

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 1506

STATE OF LOUISIANA

VERSUS

LAWRENCE GAINES

Judgment rendered: February 9, 2007

**On Appeal from the 23rd Judicial District Court
Parish of Ascension, State of Louisiana
Case Number 13,205; Division A
The Honorable Ralph Tureau, Judge Presiding**

**Anthony G. Falterman,
District Attorney
Donald David Candell
Assistant District Attorney
Gonzales, LA**

**Counsel for Appellee
State of Louisiana**

**Frederick H. Kroenke
Baton Rouge, LA**

**Counsel for Appellant
Lawrence Gaines**

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

Lawrence Gaines, defendant, was charged by bill of information with one count of possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1. Defendant pled not guilty and was tried before a jury. The jury determined defendant was guilty as charged. Defendant was originally sentenced to fifteen years at hard labor. In a prior opinion of this court, **State v. Gaines**, 2003-1084 (La. App. 1 Cir. 10/29/04) (unpublished), we affirmed the conviction, but found the existence of reversible patent sentencing error, vacated defendant's sentence, and remanded the matter to the trial court for resentencing. On remand the trial court resentenced defendant to fifteen years at hard labor and assessed a fine of \$1,000.00.

Defendant appeals, arguing that his sentence is excessive.

FACTS

At approximately 1:30 a.m. on October 29, 2000, Deputy Randy Clouatre of the Ascension Parish Sheriff's Office was dispatched to the Prairieville Super Stop in reference to a drunken person in the restroom. Deputy Clouatre and Deputy Tim May, also of the Ascension Parish Sheriff's Office, each pulled into the parking lot of the Super Stop in their separate units. The officers noticed two black males at the pay phone. The shorter person¹ picked up something white off the concrete and walked quickly towards a vehicle parked at the far north end of the building. He placed the object in the passenger side of the vehicle. The door to the passenger side of the vehicle was open, and defendant did not close it before returning to where the first man was standing.

As Deputy Clouatre exited his unit, he asked the man what he had in his hand that he had placed in the vehicle. The subject replied that he did

¹ This individual would ultimately be identified as defendant.

not put anything in the vehicle and explained that he and his companion were looking for change for the pay phone. Deputy Clouatre then asked each man to identify himself. The shorter man identified himself as Wayne Thomas, while the other man identified himself as Kareem Nicholas. Nicholas indicated the vehicle that the first man had walked over to was his and he granted the police permission to look in it.

Deputy Clouatre walked over to Nicholas's vehicle and observed a white washcloth with something wrapped in it on the passenger side floorboard. Deputy Clouatre picked up the item and discovered it was a .38 pistol. Emptying the chamber of four bullets, Deputy Clouatre returned and asked the two men whose gun it was. Both men denied that it belonged to them. A serial number search revealed that the weapon had not been reported stolen. Deputy Clouatre took possession of the weapon and let the men go on their way.

The following day, Detective Glenn LeBlanc of the Ascension Parish Sheriff's Office, received the report from Deputy Clouatre regarding seizing the revolver at the Super Stop. Detective LeBlanc tried to identify the person in the report named Wayne Thomas, because Deputy Clouatre felt that the person was lying about his identity. Detective LeBlanc contacted Nicholas and went to his residence in Donaldsonville to find out who was with him the night the gun was seized. Nicholas identified his companion as defendant.

A photographic line-up was prepared and shown to Deputies Clouatre and May, who each identified defendant as the individual they saw placing the object that turned out to be the pistol into Nicholas's vehicle. Defendant's criminal history was checked and Detective LeBlanc discovered that defendant previously had been convicted of sexual battery on November

13, 1998. A warrant was obtained for defendant to arrest him on the charge of being a felon in possession of a firearm.

At trial, Nicholas testified that on the way home, defendant explained that he gave the police a false name so he would not go to jail because of the gun.

The State also presented testimony from Joann Robo, a fingerprint technician supervisor for the Louisiana State Police Crime Lab, who was accepted by the trial court as an expert in the field of rolled fingerprints. She testified that defendant's prints taken at trial matched the prints on the criminal records evidencing his prior conviction for sexual battery.

Defendant did not testify at trial.

EXCESSIVE SENTENCE

In his sole assignment of error, defendant argues that the trial court imposed an excessive sentence. Defendant argues that while he committed crimes in the past, he had never been violent and had endured serious personal losses in that both parents abandoned him when he was younger and his own daughter died several months prior to trial.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may fall within statutory limits, it may nevertheless violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). 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. **State v. Reed**, 409

So.2d 266, 267 (La. 1982). 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. Lanclos**, 419 So.2d 475, 478 (La. 1982).

The penalty for possession of a firearm by a convicted felon provides for imprisonment of not less than ten nor more than fifteen years without benefit of probation, parole, or suspension of sentence and a fine of not less than one thousand dollars nor more than five thousand dollars. La. R.S. 14:95.1(B).

The Code of Criminal Procedure sets forth in Article 894.1 items that must be considered by the trial court before imposing sentence. Generally, the trial court need not recite the entire checklist of factors, but the record must reflect that it adequately considered the guidelines. **State v. Shipp**, 98-2670, p. 6 (La. App. 1st Cir. 9/24/99), 754 So.2d 1068, 1072.

In the present case, the trial court sentenced defendant to the maximum penalty, fifteen years at hard labor. In written reasons for sentence, the trial court specifically noted that it had considered the information contained in the Pre-Sentence Investigation (PSI). A review of the PSI indicates that defendant was arrested eleven times since 1993. The PSI classified defendant as a third-felony offender and noted his prior convictions in 1995 for attempted felony theft, felony theft, and illegal possession of stolen things; in 1996 for felony theft; and in 1999 for sexual battery. At the time of the present offense, defendant was on parole.

Although defendant seeks leniency based on the death of his daughter prior to trial, the PSI indicates that defendant stated he had no contact and offered no financial support to any of his three children. Moreover, the facts

of the offense indicate that defendant was well aware that possessing a weapon would equate to more jail time.

Maximum sentences may be imposed only 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. Gedric**, 96-2262, p. 3 (La. App. 1st Cir. 9/23/97), 700 So.2d 564, 566. In the present case, we conclude the trial court did not err because we conclude that defendant's repeated criminality poses an unusual risk to public safety. Although defendant's history is not filled with violent offenses, considering that he was found in possession of a weapon while on parole, and his propensity to break the law, defendant poses an unusual risk to public safety.

DECREE

For the foregoing reasons, the maximum sentence for this crime was justified. This assignment of error is without merit.

SENTENCE AFFIRMED