

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

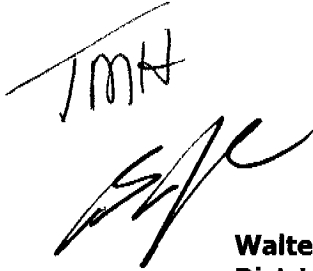
2011 KA 1426

STATE OF LOUISIANA

VERSUS

CHARLES WATTS, JR.

—
**On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, Louisiana
Docket No. 408521-2, Division "C"
Honorable Richard A. Swartz, Judge Presiding**
—


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Defendant-Appellant
Charles Watts, Jr.**

BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Judgment rendered February 10, 2012

PARRO, J.

The defendant, Charles Watts, Jr., was charged by bill of information with possession of four hundred grams or more of cocaine, a violation of LSA-R.S. 40:967(F)(1)(c). He pled not guilty and, following a jury trial, was found guilty as charged. The state subsequently filed a multiple offender bill of information and, following a hearing on the matter, the defendant was adjudicated a second-felony habitual offender. The trial court sentenced the defendant to thirty years of imprisonment at hard labor, without benefit of probation or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating two assignments of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On February 19, 2006, around 9:45 p.m., Louisiana State Trooper Ron Whittaker, Jr., was patrolling eastbound on I-12 in St. Tammany Parish. Trooper Whittaker observed a gold Cadillac following too closely to another vehicle and, accordingly, effected a traffic stop. Derrick Barge was driving the Cadillac, but had a suspended driver's license. The two passengers were Charles Lyons and the defendant. Trooper Whittaker learned that the vehicle was a rental and that neither Lyons nor the defendant were authorized drivers on the rental agreement.

Trooper Whittaker asked Barge if he could search the vehicle. Barge provided the trooper with both oral and written consent to search. Trooper Whittaker searched the vehicle and found marijuana and a little less than one kilogram of cocaine (882 grams). The three men were arrested and brought to Troop L. Louisiana State Trooper Thomas Noto **Mirandized** and interviewed the defendant. The defendant told Trooper Noto that the narcotics in the vehicle belonged to him. The defendant also provided the following written statement: "I Charles Watts is responsible for the drugs that was find in the car. Derick and Charles don't know anything about it."

The defendant testified at the trial of the matter. He stated that his written statement to the police was a lie. The defendant explained that when they were stopped, the other two men became upset and started crying. They pleaded for the

defendant to say that the drugs were his. The defendant agreed, with the understanding that the men would help get him out of jail. The defendant also testified that he knew the drugs were in the vehicle, but they were not his.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related assignments of error, the defendant argues, respectively, that the trial court erred in denying the motion to reconsider sentence and that the trial court erred in imposing an excessive sentence.

The Eighth Amendment to the United States Constitution and Article I, § 20 of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of LSA-C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with LSA-C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through

correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

In the instant matter, the defendant, as a second-felony habitual offender, faced a maximum sentence of sixty years and was sentenced to thirty years of imprisonment at hard labor. See LSA-R.S. 40:967(F)(1)(c) and 15:529.1(A)(1)(a) (prior to the 2010 amendments). The defendant argues in his brief that he is fifty years old and will be incarcerated for much of his natural life, he has no history of violent crimes, and his two felony convictions were most likely the result of his drug addiction. It was clear during sentencing that the trial court considered LSA-C.Cr.P. art. 894.1 in arriving at an appropriate sentence for the defendant:

At sentencing, the trial court stated in pertinent part:

Again, the Court is going to consider the guidelines under Code of Criminal Procedure Article 894.1, as follows: The Court finds there's an undue risk that during any period of a suspended sentence or probation the defendant would commit another crime. The Court feels that the defendant is in need of correctional treatment that can be provided most effectively by its commitment to an institution. And, further, that a lesser sentence than the one that will be imposed here today would deprecate the seriousness of this offense.

Considering the circumstances of the case, the nature of the crime, and the ongoing problem our society faces with illegal drugs, and given the fact that the defendant was sentenced to one-half of a possible sixty-year sentence, we find no abuse of discretion by the trial court. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. The trial court, thus, did not err in denying the motion to reconsider sentence.

These assignments of error are without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE
AFFIRMED.**