NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 KA 0400

STATE OF LOUISIANA

VERSUS

DON MORELAND

Judgment Rendered: SEP 19 2008

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 501,499

Honorable Brenda Bedsole Ricks, Judge

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Scott M. Perrilloux, District Attorney
Patricia Parker, Asst. District Attorney
Amite, LA

Attorneys for
State – Appellee

Frederick Kroenke
Baton Rouge, LA

Attorney for
Defendant – Appellant
Don Moreland

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Don Moreland, was charged by amended grand jury indictment with four counts of indecent behavior with a juvenile (counts I, III, V, and VII), violations of La. R.S. 14:81; one count of aggravated rape (count II), a violation of La. R.S. 14:42; and two counts of molestation of a juvenile by the use of influence by virtue of the defendant's care, custody, control, and supervision of the juvenile (counts IV and VI), violations of La. R.S. 14:81.2. He pled not guilty on all counts. Following a jury trial on counts I, III, V, VI, and VII, he was found guilty as charged; on count II, he was found guilty of the responsive offense of attempted aggravated rape of a juvenile, a violation of La. R.S. 14:27 and La. R.S. 14:42; and on count IV, he was found guilty of the responsive offense of attempted molestation of a juvenile, a violation of La. R.S. 14:27 and La. R.S. 14:81.2. On count I, he was sentenced to seven years at hard labor. On count II, he was sentenced to fifty years at hard labor to run consecutively to the sentence imposed on count I. On count III, he was sentenced to seven years at hard labor to run concurrently with the sentence imposed on count II, but consecutively to the sentence imposed on count I. On count IV, he was sentenced to seven and one-half years at hard labor to run consecutively to the sentences imposed on counts I and II. On count V, he was sentenced to seven years at hard labor to run consecutively to the sentences imposed on counts I and II, but concurrently with the sentence imposed on count IV. On count VI, he was sentenced to fifteen years at hard labor to run consecutively to the sentence imposed on counts I, II, and IV, but concurrently with the sentence imposed on count VII. On count VII, he was sentenced to seven years at hard labor to run concurrently with the sentence imposed on count VI. He moved for reconsideration of sentence, but the motion was denied He now appeals, contending that the sentences imposed were unconstitutionally excessive. We affirm the convictions and sentences.

FACTS

The victims were four sisters who lived next door to the defendant in Ponchatoula before they moved out of state with their family in 2005. In March of 2005, after finding victim DOB 7/27/96[1] and victim DOB 6/10/98 naked in a closet at their new home, their mother questioned them concerning "what was going on." Victim DOB 7/27/96 was reluctant to disclose any information because "Mr. Don [would be] in trouble." She stated, however, that "Mr. Don [was] a very sick man." She indicated that the defendant had touched her between her legs with his mouth. She also indicated that the defendant had touched victim DOB 6/25/00 between her legs with his mouth when she was not wearing pants and had also "touched" victim DOB 9/23/92. Victim DOB 9/23/92 advised her mother that the defendant had put his hands down her shirt on more than one occasion. Victim DOB 6/25/00 became angry with her sisters for disclosing what the defendant had done to them.

Victim DOB 9/23/92 testified that when she was between the ages of six years old and nine years old, the defendant would touch her on her chest. The incidents occurred at the defendant's house.

Victim DOB 7/27/96 testified that the defendant had put his hand in her shirt, kissed her on the lips, and had put his lips on her private, which she identified as "right through [her] legs." She also indicated that she had seen the defendant take Victim DOB 6/25/00 to his bedroom, take her pants and panties down, and "[stick] his mouth on her area between her legs." She also indicated that the defendant had shown her and Victim DOB 6/10/98 pictures of private parts of men, women, and children on his computer. She denied jumping up and down on the defendant or roughhousing with him.

