NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 KA 1671

STATE OF LOUISIANA

VERSUS

SEDRICK PAYNE

EJG BY GET

Judgment Rendered: February 13, 2009

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Appealed from the
20th Judicial District Court
In and for the Parish of East Feliciana, Louisiana
Case No. 06-CR-355

The Honorable William G. Carmichael, Judge Presiding

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Sedrick Payne

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

GAIDRY, J.

Defendant, Sedrick Payne, was charged by bill of information with one count of aggravated battery, a violation of La. R.S. 14:34. Defendant entered a plea of not guilty and was tried before a jury. The jury found defendant guilty as charged. The trial court subsequently sentenced defendant to a term of ten years at hard labor, to be served consecutive to any other sentences being served by defendant.

Defendant appeals, citing the following as error:

1. The trial court erred by imposing an excessive sentence.

2. The trial court erred by imposing the maximum term of incarceration allowed by law, 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 by utilizing, in the absence of evidence to support, the "testimony" of the prosecutor that the victim had been threatened by the defendant to support its harsh sentence.

4. The trial court erred in denying defendant's motion for reconsideration of sentence.

We affirm defendant's conviction and sentence.

FACTS

On March 25, 2006, defendant and Rendell Washington (the victim), were both inmates at Dixon Correctional Institute (DCI) in East Feliciana Parish. On that day, defendant and Washington "had words" while on the basketball court. According to Washington, despite this incident, he and defendant remained friends. However, the following morning, as Washington slept in his bed located in Dorm F, a multi-bed facility with no individual cells, defendant approached him and began beating him with a metal combination lock attached to a belt. Defendant struck Washington at

least three times in the head. As a result, Washington sustained several cuts to his head, requiring a total of twenty stitches, which were provided at an off-site hospital.

At trial, Washington was reluctant to testify against defendant and was ordered to answer questions on three different occasions, until he was eventually held in contempt of court.[1] Washington admitted his reluctance to testify against defendant arose from concern that defendant would retaliate against him or his family. Washington told the trial court that he lived in the same area as defendant.

Cardies Minor, who worked as a sergeant at DCI at the time of this incident, also testified at trial. Minor was on duty in the dorm at the time of the incident and heard screaming. When Minor turned toward the screaming, he saw defendant strike Washington in the head, as Washington was lying in his bed. Defendant then dropped the metal combination lock and started running, only to be stopped by Minor.

Defendant did not testify.

EXCESSIVE SENTENCE

Defendant uses all of his assignments of error to argue that the trial court imposed an excessive 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. 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

[1] After finding Washington in contempt of court, the trial court ordered he serve six months in the parish jail, consecutive to any sentence he was currently serving.

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, 2000-3053 (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. Code Crim. 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). Maximum sentences are reserved for cases involving the most serious offenses and the worst offenders. *State v. Easley*, 432 So.2d 910, 914 (La. App. 1st Cir. 1983).

The penalty for aggravated battery provides for a fine of not more than five thousand dollars, imprisonment with or without hard labor for not more than ten years, or both. La. R.S. 14:34. In the present case, the trial court sentenced defendant to the maximum term of imprisonment of ten years at hard labor.

The record clearly reflects that defendant approached the victim as the victim slept and struck him at least three times in the head with a metal combination lock attached to a belt. As a result of this attack, the victim required approximately twenty stitches to his head and mouth area. In sentencing defendant, the trial court noted that it had considered the factors enumerated in Article 894.1, and found no mitigating factors in the circumstances of this offense. The trial court noted that the victim could have been killed as a result of being repeatedly struck in the head. The trial court further noted that the attack was without provocation, and perpetrated upon a sleeping, helpless victim, which demonstrated deliberate cruelty, involved a risk of death, inflicted serious injury, and involved the use of violence. The trial court also articulated that there was an undue risk of defendant committing another crime considering the present crime was committed in a prison, where defendant could not abide by the rules.

On appeal, defendant argues that the victim testified on defendant's behalf at the sentencing hearing and requested the trial court to show mercy upon defendant. We note that during the trial, there was ample evidence that the victim was reluctant to testify against defendant for fear of retaliation. When the trial court denied defendant's motion for new trial, it specifically noted that "I will say for the record that I believe that the defendant attempted to intimidate the victim during this trial." In its reasons for sentence, the trial court stated that it was clear that despite the victim's testimony seeking leniency for the defendant, it was clear he still feared defendant. The trial court recalled how during the trial, the defendant changed his position in his chair during the victim's testimony in order to have a better line of sight to the victim.

Finally, we note defendant contends that the trial court made no attempt to "acquaint" itself with defendant by ordering a presentence investigation. We note the trial judge who presided over the trial of this matter was the same judge who imposed the sentence for defendant's conviction. Moreover, La. Code Crim. P. art. 875(A)(1) states in pertinent part, "If a defendant is convicted of a felony offense ... the court may order the Department of Corrections, division of probation and parole, to make a presentence investigation." Official Revision Comment (d) to that article states, "Under this article the court may, but is not required to, order a presentence investigation." Clearly, in this case, the law did not require the trial court to order a presentence investigation. Accordingly, the trial court did not err in failing to order a presentence investigation.

We find no merit in any of defendant's assignments of error.

DECREE

For the above reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.