

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-264

STATE OF LOUISIANA

versus

TYRONE J JERNIGAN

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 23-2953, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

December 15, 2025

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Jude G. Gravois

**CONVICTION AND SENTENCE AFFIRMED; MOTION TO
WITHDRAW GRANTED**

SMC
FHW
JGG

TRUE COPY



LINDA TRAN
DEPUTY CLERK

COUNSEL FOR DEFENDANT/APPELLANT,
TYRONE J. JERNIGAN

Prentice L. White

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.

Monique D. Nolan

Thomas J. Butler

Leo M. Aaron

CHEHARDY, C.J.

Defendant, Tyrone J. Jernigan, was charged and convicted of one count of criminal trespass. Defendant's appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and a motion to withdraw alleging there are no non-frivolous issues that could support an appeal. After thorough review of the record, we agree with counsel's assessment of the case, affirm defendant's conviction and sentence, and grant appellate counsel's motion to withdraw as counsel of record for defendant.

PROCEDURAL HISTORY

On June 23, 2023, the Jefferson Parish District Attorney filed a bill of information charging defendant, Tyrone J. Jernigan, with one count of criminal trespass, in that he did willfully enter upon the improvable property owned by another without the express authorization of the owner on April 12, 2023, in violation of La. R.S. 14:63. Defendant pled not guilty at his arraignment on June 26, 2023.

On September 27, 2023, in response to defense counsel's request that the district court appoint a sanity commission for purposes of determining defendant's competency to stand trial, a competency hearing was held, wherein defendant was deemed competent to proceed. Pre-trial motions were filed. A hearing on defendant's motion to suppress statements and identification was held by the district court on March 21, 2024. The district court took the matter under advisement and issued a judgment, with reasons, denying defendant's motion on March 27, 2024.¹

Defendant changed his plea of not guilty to "not guilty by reason of insanity" on July 15, 2023. He subsequently withdrew his not guilty plea and on

¹ Defendant sought supervisory review of the district court's denial of his motion to suppress identification. This Court denied defendant's writ application having found no abuse of the district court's discretion. See *State v. Jernigan*, 24-200 (La. App. 5 Cir. 5/15/24) (unpublished writ disposition).

March 20, 2025, pled guilty to one count of criminal trespass in violation of La. R.S. 14:63.² On that same date, the district court sentenced defendant to thirty days in the parish prison, with credit for time served. The court further ordered that the sentence run concurrently with the sentences in district court case numbers 23-2686 and 24-5517. Additionally, the district court imposed a fine of \$50.00 to the Indigent Defender Board and \$50.00 to the Jefferson Parish Sheriff's Office.

On April 3, 2025, defendant filed a *pro se* motion for appeal and a *pro se* application to proceed *informa pauperis*. The district court issued an order granting defendant's motion for appeal and denying defendant's related requests on April 9, 2025. A motion to withdraw as counsel of record was granted on April 16, 2025, and the Louisiana Appellate Product was appointed to represent defendant. Appellate counsel subsequently filed an *Anders* brief alleging that, after thorough review of the record, there are no non-frivolous issues that could support an appeal.

FACTUAL BACKGROUND

Because defendant's conviction resulted from a guilty plea, the underlying facts were not fully developed at trial. Nevertheless, the State alleged in the bill of information that, on or about April 12, 2023, defendant committed criminal trespass in violation of La. R.S. 14:63, in that he willfully and unlawfully entered upon immovable property owned by another, located at 512 Lavoisier, Gretna, without the express authorization of the owner, Donna Raffo. Additionally, defendant indicated that he committed the crime.

² On March 20, 2025, defendant also pled guilty under district court case number 23-2686 to two counts of obscenity, third offense, which is currently before this Court on appeal in case number 25-KA-263. Defendant also pled guilty under district court case number 24-5517 to obscenity, which is currently before this Court on appeal in case number 25-KA-265.

