NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1447

STATE OF LOUISIANA

VERSUS

SHEDDRICK DEON PATIN

JEW

Judgment Rendered: March 25, 2011

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 06-05-0485

The Honorable Michael R. Erwin, Judge Presiding

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Sheddrick Deon Patin

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

The defendant, Sheddrick Deon Patin, was charged by bill of information with forcible rape, a violation of La. R.S. 14:42.1. He entered a plea of not guilty. After a trial by jury, defendant was found guilty of the responsive offense of sexual battery, a violation of La. R.S. 14:43.1. The state filed a habitual offender bill of information, and defendant was adjudicated a fourth-felony habitual offender. The trial court sentenced defendant to 35 years imprisonment at hard labor. The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, challenging the denial of his motion to reconsider sentence and the constitutionality of the enhanced sentence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

STATEMENT OF FACTS

On January 20, 2005, defendant spoke to A.R.[1] (the victim) by cellular telephone while she was attending high school and made arrangements to pick her up at school. A.R. was 14 years old at the time, while defendant was 26 years old. Prior to the date in question, A.R. was introduced to defendant by a cousin who, as confirmed by A.R., had romantic feelings for defendant. A.R. had prior telephone conversations with defendant. According to A.R.'s trial testimony, when defendant arrived at the school after 3:00 p.m., he told her that he would take her "to get something to eat or something like that." Defendant took the victim to a friend's residence within five miles of the school. A.R. had never been there before and did not know defendant's friend or the other people present at the house at the time.

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[1] We identify the victim, whose date of birth is July 9, 1990, and her immediate family members by initials. *See* La. R.S. 46:1844(W).

Once defendant and the victim arrived at the house, they went into a rear bedroom of the house. According to the victim's testimony, defendant began to talk about sex and to kiss and touch her. She informed him that she did not want to have sex. A.R. further testified that defendant told her that she had to have sex with him because she had "led him on," and he removed her clothing. She stated that she told defendant to stop, but he did not comply. According to the victim, defendant "got on top" of her and "forced himself inside" her. A.R. did not scream but unsuccessfully attempted to rise as defendant held her down. Defendant told A.R. not to tell anyone what happened before taking her back to school.

As defendant drove A.R. back to the school, a relative saw her with defendant and contacted A.R.'s grandmother. When they arrived at the school, defendant again told the victim not to tell anyone, and she stated that she would not. Before she arrived home from school, defendant called A.R. on her cellular telephone and again told her not to report the incident. A.R. testified that she was afraid of defendant and that she was a virgin before the incident.

The victim's grandmother filed a complaint with the Baton Rouge City Police Department, and Officer John Barker interviewed the victim at her residence in the presence of her grandmother and mother. At that point A.R. told the police that defendant picked her up from school, that they kissed while in the vehicle, and defendant was "touching her all over," including on her breasts and genitalia, but outside of her clothing. A.R. further stated that the defendant took her to a residence where they kissed and he touched her. A.R. testified at trial that she did not report any further details to the police at that time because she was "embarrassed," afraid of defendant, and concerned about him retaliating.

According to Officer Barker, A.R. was withdrawn and quiet at the time of the interview. Officer Barker advised her grandmother to take her to the hospital and to consider a rape examination.

The next day, the victim informed her school principal and her grandmother that she had been raped. The victim's grandmother took her to Our Lady of the Lake Hospital where a rape kit examination took place. The examination results confirmed sexual intercourse occurred with defendant. On February 7, 2005, Detective Donald Young interviewed the victim at the police department, outside of the presence of her grandmother, and she confirmed that the intercourse was forced. Detective Young testified that A.R. was nervous and afraid at the time of the interview, but he was able to develop a rapport with her. A.R. specifically informed the detective that she told defendant that she did not want to have sex with him. She explained that after defendant removed his clothing, she repeatedly told him to stop and struggled with him, but she was overcome by him as he removed her lower clothing, pulled her legs apart, positioned himself in between her legs, and penetrated her vaginally.[2] A.R. informed Detective Young that she told defendant that she did not want to have sex and to stop, but he continued. She also told the detective that she initially withheld details because she was afraid and that defendant had told her not to tell anyone.

