NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 1203

STATE OF LOUISIANA

VERSUS

CHARLES CURTIS DUCKWORTH, JR.

Judgment Rendered: December 23, 2008

* * * * * * * *

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 425160

The Honorable Elaine W. DiMiceli, Judge Presiding

* * * * * * * *

Walter P. Reed
District Attorney
Covington, Louisiana

Counsel for Appellee
State of Louisiana

Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Mary E. Roper
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Charles Curtis Duckworth, Jr.

* * * * * * * *

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

GAIDRY, J.

The defendant, Charles Curtis Duckworth, Jr., was charged by bill of information with one count of aggravated second degree battery, a violation of La. R.S. 14:34.7, and pleaded not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the state filed a habitual offender bill of information against defendant, alleging he was an eighth-felony habitual offender.[1] Following a hearing, he was adjudged a third-felony habitual offender under La. R.S. 15:529.1(A)(1)(b)(ii), and was sentenced to imprisonment at hard labor for the remainder of his natural life without benefit of parole, probation, or suspension of sentence.

Defendant now appeals, contending in his sole assignment of error that the trial court erred in holding that it had no discretion in sentencing under La. R.S. 15:529.1(A)(1)(b)(ii), because a trial court always has the responsibility to determine whether or not a sentence is unconstitutionally excessive and has the authority to deviate from the sentence when deviation is warranted. For the following reasons, we affirm the conviction, the habitual offender adjudication, and the sentence.

FACTS

Steven Mark Johnson owned a trailer park with FEMA trailers off U.S. Highway 190 in St. Tammany Parish. He had known the victim, Harvey L. "Harvey Sonny" Singletary, III since elementary school. On December 16, 2006, the victim came to the trailer park and asked Johnson

[1] Predicate No. 1 was set forth as defendant's conviction, under Orleans Parish Docket No. 279456, for possession of stolen property. Predicate No. 2 was set forth as defendant's conviction, under Orleans Parish Docket No. 273095, for manslaughter. Predicate No. 3 was set forth as defendant's conviction, under Orleans Parish Docket No. 317819, for burglary. Predicate No. 4 was set forth as defendant's conviction, under Orleans Parish Docket No. 359076, for theft. Predicate No. 5 was set forth as defendant's conviction, under Orleans Parish Docket No. 380637, for theft. Predicate No. 6 was set forth as defendant's conviction, under Orleans Parish Docket No. 404792, for theft of goods. Predicate No. 7 was set forth as defendant's conviction, under 34th Judicial District Court Docket No. 228054, for aggravated escape.

whether any trailers were available for rent. Johnson advised the victim that there were no trailers available at that time. Defendant, a resident of the trailer park, overheard the conversation between Johnson and the victim and offered to let the victim stay with him in exchange for money. The victim accepted the offer and paid the defendant $50.00 to stay with him for a couple of nights.

On December 17, 2006, in response to a request from Johnson's wife, the victim approached defendant on the porch of his trailer and informed him that Mrs. Johnson had asked that defendant "keep it [an argument] down." The two men began "bickering," and after the victim turned away from defendant to leave, defendant stabbed him in the back with a screwdriver, puncturing a lung. The victim attempted to walk away from defendant, but collapsed next to a wooden fence. Defendant, still carrying the screwdriver, followed the victim. Johnson came out to investigate what was occurring, and the victim told him that he had just been stabbed by defendant. Defendant then stated, "Well, I'll do it again." Defendant left the scene, however, after Johnson got between him and the victim and pushed defendant away, telling him, "No. I can't allow you to do that." As a result of the offense, the victim was hospitalized with a chest tube inserted into his lungs, and did not regain full use of his lungs for ten days.

EXCESSIVE SENTENCE

In his sole assignment of error, defendant argues the trial court erred in holding that it had no discretion in sentencing him under La. R.S. 15:529.1(A)(1)(b)(ii), because it had an obligation to ensure that the mandatory minimum sentence required by the habitual offender statute was not unconstitutionally excessive.

Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. 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 judge 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. 1st Cir. 10/3/00), 797 So.2d 75, 83, *writ denied*, 00-3053 (La. 10/5/01), 798 So.2d 962.

Whoever commits the crime of aggravated second degree battery shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than fifteen years, or both. La. R.S. 14:34.7(B).

Louisiana Revised Statutes 15:529.1, in pertinent part, provides:

> A. (1) Any person who, after having been convicted within this state of a felony . . . thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:
>
> . . .
>
> (b) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:
>
> . . .
>
> (ii) If the third felony and the two prior felonies are felonies defined as a crime of violence under R.S. 14:2(B) . . . or any other crimes punishable by imprisonment for twelve

> years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

The instant offense and predicate offense No. 2[2] are felonies defined as crimes of violence under La. R.S. 14:2(B)(31) and La. R.S. 14:2(B)(4). Predicate offense No. 3 is punishable by imprisonment for twelve years. La. R.S. 14:62(B).

The Louisiana Supreme Court has on numerous occasions held that the Habitual Offender Law is constitutional. *State v. Johnson*, 97-1906, p. 5 (La. 3/4/98), 709 So.2d 672, 675. Since the Habitual Offender Law in its entirety is constitutional, the minimum sentences it imposes upon multiple offenders are also presumed to be constitutional. *Johnson*, 97-1906 at pp. 5-6, 709 So.2d at 675.

To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that he is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. *Johnson*, 97-1906 at p. 8, 709 So.2d at 676.

Defendant was adjudged a third-felony habitual offender under La. R.S. 15:529.1(A)(1)(b)(ii), and was sentenced to imprisonment at hard labor for the remainder of his natural life without benefit of parole, probation, or suspension of sentence. The defense objected as to the severity of the sentence and to the court's reliance on La. R.S. 15:529.1(A)(1)(b)(ii) for sentencing. Defense counsel also orally moved for reconsideration of sentence "along the lines" already stated. The court denied the motion to

---

[2] See n.1, *supra.*

reconsider, stating, "This is a mandatory sentence under the statutes of the State of Louisiana. I don't have any discretion whatsoever on it."

The trial court's conclusion was correct because defendant failed to rebut the presumption that the mandatory minimum sentence under La. R.S. 15:529.1(A)(1)(b)(ii) was constitutional. Defendant failed to clearly and convincingly show that because of unusual circumstances he was a victim of the legislature's failure to assign sentences that were meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Accordingly, there was no reason for the trial court to deviate from the provisions of La. R.S. 15:529.1(A)(1)(b)(ii) in sentencing him. *See State v. Lee*, 39,969, p. 10 (La. App. 2d Cir. 8/17/05), 909 So.2d 672, 679, *writ denied*, 06-0247 (La. 9/1/06), 936 So.2d 195 ("It would be an exercise in futility for the trial court to discuss the factors enumerated in [La. C.Cr.P. art. 894.1] when the court had no discretion in sentencing the defendant.").

The assignment of error is without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.