

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0013

STATE OF LOUISIANA

VS.

RODNEY JERMAINE WATTS

JUDGMENT RENDERED: JUN 06 2007.

ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 370,023, DIVISION I
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE REGINALD T. BADEAUX, III, JUDGE

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RODNEY JERMAINE WATTS

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

McDonald, J. dissents and assigns reasons.

CARTER, J.

The defendant, Rodney Jermaine Watts, was charged by bill of information with three counts of attempted first degree murder, violations of LSA-R.S. 14:30 and LSA-R.S. 14:27. He pled not guilty. Following a jury trial, the defendant was convicted as charged on all three counts. The defendant was sentenced to fifty years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence for each count, with the sentences to run consecutively. The defendant appealed. While the matter was on appeal, the state filed a multiple-offender bill of information seeking to have the defendant adjudicated a habitual offender pursuant to LSA-R.S. 15:529.1. Following a multiple-offender hearing, the defendant was adjudicated a second-felony habitual offender. The trial court vacated the fifty-year sentences previously imposed and resentenced the defendant to one hundred years imprisonment at hard labor without benefit of probation or suspension of sentence for each count, with the sentences to run consecutively.

Subsequently, this court considered the defendant's appeal, wherein we affirmed the convictions and pretermitted consideration of the defendant's excessive sentence claim based upon the fact that the trial court had imposed new sentences. See State v. Watts, 04-1926 (La. App. 1 Cir. 5/6/05), 903 So.2d 21 (unpublished), writ denied, 05-1680 (La. 2/3/06), 922 So.2d 1175. Thereafter, the defendant again appealed seeking review of his habitual offender sentences. In another unpublished opinion, this court found error in the fact that the trial court adjudicated the defendant a habitual offender and sentenced him as such on all three convictions. We vacated the habitual offender adjudications and sentences and remanded the matter to the trial court with instructions. See State v. Watts, 05-1549 (La. App. 1

Cir. 3/24/06), 925 So.2d 772 (unpublished). On remand, following the state's withdrawal of its multiple-offender bill of information, the trial court resentenced the defendant to the original sentences of fifty years imprisonment at hard labor without probation, parole, or suspension of sentence on each count. The trial court again ordered that the sentences run consecutively. The defendant moved for reconsideration of the sentences. The trial court denied the motion. The defendant now appeals, urging in a single assignment of error that the trial court erred in imposing unconstitutionally excessive sentences and in failing to provide reasons for the consecutive sentences.

We affirm the sentences.

FACTS

In the defendant's first appeal, the facts of this case were summarized as follows:

Shortly after midnight on June 19, 2003, the St. Tammany Parish Sheriff's Office received a "911" call indicating that two black males were fighting at a residence on C.S. Owens Road in Madisonville, Louisiana. The caller advised the dispatcher that one of the men involved in the fight had a gun. Deputies Ronnie Plaisance and Jeffrey Mayo, who worked in the Criminal Patrol Division of the St. Tammany Parish Sheriff's Office, were dispatched to the residence. Upon their arrival, the deputies began questioning those who remained present following the fight.

One of the men questioned was Paul Burnett. He informed Deputy Mayo that he and the defendant had previously been involved in a verbal argument and struggle involving a child that had escalated into a physical altercation. Burnett initiated the "911" call and then handed the phone to his fiancé, Peaches Scott, who provided additional information to the operator. After they placed the "911" call, defendant attempted to flee the scene by entering his van and attempting to back down the driveway. Upon hearing the patrol units approaching, defendant feared apprehension. He ultimately decided to leave the van and to head north on foot through the woods towards Galatas Road. At some point, defendant retrieved a shotgun that he had previously hidden in the woods.

While Deputies Plaisance and Mayo were conducting their investigation, Lieutenant Joe Jarrell dispatched other sheriff's officers towards Galatas Road to set up a perimeter of the area. While Deputies Plaisance and Mayo were questioning witnesses, they heard a loud boom and several popping sounds. They described these sounds as consistent with the sounds of a shotgun being fired, followed by several pistol shots. Next the deputies heard over the radio that two officers and the perpetrator had been shot. Deputy Plaisance headed towards Galatas Road. When he arrived he observed Deputy Mark Barrios lying on the ground, Deputy James R. Taylor slumped over by a patrol unit, and Sergeant Bryan Wetzel to the right of the patrol unit. He observed the defendant lying about fifteen yards in front of the officers on the ground.

State v. Watts, 04-1926 at pp. 3-4.

The trial testimony established that Deputy Barrios, Deputy Taylor, and Sergeant Wetzel were among the St. Tammany Parish Sheriff's officials who responded to the domestic disturbance call. Upon arrival in the area, these officers decided to pursue the defendant. Equipped with night-vision binoculars, the officers, led by Sergeant Wetzel, entered the dark, wooded area near Galatas Road. Shortly thereafter, the defendant was observed crouched down in a seated position with a shotgun in his hand. The shotgun was pointed towards the ground. Once Deputy Barrios illuminated the area by pointing his flashlight towards the defendant, the defendant raised the shotgun (which was later determined to be loaded with birdshot), pointed it towards the officers and fired a single shot. Fearing for their lives, all three officers immediately returned fire. Deputy Taylor was hit by gunshot in his feet, his legs, and his abdomen. He was hospitalized for four to five days. Deputy Barrios was shot in the upper right thigh, right knee and left foot, which required surgery. He was hospitalized for three to four days.

EXCESSIVE SENTENCES

In his sole assignment of error, the defendant contends the three fifty-year consecutive sentences imposed by the trial court in this case are

unconstitutionally excessive. More specifically, the defendant avers that the trial court failed to provide reasons sufficient to justify the imposition of consecutive sentences for convictions arising out of the same course of conduct.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. **State v. Dorthey**, 623 So.2d 1276, 1280 (La. 1993). 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); **State v. Lanieu**, 98-1260, p. 12 (La. App. 1 Cir. 4/1/99), 734 So.2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So.2d 962. However, a trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Lobato**, 603 So.2d 739, 751 (La. 1992).

As a general rule, maximum sentences are reserved for the most serious violations of the relevant statute and for the worst type of offenders. **State v. Mance**, 00-1903, p. 4 (La. App. 1 Cir. 5/11/01), 797 So.2d 718, 721.

As previously noted, the defendant in this case was convicted of three counts of attempted first degree murder. Attempted first degree murder is punishable by imprisonment at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence. See LSA-R.S. 14:27(D)(1) (prior to its amendment by 2003 La. Acts No.

745, § 1) & 14:30(C). The defendant was sentenced to the maximum penalty of imprisonment at hard labor for fifty years without benefit of probation, parole, or suspension of sentence on each conviction. The trial court also ordered that these sentences be served consecutively. Thus, we note that the sentences imposed in this case are within the statutory limits.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. See LSA-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. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1 Cir.), writ denied, 565 So.2d 942 (La. 1990). The articulation of the factual basis for a sentence is the goal of LSA-C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. When reviewing a sentence alleged to be excessive, lacking a factual basis, or lacking a statement of sentencing reasons, if this court concludes that the sentence is otherwise supported by the record, the sentence may be affirmed without a remand for resentencing or supplementation merely for compliance with LSA-C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982); **State v. Johnson**, 99-0385, p. 7 (La. App. 1 Cir. 11/5/99), 745 So.2d 217, 221, writ denied, 00-0829 (La. 11/13/00), 774 So.2d 971.

The imposition of consecutive sentences is governed by LSA-C.Cr.P. art. 883, which provides, in pertinent part:

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively.

This article specifically excludes from its scope sentences that the court expressly directs to be served consecutively. **State v. Rogers**, 95-1485, p.

11 (La. App. 1 Cir. 9/27/96), 681 So.2d 994, 1000, writs denied, 96-2609, 96-2626 (La. 5/1/97), 693 So.2d 749. Thus, it is within a trial court's discretion to order sentences to run consecutively rather than concurrently. **State v. Rollins**, 32,686, p. 13 (La. App. 2 Cir. 12/22/99), 749 So.2d 890, 899, writ denied, 00-0549 (La. 9/15/00), 768 So.2d 1278. The imposition of consecutive sentences requires particular justification when the crimes arise from a single course of conduct. **State v. Johnson**, 99-0385 at p. 7, 745 So.2d at 221. However, even if the convictions arise out of a single course of conduct, consecutive sentences are not necessarily excessive if the trial court considers other factors when imposing sentence. **State v. Ferguson**, 540 So.2d 1116, 1123 (La. App. 1 Cir. 1989). Some of those factors include defendant's criminal history, the dangerousness of the offense, the viciousness of the crimes, the harm done to the victim, the potential for defendant's rehabilitation, and the danger posed by the defendant to the public safety. **State v. Parker**, 503 So.2d 643, 646 (La. App. 4 Cir. 1987). Additional factors that may serve as justification for consecutive sentences include multiplicity of acts, lack of remorse, and risk to the public safety. **State v. Lewis**, 430 So.2d 1286, 1290 (La. App. 1 Cir.), writ denied, 435 So.2d 433 (La. 1983).

