

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 KA 2090

STATE OF LOUISIANA

VERSUS

COLBY LEONARD

Judgment Rendered: MAR 27 2009

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 04-07-0409

Honorable Richard "Chip" Moore, Judge

Doug Moreau, District Attorney
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Attorneys for
State – Appellee

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Defendant – Appellant
Colby Leonard

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Colby Leonard, was charged by bill of information with one count of armed robbery, a violation of La. R.S. 14:64, and pled not guilty. Following a jury trial, he was found guilty as charged. He was sentenced to thirty-five years at hard labor without benefit of probation, parole, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending in his only assignment of error that the trial court erred in denying the motion to reconsider sentence. We affirm the conviction and sentence.

FACTS

The victim, J.N.,¹ testified at trial. On January 10, 2007, she was a student at Louisiana State University and resided at an apartment complex on Highland Road. Shortly after 2:00 a.m., as she was returning home after attending a birthday party, the defendant approached her in the parking garage of the apartments. He had a gun in one hand and put his finger on his mouth to indicate she was to stay silent. He told the victim that she had better not run or scream and asked her how much money she had. The victim told the defendant that she did not have much money and pleaded with him to let her go. She stated that she would do anything and that her friends would be looking for her, although she knew they had already left. The defendant asked the victim if she knew how to “deep throat,” and placed his hand as if he was about to unbutton his pants. The victim told the defendant that her friends were coming and that a sound in the garage might be them. The defendant told the victim to give him all the money she had in her purse, and she gave him three one dollar bills and some change.

After taking the victim’s money, the defendant pulled her into a corner near the elevator. A small dog came up the stairway, and the victim screamed because she was afraid of dogs. Another resident of the apartment complex then exited the

¹ We reference the victim only by her initials. See La. R.S. 46:1844(W).

elevator. The defendant told the victim that she had better act like they were together and kissed her on the cheek. The resident exiting the elevator asked the victim if she was okay and she nodded her head, but whispered “help me,” and “[c]all 911.” The defendant told the other resident that everything was okay and that he should “go on about [his] business.” The defendant told the victim to go into the stairway, but she broke away and got into a car that was driving by in the parking garage. She then contacted the police. Approximately ten minutes later, she identified the defendant as the robber after the police brought him to her to view. At trial, she identified the defendant in court as the robber and State Exhibit #2 as the gun used during the robbery.

Baton Rouge City Police Officer Michael Thomas also testified at trial. On January 10, 2007, he responded to the scene of the crime after being alerted to a robbery in progress. The suspect was described as a black male, wearing all black clothing and a black knit cap. As Officer Thomas approached the parking garage he saw an individual hanging from the second floor of the garage and who then dropped down fifteen to twenty feet into an alley next to the garage. Officer Thomas went to the alley and saw a black male, who was wearing black pants, a black shirt, and a black knit hat, turn and look at him, and then begin running away. Officer Thomas requested assistance and chased the suspect as he jumped over two fences. Officer Thomas subsequently located the suspect lying across the passenger seat of a car on top of a gun. Another man, wearing a blue work uniform, was also in the car. A second weapon, an automatic-style firearm, was also recovered from the area in the car where the defendant’s feet would have been. Both weapons were loaded. The defendant had three one dollar bills and change in his pocket. Officer Thomas identified the defendant in court as the suspect he had apprehended and State Exhibit #2 as the gun that was under the defendant.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant argues the trial court erred in denying the motion to reconsider sentence and failed to give adequate consideration to the following mitigating facts: he was the father of a child; he was working and going to school; he was only twenty-one years old; and he had an eighth-grade education, could read and write, and thus, could be a productive member of society. He also argues that the trial court more than doubled the number of years he would serve simply because he chose to exercise his constitutional right to a trial rather than accept a plea bargain for fifteen years.

The Louisiana Code of Criminal Procedure article 894.1 sets forth items which 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. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. **State v. Hurst**, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

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. **Hurst**, 99-2868 at pp. 10-11, 797 So.2d at 83.

Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years without benefit of parole, probation, or suspension of sentence. La. R.S. 14:64(B). The defendant was sentenced to thirty-five years at hard labor without benefit of probation, parole, or suspension of sentence.

In sentencing the defendant, the trial court stated it was “struck” by the fact that the defendant was still denying he had committed the offense. The trial court noted that a jury had convicted the defendant on the basis of the victim’s “spot on, very believable” testimony against the defendant, the fact that the defendant had been found jumping from the garage down into an alley and had been apprehended on top of the gun in a car after running around the apartment complex, and the victim’s identification of the defendant as the robber at the scene.

In denying the motion to reconsider sentence, the trial court noted it had considered all the facts and sentencing guidelines provided in La. C.Cr.P. art. 894.1 at the time of sentencing and again as a result of the motion. The trial court also noted that the circumstances of the case did not warrant an amendment of the sentence.

Nothing in the record indicates that the trial court failed to consider the particular facts the defendant cites as mitigating factors, and to the contrary, all of these facts were presented to the trial court during the sentencing hearing. The trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence herein. See La. C.Cr.P. art. 894.1 (A)(1), (A)(2), (A)(3), (B)(1), (B)(6), (B)(10), (B)(19), & (B)(21). Further, the sentence imposed was not grossly disproportionate to the severity of the offense, and thus, was not unconstitutionally excessive.

We also reject the defendant’s claim that the trial court punished him for

exercising his right to trial rather than accepting a plea bargain. A defendant's lack of remorse is a relevant aggravating circumstance under La. C.Cr.P. art. 894.1(B)(21). See State v. Fairley, 97-1026, p. 7 (La. App. 1st Cir. 4/8/98), 711 So.2d 349, 353; see also State v. Williams, 96-1023, p. 14 (La. 1/21/98), 708 So.2d 703, 715-716, cert. denied, 525 U.S. 838, 119 S.Ct. 99, 142 L.Ed.2d 79 (1998) (a lack of remorse is a relevant factor for the sentencing jury's consideration). Further, it is permissible for the State to encourage guilty pleas by offering substantial benefits to a defendant for a guilty plea and by threatening more severe punishment should a negotiated plea be refused. A defendant who refuses a plea bargain cannot expect to receive the benefits of that abandoned agreement after conviction. See Cousin v. Blackburn, 597 F.2d 511, 512 (5th Cir. 1979) (per curiam), cert. denied, 445 U.S. 945, 100 S.Ct. 1343, 63 L.Ed.2d 779 (1980).

This assignment of error is without merit.

CONCLUSION

Based on the foregoing, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.