

(NOT DESIGNATED FOR PUBLICATION)

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 2450

STATE OF LOUISIANA

VS.

KHOSECA MILLER

JUDGMENT RENDERED: May 2, 2008

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 11-05-56, SECTION V
PARISH OF ESAT BATON ROUGE, STATE OF LOUISIANA

THE HONORABLE LOUIS DANIEL, JUDGE

DOUGLAS MOREAU
DISTRICT ATTORNEY

ALLISON MILLER RUTZEN
ASSISTANT DISTRICT ATTORNEY
BATON ROUGE, LOUISIANA

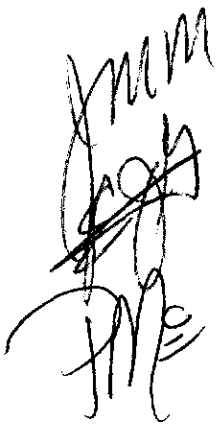
MARK D. PLAISANCE
BAKER, LOUISIANA

ATTORNEY FOR
APPELLEE

STATE OF LOUISIANA

ATTORNEY FOR DEFENDANT/
APPELLANT
KHOSECA MILLER

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ



McDONALD, J.

The defendant, Khoseca Miller, was charged by bill of information with aggravated battery, a violation of La. R.S. 14:34. The defendant withdrew her original plea of not guilty, and entered a "best interest" plea of guilty of the responsive offense of second degree battery, a violation of La. R.S. 14:34.1. The defendant was sentenced to five years imprisonment at hard labor. The trial court suspended two years of said sentence and imposed five years active, supervised probation with general and special conditions. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that the trial court imposed an unconstitutionally excessive sentence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

As the defendant entered a guilty plea herein, the facts were not fully developed. The following facts are based on the testimony presented during the preliminary examination hearing. At the time of the offense, on or about June 27, 2005, and on the date of the hearing, the defendant was the girlfriend of an ex-boyfriend of Kim Emerson (the victim). On the date of the offense, the defendant and Amanda Anderson¹ arrived at the victim's grandmother's home in Baton Rouge, and the three females engaged in a verbal dispute. As the defendant and Anderson began to physically attack the victim, the victim was able to strike the defendant with a belt. Anderson held the victim as the defendant repeatedly stabbed the victim with a knife with a serrated blade. The victim suffered approximately seventeen stab wounds and her injuries included a punctured lung. It was later determined that some of the wounds were inflicted with an ice pick, thought to have been used by Anderson, as the defendant used the knife. The

¹ Codefendant Amanda Anderson also entered a guilty plea to second degree battery for her role in the instant offense.

defense presented testimony of three witnesses to show that the victim initiated the physical contact and initially had possession of the knife.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court erred in imposing an excessive sentence. The defendant concedes that the trial court complied with Louisiana Code of Criminal Procedure article 894.1, but argues that the trial court reached unfounded conclusions. The defendant notes that she is a first time felony offender and that she took responsibility for her actions by pleading guilty despite the conflicting testimony that was presented at the preliminary examination hearing. The defendant also notes that she has five children that she raises alone, including one disabled child and one child with an immune-system deficiency. The defendant reiterates the trial court's express concern that imprisonment will cause hardship to the children. The defendant contends that there is no reason to believe that she would commit another crime during a period of probation. The defendant further contends that the sentence is disproportionate to the crime. The defendant cites **State v. Abercumbia**, 412 So.2d 1027 (La. 1982), in arguing that the sentence is not in line with sentences imposed by other courts in similar situations. Finally, the defendant contends that the evidence herein does not clearly negate her claim that she was acting in self-defense.

Article I, section 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. In reviewing a sentence for excessiveness, the appellate court must consider the punishment and the crime in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and,

therefore, is nothing more than the needless imposition of pain and suffering. See State v. Guzman, 99-1528, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167. The trial court has wide discretion in imposing a sentence within the statutory limits and such a sentence will not be set aside as excessive in the absence of manifest abuse of discretion. State v. Loston, 2003-0977, pp. 19-20 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 210, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing sentence. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. State v. Leblanc, 2004-1032, p. 10 (La. App. 1st Cir. 12/17/04), 897 So.2d 736, 743, writ denied, 2005-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005); State v. Faul, 2003-1423, p. 4 (La. App. 1st Cir. 2/23/04), 873 So.2d 690, 692.

The defendant was exposed to a fine of not more than two thousand dollars, or imprisonment, with or without hard labor, for not more than five years, or both. La. R.S. 14:34.1.² As heretofore noted, the trial court imposed a sentence of five years imprisonment at hard labor but suspended two years of the sentence. The trial court further imposed five years active, supervised probation with general and special conditions. As noted by the defendant, in imposing the sentence, the trial court fully complied with Article 894.1. The trial court considered the presentence investigation report, including the victim's input therein. The trial court noted the absence of a significant criminal record, noting that the defendant does not have any prior convictions. The trial court noted the hardship that incarceration would

² The defendant was arrested originally on a charge of attempted second degree murder and simple battery. She was billed by the district attorney with an offense of aggravated battery, which carries the penalty of a fine of five thousand dollars, or imprisonment with or without hard labor for not more than ten years, or both.

place upon the defendant's children. The trial court considered the defendant's educational and employment background, specifically noting that the defendant completed the tenth grade of high school. Finally, the trial court considered the serious nature of the instant offense and the defendant's failure to show remorse, noting that the defendant's actions caused significant life-threatening injury, pain, suffering and emotional harm to the victim.

We note that the sentencing comparison made by the defendant is of little value. It is well settled that sentences must be individualized to the particular offender and to the particular offense committed. **State v. Albarado**, 2003-2504, p. 6 (La. App. 1st Cir. 6/25/04), 878 So.2d 849, 852, writ denied, 2004-2231 (La. 1/28/05), 893 So.2d 70; **State v. Banks**, 612 So.2d 822, 828 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1254 (La. 1993). We find that the trial court adequately considered the facts and circumstances of the instant case and thoroughly set forth the basis for the sentence. The record supports the sentence imposed herein. We do not find that the sentence shocks the sense of justice or fails to make a meaningful contribution to acceptable penal goals. Thus, the trial court did not abuse its discretion in imposing the sentence or err in denying the motion to reconsider sentence. The sole assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.