PRELIMINARY NOTE

As a preliminary matter, we note that this Court's appellate jurisdiction extends to cases that are triable by a jury. La. Const. art. 5 § 10; La. C.Cr.P. art. 912.1; *State v. Chess*, 00-164 (La. App. 5 Cir. 6/27/00), 762 So.2d 1286, 1287. La. C.Cr.P. art. 779 provides the method of trial for misdemeanors and states that, unless the punishment that may be imposed exceeds six months of imprisonment or a fine in excess of one thousand dollars, a misdemeanor is not triable by jury. *State v. Karim*, 19-133 (La. App. 5 Cir. 9/9/20), 302 So.3d 1200, 1203, *writ denied*, 20-1185 (La. 1/12/21), 308 So.3d 713. *See also* La. Const. art. 1 § 17.

Here, defendant pled guilty to criminal trespass in violation of La. R.S. 14:63, a misdemeanor. At the time of the offense, La. R.S. 14:63(G)(1) set forth the penalty for a first offense of criminal trespass, namely a fine of not less than \$100.00 and not more than \$500.00, or imprisonment of not more than thirty days, or both. Thus, criminal trespass is not triable by a jury.

The proper procedure for seeking review of a misdemeanor conviction is an application for writ of review asking this Court to exercise its supervisory jurisdiction. *See* La. C.Cr.P. art. 912.1(C)(1); *State v. Vaughn*, 18-51 (La. App. 5 Cir. 5/16/18), 248 So.3d 578, 582. Further, it is this Court's policy to dismiss such misdemeanor matters that are not appealable. We recognize, however, that dismissal may not be warranted in "exceptional cases, especially where there are misdemeanor and felony convictions intertwined to the point that the interests of justice are better served by considering the matters together." *Vaughn*, 248 So.3d at 583.

In the case *sub judice*, defendant's misdemeanor and felony offenses were charged in three separate bills of information. These cases are companion cases pending before this Court on appeal (25-KA-263, 25-KA-264, and 25-KA-265). The misdemeanor and felony offenses all occurred during the same incident on the

same day, and defendant simultaneously pled guilty and was sentenced on both the misdemeanor and felony charges. Consequently, we find the misdemeanor and felony convictions are intertwined to the point that the interests of justice are better served by considering the matters together. Accordingly, judicial economy dictates that these matters should be considered simultaneously. *Vaughn*, 248 So.3d at 583; *see also State v. Blackwell*, 18-118 (La. App. 5 Cir. 12/27/18), 263 So.3d 1234, 1239.

ISSUE PRESENTED FOR REVIEW

While defense counsel has assigned no errors for appellate review, the issue this Court must decide is whether the record reveals any facts that could support a non-frivolous appeal. Additionally, we must determine whether any patent errors appear on the face of the record.

ANDERS BRIEF

Under the procedure adopted by this Court in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11,³ appointed appellate counsel has filed a brief asserting that he has thoroughly reviewed the trial court record and cannot find any non-frivolous issues to raise on appeal. Accordingly, pursuant to *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*), appointed counsel requests permission to withdraw as counsel of record.

In *Anders*, the United States Supreme Court stated that appointed appellate counsel may request permission to withdraw if he finds his case to be wholly frivolous after a conscientious examination of it.⁴ The request must be accompanied by “a brief referring to anything in the record that might arguably

³ In *Bradford*, this Court adopted the procedures outlined in *State v. Benjamin*, 573 So.2d 528, 530 (La. App. 4 Cir. 1990), which were sanctioned by the Louisiana Supreme Court in *State v. Mouton*, 95-981 (La. 4/28/95), 653 So.2d 1176, 1177 (*per curiam*).

⁴ The United States Supreme Court reiterated *Anders* in *Smith v. Robbins*, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).

support the appeal” so as to provide the reviewing court “with a basis for determining whether appointed counsel have fully performed their duty to support their clients’ appeals to the best of their ability” and to assist the reviewing court “in making the critical determination whether the appeal is indeed so frivolous that counsel should be permitted to withdraw.” *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 439, 108 S.Ct. 1895, 1902, 100 L.Ed.2d 440 (1988) (quotation omitted).