Victim DOB 6/10/98 did not provide any details at trial concerning the

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[1] The State identified the victims by their dates of birth, rather than by their initials, because the victims had identical first and last initials. See La. R.S. 46:1844(W).

offenses against her. The State, however, introduced into evidence a videotape of an interview with her by the Child Advocacy Center. In response to questioning, Victim DOB 6/10/98 indicated she was angry with "Don" for touching her in places that people are not supposed to touch you. She indicated that the defendant had pulled her pants and panties down in his bedroom and had put his hand inside of her. She also indicated that the defendant had shown her pictures of naked people on his computer.

Victim DOB 6/25/00 was excused as a witness shortly after the State attempted to qualify her to testify at trial. The State, however, introduced into evidence two videotaped interviews with her by the Child Advocacy Center. In response to questioning, Victim DOB 6/25/00 indicated that when she was three years old, "Mr. Don" had touched her on a part of her body where people are not supposed to touch you. She indicated the defendant used his hand to touch her, and the touching was above her clothes. She also indicated that Victim DOB 7/27/96 had witnessed the touching.

The State also played two audiotapes at trial of statements made by the defendant prior to trial concerning the offenses. The defendant indicated he had rubbed Victim DOB 7/27/96's chest, inside legs, vagina, and may have "grabbed her butt," but claimed he was wrestling, tickling, and playing around with her. He also conceded he had touched Victim DOB 7/27/96's vagina with his mouth "[t]wice, at the most." He claimed Victim DOB 6/10/98 had licked her finger and put it in her vagina while on his bed. He conceded he may have touched Victim DOB 6/10/98's vagina with his finger, but denied putting his finger into her vagina. He claimed pornographic material had accidentally popped up on his computer while Victim DOB 7/27/96 and Victim DOB 6/10/98 were at his house. He indicated he had pulled Victim DOB 6/25/00's "britches" to below her belly button and had blown bubbles on her.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant contends the total sentence imposed is excessive because it amounts to more than a life sentence for him due to his age of seventy-six years and his numerous heart and blood pressure ailments. He also claims the sentence is excessive because he is a retired police officer who served his community and State admirably, because he has no prior arrests or convictions, and because he has ably cared for and been in successful relationships with his children and grandchildren.

In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the State or the defendant may make or file a motion to reconsider sentence. La. C.Cr.P. art. 881.1(A)(1). The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based. La. C.Cr.P. art. 881.1(B). Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the State or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. La. C.Cr.P. art. 881.1(E).

Following the imposition of sentence herein, defense counsel asked the court to "note our objection to the sentencing in this matter." Thereafter, he stated, "I'm going to make an oral motion for reconsideration of sentence." The motion was subsequently denied without the defense offering any argument in support of the motion. No written motion to reconsider sentence was filed.

In the instant case, although the defendant stated at sentencing that he was making an oral motion to reconsider sentence, the motion failed to include any grounds upon which a motion to reconsider sentence may be based. Accordingly, review of the instant assignment of error is procedurally barred. La. C.Cr.P. art.

881.1(E); see **State v. Bickham**, 98-1839, p. 6 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 891 ("a general objection to a sentence preserves nothing for appellate review"); **State v. Jones**, 97-2521, p. 3 (La. App. 1st Cir. 9/25/98), 720 So.2d 52, 53 ("defendant's failure to urge a claim of excessiveness or any other specific ground for reconsideration of sentence by his oral or written motion precludes our review of his assignment of error").

PROTECTIVE ORDER

Louisiana Revised Statutes 15:440.6 requires a videotape of a child's statement admitted under La. R.S. 15:440.5 to be preserved under a protective order of the court to protect the privacy of the child. Although the trial court placed the record "under seal," it failed to issue such an order in this case. Accordingly, it is hereby ordered that State Exhibits #1, #2, and #3, the videotaped statements of the victims, be placed under a protective order. See **State v. Ledet**, 96-0142, p. 19 (La. App. 1st Cir. 11/8/96), 694 So.2d 336, 347, writ denied, 96-3029 (La. 9/19/97), 701 So.2d 163.

CONCLUSION

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

CONVICTIONS AND SENTENCE AFFIRMED; PROTECTIVE ORDER ISSUED.