

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 1433

STATE OF LOUISIANA

VERSUS

STEPHEN G. HARMON

Judgment Rendered: FEB 10 2012

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Appealed from the  
Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Docket Number 497,782

Honorable Allison H. Penzato, Judge Presiding

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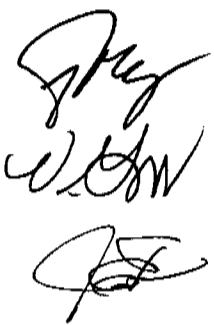
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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.



## **GUIDRY, J.**

The defendant, Stephen G. Harmon, was charged by bill of information with one count of simple burglary, a violation of La. R.S. 14:62(A), and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against the defendant, alleging he was a second-felony habitual offender.<sup>1</sup> The defendant agreed with the allegations of the habitual offender bill, and the court adjudged him a second-felony habitual offender. He was sentenced to ten years at hard labor without benefit of probation or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending the trial court erred in denying the motion to reconsider sentence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

### **FACTS**

Shaun Thonn was a commercial fisherman. One of his hobbies was rebuilding Ford Mustangs at his property on Behrman Street in Slidell, Louisiana. He had a twenty-foot long container on the property for storing auto parts. In the container, he stored some AFR racing engine heads, worth approximately \$1,600.00. In October of 2010, he discovered the engine heads were missing, and reported the incident to the police. He saw the engine heads the next day at "Russell's Shop." He identified State Exhibits #1-3, photographs of AFR engine heads, as the items taken from the container on his property. He testified he did not give the defendant permission to enter his container, to take the engine heads, or to throw them over the fence.

St. Tammany Parish Sheriff's Department Detective Charles Smith investigated the incident. He developed the defendant as a suspect in the burglary

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<sup>1</sup> The predicate offense was set forth as the defendant's April 1, 2004 guilty plea, under Twenty-Second Judicial District Court Docket #366217, to second degree battery.

and took a statement from him concerning the incident. Detective Smith recovered the victim's engine heads after James Belcher, the cousin of James Jerome, turned the engine heads in to Smith.

The defendant's October 21, 2010 audiotaped statement was played at trial. The defendant stated his date of birth and indicated he lived on Behrman Street. He was friends with James Jerome. Jerome had been in the victim's yard and was aware the victim had AFR aluminum "heads" stored there. The victim "pissed off" Jerome by saying something to him. Jerome wanted the "heads" and needed them to rebuild his Mustang. Jerome asked the defendant to get the "heads" for him. The defendant "used" the victim's jack and went to "put it back." The defendant then "grabbed the heads," and threw them over a fence and into a field behind the victim's shed. The defendant told Jerome where the "heads" were located. Thereafter, late at night, Jerome took the heads and put them in his shed. He then took them to Russell Picou's shop. The defendant was "under the impression" that if he got the "heads" for Jerome, Jerome would give him "a good amount" of pills to sell.

#### **EXCESSIVE SENTENCE**

In his sole assignment of error, the defendant argues the sentence imposed was unconstitutionally excessive because: (1) he cooperated with the police and accepted responsibility for his involvement in the incident; (2) all of the items he took were recovered and returned; and (3) he was only twenty-nine years old at the time of the incident.

The Louisiana Code of Criminal Procedure sets forth items which must be considered by the trial court before imposing sentence. La. C.Cr.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. 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. Hurst, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So. 2d 962. Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. State v. Harper, 07-0299 (La. App. 1st Cir. 9/5/07), 970 So. 2d 592, 602, writ denied, 07-1921 (La. 2/15/08), 976 So. 2d 173.

Louisiana Constitution Article I, Section 20 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 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. Hurst, 797 So. 2d at 83.

Whoever commits the crime of simple burglary shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than twelve years, or both. La. R.S. 14:62(B). Any person who, after having been convicted within this state of a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows: if the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction. La. R.S. 15:529.1(A)(1). The defendant was sentenced as a second-

felony habitual offender to ten years at hard labor without benefit of probation or suspension of sentence.

In imposing sentence, the court stated it had considered both the aggravating and the mitigating circumstances under La. C.Cr.P. art 894.1. The court found there was an undue risk that, during the period of a suspended sentence or probation, the defendant would commit another crime. The court also found that any lesser sentence than the sentence it was imposing would deprecate the seriousness of the crime.

The alleged mitigating circumstances cited by the defendant were considered by the trial court, but the court found the sentence imposed was warranted by the aggravating circumstances present in the case. A thorough review of the record reveals the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing sentence. See La. C.Cr.P. art. 894.1 (A)(1) & (A)(3). Additionally, the sentence imposed was not grossly disproportionate to the severity of the offense and thus, was not unconstitutionally excessive.

This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND  
SENTENCE AFFIRMED.**