

NOT DESIGNATED FOR PUBLICATION

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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 2209

STATE OF LOUISIANA

VERSUS

DENNIS JEROME BARTIE

Judgment Rendered: June 8, 2012

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 9-07-0560

Honorable Trudy M. White, Judge

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

Defendant, Dennis Jerome Bartie, was charged by bill of information with attempted second degree murder (count one), a violation of La. R.S. 14:27 and 14:30.1, and armed robbery (count two), a violation of La. R.S. 14:64. Defendant pled not guilty and waived his right to a jury trial. After a bench trial, he was found guilty as charged on count one, and guilty of the responsive offense of simple robbery, a violation of La. R.S. 14:65, on count two.¹ For his conviction on count one, defendant was sentenced to a term of forty years at hard labor, without benefit of parole, probation, or suspension of sentence. For his conviction on count two, defendant was sentenced to a term of four years at hard labor.² The trial court ordered defendant's sentences to be served concurrently. Defendant filed a motion to reconsider his sentence on count one, but the trial court denied that motion. Defendant now appeals, alleging one assignment of error. For the following reasons, we affirm defendant's convictions and sentences.

FACTS

In the early morning hours of December 27, 2006, Catherine Peters, Joseph Lucio, and Kimberly Dicharry met Mari Todd, the victim, and a man identified only as "Bill" at The Gates apartment complex in Baton Rouge in order to buy cocaine. Lucio parked his black Oldsmobile Cutlass near the victim's apartment, and he and Dicharry went up to the victim's apartment with her and Bill while Peters stayed in the car. Because Peters remained in the car, Lucio left his keys in

¹ We note that the transcript of defendant's trial indicates that defendant was found guilty of the responsive offense of first degree robbery on count two, but the minutes from defendant's trial indicate that defendant was found guilty of simple robbery. Ordinarily, whenever there is a conflict between the transcript and the minutes, the transcript prevails. *See State v. Lynch*, 441 So.2d 732, 734 (La. 1983). However, this discrepancy was apparently resolved at defendant's sentencing hearing, where the trial judge and defense counsel indicated that their records reflected defendant as having been convicted of simple robbery. The state did not object to this determination, so we list defendant's conviction on count two as guilty of simple robbery.

² With respect to count two, the minutes of defendant's sentencing indicate that defendant was sentenced to forty years at hard labor. However, the transcript of defendant's sentencing hearing indicate that defendant was actually sentenced to a term of four years at hard labor on count two. In the case of this discrepancy, the transcript does prevail. *See Lynch*, 441 So.2d at 734.

the ignition with the car running. After entering her apartment, the victim walked to her bedroom in order to procure the drugs that Lucio and Dicharry wanted to buy. Upon entering her bedroom, the victim put down her purse, and she was immediately attacked by defendant, her ex-boyfriend, who had come from the victim's bathroom. Defendant was armed with a knife which was described at trial as a "dagger," and he began to stab and slice at the victim. Upon hearing her screams, Lucio, Dicharry, and Bill opened the victim's bedroom door and observed defendant stabbing the victim as he pinned her down on her bed. Defendant then exited the victim's apartment, approached Lucio's car, and ordered Peters to exit the vehicle. Defendant drove Lucio's vehicle to Lake Charles, where he later abandoned it. As a result of the attack, the victim suffered twenty-two stab wounds, lost an eye, needs a liver transplant, and requires continuing medical treatment.

During the subsequent investigation into this incident, both Dicharry and the victim identified defendant as the perpetrator when they were shown a photographic lineup. After defendant was arrested, he made a statement in which he admitted to stabbing the victim, but he said that he did so only after the victim laced a sandwich that she made him with crack cocaine and then attacked him with a steak knife that he subsequently used to defend himself. Defendant offered the same version of events in his testimony at trial, and he also stated that he left the steak knife in the victim's bedroom. However, neither a sandwich nor a steak knife was ever recovered from the scene.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that the trial court's sentence of forty years at hard labor, without benefit of parole, probation, or suspension of sentence, for his attempted second degree murder conviction is constitutionally excessive. Defendant does not challenge the sentence for his

simple robbery conviction.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may fall within statutory limits, it may nevertheless violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). Generally, a sentence is considered constitutionally excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. **State v. Dorthey**, 623 So.2d 1276, 1280 (La. 1993). 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. **State v. Reed**, 409 So.2d 266, 267 (La. 1982). 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. Lanclos**, 419 So.2d 475, 478 (La. 1982). See also State v. Savario, 97-2614 (La. App. 1st Cir. 11/6/98), 721 So.2d 1084, 1089, writ denied, 98-3032 (La. 4/1/99), 741 So.2d 1280.

Article 894.1 of the Louisiana Code of Criminal Procedure sets forth items that 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 guidelines. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). 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. Watkins**, 532 So.2d 1182, 1186 (La. App. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. **Lanclos**, 419 So.2d at 478. The

sentencing range for defendant's attempted second degree murder conviction is imprisonment at hard labor for not less than ten nor more than fifty years, without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:27(D)(1)(a) & 14:30.1(B). The trial court sentenced defendant to a term of forty years at hard labor, without benefit of parole, probation, or suspension of sentence.

Prior to sentencing defendant, the trial judge listened to statements made by defendant and defendant's mother. Defendant expressed remorse for and recognition of the seriousness of his actions. Defendant's mother requested leniency and asked that defendant be allowed to seek counseling. In addition, the trial judge read aloud a statement submitted by the victim, who was not present at defendant's sentencing. The victim's statement reiterated her need for continuing medical care, and it detailed the emotional hardships suffered by both herself and her family as a result of the incident.

In addressing the Article 894.1 factors, the trial judge stated that she considered the nature and manner in which defendant committed these crimes. She noted specifically that defendant's conviction for attempted second degree murder was a crime of violence and that the injuries inflicted on the victim were near fatal, and that it "defie[d] logic how they were not so." The trial judge also noted that defendant committed the offense of simple robbery in order to facilitate his attempted second degree murder offense. Further, the trial judge noted that defendant's prior criminal history included other crimes committed against persons. Finally, the trial judge stated that although she considered the contents of a presentence investigation report (PSI), that report offered little to mitigate defendant's actions.

Based on our review of the record, we cannot say that the trial court abused its discretion in sentencing defendant to forty years at hard labor, without benefit

of parole, probation, or suspension of sentence. In his brief, defendant acknowledges that the victim received life threatening wounds and is lucky to be alive. However, he argues that a lesser sentence is appropriate because he was working at the time of his arrest and had a young son to support, he expressed remorse for what happened, and he asked for the court's mercy. The fact that defendant was employed at the time of his arrest and had a young son were presented in defendant's testimony and were likely implicitly considered by the trial judge before she imposed her sentence. We find that defendant's sentence for attempted second degree murder is not excessive.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.