

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 2182

STATE OF LOUISIANA

VERSUS

DEORBRA F. WOODS

Judgment rendered: MAR 26 2008

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Case Number 06-06-0942; Section 8
The Honorable Wilson Fields, Judge Presiding**

**Hon. Doug Moreau, District Attorney
Dana Cummings, Asst. District Attorney
Dylan C. Algee, Asst. District Attorney
Baton Rouge, LA**

**Counsel for Appellee
State of Louisiana**

**Bertha M. Hillman
Thibodaux, LA**

**Counsel for Appellant
Deorbra F. Woods**

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Handwritten signatures and initials in the left margin, including what appears to be 'R' and 'J'.

DOWNING, J.

The defendant, Deorbra F. Woods, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:30.1 and 14:27. He pled not guilty. Following a jury trial, he was found guilty as charged. The defendant was sentenced to twenty years at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant filed a motion to reconsider sentence. A hearing was held on the matter, and the motion to reconsider sentence was denied. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On May 27, 2006, at about 11:30 p.m., Carl Wright, Jr., the victim, and his friend, Akeem Robertson, went to a high school graduation party of about fifty people at the home of Howard Austin on Highland Road in Baton Rouge. The defendant, his girlfriend, his friends, and his cousin, Terrence Dent, were also at the party. Shortly after Carl's arrival at the party, several fights broke out. Carl and Akeem were not involved in any of the fights, but Terrence was in one of the fights. Two gunshots were fired in the backyard. Most of the people were asked to leave the party. Carl and Akeem walked toward Akeem's car. The defendant had already made it back to his girlfriend's car and was sitting in the front passenger seat with the window rolled down. As Carl walked near the car the defendant was in, Carl and the defendant exchanged words about Terrence. The defendant exited the car and aggressively approached Carl. Carl put his hands up to defend himself. Carl was not armed. The defendant reached back toward his girlfriend's car, grabbed a semi-automatic handgun, pointed the gun at Carl's chest, and pulled the trigger. The gun failed to discharge. The defendant pulled the slide back and again pointed it at Carl and pulled the trigger. The gun

discharged and Carl was shot in his right thigh. The defendant returned to his girlfriend's car and left. Carl was treated at the hospital. Bullet fragments still remain in his leg.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in denying his motion to reconsider sentence. Specifically, the defendant contends that his twenty-year sentence for attempted second degree murder was constitutionally excessive. According to the defendant, the trial court failed to give adequate consideration to mitigating circumstances, including his young age, that he had completed only the eleventh grade, that he was the father of a one-year-old child, and that this was his first felony offense.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive 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 one's sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (La. App. 1 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. 1 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 La. Code of Crim. P. art. 894.1 need not be recited, the

record must reflect the trial court adequately considered the criteria. **State v. Brown**, 02-2231, p. 4 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

In the instant matter, the trial court imposed a twenty-year sentence at hard labor. While the trial court did not specifically mention La. Code Crim. P. art. 894.1, it is clear from its reasons for judgment at sentencing that it considered the article. At sentencing, the trial court stated in pertinent part:

I ordered a presentence investigation report, and that report came back. I reviewed your criminal history. Although this is your first felony offense as an adult, looking at your offenses that occurred while you were a juvenile, they had some matters in there that concerned me as it relates to crimes of violence as a juvenile.¹ And the defendant -- the victim in this matter was actually shot and had to have surgery to get the bullet removed and some fragment remains in the victim's body at this time.

Further, at the hearing on the motion to reconsider sentence, the trial court stated in pertinent part:

Mr. Woods, I have given your request for reconsideration great thought, and I have even gone over your P.S.I. [on] . . . three different occasions. . . . I was looking at your age, and you're only 20. I think you was [sic] about 19 or 18 when the event occurred. And counsel alluded to your previous history in which I made a judgment on as well, and I even went back through the P.S.I. to see if there was something that I may have overlooked or should not have taken into account. I didn't really find anything. I found your previous history to be one of some, I guess, violent crimes, violent in nature. And with the instant matter that we are considering today, after sitting through the trial, and listening to the trial and the witnesses that came forward in reference to how this particular event occurred and what did happen, and thank God that the weapon did jam in the manner in which it jammed. But you found a way to unjam it and still fire upon the victim. And the court feels that based off your violent history and this particular offense, that the sentence that the court rendered when the court rendered the decision back on June 20th was a just sentence.

The maximum sentence pursuant to La. R.S. 14:30.1(B) and La. R.S. 14:27(D)(1)(a) is fifty years imprisonment. Considering the trial court's careful analysis of the circumstances, the defendant's criminal history, the fact that the

¹ According to the presentence investigation report, as a juvenile, the defendant was charged on September 20, 2002, with entry on or remaining in a place after being forbidden, charged on March 12, 2003 with principal to simple robbery, charged on March 17, 2003, with simple battery, charged on April 27, 2003, with illegal carrying of weapons, and charged on March 13, 2004, with illegal possession of a handgun by a juvenile. As to his adult record, the defendant was charged on January 24, 2005, with second degree battery. He pled guilty to simple battery and was sentenced to one year of probation.

victim may well have been killed but for the defendant's gun misfiring, and the fact that the defendant was sentenced to only twenty years imprisonment, or less than one-half the maximum sentence, we find no abuse of discretion by the trial court. The sentence is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. The trial court did not err in denying the defendant's motion to reconsider sentence.

The assignment of error is without merit.

DECREE

For the foregoing reasons, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED