

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 KA 1781

STATE OF LOUISIANA

VERSUS

MICHA HOWARD

**Judgment Rendered: February 13, 2009**

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Appealed from the  
Twentieth Judicial District Court  
In and for the Parish of East Feliciana  
State of Louisiana  
Trial Court Number 06-CR-737  
Honorable William G. Carmichael, Judge

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Micha Howard

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

*Handwritten signatures and initials:*  
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EJG  
5/19/09

## **GUIDRY, J.**

Defendant, Micha Howard, was charged by bill of information with one count of obscenity, a violation of La. R.S. 14:106. After entering a plea of not guilty, defendant was tried before a jury. The jury determined defendant was guilty as charged. The trial court subsequently sentenced defendant to a term of two years at hard labor, to be served consecutive to any other term defendant was serving.

Defendant appeals, citing the following as error:

1. The trial court erred by imposing an excessive sentence.
2. The trial court erred by imposing a near maximum term of incarceration, a sentence appropriately reserved for the worst offenders and/or the worst offenses, without making any effort to acquaint itself with the defendant's background and without any evidence to support the harshness.
3. The trial court erred in denying [defendant's] motion for reconsideration of sentence.

## **FACTS**

On the afternoon of August 31, 2006, Ericka Holmes, a guard at Dixon Correctional Institute (DCI), was in the control room of Cellblock C, with Peggy Babin, another DCI employee. Holmes looked over to where the cells comprising Cellblock B were located and noticed defendant was standing at the bars of his cell with his penis exposed and masturbating. Holmes brought defendant's actions to the attention of Babin. Both women testified that defendant was the only prisoner in the area and they found his actions offensive.

## **EXCESSIVE SENTENCE**

All of defendant's assignments of error raise the issue that the trial court imposed an excessive sentence for his obscenity conviction.

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. 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. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So. 2d 962.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. C.Cr.P. art. 894.1. 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. Herrin, 562 So. 2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So. 2d 942 (La. 1990). 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. Watkins, 532 So. 2d 1182, 1186 (La. App. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982).

The applicable penalty provision in this case provides that whoever commits the crime of obscenity shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned, with or without hard labor, for not less than six months nor more than three years, or both. La. R.S. 14:106(G)(1).

In the present case, the trial court sentenced defendant to two years at hard labor, a sentence less than the maximum allowable sentence. Accordingly, we cannot say defendant received the maximum sentence that is generally reserved for the most serious offenders. In sentencing defendant, the trial court found that defendant had intentionally exposed himself in the presence of two female officers, without provocation, and there were no grounds to justify his actions.

The trial court found it significant that defendant committed this crime while serving time for another crime, which indicated that defendant had not learned that he must abide by the rules of society. The trial court further emphasized that this was not a situation where a female guard came upon him unexpectedly. Rather, defendant was intentionally engaging in this act by exposing himself through the bars of his cell in a manner that insured he could be seen by the guards. The trial court commented that the manner in which defendant perpetrated this act demonstrated defendant's clear intent that it be found offensive.

Defendant also argues that the trial court made no effort to acquaint itself with his background or any evidence to support the harshness of the sentence. We disagree. The trial court's failure to order a presentence investigation report (PSI) prior to sentencing was not an abuse of discretion; defendant did not request a PSI, and the trial court had sufficient information to allow it to review defendant's character and attitude and the background of the offense. See La. C.Cr. P. art. 875(A)(1) and State v. Wimberly, 618 So. 2d 908, 914 (La. App. 1st Cir.), writ denied, 624 So. 2d 1229 (La. 1993).

These assignments of error are without merit and accordingly, we affirm the judgment of the trial court.

**SENTENCE AND CONVICTION AFFIRMED.**