

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-552

STATE OF LOUISIANA

VERSUS

DERRICK C. BAILEY

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-1322, DIVISION "J"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

July 01, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

**CONVICTIONS AND SENTENCES AFFIRMED; MOTION TO
WITHDRAW GRANTED**

JJM
FHW
SUS

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JALISA WALKER
DEPUTY CLERK

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DERRICK C. BAILEY

In Proper Person

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Andrea F. Long
Brooke A. Harris

MOLAISON, J.

Derrick Bailey, the defendant/appellant, appeals his conviction and sentence for possession of a firearm by a convicted felon, possession with intent to distribute marijuana, possession of cocaine, and being a second-felony offender. For the following reasons, we affirm the convictions and sentences.

PROCEDURAL HISTORY

On August 8, 2024, the State filed a superseding bill of information charging the defendant with possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1 (count one), possession with intent to distribute marijuana weighing less than two and a half pounds in violation of La. R.S. 40:966(A) (count two), and possession of cocaine weighing less than two grams in violation of La. R.S. 40:967(C) (count three). The defendant pled not guilty to all counts.

On July 7, 2025, the defendant withdrew his not guilty pleas and pled guilty as charged to all counts. The trial court sentenced him to imprisonment at hard labor for thirteen years without benefit of parole, probation, or suspension of sentence on count one; imprisonment at hard labor for five years on count two; and imprisonment at hard labor for two years on count three, with the sentences to run concurrently with each other. The State filed a multiple-offender bill on count one, alleging the defendant to be a second-felony offender, to which he stipulated. The trial court vacated the original sentence on count one and resentenced him to thirteen years at hard labor, without benefit of parole, probation, or suspension of sentence, to run concurrently with the sentences on counts two and three.

The trial court granted the defendant's *pro se* motion for an out-of-time appeal.

On appeal, the defendant's appointed counsel filed an appellate brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and filed a motion to withdraw as counsel of record for the defendant.

FACTS

Because the defendant pleaded guilty, the record does not include the facts of the crime. The State charged that on or about March 7, 2024, in Jefferson Parish, the defendant violated La. R.S. 14:95.1 by possessing a Glock 19, Gen 4, 9 mm semi-automatic handgun (serial numbers: ACMR 144 for the slide and BPGH7422 for the stock). The State also alleged that the defendant had prior convictions for possession with intent to distribute Tapentadol (La. R.S. 40:967(A)) and simple burglary (La. R.S. 14:62) in case number 23-1006 on February 8, 2024, in Division O of the 24th Judicial District Court in Jefferson Parish, and in case 613733-4 on June 26, 2019, in the 22nd Judicial District Court in St. Tammany Parish.

LAW AND DISCUSSION

Following the procedure set out in *State v. Bradford*, 95-929 (La. App. 5 Cir. 6/25/96), 676 So.2d 1108, 1110-11, appointed appellate counsel filed a brief stating that she thoroughly reviewed the trial court record and found no non-frivolous issues to raise on appeal. Under *Anders v. California* and *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241 (*per curiam*), appointed counsel asks for permission to withdraw as counsel of record for the defendant.

In *Anders*, the United States Supreme Court explained that appointed appellate counsel may ask to withdraw if, after a careful review, she finds the case to be entirely frivolous. The request must include a brief that points out anything in the record that might arguably support the appeal. This requirement helps the reviewing court determine whether appointed counsel fully considered the client's appeal and assists the court in deciding if the appeal is so frivolous that counsel should be allowed to withdraw. See *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).

In *Jyles*, 704 So.2d at 241, the Louisiana Supreme Court clarified that an *Anders* brief does not need to list every meritless pretrial motion or objection made at trial or explain in detail why each lacks merit. Instead, the brief must show through full discussion and analysis that appellate counsel has carefully reviewed the trial record and considered whether any trial court ruling, subject to the contemporaneous objection rule, significantly affected the evidence presented to the jury. *Id.*

When reviewing for *Anders* compliance, an appellate court must independently examine the record to decide whether the appeal is entirely frivolous. *Bradford*, 676 So.2d at 1110. If, after this review, the court finds no non-frivolous issues for appeal, it may grant counsel's motion to withdraw and affirm the defendant's conviction and sentence. If the court finds any arguable legal point, it may either deny the motion and order the attorney to file a brief on those points or grant the motion and appoint substitute appellate counsel. *Id.*

The defendant's appellate counsel states that after thoroughly reviewing the record, she found no non-frivolous issues to raise on appeal. The bill of information properly charged the defendant, and he appeared at every stage of the proceedings with counsel present. Counsel concludes that there are no appealable issues regarding the defendant's presence or representation.

