NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1439

STATE OF LOUISIANA

VERSUS

PRINTESS WILLIAMS

Judgment Rendered: ***February 13, 2009***

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ON APPEAL FROM THE
TWENTY-THIRD JUDICIAL DISTRICT COURT
DOCKET NUMBER 12701, DIVISION D
PARISH OF ASCENSION, STATE OF LOUISIANA

THE HONORABLE PEGRAM J. MIRE, JR., Judge

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BEFORE: PETTIGREW, McDONALD, HUGHES, JJ.

McDONALD, J.

The defendant, Printess Williams, Jr., was charged by bill of information with attempted first degree murder in violation of La. R.S. 14:30 and 14:27, and armed robbery in violation of La. R.S. 14:64 in June 2000. On July 6, 2000 the defendant pled not guilty to both charges. Subsequently, the State amended the bill of information to reduce the armed robbery charge to attempted armed robbery in violation of La. R.S. 14:64; 27. On October 17, 2000, the defendant withdrew his pleas of not guilty and entered pleas of guilty of attempted first degree murder and attempted armed robbery, pursuant to a plea agreement with the State. The court accepted the guilty pleas and sentenced the defendant to twenty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence on the charge of attempted first degree murder and ten years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence on the charge of attempted armed robbery, with both sentences to run consecutively. Following an appeal, in an unpublished opinion, this court affirmed the defendant's convictions and sentences. See **State v. Williams**, 2002-0425 (La. App. 1st Cir. 9/27/02), writ denied, 2002-3029 (La. 10/10/03), 855 So.2d 324.

In July 2004, the defendant filed an application for postconviction relief, alleging that his convictions and sentences subjected him to double jeopardy, and that he received ineffective assistance of counsel, which the trial court denied. The defendant applied for supervisory writs to this court. In an unpublished decision, this court denied the writ application. See **State ex rel. Williams v. State**, 2004-1845 (La. App. 1st Cir. 12/13/04). The defendant then filed a writ of certiorari to the supreme court, which granted the writ in part, otherwise denied the writ, and remanded the case. Finding that the defendant's convictions violated double jeopardy principles, the supreme court ordered the district court to vacate the attempted armed robbery conviction and sentence. The district court was further

ordered to vacate the sentence for attempted first degree murder and to resentence the defendant on that charge in a manner consistent with its original "interdependent sentences [imposed] according to a scheme of punishment for [relator's] conduct as a whole." See **State ex rel. Williams v. State**, 2005-0427 (La. 1/27/06), 922 So.2d 526.

On February 7, 2006, in the absence of the defendant's presence, the court vacated the attempted armed robbery conviction and sentence and, improperly, vacated both the attempted first degree murder conviction and sentence. The court sentenced the defendant to thirty years at hard labor. The defendant applied for supervisory writs to this court. In an unpublished decision, this court granted the writ application and found that, while the district court incorrectly vacated the defendant's conviction for attempted first degree murder, such error was ministerial. This court further remanded the matter and ordered the district court to reinstate the defendant's conviction for attempted first degree murder, to secure the defendant's presence in court, to vacate the sentence previously imposed in the defendant's absence, and to resentence the defendant. See **State v. Williams**, 2006-0696 (La. App. 1st Cir. 7/10/06).

On August 21, 2006, the court secured the defendant's presence, reinstated his attempted first degree murder conviction, vacated his previous sentence, and resentenced him to twenty years at hard labor without benefit of parole, probation, or suspension of sentence. The defendant now appeals, asserting four assignments of error.

FACTS

On May 5, 2000, Irvin Washington was getting into his vehicle when the defendant, brandishing a revolver, attempted to carjack him. Washington's two young children were with him at the time. Washington grabbed for the defendant's gun, but fell to the ground as the defendant backed up. The defendant then fired a

shot at him, but the shot missed Washington and hit a store window. See **Williams** 2002-0425 at pp. 2-3.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the trial court erred in imposing a sentence for a conviction that had been vacated.

The defendant asserts the trial court had no authority to resentence him because, after the attempted first degree murder conviction was vacated, there was no conviction on which to be sentenced. This assertion is baseless. In a writ decision, this court specifically found the trial court's mistake of vacating the defendant's conviction for attempted first degree murder to be a "ministerial error." **State v. Williams**, 2006-0696. This court cited **State v. Williams**, 2001-0554 (La. 5/14/02), 817 So.2d 40, and noted that such error "did not involve a reconsideration by the district court of the decision to accept the guilty plea." **Id.** This court further ordered the trial court to reinstate the conviction for attempted first degree murder, to secure the defendant's presence in court, vacate the sentence previously imposed in the defendant's absence, and to resentence him. On August 21, 2006, the defendant's presence was secured before the trial court for sentencing. The trial court reinstated the conviction for attempted first degree murder, vacated the sentence imposed, and resentenced him to twenty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The trial court complied with the orders of this court and, in all respects, the defendant's conviction and sentence are proper.