In *Jyles*, 96-2669, 704 So.2d at 241, the Louisiana Supreme Court stated that an *Anders* brief need not tediously catalog every meritless pretrial motion or objection made at trial with a detailed explanation of why the motions or objections lack merit. The Supreme Court explained that an *Anders* brief must demonstrate by full discussion and analysis that appellate counsel “has cast an advocate’s eye over the trial record and considered whether any ruling made by the trial court, subject to the contemporaneous objection rule, had a significant, adverse impact on shaping the evidence presented to the jury for its consideration.” *Id.*

When conducting a review for compliance with *Anders*, an appellate court must conduct an independent review of the record to determine whether the appeal is wholly frivolous. *Bradford*, 95-929, 676 So.2d at 1110. If, after an independent review, the reviewing court determines there are no non-frivolous issues for appeal, it may grant counsel’s motion to withdraw and affirm the defendant’s conviction and sentence. However, if the court finds any legal point arguable on the merits, it may either deny the motion and order the court-appointed attorney to file a brief arguing the legal point(s) identified by the court, or grant the motion and appoint substitute appellate counsel. *Id.*

DISCUSSION

Defendant's appellate counsel asserts that after a detailed review of the record, he could find no non-frivolous issues to raise on appeal. He explains that the bill of information was proper, the trial court correctly ruled on the pretrial motions, and the plea was entered freely and voluntarily with no *Boykin*⁵ deficiencies. The court confirmed defendant's educational background, mental stability, and opportunity to review the plea agreement with counsel. Defendant was also advised of the sentencing range and his right to counsel if he chose to appeal his sentence. Counsel concludes that no appealable issues exist to support a direct appeal of the conviction or sentence and requests an errors patent review.

The State agrees with appellate counsel that there are no non-frivolous issues for appeal. It asserts that the bill of information was proper and that defendant was present and represented by counsel at every critical stage of the proceedings. The State further asserts that defendant knowingly and voluntarily waived his rights and pled guilty and that the trial court conducted a proper *Boykin* colloquy. It adds that defendant was sentenced in accordance with the plea agreement and that the sentence imposed was legal. The State concludes that because appellate counsel's brief demonstrates compliance with *Anders*, the motion to withdraw should be granted.

Appellate counsel has filed a motion to withdraw as attorney of record, which states he made a conscientious and thorough review of the trial court record and can find no non-frivolous issues to raise on appeal and no rulings of the trial court which would arguably support the appeal. He further indicates defendant was notified of his filing and advised of his right to file a *pro se* brief. Additionally, this Court sent defendant a letter informing him that an *Anders* brief

⁵ *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

had been filed and that he had until August 10, 2025, to file a *pro se* supplemental brief. Defendant chose not to file a *pro se* brief.

Our independent review of the record supports appellate counsel's assertion that there are no non-frivolous issues that could support an appeal.

The bill of information properly charged defendant and concisely stated the essential facts constituting the offense charged. It also sufficiently identified defendant and the crime charged. *See* La. C.Cr.P. arts. 463-466. The minute entries reflect that defendant and his counsel appeared at all crucial stages of the proceedings against him, including his arraignment, guilty plea proceeding, and sentencing. As such, defendant's presence does not present any issues that would support an appeal.

Further, defendant pled guilty as charged to the bill of information. If a defendant pleads guilty, he normally waives all non-jurisdictional defects in the proceedings leading up to the guilty plea and precludes review of such defects either by appeal or post-conviction relief. *State v. Turner*, 09-1079 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. Here, defendant entered an unqualified plea of guilty; consequently, all non-jurisdictional defects are waived. No rulings were preserved for appeal under the holding in *State v. Crosby*, 338 So.2d 584 (La. 1976).

Defendant filed pretrial motions. Even if all of those motions were not heard or ruled upon, when a defendant does not object to the district court's failure to hear or rule on a pretrial motion prior to pleading guilty, the motion is considered waived. *See State v. Corzo*, 04-791 (La. App. 5 Cir. 2/15/05), 896 So.2d 1101, 1102. Here, defendant did not object to the district court's failure to hear or rule on any pretrial motions prior to his guilty plea. Further, prior to defendant's guilty plea proceeding, the district court found that defendant was competent to proceed to trial. This Court has previously determined that a

defendant's guilty plea waived his right to challenge his competency on appeal. *See State v. Ellis*, 19-435 (La. App. 5 Cir. 1/29/20), 290 So.3d 306, 311; *State v. Chirlow*, 18-360 (La. App. 5 Cir. 11/7/18), 259 So.3d 604, 609; *State v. Marengo*, 17-418 (La. App. 5 Cir. 12/27/17), 236 So.3d 784, 789.