Counsel reports that the court heard and denied a motion to suppress. The defendant did not make any statements, and no identification procedures took place. Counsel explains that the police did not seize evidence from the defendant but recovered discarded evidence on the roof of a shed. She also notes that while the issue of possession of this evidence could have been raised at trial, the defendant did not preserve it for appeal when he pleaded guilty.

Counsel explains that the defendant had outstanding attachments, and the police arrested him. The police searched the car where he was a passenger and

found an iPhone. She states that the police justified the search as incident to arrest and because they smelled marijuana coming from the vehicle. The police searched the iPhone with a valid search warrant. Counsel concludes that there are no valid issues to raise on appeal regarding the denial of this motion.

Counsel states that the defendant did not preserve any issues for appellate review under *State v. Crosby*, 338 So.2d 584 (La. 1976). She explains that the transcript shows the defendant entered his pleas freely and voluntarily, and the trial court did not make any errors in the *Boykin* colloquy. The trial court advised the defendant of the rights he was giving up by pleading guilty, and the defendant confirmed that he understood. The defendant also indicated that he understood the possible sentences, initialed next to the rights on the plea form, and signed the form with his attorney.

Counsel notes that the court did not provide a factual basis for the pleas. The defendant did not claim innocence but agreed there was a factual basis and admitted his guilt by pleading guilty. The defendant stipulated to the multiple bill, and the trial court vacated the original sentence on count one and resentenced him as a second-felony offender to thirteen years in prison. Counsel also notes that all sentences fall within the statutory ranges.

The State responds that counsel appears to have followed the correct procedures to withdraw. The State agrees that the superseding bill of information sets out the essential facts of the charged offenses and clearly identifies the defendant as required by La. C.Cr.P. arts. 464 and 466. The minute entries show that the defendant was present and had counsel at all important stages of the proceedings.

The State agrees that the court held a pretrial hearing on the defendant's motions to suppress evidence and statements, and the defendant did not reserve his right to challenge those rulings at the time of his guilty pleas under *Crosby*. The

State maintains that the record shows no unconstitutional issues with the guilty pleas that would make them invalid. The State asserts that the trial court advised the defendant of his rights, and the defendant confirmed that he understood and wanted to waive those rights. The State further asserts that the trial court accepted the defendant's pleas as knowing and voluntary and then sentenced him according to the plea agreement.

The State explains that it filed a multiple bill alleging the defendant was a second-felony offender. The trial court advised the defendant of his rights, the defendant waived those rights, and he stipulated to being a second-felony offender. The trial court accepted the stipulation after finding that the defendant knowingly and voluntarily made it. The trial court then vacated the original sentence on count one and imposed a legal sentence under La. R.S. 15:529.1 in accordance with the plea agreement. All sentences imposed are within statutory limits. The State asks that the convictions and sentences be affirmed.

Our independent review of the record confirms appellate counsel's statement that there are no non-frivolous issues to raise on appeal.

The superseding bill of information properly charged the defendant, plainly and concisely stated the essential facts constituting the charged offenses and sufficiently identified the defendant and the crimes charged. *See* La. C.Cr.P. arts. 464 and 466. The minute entries show that the defendant and his counsel appeared at all crucial stages of the proceedings, including his arraignment, guilty plea proceedings, multiple-offender stipulation, and sentencing. Thus, the defendant's presence does not present any issues that would support an appeal.

The defendant's trial counsel filed omnibus motions, including motions to suppress the statement, evidence, and identification. The trial court denied the motions to suppress evidence at the hearing on April 14, 2025. The defendant did not preserve any pretrial rulings for appeal under the holding in *Crosby*, 338 So.2d

584, when he pleaded guilty. Further, the defendant waived his outstanding pretrial motions by pleading guilty without complaining that the trial court had neither heard nor ruled on them. *See State v. Walker*, 08-563 (La. App. 5 Cir. 1/13/09), 8 So.3d 17, 20.

The defendant pleaded guilty as charged to possession of a firearm by a convicted felon, possession with intent to distribute marijuana weighing less than two and a half pounds, and possession of cocaine weighing less than two grams, as stated in the superseding bill of information. He also stipulated to being a second-felony offender. When a defendant pleads guilty, he usually waives all non-jurisdictional defects in the proceedings leading up to the guilty plea and cannot later challenge those defects by appeal or post-conviction relief. *State v. Turner*, 09-1079 (La. App. 5 Cir. 7/27/10), 47 So.3d 455, 459. After sentencing, only guilty pleas that are unconstitutionally infirm may be withdrawn by appeal or post-conviction relief. *State v. McCoil*, 05-658 (La. App. 5 Cir. 2/27/06), 924 So.2d 1120, 1124. A guilty plea is unconstitutionally infirm if the defendant does not enter it freely and voluntarily, if the *Boykin* colloquy is inadequate, or if the defendant enters the plea because of a plea bargain, or what he reasonably believed was a plea bargain, and the State does not honor that bargain. *Id.* In addition, an unconditional plea, made willingly and knowingly, waives all non-jurisdictional defects and prevents the defendant from later arguing on appeal that the State failed to produce enough proof at the habitual offender hearing. *State v. Surgi*, 24-293 (La. App. 5 Cir. 2/26/25), 406 So.3d 1181, 1187.

At the hearing, defense counsel stated that the defendant withdrew his not guilty pleas and entered guilty pleas as charged on all counts in the superseding bill of information. Defense counsel also said that the defendant completed and signed a waiver of rights form.

The defendant testified under oath that he had a ninth-grade education and could read and write English. He reviewed the waiver of rights form with his attorney, read and understood the form, and signed it. The trial judge explained the three offenses the defendant faced. The defendant said he understood the charges and pleaded guilty because he was guilty of those charges.

The defendant said he understood that by pleading guilty, he was giving up certain rights. The trial judge explained that the defendant had the right to a trial by judge or jury, the right to appeal if convicted, the right to cross-examine his accusers, the privilege against self-incrimination and not having to testify, and the right to require witnesses to testify on his behalf. The trial judge also explained that the defendant had the right to have an attorney at every stage of the proceedings and to have an attorney appointed if he could not afford one. The defendant confirmed that he understood that by pleading guilty, he was waiving all these rights.

The trial judge told the defendant the maximum sentences he could receive on each count and explained that by pleading guilty, the defendant allowed the court to impose those maximum sentences. The defendant said he understood and that no one promised him anything or threatened him to plead guilty. When the trial judge asked if the defendant had any questions about the proceedings, the defendant replied, "No, sir." When asked if he had questions about the forms he signed or the rights he waived, the defendant asked about parole. The trial judge explained that the Department of Corrections would calculate the sentences but advised the defendant to plan on serving the full term of the agreed sentences. The defendant replied, "All right."

The defendant said he pleaded guilty because he believed it was in his best interest and understood that these convictions could increase any future sentences. The trial judge found that the defendant knowingly, intelligently, freely, and

voluntarily pleaded guilty. After defense counsel waived sentencing delays, the trial judge sentenced the defendant according to the plea agreement: thirteen years at hard labor without benefit of parole, probation, or suspension of sentence on count one; five years at hard labor on count two; and two years at hard labor on count three, with all sentences to run at the same time. The trial court suspended any fines and fees, finding that the defendant was “indigent” during his incarceration.

The waiver of rights form shows that the defendant pleaded guilty to the three offenses in the superseding bill of information. The trial judge advised him of his rights, and the form explained the sentencing ranges and the actual sentences he would receive. The defendant initialed next to his rights, he and his attorney signed the form, and the trial judge signed the form, accepting the plea as knowingly, intelligently, freely, and voluntarily made.

