

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1519

STATE OF LOUISIANA

VERSUS

TERRY PETER AUTHEMENT, JR.

DATE OF JUDGMENT: MAY 06 2011

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 544,868, PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE JOHN R. WALKER, JUDGE

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Terry Peter Authement, Jr.

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

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KUHN, J.

Defendant, Terry Peter Authement, Jr., was charged by bill of information with one count of possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1, and pled not guilty.¹ Following a jury trial, he was found guilty as charged. He was sentenced to ten years at hard labor without benefit of parole, probation, or suspension of sentence. He now appeals, contending the trial court imposed an unconstitutionally excessive sentence. For the following reasons, we affirm the conviction and sentence.

FACTS

Tyler Authement testified at trial. He is the biological brother of defendant. When a gun belonging to Tyler's deceased father disappeared from Tyler's bedroom in Houma, he suspected defendant had taken the weapon. According to Tyler, in a telephone conversation, defendant denied taking the missing weapon, but stated he had another gun. Thereafter, Tyler advised Terrebonne Parish Sheriff's Office Deputy Ryan Trosclair that defendant had a gun. Tyler denied threatening to "put [defendant] in prison."

Deputy Trosclair also testified at trial. He was familiar with defendant because defendant had been an inmate when Deputy Trosclair worked as a correctional officer. On April 6, 2009, Tyler Authement reported he believed defendant had stolen a gun from him because the gun was missing from his bedroom, and defendant was in the small group of people who had access to that area. Deputy Trosclair advised Tyler no crime had been committed because

¹ The State and the defense stipulated defendant had previously been convicted, under Thirty-second Judicial District Court Docket #386,809, of three counts of unauthorized entry of an inhabited dwelling; and, under Thirty-second Judicial District Court Docket #464,871, of one count of simple burglary.

ownership of the missing weapon was at issue.

Thereafter, Tyler advised Deputy Trosclair defendant was a convicted felon and had traded the missing gun for another gun. According to Deputy Trosclair, in a telephone conversation between Tyler and defendant, defendant stated, “tell the cop to come get this gun that I have; I don’t have your gun, but tell him to come get this gun, because I just – I’m just realizing I’m not supposed to have a gun because I’m a felon. So tell him to come get this gun so I don’t get in trouble.” Deputy Trosclair then identified himself and asked defendant to disclose his location. Subsequently, Deputy Trosclair met defendant at 103 Chauvin Street. While travelling to that location, central dispatch advised Deputy Trosclair defendant had a simple burglary conviction. According to Deputy Trosclair, when he arrived, defendant stated, “I just want to give you this because I just found out I’m a convicted felon and I’m not supposed to have a weapon. So I want to give you this before I get in any trouble.” Thereafter, defendant gave Deputy Trosclair a red bag containing a .22 caliber revolver in a sock, and Deputy Trosclair arrested him. According to Deputy Trosclair, following advice of his *Miranda*² rights, defendant stated he had obtained the gun from a juvenile in exchange for stereo equipment.

Amanda Lirette also testified at trial. She resided at 103 Chauvin Street. According to Amanda, defendant visited her and other members of her family beginning on April 2, 2009, and on April 4, 5, and 6, 2009, he was out fishing with them. She claimed, when they came back from fishing on April 6, 2009, a red bag was on top of the garbage can at her residence. She claimed her husband, Mark

² *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Lirette, Jr., investigated the bag. She denied ever seeing defendant with a gun. She claimed that during an argument on April 4, 2009, Tyler told defendant, "I'm going to put you back in jail."

Mark Lirette, Jr., also testified at trial. He had been defendant's friend for twenty-five years. He claimed he did not see defendant with a gun while defendant stayed with him. Mark claimed that when they returned from fishing on April 3, 2009, there was a red bag on his garbage can with a gun in a sock. He claimed he asked defendant if he knew anything about the gun, and defendant stated he did not know anything about the weapon. According to Mark, two or three days prior to defendant's arrest, in reference to defendant, Tyler stated, "I'll put that damn no good little mother f***** in jail." Mark claimed, when Deputy Trosclair arrived, defendant nodded in the direction of the red bag, and Deputy Trosclair put the gun in his car.

EXCESSIVE SENTENCE

In his sole assignment of error, defendant argues the trial court imposed an unconstitutionally excessive sentence because it failed to realize it could sentence him to less than the statutorily mandated minimum sentence.

La. Code Crim. P. art. 881.1, in pertinent part, provides:

A. (1) In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the [S]tate or the defendant may make or file a motion to reconsider sentence....

B. The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based....

E. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the

[S]tate or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

The record indicates defendant failed to make or file a motion to reconsider sentence in this matter. Accordingly, review of the instant assignment of error is procedurally barred. See La. C.Cr.P. art. 881.1(E); *State v. Duncan*, 94-1563, p. 2 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (en banc per curiam).

REVIEW FOR ERROR

Initially, we note our review for error is pursuant to La. C.Cr.P. art. 920, which provides the only matters to be considered on appeal are errors designated in the assignments of error and “error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.” La. C.Cr.P. art. 920(2).

The trial court failed to impose the mandatory fine of not less than one thousand dollars or more than five thousand dollars. See La. R.S. 14:95.1(B). Although the failure to impose the fine is error under Article 920(2), it certainly is not inherently prejudicial to defendant. Because the trial court’s failure to impose the fine was not raised by the State in either the trial court or on appeal, we are not required to take any action. As such, we decline to correct the illegally lenient sentence. See *State v. Price*, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONVICTION AND SENTENCE AFFIRMED.