NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 KA 1931

STATE OF LOUISIANA

VERSUS

HILNER THOMAS

Judgment Rendered: March 26, 2010

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 03-08-0188

The Honorable Louis Daniel, Judge Presiding

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Hillar C. Moore, III **District Attorney** **Allison Miller Rutzen** **Assistant District Attorney** **Baton Rouge, Louisiana**	**Counsel for Appellee** **State of Louisiana**
Gwendolyn K. Brown **Baton Rouge, Louisiana**	**Counsel for Defendant/Appellant** **Hilner Thomas**

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BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

GAIDRY, J.

The defendant, Donald Ray Thomas,[1] was charged by bill of information with possession of cocaine, a violation of La. R.S. 40:967(C). Defendant pleaded not guilty, and following a jury trial, he was found guilty as charged. He was sentenced to serve 42 months at hard labor. Defendant filed a motion to reconsider sentence, which was denied. Defendant now appeals, designating two assignments of error. For the following reasons, we affirm the conviction and sentence.

FACTS

On February 8, 2008, at about 9:00 p.m., Corporal John Bellard and Officer Matthew Dunaway of the Baton Rouge City Police Department were riding together on routine patrol on Scenic Highway in Baton Rouge. Corporal Bellard was training Officer Dunaway, who was driving Corporal Bellard's unit. Detective Gayton Montgomery of the Baton Rouge City Police Department was following the other police officers in his unit.

As Officer Dunaway turned onto 71st Avenue, considered a high-crime area, Corporal Bellard observed a vehicle back out of the driveway of a house where Corporal Bellard had made several narcotics arrests in the past. Rita Gosserand was the owner and driver of the vehicle and defendant was a passenger. As Officer Dunaway followed the vehicle, both officers observed a broken cover on one of the taillights. Officer Dunaway activated his lights and siren to make a traffic stop. As Ms. Gosserand's vehicle came to a stop, Corporal Bellard observed defendant reach out of the passenger's-side window and toss what appeared to be crack cocaine rocks on the ground. At that point, Corporal Bellard and Detective Montgomery

[1] While defendant was tried under the name of "Hilner Thomas," defendant's real name, as noted at sentencing and in his presentence investigation report, is "Donald Ray Thomas."

conducted a felony traffic stop. Detective Montgomery secured the driver, while Corporal Bellard secured defendant.

Corporal Bellard walked to the area where defendant threw the suspected drugs and found two rocks of crack cocaine in the grass, which he seized. Detective Montgomery found another rock of crack cocaine on the driver's-side floorboard. The total weight of the crack cocaine was 1.6 grams.

ASSIGNMENTS OF ERROR

In his two assignments of error, defendant argues, respectively, that his sentence was excessive and that the trial court failed to comply with the sentencing mandates of La. C.Cr.P. art. 894.1. Specifically, defendant contends the trial court did not give appropriate weight to the mitigating factors, and that it failed to provide sufficient justification for the harshness of the sentence.

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 to society, it shocks the sense of justice. *State v. Andrews*, 94-0842, pp. 8-9 (La. App. 1st 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. 1st Cir. 1988). On appellate review of a sentence, the relevant question is "'whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate.'" *State v. Thomas*, 98-1144, pp. 1-2 (La. 10/9/98), 719 So.2d 49, 50 (per curiam) (quoting *State v. Humphrey*, 445 So.2d 1155, 1165 (La. 1984)).

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. C.Cr.P. art. 894.1 need not be recited, the record must reflect that the trial court adequately considered the criteria. *State v. Brown*, 02-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569. The articulation of the factual basis for a sentence is the goal of La. C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C.Cr.P. art. 894.1. *State v. Lanclos*, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. *See State v. Jones*, 398 So.2d 1049, 1051-52 (La. 1981).

It is clear from its stated reasons for the sentence that the trial court adequately considered the provisions of La. C.Cr.P. art. 894.1. At sentencing, the trial court noted that it had ordered defendant's presentence investigation report. In reviewing defendant's prior criminal history, the trial court stated, in pertinent part:

> You pled guilty back in '87 to a possession of marijuana charge after having been arrested for that and more serious charges which were apparently not prosecuted. You have other arrests . . . for aggravated battery and aggravated burglary. Also, you have arrests for attempted felony theft, forgery, battery of a police officer, simple battery, disturbing the peace, misrepresentation during booking. Apparently you pled guilty to battery of a police officer and resisting arrest in 1992 and sentenced to six months in the Parish Prison. You have a 2000 arrest for a simple battery. You have two prior felony convictions . . . for a felony theft charge . . . [and] a possession of cocaine charge. This would make this your third felony conviction[.] . . . I have reviewed the social history contained, and you have numerous other arrests that I'm not going to get into. . . . I've reviewed your employment history showing you were employed with . . . TransChemical. . . . I've reviewed your medical history that is contained in the presentence report. I do show you graduated from high school, Southern Lab High School back in 1984. I have reviewed the recommendation of the Office of Probation and Parole in which they say due to your long criminal history, your previously being on probation and having that probation revoked, the fact that you proceeded a lot onto this trial under an alias which is your brother's name . . . I do think [incarceration] is appropriate in this case. I have considered the sentencing guidelines of Code of Criminal Procedure Article 894. I do find that any lesser sentence will deprecate the seriousness of this offense and that you are in need of a custodial or correctional environment bes[t] served by commitment to an institution. You played a major role in the commission of this offense. As I say to everybody I sentence generally on drug cases, when you choose to walk in the drug world, you cause a great loss to our society. It is probably an immeasurable loss and you contribute to that immeasurable loss. You are a third felony offender. . . . To this date, you have not accepted responsibility for your actions in this case.

For his conviction, defendant faced a maximum sentence of five years at hard labor. *See* La. R.S. 40:967(C)(2). He was sentenced to 42 months at hard labor. Considering the trial court's careful analysis of the circumstances, defendant's criminal history, and the fact that defendant is a third-felony offender, the 42-month sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

These assignments of error are without merit. Accordingly, the sentence and conviction of the defendant, Donald Ray Thomas (initially referred to as "Hilner Thomas"), are affirmed.

CONVICTION AND SENTENCE AFFIRMED.