**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1100

STATE OF LOUISIANA

VERSUS

LAZANDY DANIELS

***DATE OF JUDGMENT: October 31, 2008***

ON APPEAL FROM THE 22ND JUDICIAL DISTRICT COURT
(No. 06 CR5 96016), PARISH OF WASHINGTON
STATE OF LOUISIANA

HONORABLE ELAINE DIMICELI, JUDGE

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|---|---|
| Walter Reed<br>Franklinton, Louisiana<br>Kathryn Landry<br>Baton Rouge, Louisiana | Counsel for Appellee<br>State of Louisiana |
| Frederick Kroenke<br>Baton Rouge, Louisiana | Counsel for Appellant<br>Lazandy Daniels |

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BEFORE: KUHN, GUIDRY, AND GAIDRY, J.J.

**Disposition: CONVICTIONS AND SENTENCES AFFIRMED.**

KUHN, J.

Defendant, Lazandy Daniels, was charged by a five-count bill of information with simple escape (count 1), a violation of La. R.S. 14:110; public intimidation (count 2), a violation of La. R.S. 14:122; simple criminal damage to property (count 3), a violation of La. R.S. 14:56; disturbing the peace (count 4), a violation of La. R.S. 14:103; and resisting an officer (count 5), a violation of La. R.S. 14:108. Defendant pleaded not guilty to all charges. Subsequently, the State severed counts 1 and 2 from the remainder of the bill of information. Following a jury trial on counts 1 and 2, defendant was convicted as charged. Defendant was sentenced to imprisonment at hard labor for three years on the public intimidation conviction and a consecutive two years at hard labor on the simple escape conviction. Defendant now appeals, urging in a single assignment of error that the sentences imposed are excessive. We affirm the convictions and sentences.

## FACTS

On October 30, 2006, Officer Daniel Norsworthy and Sergeant Michael Tate of the Franklinton Police Department were dispatched to Parker Street in response to a disturbing the peace complaint involving defendant. When the officers attempted to make contact with defendant, he refused to cooperate. After being advised that he was being placed under arrest, defendant fled. A foot pursuit ensued. Defendant subsequently was captured after he tripped and fell. Because he continued to resist the arrest, refusing to give the officers his hands, he was sprayed with pepper spray. Thereafter, defendant was subdued and placed inside the police vehicle. His efforts to resist arrest did not stop. Defendant repeatedly kicked the door and window of the police vehicle. He eventually

kicked the glass window out and unsuccessfully attempted to escape. The officers again sprayed defendant with pepper spray. Later, while being transported to the police station, defendant continuously threatened to kill Sergeant Tate, Officer Norsworthy, and their families.

At the police station, after having calmed down, defendant asked Sergeant Tate to allow him to go outside to smoke. Sergeant Tate agreed to afford defendant this privilege. Sergeant Tate left defendant in the booking room while he went to get a lighter. Shortly thereafter, defendant fled. He was not immediately apprehended. Defendant later turned himself in to the police.

## EXCESSIVE SENTENCES

In his sole assignment of error, defendant contends the trial court erred by imposing unconstitutionally excessive sentences. He asserts that the sentences imposed, which amount to an aggregate sentence of five years at hard labor, are not warranted. He maintains the trial court failed to give adequate consideration to the fact that he voluntarily turned himself in to the police and he also appeared in court as scheduled, urging that these factors mitigate against the imposition of the five-year total sentence.

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. See ***State v. Sepulvado***, 367 So.2d 762, 767 (La. 1979); see also ***State v. Lanieu***, 98-1260, p. 12 (La. App. 1st Cir. 4/1/99), 734 So.2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So.2d 962. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the

offense or is nothing more than a purposeless and needless infliction of pain and suffering. See ***State v. Dorothy***, 623 So.2d 1276, 1280 (La. 1993). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. See ***State v. Hogan***, 480 So.2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. See ***State v. Lobato***, 603 So.2d 739, 751 (La. 1992).

As previously noted, defendant was sentenced to imprisonment for three years on the public intimidation conviction and two consecutive years on the simple escape conviction. La. R.S. 14:110 provides that a person imprisoned, committed, or detained who commits the crime of simple escape shall be imprisoned with or without hard labor for not less than two years nor more than five years; provided that such sentence shall not run concurrently with any other sentence. La. R.S. 14:110B(3). Under La. R.S. 14:122C, whoever commits the crime of public intimidation shall be fined not more than one thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

Prior to imposing sentence in this case, the trial court specifically pointed out that it considered defendant's prior criminal record. As the State notes in its brief, defendant received a mid-range sentence on the public intimidation conviction and the statutory minimum on the simple escape. Furthermore, the simple escape sentence was required, by statute, to be served consecutively to any other sentence. Based on the entire record before us, we find no error or abuse of discretion in the sentences imposed. Contrary to defendant's assertions, we find

that the sentences imposed are not grossly disproportionate to the severity of the offenses, nor are they so disproportionate as to shock our sense of justice. Therefore, we conclude that the sentences imposed, even when considered in the aggregate, are not unconstitutionally excessive. Accordingly, this assignment of error lacks merit.

## DECREE

For these reasons, we affirm the convictions of and sentences imposed against defendant, Lazandy Daniels.

**CONVICTIONS AND SENTENCES AFFIRMED.**