La. C.Cr.P. art. 556.1(A)(1) requires the court to personally inform the defendant of the nature of the charge, any mandatory minimum penalty, and the maximum possible penalty before accepting a guilty plea. Any difference from these procedures that does not affect the accused’s substantial rights does not invalidate the plea. La. C.Cr.P. art. 556.1(E). Violations of Article 556.1 that do not amount to *Boykin* violations are subject to harmless error analysis. *State v. Guzman*, 99-1528 and 99-1753 (La. 5/16/00), 769 So.2d 1158, 1164-66; *State v. Gilliam*, 01-748 (La. App. 5 Cir. 1/15/02), 807 So.2d 1024, 1027, *writ denied*, 02-512 (La. 11/1/02), 828 So.2d 562. The Louisiana Supreme Court has held that the core *Boykin* constitutional requirements do not include advice about sentencing. *Guzman*, 769 So.2d at 1164. Also, informing the defendant of the agreed-upon sentence satisfies Article 556.1. *State v. Martin*, 17-558 (La. App. 5 Cir. 3/14/18), 242 So.3d 1236, 1239 n.4. To decide if a violation of Article 556.1 is harmless, the court asks whether the defendant’s knowledge and understanding of the full

and correct information would likely have changed his decision to plead guilty.

Gilliam, 807 So.2d at 1027.

Here, the trial court told the defendant during the colloquy about the possible maximum sentences for the three counts but did not explain the sentencing ranges or the actual sentences. However, the waiver of rights form informed the defendant of the possible minimum and maximum sentences and the actual sentences he would receive if the court accepted his guilty pleas.

After the trial judge accepted the defendant's guilty pleas and sentenced him, the prosecutor gave the trial judge a multiple bill alleging the defendant was a second-felony offender. Defense counsel said he reviewed the multiple bill with the defendant, that the defendant wanted to stipulate to it, and that the defendant completed and signed a waiver of rights form. Our independent review of the record shows no constitutional issues with the defendant's stipulation to the multiple bill.

During the colloquy, the defendant said he reviewed the waiver of rights form with his attorney and read, understood, and signed the form. He stated that he stipulated to being a second-felony offender and acknowledged a prior conviction for illegal possession of stolen things valued at \$25,000 or more on February 8, 2024. He said that by stipulating to being a second-felony offender, he was waiving certain rights. The trial judge explained that the defendant had the right to a trial by jury, the right to appeal if convicted, the right to cross-examine witnesses, the privilege against self-incrimination and not having to testify, the right to require witnesses to appear on his behalf, the right to have an attorney, and the right to have an attorney appointed if he could not afford one. The defendant confirmed that he understood he was giving up all these rights by stipulating to being a second-felony offender.

The trial judge explained to the defendant that by stipulating, he allowed the court to impose the maximum sentence. The trial judge asked if the defendant understood he could receive up to forty years at hard labor without benefit of parole, probation, or suspension of sentence, and the defendant said he understood. Although the trial judge did not explain the sentencing range or the actual sentence during the colloquy, the waiver of rights form provided that information to the defendant.

During the colloquy, the defendant said no one offered him anything of value, promised him anything, or threatened him to enter a stipulation. He did not have any questions for the trial judge about the proceedings, the forms he signed, or the rights he waived. The defendant said he stipulated to being a second-felony offender because he believed it was in his best interest. He understood that his stipulation could increase a sentence he might receive for a future conviction.

The trial judge found that the defendant knowingly, intelligently, freely, and voluntarily stipulated to being a second-felony offender and accepted the stipulation. The trial judge vacated the original sentence on count one and resentenced the defendant as a second-felony offender to thirteen years at hard labor without benefit of parole, probation, or suspension of sentence, to run at the same time as the sentences on counts two and three. The trial judge suspended any mandatory fines or fees, finding that the defendant was indigent during his incarceration.

The waiver of rights form explained his rights, the sentencing range, and the actual sentence and shows that the defendant stipulated to being a second-felony offender. The form shows that the enhanced sentencing range was six and two-thirds years to forty years, and the actual enhanced sentence would be thirteen years. The waiver of rights form also shows that the defendant initialed next to each advisal of his rights and signed the form, indicating that he understood he was

waiving those rights. The trial judge found that the defendant knowingly, intelligently, freely, and voluntarily stipulated to the multiple bill.

