

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 1387

STATE OF LOUISIANA

VERSUS

ANITA MARIE CLARK

Judgment Rendered: December 21, 2007

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On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 03-06-0994

Honorable Richard Anderson, Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Anita Marie Clark, was charged by bill of information with attempted second-degree murder, a violation of La. R.S. 14:30.1 and La. R.S. 14:27. The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to twenty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that the trial court erred in denying the motion to reconsider sentence. We affirm the conviction and sentence.

FACTS

On December 31, 2005, near 8:00 p.m., Julia B. Like (the victim) and the defendant attended a New Year's Eve celebration at Donald Span's apartment located in the Province Place apartment complex in Baton Rouge, Louisiana. At that time, the victim and the defendant also had separate apartments in the same complex. The victim had known the defendant for approximately eleven months. While the victim described their relationship as friendly neighbors, she also stated that they had non-physical disputes prior to that night. According to the victim, some attendees had alcoholic beverages and drugs at the party. The victim had one alcoholic drink, but did not use any drugs. The victim's initial contact with the defendant on that night occurred while they were in Span's kitchen. According to the victim, the defendant used her shoulder to bump into the victim. The victim ignored the gesture.

Approximately five minutes later, the victim exited Span's apartment and began to walk toward her nearby apartment. As the victim approached her apartment, the defendant (just leaving her own neighboring apartment) bumped into the victim again. The victim concluded that the defendant "wanted to start

something" and was acting out of jealousy. The victim questioned the defendant as follows, "What's wrong? What's up? I'm trying to have a good time." As the defendant waved her finger and used it to touch the victim's face, she responded, "I'm trying to have a good time too." The victim proceeded to unlock her apartment door. As the victim stood just inside her doorway, the defendant stood just outside of the doorway, face-to-face with the victim. The defendant brandished a beer bottle, raising it upside down toward the victim. The victim "slung" the defendant into her apartment, and the two began to exchange blows. The victim was able to position her body over the defendant's as they continued to exchange blows. Eric Fisher, the defendant's child's father, approached the scene of the fight and attempted to separate the two females. When Fisher positioned himself between the two females, the defendant reached under her shirt, pulled out a handgun and shot the victim in the face

The victim suffered a single bullet wound to the left side of her face, just above her mouth. She was unconscious for three days in the hospital. Several of her teeth were broken and her bones were fractured as the bullet traveled through her sinus area and lodged behind her nasal bones in the midline. Dr. Scott Norwood, an expert in trauma, described her injury as potentially life threatening.

ASSIGNMENT OF ERROR

In her sole assignment of error, the defendant argues that the trial court erred in denying her motion to reconsider sentence. The defendant argues that the offense was committed in sudden passion and heat of blood caused by provocation sufficient to deprive her of self-control and cool reflection. The defendant argues that she did not have the specific intent to kill the victim. The defendant contends that the sentence would be more appropriate if she had the specific intent to kill the victim. The defendant notes her status as a first offender and mother and notes that

she showed remorse. The defendant concludes that the sentence consists of the needless infliction of pain and suffering.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing sentence. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. State v. Leblanc, 2004-1032, p. 10 (La. App. 1st Cir. 12/17/04), 897 So.2d 736, 743, writ denied, 2005-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005); State v. Faul, 2003-1423, p. 4 (La. App. 1st Cir. 2/23/04), 873 So.2d 690, 692.

Article I, section 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. In reviewing a sentence for excessiveness, the appellate court must consider the punishment and the crime in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and, therefore, is nothing more than the needless imposition of pain and suffering. See State v. Guzman, 99-1528, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167. The trial court has wide discretion in imposing a sentence within the statutory limits and such a sentence will not be set aside as excessive in the absence of manifest abuse of discretion. State v. Loston, 2003-0977, pp. 19-20 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 210, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167.

The victim addressed the trial court at the sentencing hearing and noted her daily struggles regarding the scar on her face and missing teeth. The defense attorney, in part, noted that the defendant had an eleventh-grade education and further noted her status as the mother of one child. The defendant stated that she

made peace with God and apologized for the incident. The trial court reviewed the facts of the offense, the statutory range for the sentence, and the presentence investigation report, including letters written on behalf of the defendant. The defendant was thirty-seven years of age at the time of the sentencing (over one year after the offense). The trial court noted the defendant's claim that she was defending herself at the time of the offense. The trial court felt that the defendant's apology was sincere. The trial court noted that the defendant had no juvenile record, but was arrested as an adult and charged with accessory after the fact to second-degree murder. As noted by the trial court, that case was never resolved. The defendant was also arrested for aggravated battery, issuing worthless checks, and unauthorized use of a movable. As noted by the trial court, those charges were pending at the time of the sentencing. At the time of the offense, the defendant was employed as a housekeeper. The trial court noted the seriousness of the offense and commented on the fact that the victim was very lucky to survive the gunshot when imposing the sentence of twenty years at hard labor without the benefit of probation, parole, or suspension of sentence.

The sentencing range for attempted second-degree murder is not less than ten nor more than fifty years at hard labor without the benefit of probation, parole, or suspension of sentence. La. R.S. 14:30.1(B) and La. R.S. 14:27(D)(1)(a). Thus, the twenty-year sentence imposed by the trial court is at the low end of the sentencing range. The trial began January 31, 2007, over a year after the instant offense. As at the subsequent sentencing hearing, the victim described her injury during her trial testimony. She stated that she suffers severe headaches as a result of the injury sustained from the offense. She noted that some of her teeth were destroyed and noted the scar on her face. The victim also stated that she is "real nervous" and does not like noise. Considering the seriousness of the offense and the injury suffered by the victim, we find that the record supports the sentence

imposed herein. The trial court carefully considered the mitigating and aggravating factors, and did not abuse its discretion in imposing sentence or err in denying the motion to reconsider sentence. Thus, the sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.