

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0982

STATE OF LOUISIANA

VERSUS

JERMAINE ANTHONY MILTON

Judgment Rendered: November 9, 2011

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 09-10-0275

Honorable Bonnie P. Jackson, Judge Presiding

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

Parro, J., concurs.

HIGGINBOTHAM, J.

The defendant, Jermaine Anthony Milton, was charged by bill of information with one count of illegal use of weapons or dangerous instrumentalities (count I), a violation of La. R.S. 14:94, and with one count of aggravated assault with a firearm (count II), a violation of La. R.S. 14:37.4. He initially pled not guilty on both counts. Thereafter, in exchange for the State dismissing count I, he pled guilty as charged on count II. He was sentenced to five years at hard labor. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending the maximum sentence was excessive. For the following reasons, we affirm the conviction and sentence.

FACTS

Due to the defendant's guilty plea, there was no trial, and thus, no trial testimony concerning the offense. At the **Boykin**¹ hearing, however, the State set forth the following factual basis for the charge.

On June 20, 2010, the defendant, the victim, and other friends were having a gathering in the parking lot of 1084 Monet² Drive in Baton Rouge, Louisiana. The victim stated he heard two random shots coming from an unknown direction. After the victim walked to the area where he thought the shots had come from, the defendant began firing behind the victim for no apparent reason. The victim turned and stated, "Man, why you shot me?" The victim then fell to the ground unable to move. The victim had numerous internal injuries that required extensive surgeries, and he suffered permanent paralysis to his lower extremities. The operating physician advised the police that the victim had been shot from behind. The victim stated the defendant was armed with a Glock pistol containing a thirty-

¹ **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

² Monet Drive was erroneously referred to as "Mermaid" Drive in the transcript of the **Boykin** hearing.

round magazine during the incident. The defendant admitted he fired the weapon behind the victim, and stated he had been shot several weeks earlier and was not taking any chances. The defendant claimed he fired his weapon only when he thought he was under fire, but admitted that he did not see anyone when he fired his weapon. The defendant accepted the factual basis for the charge as set forth by the State.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant argues the maximum sentence was excessive because he was a first-felony offender who pled guilty to the offense and was not the worst offender.

Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Hurst**, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. **Id.** A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. **Id.** A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **Id.** Maximum sentences may only be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Miller**, 96-2040 (La. App. 1st Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459. A trial court is entitled to consider the defendant's entire criminal history in

determining the appropriate sentence to be imposed. **State v. Ballett**, 98-2568 (La. App. 4th Cir. 3/15/00), 756 So.2d 587, 602, writ denied, 2000-1490 (La. 2/9/01), 785 So.2d 31. Thus, arrests can be considered.

Whoever commits an aggravated assault with a firearm shall be fined not more than five thousand dollars, or imprisoned for not more than five years, with or without hard labor, or both. La. R.S. 14:37.4(C). The defendant was sentenced to five years at hard labor.

At sentencing, the court stated it had ordered and reviewed a pre-sentence investigation report concerning the defendant. It noted that although the defendant was classified as a first-felony offender, he had numerous arrests including: arrests in 2006 and 2007 for illegal possession of stolen firearms and arrests for domestic abuse battery; a 2008 arrest for armed robbery; a 2008 arrest for felony damage to property; a 2008 arrest for illegal use of weapons; a 2010 arrest for domestic abuse battery; a 2010 arrest for drug possession; and a 2010 arrest for unlawful use of body armor.

The court found the instant case to be tragic. The court did not think the defendant could conceive of that tragedy because he was standing on his own and would walk out of the courtroom on his own. The court stated that the victim, however, was paralyzed for the rest of his life. The court also noted that persons confined to wheelchairs often develop other problems as they get older because they cannot use their muscles. The court commented that the defendant did not intend to shoot his friend, "but that doesn't take him out of the wheelchair." The court also found that the defendant did intend to shoot someone. The court remarked that the instant offense was not the first time the defendant had been arrested in connection with illegal possession of firearms or illegal use of firearms, but the consequences of walking around with a gun obviously did not register with him. The court indicated that it would give the defendant credit for getting his

GED while in prison. The court concluded that given the “serious, serious, serious consequences of [the] crime,” it could not place the defendant on probation.

The sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. Further, a maximum sentence was warranted in this case, because this was one of the most serious offenses, and the defendant was one of the worst offenders. The trial court correctly concluded that the defendant poses an unusual risk to the public safety due to his past conduct of repeated criminality. The victim was paralyzed for life due to the offense, and the defendant failed to understand the consequences of walking around with a gun. Additionally, we note the defendant benefitted from plea bargaining in this case. A defendant’s reduced total penalty exposure as a result of plea bargaining is a valid factor for consideration in imposing sentence. See State v. Lanclos, 419 So.2d 475, 478 (La. 1982). Based on our review of the record, we do not find the trial court abused its wide discretion in imposing the five-year sentence on the defendant. This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.