NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0587

STATE OF LOUISIANA

VERSUS

ALFRED LUCAS

Judgment rendered September 14, 2007.

J.J.P.
B.J.C.
by J.J.P.

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 09-04-0168
Honorable Bonnie Jackson, Judge

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ALFRED LUCAS

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BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

The defendant, Alfred Lucas, was charged by bill of information with hit-and-run driving where the victim suffers death or serious bodily injury, in violation of La. R.S. 14:100C(2). The defendant entered a plea of not guilty. The defendant later withdrew his plea of not guilty and entered a plea of guilty as charged. The defendant was sentenced to ten years imprisonment at hard labor. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error as to the constitutionality of the sentence. For the reasons that follow, we affirm the conviction and sentence.

FACTS

As the defendant entered a guilty plea herein, the facts were not fully developed. The following factual basis was presented during the **Boykin**[1] hearing.

> Your Honor, on or about November 2, 2003 at approximately one a.m. a major traffic collision occurred at the 400 block of Sherwood Street and Beachwood Street. At the scene the investigation revealed that a 1986 Cadillac Deville was travelling [sic] east on Sherwood Street and struck a 1996 Nissan Sentra travelling [sic] north on Beachwood. As a result of the collision two people were seriously injured. One which was including a broken pelvis and a head wound. The one person -- one occupant of the car that Mr. Lucas struck was treated at a rehab hospital in New Orleans. She moved back to New Orleans where she continued to receive rehabilitation treatment. He was seen driving the car that day and they lifted his palm print from inside the driver's window that was matched to him. It was appearing -- applying pressure to the glass in an attempt to open the door. He fled from the scene and they prepared an arrest warrant for his arrest. And after some effort were able to locate him and arrest him.

The trial court gave the defendant the opportunity to supplement or dispute any portion of the above quoted factual basis, and he declined.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that his sentence is unconstitutionally excessive. The defendant contends that the trial court considered misdemeanor charges, to which the defendant claims he did not plead guilty, in

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[1] **Boykin v. Alabama**, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969).

imposing the sentence for the instant offense.[2] The defendant concludes that he is not the worst offender and that this is not the worst offense under the statute.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979), held that although a sentence may be within statutory limits, a sentence may still be excessive. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Hurst**, 99-2868, pp. 10-11 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. Maximum sentences may be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Miller**, 96-2040, p. 4 (La. App. 1 Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. Code Crim. P. art. 894.1. The trial court is not required to list every aggravating or mitigating factor as long as the record shows ample considerations of the guidelines. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1 Cir.), writ denied, 565 So.2d 942 (La. 1990). The articulation of the factual basis for a sentence is the goal of Article 894.1, not to force a rigid or mechanical recitation of the factors. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and

[2] The defendant notes he was sentenced in the misdemeanor cases without any finding of guilt. He further notes that he did not apply for writs in the misdemeanor cases.

the trial court's stated reasons and factual basis for its sentencing decision. **State v. Mickey**, 604 So.2d 675, 678 (La. App. 1 Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Thus, even without full compliance with Article 894.1, remand is unnecessary when the record clearly reflects an adequate basis for the sentence. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982); **State v. Milstead**, 95-1983, p. 8 (La. App. 1 Cir. 9/27/96), 681 So.2d 1274, 1279, writ denied, 96-2601 (La. 3/27/97), 692 So.2d 392.

At the opening of the **Boykin** hearing, the defense counsel stated that the defendant would be pleading guilty "to one felony and some misdemeanors." Before the defendant was addressed, the defense attorney, the State, and the trial court discussed the defendant's intent to plead guilty to the instant offense and several misdemeanor charges in other cases.[3] In addressing the defendant, the trial court stated, "Mr. Lucas, you are here in connection with a felony hit and run driving charge. How do you wish to plead to that?" The defendant stated that he wished to plead guilty. During the **Boykin** examination, taking place prior to the acceptance of the defendant's guilty plea, the trial court explained the elements and possible penalty for the instant offense, without reference to any other offenses. The factual basis presented by the State solely entailed proposed facts for the instant offense. At the close of the **Boykin** hearing, the trial judge stated, "Mr. Lucas, the court will accept your guilty pleas in each of these matters." The trial court deferred sentencing on the misdemeanors and ordered a presentence investigation for the instant offense. At the sentencing hearing, the trial court imposed a sentence of ten years imprisonment at hard labor for the instant offense. The defendant was further sentenced, without objection, on the misdemeanor cases.

In accordance with La. R.S. 14:100C(2), the defendant was subjected to a fine of not more than five thousand dollars or imprisonment with or without hard labor for not

[3] In addition to the instant case, the following cases were noted: an unspecified misdemeanor offense in case number 2-05-74; unauthorized use of a movable (initially denoted as unauthorized use of a motor vehicle, but revised during sentencing to a misdemeanor) in case number 8-05-376; and unspecified misdemeanor offenses in case number 10-04-102.

more than ten years, or both. Thus, the trial court imposed the maximum term of imprisonment herein. In sentencing the defendant for the instant offense, the trial court accepted a statement from Ms. Virginia Lewis, grandmother of Whitney Lewis (one of the victims). Ms. Lewis stated that Whitney was a seventeen-year-old, good and trouble-free "B" student prior to the instant incident. She added that Whitney was college bound. Ms. Lewis stated that Whitney has a "shunt in her head" and had a "trachea in her throat." She stated that Whitney was no longer independent, as she needs assistance with everyday activities. According to Ms. Lewis, Whitney is unable to walk and talk and has "short time memory (sic)."

The defendant stated that he was "terribly sorry." He expressed his personal anguish due to his knowledge that he caused an innocent person to be injured. The defendant offered his condolences to Whitney's family and stated that he prays for Whitney.

The trial court reiterated Whitney's state of physical dependency and noted the details of the offense. The trial court stated that there were actually three victims in the instant case, noting that the other two victims received moderate injuries. The trial court further acknowledged the medical expenses of the victims. The trial court noted its observation of the photographs of the defendant's vehicle and the other vehicle and particularly stated, "[Y]ou had to be going at a tremendous rate of speed when you went through that stop sign." The trial court added that the defendant was near his home and familiar with the stop sign he disregarded. Noting the defendant's claim to the Division of Probation and Parole that he did not realize that he hit another car, the trial court stated, "there is no way in the world that you could not have realized that you hit somebody, particularly after you got out of your own car and your car was wedged into the side of this young lady's car." Because the defendant fled from the scene of the accident, the trial court speculated he was "under the influence of some intoxicating substance." The trial court noted the defendant's extensive criminal history consisting of several arrests and his status as a third-felony offender. The trial court noted that the defendant was scheduled to be sentenced for misdemeanor offenses on

the date of the instant sentencing. The trial court concluded that the instant offense did not have any impact on the defendant, noting that the defendant had a subsequent arrest for the alleged use of his brother's vehicle without his permission. The trial court also noted a prior probation period for illegal possession of stolen things that was revoked and the defendant's conviction for felony theft.

While the defendant contends that the trial court erred in considering certain misdemeanor offenses in its reasons for sentencing, we find that the record, nonetheless, supports the imposition of the maximum term of imprisonment. In light of the risk of harm to society and the multiple victims involved, the sentence imposed was neither grossly disproportionate to the severity of the crime, nor so disproportionate as to shock our sense of justice. Moreover, considering the defendant's criminal background, the pain and suffering caused by the instant offense, and the trial court's stated reasons for the sentence imposed, we cannot say that the trial court abused its wide discretion in imposing the maximum term of imprisonment. Thus, the sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.