Additionally, a review of the record reveals no irregularities in defendant's guilty plea that would render it invalid. Once a defendant is sentenced, only those guilty pleas that are constitutionally infirm may be withdrawn by appeal or post-conviction relief. A guilty plea is constitutionally infirm if it is not entered freely and voluntarily, if the *Boykin* colloquy is inadequate, or when a defendant is induced to enter the plea by a plea bargain or what he justifiably believes was a plea bargain and that bargain is not kept. *State v. McCoil*, 05-658 (La. App. 5 Cir. 2/27/06), 924 So.2d 1120, 1124.

The record indicates that on March 20, 2025, prior to the colloquy, defense counsel mentioned the misdemeanor charge in this case (23-2953) and inquired as to whether it would be dismissed. The State responded that it could not be dismissed because the victim was uncooperative. The court then advised defense counsel that the fines and fees for the misdemeanor were \$50.00 to the Indigent Defender Board and \$50.00 to the Jefferson Parish Sheriff's Office. Counsel asked what the sentence on the criminal trespass would be, and the district court responded. The record shows that defense counsel then stated, "Well, let me go and fill out my paperwork," to which the judge responded, "All right, fill your paperwork out." Afterward, defense counsel provided that in the matters before the court, defendant would withdraw his former pleas of not guilty and enter pleas of guilty as charged.

During the subsequent plea colloquy, the district court specifically mentioned the felony obscenity charges in district court case numbers 23-2686 and 24-5517. There is no specific mention of the misdemeanor charge during the

colloquy. The Misdemeanor Guilty Plea Form, signed and dated by defendant, his attorney, and the judge, executed on that same date, provided, “I understand that I am pleading guilty to the crime of criminal trespass, a violation of La. R.S. 14:63, which occurred on the 12[th] day of April, 2023[.]”

During the colloquy, defendant was advised of his *Boykin* rights.⁶ The trial judge advised him that by pleading guilty, he was waiving these rights and defendant indicated that he understood this. He denied being forced, intimidated, coerced, or promised any award to himself or any member of his family for the purpose of forcing him to plead guilty. Defendant answered negatively when asked if he was suffering from any physical or mental impairments that would affect his ability to enter the guilty plea. The judge asked if he could read, write, and understand English, and defendant answered affirmatively. He also confirmed that he was a United States citizen.

Thereafter, defense counsel and defendant both indicated that they read and signed the waiver of rights form. The trial judge indicated that she was satisfied that defendant was aware of the nature of the crime to which he pled guilty. The judge said defendant did in fact commit said crime and understood the consequences of his guilty plea. After indicating defendant made a knowing,

⁶ A review of the colloquy indicates the trial judge did not specifically refer to defendant’s privilege against self-incrimination; however, at the commencement of the colloquy, the judge asked defendant whether his attorney had advised him of his right against self-incrimination and whether he understood that he was waiving his right by pleading guilty. Additionally, at the conclusion of the colloquy, the judge confirmed with defendant counsel that he had, in fact, advised defendant of his rights, including the right against self-incrimination, and that he was satisfied that defendant entered his plea of guilty knowing all of the consequences. The district court also confirmed with defendant that his waiver of rights form was read to him and that he was informed of all the rights he was waiving by pleading guilty. Finally, the Misdemeanor Guilty Plea form signed by defendant, his attorney, and the district court, reflects a waiver of defendant’s privilege against self-incrimination.

While it is preferable for the trial judge to conduct a colloquy with the defendant to ascertain the validity of the plea, such a colloquy may not be indispensable, as long as the record contains some other affirmative showing to support the plea. *State v. Halsell*, 403 So.2d 688, 690 (La. 1981). A written form containing a waiver of rights is a part of the record and can be examined to determine the free and knowing nature of the plea. *State v. Dunn*, 390 So.2d 525 (La. 1980). See also *State v. Hebert*, 02-884 (La. App. 5 Cir. 12/30/02), 838 So.2d 30, 31-34; *State v. Cole*, 04-615 (La. App. 5 Cir. 3/1/05), 900 So.2d 15, 23-24. Here, although the district court did not specifically advise defendant of his right against self-incrimination during the colloquy, we find the record supports defendant’s guilty plea and does not present a non-frivolous issue for appeal.

intelligent, free, and voluntary plea, and there was a factual basis for the acceptance of the plea, the court accepted defendant's guilty plea. The district court then sentenced defendant in the instant case to thirty days in the parish prison to run concurrently with the sentences rendered in case numbers 23-2686 and 24-5517.

