

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 2360

STATE OF LOUISIANA

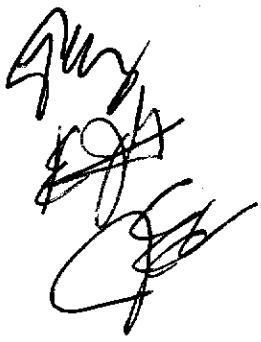
VERSUS

ROBERT RICARD

**Judgment Rendered:** SEP 23 2008

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Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of Tangipahoa  
State of Louisiana  
Trial Court Number 600349



Honorable Ernest G. Drake, Jr., Judge

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

## **GUIDRY, J**

The defendant, Robert Ricard, was charged by bill of information with one count of possession of a firearm or carrying a concealed weapon by a convicted felon, a violation of La. R.S. 14:95.1, and pleaded not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. He was sentenced to fourteen years at hard labor without benefit of probation, parole, or suspension of sentence and fined \$1000.00. He moved for reconsideration of sentence, but the motions were denied. He now appeals, contending that the sentence imposed was unconstitutionally excessive. We affirm the conviction and sentence.

### **FACTS**

On December 16, 2005, Tangipahoa Parish Sheriff's Deputy Joseph M. Drago, Jr. was dispatched to investigate a report of a suspicious black male, possibly with a knife, lingering around the Woodland Apartments. There had been a homicide involving a knife and a number of burglaries in the area. Deputy Drago encountered the defendant walking in the referenced area. The defendant avoided eye contact with Deputy Drago and repeatedly turned away from him. The defendant was also wearing two large jackets even though the temperature was approximately 70 degrees. He also had his hand in his left pocket. Deputy Drago found the defendant's behavior suspicious and asked him to take his hand out of his pocket. The defendant refused. Deputy Drago again asked the defendant to take his hand out of his pocket, and the defendant gestured with his arms and stated, "What?" When the defendant moved his arms away from his body, Deputy Drago saw the grip of a revolver sticking out of the interior left pocket of one of the defendant's jackets. Deputy Drago drew his service weapon and ordered the defendant to remove his hand from his pocket, place it above his head, and not make any sudden moves toward any of his pockets. The defendant complied with the orders. Deputy Drago then recovered a loaded revolver from the defendant's jacket

pocket and a second loaded revolver from the front right pocket of the defendant's pants. The defendant claimed the guns belonged to his uncle.

The defendant testified at trial. He admitted that he had been convicted of burglary on March 9, 2004, and had only been out of jail for approximately a week when he was arrested on the instant offense. He also conceded that he had two revolvers in his possession on the date in question, but claimed he was only returning the guns to his uncle.

### **EXCESSIVE SENTENCE**

In his sole assignment of error, the defendant argues that the sentence imposed was unconstitutionally excessive because he was not the worst type of offender and this was not the most serious violation of the crime, because the weapons were not used in any further criminal activity and it was reasonable to accept his version that he was returning the guns to his uncle.

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. State v. Dorsey, 04-1358, p. 5 (La. App. 1st Cir. 3/24/05), 907 So. 2d 154, 157. 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 penalty provision of La. R.S. 14:95.1 provides that whoever is found guilty of violating the provisions of the statute shall be imprisoned at hard labor for not less than ten years nor more than fifteen years without the benefit of probation, parole, or suspension of sentence and be fined not less than one thousand dollars nor more than five thousand dollars. La. R.S. 14:95.1(B). The defendant was sentenced to fourteen years at hard labor without benefit of probation, parole, or suspension of sentence and fined \$1000.00.

In imposing sentence, the trial court noted the defendant had been walking down the road with two guns under his jacket after only recently being released from jail. In denying the motion<sup>1</sup> to reconsider sentence, the court further noted that the defendant's prior conviction was for burglary. The sentence imposed was not grossly disproportionate to the severity of the offense, and thus was not unconstitutionally excessive. The defendant's argument that he had to be the worst type of offender and this had to be the most serious offense to justify the sentence is misplaced. Maximum sentences may be imposed 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. Miller, 96-2040, p. 4 (La. App. 1st Cir. 11/7/97), 703 So. 2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So. 2d 459. The defendant, however, did not receive a maximum sentence in this case. Further, it has been observed that a convicted burglar walking around with two concealed, loaded guns presents an unusual risk to public safety. See State v. Elliott, 04-936, pp. 5-6 (La. App. 5th Cir. 2/15/05), 896 So. 2d 1110, 1114, writ denied, 05-2182 (La. 5/26/06), 930 So. 2d 11. Moreover, there is no requirement under La. R.S. 14:95.1 that the convicted felon possess the firearm with the intent to use it in an illegal manner. State v. Becnel, 04-1266, p. 12 n.8 (La. App. 5th Cir.

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<sup>1</sup> The defendant filed one timely and two untimely motions to reconsider sentence. All of the motions were denied.

5/31/05), 904 So. 2d 838, 849 n.8; State v. Recard, 97-754, p. 10 (La. App. 3d Cir. 11/26/97), 704 So. 2d 324, 330, writ denied, 97-3187 (La. 5/1/98), 805 So. 2d 200. The same jurisprudence holds that the reason a convicted felon possesses a firearm is irrelevant under La. R.S. 14:95.1. Accordingly, this assignment of error is without merit.

### **CONCLUSION**

For the foregoing reasons, we find that the sentence imposed for the defendant's violation and conviction of La. R.S. 14:95.1, possession of a firearm by a convicted felon, is proper and not unconstitutionally excessive. We therefore affirm the defendant's conviction and the sentence imposed.

**CONVICTION AND SENTENCE AFFIRMED.**