NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2153

STATE OF LOUISIANA

VERSUS

VASHAWN DARRELL McKNIGHT III

Judgment Rendered: JUN - 8 2012

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court No. 493849, Division "J"

The Honorable William J. Knight, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

The defendant, Vashawn Darrell McKnight III, was charged by bill of information with two counts of distribution of cocaine, violations of LSA-R.S. 40:967(A)(1). The defendant pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced on each count to twenty-five years at hard labor, the first two years without benefit of parole, probation or suspension. The sentences were ordered to run concurrently. He moved for reconsideration of sentence, and the motion was denied. Thereafter, the State filed a multiple offender bill of information against the defendant, alleging he was a second-felony habitual offender. Following a hearing on the matter, the defendant was adjudicated a second-felony habitual offender. The trial court vacated the previously imposed sentence on Count I and resentenced the defendant to thirty-five years at hard labor, the first two years without benefit of parole, probation or suspension. The trial court left the sentence for Count II intact, with the sentences to run concurrently. The defendant again moved for reconsideration of sentence, which was denied. The defendant now appeals, designating two assignments of error. We affirm the convictions and sentences.

FACTS

At trial, Sergeant Fred Ohler, a supervisor in the Investigations Division at the Slidell Police Department[1], testified regarding a long-term operation involving distribution of illegal drugs. As part of this long-term operation Calvin Collins, a narcotics agent for the Plaquemines Parish Sheriff's Department, acted as an undercover agent. Collins testified at trial that he purchased cocaine from the defendant on January 4 and January 5, 2010.

[1] At the time of the crimes at issue, Sergeant Ohler was a Supervisor of the Narcotics Division at the Slidell Police Department.

ASSIGNMENTS OF ERROR

The defendant argues that the trial court erred in denying the motion to reconsider sentence, and that the sentences imposed are constitutionally excessive. The defendant argues that the sentences are constitutionally excessive because he is a twenty-seven-year-old man with only one prior felony conviction. The defendant also faults the trial court for not ordering a presentence investigation (PSI), and argues that by its failure to order the PSI, in sentencing the defendant so quickly after trial, and more generally by its failure to consider other mitigating factors for sentencing, the trial court did not appear to have an interest in the defendant's personal history or background.

As an initial matter, we note that the defendant's oral motion to reconsider sentence did not include any grounds for the motion. The subsequent written motion alleged only that the sentence was constitutionally excessive, that the interests of justice required a less severe sentence, and "all reasons orally argued before the court at the time of sentencing and the ruling in **State v. Dorthey**, 623 So.2d 1276 (La. 1993)." Under LSA-C.Cr.P. art. 881.1(E), a defendant must file a motion to reconsider sentence setting forth the "specific ground" upon which the motion is based in order to raise an objection to the sentence on appeal. If the defendant does not allege any specific ground for his claim of excessiveness or present any argument or evidence not previously considered by the court at original sentencing, he is relegated on appeal to a review of his bare claim of excessiveness. **State v. Mims**, 619 So.2d 1059 (La. 1993) (per curiam). Accordingly, since neither the oral objection to the defendant's sentences nor his motion to reconsider sentence alleged any specific grounds for reconsideration of his sentences, our review is limited on appeal to a bare claim of constitutional excessiveness.

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. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). 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 the 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 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

For the crime of distribution of cocaine, the defendant was exposed to a term of imprisonment at hard labor for not less than two years nor more than thirty years and may have, in addition, been sentenced to pay a fine of not more than fifty thousand dollars. LSA-R.S. 40:967(B)(4)(6). We note that the trial court's original sentences on Counts I and II of twenty-five years imprisonment at hard labor, the first two years without benefit of parole, probation or suspension, are within these statutory guidelines. However, since the defendant was adjudicated to be a second-felony habitual offender on Count I, he was subject to a minimum sentence of fifteen to sixty years imprisonment at hard labor. LSA-R.S. 15:529.1(A)(1)(a) (prior to 2010 amendments). Thus, the trial court's enhanced sentence for Count I of thirty-five years imprisonment at hard labor, the first two years without benefit of parole, probation or suspension, also falls within the statutory guidelines.

At the original sentencing hearing, the trial court noted several factors that influenced the sentencing decision. The trial court was aware that the offenses were committed during a time period when the defendant was on a "701 release" awaiting trial for attempted murder/armed robbery charges, something which the trial court said showed "a mindset, a lifestyle, and an attitude which is not conducive to probation. I guess that's as kindly as I can put it." In addition, the trial court noted there was an undue risk that the defendant would commit another crime, that the defendant was in need of correctional treatment or a custodial environment, and that there would be additional victims of the defendant's drug-dealing activities were the defendant to be released on probation. The trial court recognized that the defendant had a prior conviction in 2003 for distribution of controlled dangerous substances. In addition, at the resentencing following the habitual offender hearing, the trial court again stated that there was an undue risk that during the period of a suspended sentence or probation the defendant would commit another crime, the defendant was in need of correction in a custodial environment, and any lesser sentences would certainly deprecate the seriousness of the defendant's crimes. In further support of the enhanced sentence, the trial court cited LSA-C.Cr.P. art. 894.1(B)(16), which concerns distribution of a controlled dangerous substance involving juveniles, stating that "this is a matter dealing with trafficking and distribution of drugs, a cancer that is killing our society."

The sentences on Counts I and II are not grossly disproportionate to the severity of the offenses, nor are they nothing more than the needless imposition of pain and suffering, nor are they so disproportionate as to shock one's sense of justice. Thus, the sentences are not unconstitutionally excessive.

The defendant complains that the trial court did not order a PSI in this matter. However, there is no requirement in law that a PSI be conducted, and such an investigation is more in the nature of an aid to the court, and not a right of the

accused. See LSA-C.Cr.P. art. 875(A)(1); **State v. Howard**, 262 La. 270, 263 So.2d 32, 35 (1972). The defendant also argues more generally that the trial court did not consider mitigating factors, including the defendant's personal history and background, before imposing the sentences. Louisiana Code of Criminal Procedure Article 894.1 sets forth items which must be considered by the trial court before imposing a 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. 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. See **Hurst**, 797 So.2d at 83. Contrary to the defendant's position, a thorough review of the record reveals that the trial court did adequately consider the criteria of Article 894.1. Accordingly, we do not find that the trial court abused its discretion in imposing the sentences on the instant offenses. For the foregoing reasons, the defendant's assignments of error are without merit.

CONVICTIONS AND SENTENCES AFFIRMED.