Additionally, defendant, his attorney, and the trial judge signed defendant's Misdemeanor Guilty Plea form in connection with the misdemeanor. In that form, defendant was advised that he was pleading guilty to criminal trespass, a violation of La. R.S. 14:63. Defendant was advised that by pleading guilty, he was giving up the right to trial by the court; to require the State to prove his guilt beyond a reasonable doubt; to confront his accusers and cross-examine witnesses called to testify against him; to remain silent and not to be compelled to incriminate himself; to the assistance of a lawyer, and if he could not afford one, the right to have a free court-appointed lawyer; and to appellate review of an adverse verdict at trial. Defendant indicated that by entering a guilty plea, he was waiving and giving up these rights. He also indicated that he understood that if he was arrested, charged, and convicted of a subsequent offense, this guilty plea may be used against him to enhance that penalty. Defendant acknowledged that his act of pleading guilty was a knowing, intelligent, free, and voluntary act on his part. He further acknowledged that no promises or threats were made to encourage him to enter a guilty plea to criminal trespass. Defendant indicated that he understood that his sentence would be thirty days in the parish prison to run concurrently with the sentences in district court case numbers 23-2686 and 24-5517. He indicated his rights had been thoroughly explained to him by the district court, he understood them, and had no further questions. Defendant affixed his initials on the form next to each of his rights.

We find that defendant's sentence does not present any issues for appeal. It is within the sentencing range prescribed by statute. *See* La. R.S. 14:63. Further, defendant's sentence was imposed pursuant to, and in conformity with, the plea agreement. La. C.Cr.P. art. 881.2(A)(2) precludes a defendant from seeking review of his sentence imposed in conformity with a plea agreement, which was set forth in the record at the time of the plea. *State v. Surgi*, 24-291 (La. App. 5 Cir. 2/26/25), 406 So.3d 1214, 1219. Additionally, the plea agreement is beneficial to defendant in that no fine was imposed despite the statute authorizing both imprisonment and a fine, and the sentence was ordered to run concurrently with the sentences imposed in district court case numbers 23-2686 and 24-5517.

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that he has reviewed the district court proceedings and cannot identify any basis for a non-frivolous appeal, and this Court's independent review of the record supports counsel's assertion, appellate counsel's motion to withdraw as attorney of record is granted.

ERRORS PATENT REVIEW

Defendant requests an errors patent review. Generally, an errors patent review is not conducted on misdemeanor convictions. Nevertheless, this Court in similarly situated matters has conducted an errors patent review. *See Vaughn*, 248 So.3d at 588. Accordingly, an errors patent review was conducted, and related issues are addressed heretofore in the Preliminary Note.

CONVICTION AND SENTENCE AFFIRMED;
MOTION TO WITHDRAW GRANTED

SUSAN M. CHEARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
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 2-16.4 AND 2-16.5** THIS DAY
DECEMBER 15, 2025 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-KA-264

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)		
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)		
CHRISTOPHER A. ABERLE (APPELLANT)	MONIQUE D. NOLAN (APPELLEE)	THOMAS J. BUTLER (APPELLEE)

MAILED

TYRONE J. JERNIGAN #314225 (APPELLANT)	HONORABLE PAUL D. CONNICK, JR.
RAYMOND LABORDE CORRECTIONAL	(APPELLEE)
CENTER	DISTRICT ATTORNEY
1630 PRISON ROAD	LEO M. AARON (APPELLEE)
COTTONPORT, LA 71327	ASSISTANT DISTRICT ATTORNEY
	TWENTY-FOURTH JUDICIAL DISTRICT
	200 DERBIGNY STREET
	GRETN, LA 70053