ASSIGNMENTS OF ERROR

In his assignments of error, defendant challenges the constitutionality of his enhanced sentence and the denial of his motion to reconsider

[2] According to the detective, defendant was five feet, nine inches tall and weighed 175 pounds, while the victim was five feet, three inches tall and weighed about 120 pounds.

sentence.[3] Defendant emphasizes that he was charged with forcible rape but only convicted of sexual battery, postulating that the jury did not find the victim credible and discounted her testimony that the sex was nonconsensual. Defendant also notes that the trial judge commented during sentencing that he did not believe the victim. Defendant further emphasizes that while his commission of the instant serious offense of sexual battery shows a lack of judgment, his criminal history does not show that he is a violent offender or a sexual predator.

Defendant points out that the instant sentence is nearly twelve times longer than any sentence he received for his prior convictions. As noted by the defense attorney during the sentencing proceeding, defendant contends that he was willing to accept responsibility for his wrongdoing by pleading guilty to a lesser offense, but the state did not reduce the charge. Defendant further contends that he was multiple-billed due to his refusal to plead guilty to a charge of forcible rape, an offense that he contends he did not commit.

Article I, § 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence falls within the statutory limits, it 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*, 99-1528, 99-1753, p. 15 (La.

[3] Defendant's motion to reconsider sentence is not included in the appeal record. However, the trial court minutes indicate that the trial court denied that motion, and the parties concede that it was in fact filed.

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, pp. 19-20 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 210, *writ denied*, 04-0792 (La. 9/24/04), 882 So.2d 1167.

Louisiana Code of Criminal Procedure article 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*, 546 U.S. 905, 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.

In *State v. Dorthey*, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no measurable contribution to acceptable goals of punishment, or that the sentence amounts to nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime, he is duty bound to reduce the sentence to one that would not be constitutionally excessive. However, the holding in *Dorthey* was made only after, and in light of, express recognition by the court that the determination and definition of acts that are punishable as crimes is purely a legislative function. It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. *Dorthey*, 623 So.2d at 1278.

Defendant's prior convictions consist of a 1996 guilty plea conviction of attempted simple burglary, a 1998 guilty plea conviction of possession of cocaine, and a 1999 guilty plea conviction of possession of cocaine. Pursuant to La. R.S. 14:43.1(C)(1), for the underlying offense of sexual battery, defendant was subject to a sentence of not more than ten years, with or without hard labor, without the benefit of probation, parole, or suspension of sentence. As a fourth felony offender, under La. R.S. 15:529.1(A)(1)(c)(i) (prior to the 2010 amendments), defendant was subject to a minimum of 20 years imprisonment and not more than life imprisonment. *See also* La. R.S. 14:27(D)(3), La. R.S. 14:62(B), and La. R.S. 40:966(C). As previously stated, defendant was sentenced to 35 years imprisonment at hard labor. In imposing sentence, the trial court considered the facts of the instant offense and defendant's lengthy criminal record. The trial judge specifically noted that he did not believe the victim, and concluded that she voluntarily had sex with defendant but concocted a rape charge when her mother found out about it. Thus, the trial judge indicated that he would depart from his normal practice in imposing sentence.

The impact of any credibility determination that the jury made regarding the victim is reflected in defendant's conviction of sexual battery as opposed to forcible rape. Nonetheless, as a fourth felony offender defendant was exposed to a potential sentence of life imprisonment. Given defendant's age, the 35-year imprisonment term imposed by the trial court is at the lower end of the sentencing range. The record reflects that the trial court was aware of the nature of the crime for which defendant was convicted and was aware of the fact that defendant was a career criminal. Based on the record before us, we do not find that the trial court abused its discretion in imposing sentence. Considering the facts of the offense and

defendant's criminal history, the sentence is not shocking or grossly disproportionate to defendant's behavior. The assignments of error are without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.