NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0306

STATE OF LOUISIANA

VERSUS

CHRISTOPHER SHELDON ARNOLD

Judgment Rendered: OCT 1 4 2008

* * * * * * * * * *

On Appeal from the 32nd Judicial District Court
In and For the Parish of Terrebonne
Trial Court No. 415,337, Criminal Division

Honorable Timothy C. Ellender, Judge Presiding

* * * * * * * * * *

Joseph L. Waitz, Jr. District Attorney Houma, LA	Counsel for Appellee State of Louisiana
Ellen Daigle Doskey Juan Pickett Assistant District Attorneys Houma, LA	Counsel for Appellee State of Louisiana
Prentice L. White Louisiana Appellate Project Baton Rouge, LA	Counsel for Defendant/Appellant Christopher Sheldon Arnold
Christopher Sheldon Arnold Cottonport, LA	In Proper Person

* * * * * * * * * *

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Christopher Sheldon Arnold, was charged by bill of information with armed robbery, a violation of LSA-R.S. 14:64. The defendant pled not guilty and, following a jury trial, was found guilty as charged and sentenced to forty (40) years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant appealed both his conviction and sentence and this court, in a prior opinion, found that the evidence was sufficient to convict the defendant of armed robbery, and affirmed the conviction. However, because there was nothing in the record to indicate that the trial court had ruled on the defendant's timely filed motion to reconsider sentence,[1] we remanded the matter for supplementation of the record with the ruling on the motion to reconsider sentence. See **State v. Arnold**, 2007-0362 (La. App. 1st Cir. 9/19/07), 970 So.2d 1067, writ denied, 2007-2088 (La. 3/7/08), 977 So.2d 904.

Following that opinion, the record was supplemented with a "Judgment on Motion to Reconsider Sentence." The judgment denied the motion. Specifically, the trial court found that the sentence was appropriate "considering the circumstances of the offense involved." The trial court further found that "in accordance with Louisiana Code of Criminal Procedure Article 881.1," a hearing on the motion was not necessary.

The defendant now appeals his sentence, designating one counseled and two pro se assignments of error. We affirm the sentence.

ASSIGNMENTS OF ERROR

The defendant argues that his sentence was constitutionally excessive and, as such, the trial court erred in denying his motion to reconsider sentence.

---

[1] The defendant was sentenced on January 18, 2005. The motion to reconsider the sentence was filed on February 11, 2005. See LSA-C.Cr.P. art. 881.1(A)(1).

Specifically, in his counseled assignment of error and his first pro se assignment of error, the defendant asserts that the sentencing judge did not comply with the LSA-C.Cr.P. art. 894.1 sentencing guidelines and, accordingly, his sentence was not particularized to him. Specifically, the defendant notes that the sentencing judge was not the judge who sat for the entire trial and suggests that it was "absolutely imperative that the sentencing judge preserve the record for appeal by considering all of the aggravating and mitigating factors" before imposing sentence.[2] In his second pro se assignment of error, the defendant asserts that there is no justification in the record to support the great disparity between his sentence and the sentences of the other codefendants.

In the defendant's motion to reconsider sentence, filed on February 11, 2005, he stated that "[t]he sentence was objected to orally at the time of the sentencing," and that "[t]he sentence is excessive and should be reduced." Our review of both the sentencing transcript and the minutes, however, indicate that the defendant made no such contemporaneous oral objection. The defendant's written motion for reconsideration of sentence was sufficient to raise only a bare claim of constitutional excessiveness. The motion was not sufficient to raise a claim that the trial court failed to comply with the sentencing guidelines for particularizing his sentence. See LSA-C.Cr.P. art. 881.1(E); **State v. Scott**, 634 So.2d 881, 882-83 (La. App. 1st Cir. 1993). See also **State v. Mims**, 619 So.2d 1059 (La. 1993) (per curiam). Moreover, even when the trial court has not complied with LSA-C.Cr.P. art. 894.1, this court

[2] The sitting judge for the defendant's trial was Judge Timothy C. Ellender. The sentencing judge was Judge Pro Tempore Robert J. Klees.

need not remand the case for resentencing, unless the sentence imposed is apparently severe in relation to the particular offender or the offense committed. **State v. Pender**, 521 So.2d 556, 557 (La. App. 1st Cir. 1988). Neither was the motion to reconsider sentence sufficient to raise a claim regarding the disparity between the sentence of the defendant and the sentences of the other codefendants. Moreover, other than the defendant's pro se assertions of the length of the sentences of the other codefendants, there is nothing in the record to support these assertions. This court has no authority to receive or review evidence not contained in the record. See **State v. Swan**, 544 So.2d 1204, 1209 (La. App. 1st Cir. 1989). In addition, we find little value in making such sentencing comparisons. See **State v. Thomas**, 572 So.2d 681, 685 n. 3 (La. App. 1st Cir. 1990), writ denied, 604 So.2d 994 (La. 1992). See also **State v. McAlister**, 95-1683, p. 5 (La. App. 1st Cir. 9/27/96), 681 So.2d 1280, 1282. Accordingly, we consider only the defendant's bare claim of excessiveness. See **Scott**, 634 So.2d at 882-83.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. And although a sentence falls within statutory limits, it may still 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 one's sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (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 that discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). On appellate review of a sentence, the relevant question is "whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate." **State v. Thomas**, 98-1144, pp. 1-2 (La. 10/9/98), 719 So.2d 49, 50 (per curiam) (quoting **State v. Humphrey**, 445 So.2d 1155, 1165 (La. 1984)).

The record indicates that only the defendant and Darryl Price participated in the actual armed robbery of the bank. The defendant pointed his gun at customers and employees and shouted at them to get down on the floor. Particularly, the defendant pointed his gun at Tommy Picou, who was at the bank with his wife and six-year-old triplet daughters. Mr. Picou went to the floor and covered one of his daughters. Mr. Picou's wife grabbed their other two daughters, went to the floor with them, and covered their eyes. Mr. Picou testified at trial that he was scared and that his wife and daughters were scared and crying.

The maximum sentence for armed robbery is ninety-nine years imprisonment. See LSA-R.S. 14:64(B). Given the circumstances of the present conviction, where after careful planning, the defendant placed several people, including small children, in fear for their lives, and took, at gunpoint, over $35,000 from the bank, and the fact that the defendant's sentence of forty years imprisonment is less than one-half the maximum sentence allowed, we find no abuse of discretion by the court. The record clearly establishes that the sentence is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

The court did not err in denying the defendant's motion to reconsider sentence.[3] This assignment of error is without merit.

SENTENCE AFFIRMED.

[3] We note that in his counseled assignment of error, the defendant requests that this court instruct the district court to "correct all patent errors by indicating that he is to be given credit for all time served and advised of the time delay for filing an Application for Post Conviction Relief." These issues, however, were previously raised and were addressed in this court's prior published opinion. See **Arnold**, 2007-0362 at pp. 11-12, 970 So.2d at 1074-75. We will therefore not revisit that issue.