NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0723

STATE OF LOUISIANA

VERSUS

JOSHUA WEATHERSPOON

Judgment rendered: September 14, 2007

****

On Appeal from the 23rd Judicial District Court
Parish of Ascension, State of Louisiana
Docket No. 18082 Division D
The Honorable Pegram J. Mire, Jr., Judge Presiding

****

Donald D. Candell
Assistant District Attorney
Gonzales, LA

Anthony G. Falterman
District Attorney
Donaldsonville, LA

Counsel for Appellee
State of Louisiana

Leo J. Berggreen
Baton Rouge, LA

Counsel for Appellant
Joshua Weatherspoon

BEFORE: PARRO, KUHN, AND DOWNING, JJ.

DOWNING, J.

The defendant, Joshua Weatherspoon, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered a plea of not guilty. The defendant later withdrew his plea of not guilty and pled guilty to conspiracy to commit second-degree murder, in violation of La. R.S. 14:26 and La. R.S. 14:30.1. The defendant was sentenced to thirty years imprisonment at hard labor. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error as to the constitutionality of the sentence. For the forthcoming reasons, we affirm the conviction and sentence.

FACTS

As the defendant entered a guilty plea herein, the facts were not fully developed. According to the factual basis[1] presented during the *Boykin*[2] hearing, Montreal Veal informed the defendant that Veal's vehicle was stolen from a gas station on Highland Road in Baton Rouge, Louisiana.

The defendant, along with Joseph Thomas, began searching south Baton Rouge for Veal's vehicle. Veal's cousin spotted the vehicle at a gas station on North 22nd Street. The defendant, Veal, Thomas, and Emanuel Howard met at the gas station on North 22nd Street. An attendant informed them that someone left in a vehicle matching the description of Veal's vehicle, a royal blue Cutlass, after asking for directions to New Orleans. Howard was armed with a "Glock 40" and Thomas was armed with a .357 revolver. The subjects traveled toward New Orleans.[3] They ultimately spotted Veal's vehicle in a rest area near Sorrento. Veal identified the

[1] The full factual basis was written in first person as seemingly told by the defendant. (R. 69-72).
[2] ***Boykin v. Alabama***, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

[3] The factual basis included the following statement, in part, presumably made by the defendant: "we all went to look for the car intending to get the car back by beating on the guy or guys that took it." (R 70).

person, (the victim) near the vehicle, as the person who stole the vehicle. As all four males approached, the victim began to run. Thomas and Howard opened fire toward the victim. The victim ultimately fell to the ground. The subjects left the scene without recovering Veal's vehicle.

ASSIGNMENTS OF ERROR

In separate assignments of error, the defendant raises four arguments to support his claim that the trial court imposed an excessive sentence. In the first assignment of error, the defendant argues that the trial court failed to consider that he fully cooperated with law-enforcement personnel. The defendant notes that he testified at the trial of and played a key role in the convictions of Thomas and Howard, despite their efforts to intimidate him when they were incarcerated together. The defendant also notes that he took a lie-detector test to assure the accuracy of his testimony. The defendant concludes that the trial court abused its discretion in failing to consider his cooperation a mitigating factor.

In the second assignment of error, the defendant argues that the trial court failed to consider that he did not contemplate his criminal conduct would cause death and did not intend such a result, nor did he have the necessary guilty knowledge that such a result was likely.[4] The defendant cites specific language by the trial court in imposing the sentence as an indication that the trial judge concluded that all four subjects were equally culpable and guilty of second degree murder. The defendant notes that he pled guilty to conspiracy to commit second-degree murder as opposed to second-degree murder. The defendant further notes that neither he nor Veal

[4] The defendant cites the following language from the factual basis for the guilty plea: "When we got back in the car, we were talking about why Joe started shooting, and Joseph Thomas said it was an urge for him to start shooting, and then Buck, Emanuel Howard, told Joseph that he started shooting because Thomas started shooting." (R. 72).

was armed with a gun. The defendant also notes that he and Veal did not directly harm the victim. The defendant concludes that the trial judge treated him as though he was guilty of second-degree murder.

In the third assignment of error, the defendant argues that the trial court abused its discretion in failing to consider his youthfulness. The defendant notes that he was nineteen years of age in November 2004, when the instant crime was committed. The defendant further notes that the trial court did not list his age as a mitigating factor in imposing the sentence. The defendant contends that his lack of experience and wisdom was a substantial factor in the circumstances of the offense.

In the fourth and final assignment of error, the defendant concludes that the trial court abused its discretion and erred in imposing an excessive sentence under the unique circumstances presented herein. The defendant notes the importance of a plea agreement for less culpable defendants, specifically stating that it often allows key witness testimony against more culpable defendants, reduces the court's docket, helps with judicial economy, and can assist in the rehabilitation of less culpable defendants. The defendant argues that he did not receive any significant benefit in exchange for his guilty plea.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in ***State v. Sepulvado***, 367 So.2d 762, 767 (La. 1979), held that although a sentence may be within statutory limits, a sentence may still be excessive. 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. 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. A trial judge 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. ***State v. Hurst***, 99-2868, pp. 10-11 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83. As a general rule, maximum sentences may 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, p. 4 (La. App. 1 Cir. 11/7/97), 703 So.2d 698, 701. However, where a defendant has pled guilty to an offense which does not adequately describe his conduct or has received a significant reduction in potential exposure to confinement through a plea bargain, the trial court has great discretion in imposing even the maximum sentence possible for the pled offense. ***State v. Lanclos***, 419 So.2d 475, 478 (La. 1982).

The Louisiana Code of Criminal Procedure sets forth items which must be considered by the trial court before imposing sentence. La. Code Crim. P. art. 894.1. The judge is not required to list every aggravating or mitigating factor as long as the record shows ample consideration of the guidelines. ***State v. Herrin***, 562 So.2d 1, 11 (La. App. 1 Cir. 1990). The articulation of the factual basis for a sentence is the goal of article 894.1, not to force a rigid or mechanical recitation of the factors. In light of the criteria expressed by article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. ***State v. Mickey***, 604 So.2d 675, 678 (La. App. 1 Cir. 1992). Thus, even without full compliance with article 894.1, remand is unnecessary when the record clearly reflects an adequate basis for the sentence. ***Lanclos***, 419 So.2d at 478; ***State v.***

Milstead, 95-1983, p. 8 (La. App. 1 Cir. 9/27/96) 681 So.2d 1274, 1279; ***State v. Greer***, 572 So.2d 1166, 1171 (La. App. 1 Cir. 1990).

Prior to sentencing the defendant, the trial court ordered and reviewed a presentence investigation report (PSI). The PSI indicated that the defendant was a first-felony offender with a previous guilty plea to simple burglary. The PSI noted that the defendant's date of birth is July 31, 1985. The PSI further noted that the defendant cooperated with the police, but only after his incarceration. He initially kept silent about the incident. The report recommended a sentence of eighteen years imprisonment at hard labor.

The trial court noted the defendant's age and classification as a first-felony offender. The trial court also stated that the defendant agreed to cooperate with the State and testify truthfully on behalf of the State and did so. The trial court reviewed the facts of the offense. The trial court considered the factors mandated by article 894.1. The trial court specifically noted that the offense resulted in a significant loss to the victim (his life) and his family. The court found no significant provocation for the offense. The trial court imposed the maximum sentence allowed by La. R.S. 14:26B thirty years imprisonment at hard labor. The trial court stated that it believed there is an undue risk that during a period of a suspended sentence or probation, this defendant would commit another crime; that he is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution; and, that any lesser sentence would deprecate the seriousness of the offense. The trial court filed written reasons for the sentence imposed.

In denying the motion to reconsider sentence, the trial judge reiterated his consideration of the youthful age of the defendant and of the co-

conspirators. The trial court also noted that Veal's vehicle had been stolen. The defendant notes the following statements by the trial judge:

> He and his friends decide to go look for it [Veal's vehicle], and when they decided to go look for it, they make the fatal mistake of arming themselves. They bring guns with them. They find the car on the side of the street. There's the guy that stole the car, and what happens? Two of them open fire. The other two didn't open fire, but two of them did open fire and murdered this guy. They're all four guilty. Some pled "guilty," some were found guilty, but they're all guilty of the Second Degree Murder statute.

As noted, a trial court may consider a plea bargain by a defendant. Therefore, the trial judge could properly consider the defendant's plea to a charge of conspiracy to commit second-degree murder, reduced from a more serious charge (second degree murder). The sentencing court is charged with viewing every circumstance surrounding the offense committed, and should impose a sentence fitting the defendant's conduct. Thus, even though the defendant pleads guilty to a lesser charge, it is not improper for the sentencing court to consider the defendant's actual conduct. ***State v. Wooden***, 572 So.2d 1156, 1161 (La. App. 1 Cir. 1990); ***State v. Heath***, 447 So.2d 570, 577 (La. App. 1 Cir. 1984). Therefore, it was not improper for the trial judge to consider the circumstances surrounding the defendant's offense in imposing sentence. We further note that the defendant received a significant benefit from his guilty plea, as his sentencing exposure was reduced from life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence, for second-degree murder to thirty years imprisonment at hard labor for conspiracy to commit second-degree murder. See ***State v. Raymond***, 97-0202, p. 5 (La. App. 1 Cir. 2/20/98), 708 So.2d 1156, 1158.

The record reflects that the trial court very carefully considered the sentencing guidelines of La. Code Crim. P. art. 894.1 and clearly stated the

considerations (including the defendant's age and his cooperation with the State) and factual bases for imposing the sentence. In light of the risk of harm to society and the harm suffered by the victim involved, the sentence imposed was neither grossly disproportionate to the severity of the crime, nor so disproportionate as to shock our sense of justice. Considering the reasons for the sentence imposed, we cannot say that the trial court abused its wide discretion in imposing the maximum term of imprisonment. Thus, the defendant's assignments of error lack merit.

DECREE

Accordingly, we affirm the defendant's convictions and sentences.

CONVICTION AND SENTENCE AFFIRMED