NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0399

STATE OF LOUISIANA

VERSUS

SHANNON JOSEPH SHADELL

DATE OF JUDGMENT: June 8, 2007

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 459,479), PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE GEORGE J. LARKE, JUDGE

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Joseph Waitz, District Attorney Matthew Hagen Houma, Louisiana	Counsel for Plaintiff/Appellee State of Louisiana
Bertha M. Hillman, Thibodaux, Louisiana	Counsel for Defendant/Appellant Shannon Joseph Shadell

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Shannon Joseph Shadell, was charged by bill of information with operating a vehicle while intoxicated (DWI), fifth offense, a violation of La. R.S. 14:98.[1] Defendant entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged. The trial court denied defendant's motion for new trial and motion for post-verdict judgment of acquittal. Defendant was sentenced to twenty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. Defendant now appeals, assigning as error the denial of his motion to reconsider sentence. We affirm.

FACTS

On or about June 23, 2005, at approximately 10:30 p.m., Louisiana State Trooper Brent J. Dufrene was conducting DWI patrol in Terrebonne Parish. Due to a broken headlight on a vehicle, Trooper Dufrene conducted a traffic stop at a Shell station located on the corner of Louisiana Highway 182 and Hollywood Road. Trooper Dufrene noted the presence of several subjects in the vehicle. As the vehicle pulled into the Shell station parking lot, the driver (defendant) applied the brakes and "suddenly kind of drifted back and then forward again like maybe threw it in gear and it caused the vehicle to somewhat shake." Trooper Dufrene exited his vehicle and advised defendant to do the same. Defendant did not have any identification and informed Trooper Dufrene that his license was suspended. Defendant also informed Trooper Dufrene that he had consumed a few beers.

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[1] Defendant was also charged with simple escape (count two), a violation of La. R.S. 14:110. On the date of the trial (prior to jury selection), the State nol-prossed the simple escape charge.

Trooper Dufrene noticed that defendant's speech was slurred, his eyes were glossy, and a strong odor of an alcoholic beverage emitted from his breath. Defendant was also very nervous. A videotape of the stop was admitted during the trial and shown to the jury.

Defendant agreed to participate in a field-sobriety test. Trooper Dufrene concluded that defendant failed horizontal-gaze nystagmus, walk and turn, and one-leg stand field-sobriety tests. Based on Trooper Dufrene's observations and defendant's performance on the field-sobriety tests, Trooper Dufrene concluded that defendant was impaired. As Trooper Dufrene attempted to escort defendant to the trooper's vehicle, defendant pulled away and fled. Trooper Dufrene pursued and ultimately apprehended defendant. Defendant refused to take an Intoxilyzer test.

ASSIGNMENT OF ERROR

In the sole assignment of error, defendant maintains that the trial court erred in denying his motion to reconsider sentence. He notes that he was on probation for fourth-offense DWI at the time of the instant offense (further indicating that he had been sentenced to a suspended ten-year sentence with service of sixty days in jail for the fourth offense). The trial court ordered his sentence for the instant offense to be served consecutively to the sentence imposed upon him for his fourth-offense DWI conviction. Defendant contends that the sentence is excessive, claiming that the trial court failed to give adequate consideration to mitigating circumstances.

La. C.Cr.P. art. 894.1 sets forth items that must be considered by the trial court before imposing sentence. 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. Leblanc***, 04-1032, p. 10 (La. App. 1st Cir. 12/17/04), 897 So.2d 736, 743, ***writ denied***, 05-0150 (La. 4/29/05), 901 So.2d 1063, ***cert. denied***, ___U.S.___, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005); ***State v. Faul***, 03-1423, p. 4 (La. App. 1st Cir. 2/23/04), 873 So.2d 690, 692.

Article I, section 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. In reviewing a sentence for excessiveness, the appellate court must consider the punishment and the crime in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and, therefore, is nothing more than the needless imposition of pain and suffering. See ***State v. Guzman***, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167.

The trial court has wide discretion in imposing a sentence within the statutory limits; and such a sentence will not be set aside as excessive in the absence of manifest abuse of discretion. ***State v. Loston***, 03-0977, p. 20 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 210, ***writ denied***, 04-0792 (La. 9/24/04), 882 So.2d 1167. Thus, 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. C.Cr.P. art. 894.1. ***State v. Holmes***, 99-0631, p. 4 (La. App. 1st Cir. 2/18/00), 754 So.2d 1132, 1135, ***writ denied***, 00-1020 (La. 3/30/01), 788 So.2d 440.

In sentencing defendant, the trial court stated that defendant was twenty-nine and had a criminal record consisting of twenty-eight arrests and seven convictions. The trial court noted defendant's prior DWI convictions and other felony convictions, pointing out that defendant's parole had been revoked twice. The trial court further indicated that defendant had not received substance-abuse treatment as a third offender, but rather a suspended sentence and substance-abuse treatment as a fourth offender. The trial court was unaware of any gainful employment during defendant's adult life. Defendant was allowed to raise additional factors for consideration. The defense counsel noted defendant's witnessing of his father's suicide and loss of unborn twin babies. And defendant personally stated that he felt he had not received a fair trial. The trial court noted the risk to society created by defendant's offense. Pursuant to La. R.S. 14:98E(4)(b), the trial court sentenced defendant to twenty years at hard labor, ordering that his sentence be served without benefit of probation, parole, or suspension of sentence and consecutively with the remaining balance of any sentence he was serving for his DWI fourth-offense conviction.

In accordance with La. R.S. 14:98E(4)(a) and (4)(b), defendant was subjected to a term of imprisonment of ten to thirty years at hard labor without the benefit of probation, parole, or suspension of sentence. Subsection E(4)(b) specifically states that no portion of the sentence is to be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

Based on our thorough review of the record, we find that the trial court adequately complied with the criteria of Article 894.1 and did not abuse its

discretion in imposing the sentence in this case. Further, the mid-range sentence is not grossly disproportionate to the severity of the offense and, thus, is not unconstitutionally excessive. This assignment of error lacks merit.

DECREE

Finding no merit in his only assignment of error, we affirm the trial court's conviction and the sentence imposed against defendant, Shannon Joseph Shadell.

CONVICTION AND SENTENCE AFFIRMED.