

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0406

STATE OF LOUISIANA

VERSUS

JAMES QUINCY FLOT

Judgment rendered: June 8, 2007

**On Appeal from the 19th Judicial District Court
Parish of East Baton Parish, State of Louisiana
Case Number 02-06-0571; Sec: IV
The Honorable Bonnie F. Jackson, Judge Presiding**

**Hon. Douglas P. Moreau
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Baton Rouge, LA**

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State of Louisiana**

**Gwendolyn K. Brown
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**Counsel for Appellant
James Quincy Flot**

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

Defendant was charged with sexual battery in violation of La. R.S. 14:43.1. (R 10-11) He pled guilty as charged and was sentenced to a term of five years at hard labor without benefit of parole, probation or suspension of sentence. (R 81, 83) Defendant appealed, urging in three assignments of error that the court erred by imposing an excessive sentence, by failing to apply the criteria of La. Code Crim. P. art. 894.1 when imposing sentence, and by denying defendant's motion to reconsider sentence. Finding that defendant is precluded from raising these issues on appeal, we affirm the conviction and sentence.

According to the factual basis for the plea established by the State during the **Boykin** proceeding, one of the victim's siblings reported to her mother that the victim was missing. The victim's mother searched their residence and found the victim's bedroom window open but saw no sign of the victim. When the victim was located the next morning, she told her mother that she went to defendant's residence and had sexual intercourse with him. The victim's mother had spoken to defendant a few days earlier and warned him not to talk to her daughter. (R 73-74) At the time of the incident, the victim was twelve years old and defendant was twenty-six years of age. (R 74) Defendant acknowledged that the factual basis related by the state was correct. (R 74)

EXCESSIVE SENTENCE

Defendant claims his sentence is excessive because he is a first-felony offender and has two children who are dependent upon him for support. Defendant also claims the court failed to note his substance abuse-problem and his employment or educational history.

The state initially contends that since defendant's motion to reconsider sentence alleged only that his sentence is excessive, our sentencing review is limited to the bare claim of excessiveness, and the claim that the court failed to comply with the sentencing criteria of La. Code Crim. P. art. 894.1 is not properly raised. The state also claims that the sentence is not excessive, especially in light of the state's agreement to allow defendant to plead guilty to sexual battery under these circumstances and to allow a sentencing cap of ten years. Finally, the state notes that the court questioned defendant about his work history and age, and the court offered defendant an opportunity to offer mitigating facts.

During the **Boykin** examination, defense counsel notified the court that defendant entered into a plea agreement with a sentencing cap of ten years at hard labor in exchange for the state's agreement not to seek an indictment for aggravated rape of the victim. (R 67) Counsel also notified the court that she had explained to defendant that the statute under which he pled guilty did not allow the court to impose probation and that the amount of the sentence would be between zero and ten years, subject to the trial court's discretion. When questioned by the court, defendant acknowledged that his counsel had advised him of the possible sentence and conditions and that he was still willing to enter the plea. (R 68)

Defendant filed a *pro se* motion to reconsider sentence on a generic form. This "fill-in-the-blank" motion alleges that the sentence is excessive, that mitigating circumstances in defendant's favor were not considered, that the sentence imposes undue hardship on the family since defendant is the main source of income, and that defendant does not pose a threat to society at large and is a productive member of his community. The motion does not indicate what specific mitigating circumstances the court failed to consider

nor does it provide details about the economic impact of a sentence of incarceration. (R 45-46)

Pretermitted the issue of whether this motion properly preserved defendant's claim that the court did not consider applicable mitigatory factors of La. Code Crim P. art. 894.1, we note that a defendant is precluded from appealing a sentence imposed in conformity with a plea agreement set forth in the record at the time of the plea. See La. Code Crim. P. art. 881.2A (2); **State v. Young**, 96-0195, p. 7 (La. 10/15/96), 680 So.2d 1171, 1175. See also **State v. Canada**, 2001-2674 (La. App. 1 Cir. 5/10/02), 838 So.2d 784. The term "plea agreement" encompasses an agreement whereby a defendant agrees to plead guilty in order to be sentenced under an agreed upon sentencing cap. **State v. Young**, 96-0195 at pp. 3-5, 680 So.2d at 1173-1174. Herein, defendant pled guilty with the understanding that the trial court could impose a sentence up to ten years at hard labor, and the court imposed a sentence of only half the amount allowed by the agreement. Accordingly, the defendant is procedurally barred from appealing his sentence.

DECREE

Accordingly, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED