NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1136

STATE OF LOUISIANA

VERSUS

DANIEL RHODES

DATE OF JUDGMENT: DEC 2 3 2008

ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT
(NO. 439715, DIV. A), PARISH OF LAFOURCHE
STATE OF LOUISIANA

HONORABLE JOHN E. LEBLANC, JUDGE

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Camille A. Morvant, III District Attorney Mark D. Chiasson Thibodaux, Louisiana	Counsel for Plaintiff-Appellee State of Louisiana
Frank Sloan Mandeville, Louisiana	Counsel for Defendant-Appellant Daniel Rhodes

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: CONVICTIONS AND SENTENCES AFFIRMED.

KUHN, J.

Defendant, Daniel Rhodes, was charged by bill of information with one count of unauthorized use of a motor vehicle (count I), a violation of La. R.S. 14:68.4; one count of illegal possession of stolen things (value over $500) (count II), a violation of La. R.S. 14:69; one count of aggravated escape (count III), a violation of La. R.S. 14:110; one count of unlawful use or possession of body armor (count IV), a violation of La. R.S. 14:95.3; and one count of possession of a firearm by a convicted felon (count V), a violation of La. R.S. 14:95.1, and initially pled not guilty. Thereafter, pursuant to a plea agreement, he pled guilty to counts I, III, and V, and the State nol-prossed counts II and IV. On count I, he was sentenced to ten years at hard labor. On count III, he was sentenced to ten years at hard labor to run consecutively to the sentence imposed on count I. On count V, he was sentenced to ten years at hard labor without benefit of probation, parole, or suspension of sentence to run consecutively to the sentences imposed on counts I and III. He moved for reconsideration of the sentences, but the motion was denied. He now appeals, contending in his sole assignment of error that the sentences imposed were unconstitutionally excessive. We affirm the convictions and sentences.

FACTS

Due to defendant's guilty pleas, there was no trial, and thus, no trial testimony concerning the facts of the offenses. But the State set forth that on December 5, 2006, within the jurisdiction of Lafourche Parish, defendant committed unauthorized use of a motor vehicle, aggravated escape, and intentional and illegal possession of a firearm after pleading guilty to burglary, under Superior Court of Columbia County (Georgia) Docket # 2003-CR-566, on October 28, 2003 at the

Boykin[1] hearing. Defense counsel indicated that, on the basis of his investigation of the facts and discussions with defendant, he was satisfied that all of the necessary elements of Counts I, III, and V were present in the case. Defendant agreed that the State could prove the elements of Counts I, III, and V if the matter proceeded to trial.

The record indicates that on December 5, 2006, Lafourche Parish Deputies Roland Guillot and Bridget Rupe responded to a report that a blue 1999 Chevrolet pickup truck had been stolen from the Express Stop across from Country Club Subdivision in Thibodaux. The deputies quickly located defendant driving the stolen vehicle and initiated a traffic stop of the vehicle. While Deputy Guillot was in the process of handcuffing defendant, defendant's cousin, Robert Alan Power, drove by the scene in a white Chevrolet pickup truck and began firing on the deputies with a shotgun. Deputy Guillot was struck in the back, and Deputy Rupe was shot in the arm. Power then turned the white Chevrolet around and made a second pass by the scene, firing again, and yelling to defendant to get into the vehicle with him. Both men escaped but were apprehended approximately three hours later. Defendant was wearing a Kevlar vest (a bullet-proof vest) at the time of his arrest. After he had been advised of his ***Miranda***[2] rights, defendant indicated that he and Power had stolen the white Chevrolet from their grandfather in Georgia

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[1] ***Boykin v. Alabama***, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), requires that a trial court ascertain, before accepting a guilty plea, that the defendant has voluntarily and intelligently waived his right against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. ***Boykin*** only requires a defendant be informed of these three rights. "Its scope has not been expanded to include advising the defendant of any other rights which he may have, nor of the possible consequences of his actions." ***State v. Smith***, 97-2849, p. 3 (La. App. 1st Cir. 11/6/98), 722 So.2d 1048.

[2] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

and were on their way to California to work. They also had stolen a shotgun from their other grandfather's hunting camp. After sleeping in the lot of the Express Stop because they awoke and, realizing they were low on fuel, planned to steal another vehicle or use the shotgun to rob someone. Defendant drove off in the blue Chevrolet after the driver fueled the vehicle and left it running while he went into the store. Power drove off in the white Chevrolet.

EXCESSIVE SENTENCE

In his sole assignment of error, defendant contends the trial court erred in imposing unconstitutionally excessive sentences in this case. Review of the instant assignment of error is barred by law.

A review of the transcript of defendant's guilty plea indicates he seeks review of sentences imposed in conformity with a plea agreement set forth in the record at the time of the plea. A defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea. La. C.Cr.P. art. 881.2(A)(2); see ***State v. Young***, 96-0195, p. 7 (La. 10/15/96), 680 So.2d 1171, 1175.

REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to La. C.Cr.P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence."

On count V, the trial court failed to impose the mandatory fine of not less than one thousand dollars nor more than five thousand dollars. See La. R.S.

14:95.1(B). Although the failure to impose the fine is an error under La. C.Cr.P. art. 920(2), it certainly is not inherently prejudicial to defendant. Because the trial court's failure to impose the fine was not raised by the State in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See ***State v. Price***, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

DECREE

For these reasons, we affirm the convictions and sentences on Counts I, III, and V imposed against defendant, Daniel Rhodes.

CONVICTIONS AND SENTENCES AFFIRMED.