURT OF APPEAL

STATE OF LOUISIANA


ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 12-249, DIVISION "B"
HONORABLE MARY H. BECNEL, JUDGE PRESIDING

COURT OF APPEAL
FIFTH CIRCUIT

September 24, 2014

FILED SEP 24 2014

MARC E. JOHNSON
JUDGE

 CLERK
Cheryl Quirk Landrieu

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and Robert M. Murphy

PRENTICE L. WHITE
ATTORNEY AT LAW
Louisiana Appellate Project
P. O. Box 74385
Baton Rouge, Louisiana 70874
COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE
AFFIRMED; MOTION TO
WITHDRAW GRANTED

1/3/13
SMC
BMM

Defendant, Errol Victor, Sr., appeals his conviction and three-year sentence for out-of-state bail jumping. For the reasons that follow, we affirm.¹

On August 7, 2012, Defendant was charged with out-of-state bail jumping in violation of La. R.S. 14:110.1.1.² After a *Faretta*³ hearing where it was determined Defendant voluntarily and knowingly waived his right to counsel and was competent to represent himself, Defendant represented himself during a two-day trial. On May 22, 2013, a 12-person jury found Defendant guilty as charged. The trial court sentenced him to three years imprisonment at hard labor and imposed a \$2,000 fine.

At trial, Lieutenant Kenneth Mitchell, with the St. John the Baptist Sheriff's Office, testified that Defendant was ordered to be present in court on August 15

¹ This memorandum opinion is issued in compliance with Uniform Rules – Courts of Appeal Rule 2-16.1(B).

² Defendant's wife, Tonya Victor, was also charged with out-of-state bail jumping. She was convicted and her appeal is currently pending in this Court under docket number 13-KA-888.

³ *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

and 16, 2011 for trial on a second degree murder charge but failed to appear, at which time a bail jumping warrant was issued. During the police investigation, Defendant's son indicated that he did not know of his parents' whereabouts. Defendant's son told investigators that his parents had been staying at the Best Western Hotel in Laplace, but investigators determined Defendant had last stayed there three months earlier. It was also determined that Defendant's cellular phone was no longer in service. Defendant's attorney told police that Defendant had fired him and left a voicemail the weekend prior to trial stating, "he was not appearing in court for no one." Defendant was subsequently apprehended in Georgia with the assistance of the United States Marshals.

Appellate counsel's brief contains no assignments of error and sets forth that it is filed in accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and *State v. Jyles*, 96-2669 (La. 12/12/97); 704 So.2d 241 (*per curiam*), which set forth the procedure appellate counsel should follow when, upon conscientious review of a case, counsel finds an appeal would be wholly frivolous.

In the instant case, appellate counsel reviewed the procedural history of the case in his brief. He set forth that, after a review of the record, he has found no non-frivolous issues to present on appeal. Appellate counsel specifically notes that he considered whether to raise the issues of Defendant's self-representation; the pre-trial denials of his motions to recuse the presiding judge and district attorney and change of venue; and the denial of Defendant's *Batson*⁴ challenge, but ultimately concluded that these claims would be frivolous. Accordingly, appellate counsel requests to withdraw from further representation of Defendant. Appellate counsel advised this Court that he notified Defendant of his right to file a *pro se* brief in this appeal, and we note that this Court sent Defendant a letter by certified

⁴ *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

mail informing him that an *Anders* brief had been filed and that he had a right to file a *pro se* supplemental brief. Defendant chose not to file a *pro se* brief.

This Court has performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appellate record. Our independent review reveals no non-frivolous issues or trial court rulings that arguably support an appeal. Accordingly, Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw, which has been held in abeyance pending disposition of this matter, is granted.

CONVICTION AND SENTENCE
AFFIRMED; MOTION TO
WITHDRAW GRANTED

SUSAN M. CHEARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

**NOTICE OF JUDGMENT AND
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **SEPTEMBER 24, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in cursive script, appearing to read "Cheryl Q. Landrieu", written over a horizontal line.

CHERYL Q. LANDRIEU
CLERK OF COURT

14-KA-63

E-NOTIFIED

NO ATTORNEYS WERE ENOTIFIED

MAILED

HON. THOMAS F. DALEY
DISTRICT ATTORNEY
FORTIETH JUDICIAL DISTRICT
PARISH OF ST. JOHN THE BAPTIST
POST OFFICE BOX 399
LAPLACE, LA 70069

PRENTICE L. WHITE
ATTORNEY AT LAW
LOUISIANA APPELLATE PROJECT
P. O. BOX 74385
BATON ROUGE, LA 70874