The defendant's sentences fall within the ranges set by law and do not present any issues for appeal. *See* La. R.S. 14:95.1; La. R.S. 40:966(A); La. R.S. 40:967(C); La. R.S. 15:529.1. The court imposed the sentences according to the plea agreements. La. C.Cr.P. art. 881.2(A)(2) prevents a defendant from seeking review of a sentence imposed under a plea agreement, as shown in the record at the time of the plea. *Surgi*, 406 So.3d at 1189. This Court has consistently recognized that La. C.Cr.P. art. 881.2(A)(2) bars a defendant from seeking review of an enhanced sentence to which the defendant agreed. *Id.*

Because appellate counsel's brief adequately demonstrates by full discussion and analysis that she has reviewed the trial court proceedings and cannot identify any basis for a non-frivolous appeal, and an independent review of the record supports counsel's assertion, we grant the appellate counsel's motion to withdraw as attorney of record.

PRO SE ASSIGNMENTS OF ERROR

First, the defendant argues that his multiple-offender sentence should be set aside because the trial court did not vacate the original sentence on count one before resentencing him as a second-felony offender. However, the transcript and minute entry show that the trial judge vacated the original sentence on count one and then resentenced the defendant as a second-felony offender to thirteen years at hard labor without benefit of parole, probation, or suspension of sentence, to run at the same time as the sentences on counts two and three. This assignment lacks merit.

Second, the defendant argues that his sentence for possession of a firearm by a convicted felon cannot be enhanced because that offense already carries an

enhanced sentence. He also argues that the multiple bill was defective because it did not specify whether he was a second- or third-felony offender.

The State responds that the defendant did not file a motion to quash the multiple bill or make a contemporaneous objection during the multiple-offender proceeding. The State argues that, in any event, no violation occurred because the prior felony convictions used for the La. R.S. 14:95.1 conviction did not also serve as the prior felony conviction in the multiple bill. The State further explains that the multiple bill was not defective because it listed a single prior conviction, showing that the State charged the defendant as a second-felony offender.

Double Enhancement Allegation

The record shows that the State did not use the same prior felony conviction both as an element of the offense of possession of a firearm by a convicted felon and to enhance the defendant's sentence. The State based the La. R.S. 14:95.1 charge in count one on the defendant's prior convictions for possession with intent to distribute Tapentadol and simple burglary. The State enhanced the sentence on count one under La. R.S. 15:529.1 based on the defendant's prior conviction for illegal possession of stolen things valued at \$25,000 or more. Therefore, the State properly enhanced the sentence on count one. *See State v. Baker*, 06-2175 (La. 10/16/07), 970 So.2d 948, *cert. denied*, 555 U.S. 830, 129 S.Ct. 39, 172 L.Ed.2d 49 (2008) (holding that a sentence for a person convicted of being a felon in possession of a firearm can be enhanced under the habitual offender law as long as the prior felony conviction used as an element in the firearm conviction is not also used in the multiple-offender bill of information).

Defective Multiple Bill Allegation

The defendant claims that the multiple bill was defective because it did not specify whether he was a second- or third-felony offender. However, the State filed a multiple bill that listed a single prior conviction, showing that the State

alleged the defendant was a second-felony offender. During the plea colloquy, the trial judge told the defendant that the prosecutor gave him a multiple bill alleging he was a second-felony offender, with the predicate conviction being illegal possession of stolen things valued at \$25,000 or more. The defendant said he understood and then stipulated to being a second-felony offender. This assignment lacks merit.

ERROR PATENT DISCUSSION

We reviewed the record for error patent in accordance with La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). Our review shows no errors that require correction.

CONVICTIONS AND SENTENCES AFFIRMED;
MOTION TO WITHDRAW GRANTED

SUSAN M. CHEHARDY
CHIEF JUDGE

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

JUDGES



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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 **JULY 1, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

25-KA-552

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE STEPHEN C. GREFER (DISTRICT JUDGE)

A. BRUCE NETTERVILLE (APPELLANT)

ANDREA F. LONG (APPELLEE)

REMY V. STARNES (APPELLANT)

CHAD M. IKERD (APPELLANT)

HONORABLE PAUL D. CONNICK, JR.

(APPELLEE)

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