

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0440

STATE OF LOUISIANA

VERSUS

ISIAH LANG

AKB
JEW
DMC

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 5-07-0663, Section 01
Honorable Anthony J. Marabella, Jr., Judge Presiding**

**Doug Moreau
District Attorney
Dylan C. Alge
Assistant District Attorney
Baton Rouge, LA**

**Attorneys for
State of Louisiana**

**Frederick Kroenke
Louisiana Appellate Project
Baton Rouge, LA**

**Attorney for
Defendant-Appellant
Isiah Lang**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered SEP 19 2008

PARRO, J.

The defendant, Isiah Lang, was charged by bill of information with simple burglary, a violation of LSA-R.S. 14:62. The defendant pled not guilty, but subsequently withdrew his not guilty plea and entered a plea of guilty. The defendant agreed to a twelve-year consecutive sentence in exchange for the state's agreement not to institute habitual offender proceedings following a guilty plea. Pursuant to a **Boykin** examination, the court accepted the defendant's knowing and voluntary guilty plea and sentenced the defendant to twelve years of imprisonment at hard labor, with the sentence to run consecutively to any other time being served. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

On or about June 6, 2006, the police were dispatched to the Industrial Installations site on Airline Highway to investigate a suspicious person. The police spotted an individual loading items into a truck next to Industrial Installations. While the police approached and spoke to the individual, the defendant came walking out of the fenced area of Industrial Installations with items in his hands. When the defendant saw the police, he dropped the items, which had come from inside of Industrial Installations, and ran. The police set up a perimeter, and the defendant was caught sometime later. The defendant was the owner of the truck.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the sentence imposed is unconstitutionally excessive. Specifically, the defendant contends the trial court did not consider the criteria set forth in LSA-C.Cr.P. art. 894.1.

The defendant pled guilty pursuant to a specific sentencing agreement. Following are the relevant portions of the plea agreement discussed at the **Boykin** examination, in which the defendant agreed to a twelve-year consecutive sentence:

Ms. Cummings [prosecutor]: Your Honor, I had just extended an offer, that he could plead guilty as charged, receive 12 years on this charge and it will be consecutive with the time he's backing up on his parole. I'd agree to waive the habitual offender.

Mr. Town [defense counsel]: I need to talk to him, Your Honor.

* * * * *

Ms. Cummings: I think that, if we get a jury, you know, in a couple of hours, we'll finish Tuesday easily.

The Court: Good. Good. Okay. Sign your notice, Mr. -- Mr. Lang, you already have a notice for Monday. We'll see you Monday morning.

Mr. Town: Thank you, Your Honor.

Mr. Lang: I'm going to take the 12 years. I'm going to take the 12 years.

Off-the-record Discussions

The Deputy: He's indicating he's going to take the plea.

The Court: Change of heart?

Ms. Cummings: I think so.

The Deputy: He's indicated he's going to take the plea.

Off-the-record Discussion

The Court: What are we going to do?

Mr. Town: I think he's going to accept responsibility, Your Honor.

The Court: All right. Is that what you want to do, Mr. Lang?

Mr. Lang: Your Honor, I don't have no other choice.

The Court: Well, yes, you do. You have a choice of going to trial or to plead guilty. That's your choice. That's between you and your lawyer. What -- what -- what do you want to do?

Mr. Lang: I'm going to plead -- I'm going to plead guilty.

* * * * *

Q. After having heard the charges against you, the possible consequences and the rights that you give up when you plead guilty, do you still wish to plead guilty to this charge of simple burglary?

A. Yes, sir.

The defendant knowingly and voluntarily pled guilty on the record. The trial court sentenced him to the agreed-upon sentence of twelve years to run consecutively to any other time currently being served. Under LSA-C.Cr.P. art. 881.2(A)(2), 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." See **State**

v. Young, 96-0195 (La. 10/15/96), 680 So.2d 1171, 1174; **State v. Williams**, 98-0952 (La. App. 1st Cir. 2/19/99), 729 So.2d 1080, 1082. Thus, having pled guilty pursuant to a specific sentencing agreement, the defendant is not entitled to a review of his sentence. See **State v. Johnson**, 99-2371 (La. App. 1st Cir. 9/22/00), 768 So.2d 234, 236.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.