ASSIGNMENTS OF ERROR NUMBERS 2, 3 AND 4

In these related assignments of error, the defendant argues, respectively, that the sentence imposed is excessive, the trial court failed to comply with La. Code Crim. P. art. 894.1, and defense counsel's failure to file a motion to reconsider sentence constitutes ineffective assistance of counsel.

The record does not contain an oral or written motion to reconsider sentence. Louisiana Code of Criminal Procedure article 881.1(E) provides that the failure to file or make a motion to reconsider sentence precludes the defendant from raising an excessive sentence argument on appeal. Ordinarily, pursuant to the provisions of this article and the holding of **State v. Duncan**, 94-1563, p. 2 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam), we would not consider an excessive sentence argument. However, in the interest of judicial economy, we choose to consider the defendant's argument that his sentence is excessive, even in the absence of a motion to reconsider sentence, in order to address the defendant's claim of ineffective counsel. See **State v. Wilkinson**, 99-0803, p. 3 (La. App. 1st Cir. 2/18/00), 754 So.2d 301, 303, writ denied, 2000-2336 (La. 4/20/01), 790 So.2d 631.

In **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), the United States Supreme Court enunciated the test for evaluating the competence of trial counsel:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. **State v. Robinson**, 471 So.2d 1035, 1038-39 (La. App. 1st Cir.), writ denied, 476 So.2d 350 (La. 1985).

Failure to file a motion to reconsider sentence in itself does not constitute ineffective assistance of counsel. However, if the defendant can show a reasonable probability that, but for counsel's error, his sentence would have been different, a

basis for an ineffective assistance claim may be found. See **State v. Felder**, 2000-2887, p. 11 (La. App. 1st Cir. 9/28/01), 809 So.2d 360, 370, writ denied, 2001-3027 (La. 10/25/02), 827 So.2d 1173 (citing **State v. Pendelton**, 96-367, p. 30 (La. App. 5th Cir. 5/28/97), 696 So.2d 144, 159, writ denied, 97-1714 (La. 12/19/97), 706 So.2d 450). Thus, defendant must show that but for his counsel's failure to file a motion to reconsider sentence, the sentence would have been changed, either in the district court or on appeal. **Id.**

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks one's sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code of Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed,

remand is unnecessary even where there has not been full compliance with La. Code Crim. P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

In the instant matter, the trial court imposed a twenty-year sentence at hard labor. While the trial court did not articulate its reasons for the sentence at that time, it provided reasons for the sentence on two previous occasions, namely on May 21, 2001, which was the original sentencing in this matter, and on February 8, 2006, when the defendant was resentenced for the attempted first degree murder conviction only. In its reasons for sentence filed on May 21, 2001, the trial court considered the factors in La. Code Crim. P. art. 894.1 and found there was an undue risk during the period of a suspended sentence or probation the defendant would commit another crime; he is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution; and any lesser sentence than the one imposed would deprecate the seriousness of the offense. The trial court also found the defendant knew or should have known that his actions created a risk of death or great bodily harm to, not only the person whose car he was attempting to steal, but to the two small children who were in the car. In addition, the trial court found a total lack of provocation for this offense. Because there were children involved who are still not fully recovered from the incident, the trial court found the defendant should be incarcerated "for a very long period of time."

The maximum sentence pursuant to La. R.S. 14:27(D)(1)(a) and La. R.S. 14:30 is fifty years imprisonment at hard labor. In view of its careful consideration of the circumstances of the offense, and the fact the defendant was sentenced to

less than one-half of the maximum sentence, we find no abuse of discretion by the trial court in imposing a twenty-year sentence. Further, we find no merit in defendant's claims of excessive sentence and failure of the trial court to comply with Code of Crim. Proc. art. 894.1.

Because we find the sentence is not excessive, defense counsel's failure to file or make a motion to reconsider sentence, even if constituting deficient performance, did not prejudice the defendant. See **Wilkinson**, 99-0803 at p. 3, 754 So.2d at 303; **State v. Robinson**, 471 So.2d at 1038-39. Therefore, his claim of ineffective assistance of counsel, has no merit.

CONVICTION AND SENTENCE AFFIRMED.