We have reviewed the sentences imposed herein, and considering the nature of the offenses and the circumstances of this case, we find no abuse of the trial court's broad sentencing discretion. Contrary to the defendant's claim that sufficient aggravating circumstances are lacking, our review of the record reveals that the maximum, consecutive sentences are adequately justified. As the trial court correctly reasoned, the defendant's actions of intentionally attempting to kill three police officers as they served in the line of duty warrant the imposition of maximum sentences. Under these

circumstances, the fifty-year sentences are neither grossly disproportionate to the severity of the offenses, nor so disproportionate as to shock our sense of justice. Furthermore, the multiplicity of the acts and the serious nature of the offenses (multiple gunshot wounds inflicted upon police officers at close range) provide sufficient justification for the imposition of consecutive sentences. Thus, although the trial judge did not articulate every aggravating and/or mitigating factor in this case, we find that the record in this case provides factual grounds that are more than adequate to support the sentences imposed. As previously noted, even when there has not been full compliance with LSA-C.Cr.P. art. 894.1, remand is unnecessary where the record clearly shows an adequate factual basis for the sentence imposed. This assignment of error lacks merit.

For the foregoing reasons, the defendant's sentences are affirmed.

SENTENCES AFFIRMED.

STATE OF LOUISIANA

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VERSUS

COURT OF APPEAL

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RODNEY JERMAINE WATTS

NUMBER 2007 KA 0013

 **McDONALD, J., Dissenting,**

While I understand the position taken by the majority, I disagree with the decision to affirm the sentence. This was a senseless, dangerous act that endangered three officers in the performance of upholding the law. Two were injured and required hospitalization for up to five days. The third was not hit by the shotgun blast. A trial judge should tailor each sentence in accordance with the facts of the case and the particulars concerning the defendant. My review of the record indicates the trial court in this case did not adequately comply with the sentencing guidelines in La. C.Cr.P. art. 894.1 nor did it make any effort to individualize the sentences to this particular defendant.

It is well settled that a trial judge's reasons in imposing sentence, as required by Article 894.1, are an essential aid to an appellate court when reviewing a sentence for excessiveness and abuse of discretion. *State v. Dokes*, 398 So.2d 1025-26 (La. 1981) (per curiam); *State v. Spencer*, 374 So.2d 1195, 1202 (La. 1979); *State v. Reynolds*, 435 So.2d 1275, 1279 (La. App. 1st Cir. 1983); see also *State v. Roberts*, 683 So.2d 1335, 1340-1342 (La. App. 3rd Cir. 11/6/96). Thus, a trial judge is required to state for the record both the considerations he has taken into account and the factual basis for the imposition of sentence, particularizing the sentence to the offender and the offense. *State v. Dokes*, 398 So.2d at 1026; *State v. Reynolds*, 436 So.2d at 1279.

The majority relies on *State v. Johnson* to support its position that a sentence may be affirmed without a remand for resentencing if the sentence is otherwise supported by the record, even when the trial court failed to give a factual basis for the sentence or failed to give a statement of reasons for the sentence. However, I believe *Johnson* actually supports a remand in this case. In *Johnson* the defendant was armed with a firearm and broke into an elderly widow's home. While there he threatened her and robbed her at gunpoint. Shortly after leaving he robbed a man of his automobile. He was charged with and found guilty of two counts of armed robbery and one count of aggravated burglary. On the two counts involving the break in of the residence the trial court sentenced the defendant to concurrent sentences. On the later armed robbery he imposed the sentence consecutively to the other sentences. While the court did not state the reasons for imposing the concurrent or consecutive sentences, he gave extensive reasons for imposing the length of the various sentences and utilized a pre-sentence report to assist in articulating the reasons for the sentences. The record clearly demonstrates why he gave the concurrent/consecutive sentences. The concurrent sentences for the armed robbery and aggravated burglary arose out of a single act. The later armed robbery was a separate act.

Unfortunately, the trial court in the instant case did not articulate any reasons for the maximum sentences imposed or any justification for the consecutive sentences. Because the trial court did not mention any of the guidelines or provisions contained in article 894.1, and did not articulate any justification for the sentences, I think this court lacks an adequate basis for a determination of whether the maximum consecutive sentences imposed are excessive. The failure of the trial court to articulate any reasons for the sentences imposed constitutes error and requires that the case be remanded

to the trial court for proper consideration of the Article 894.1 guidelines and justification for consecutive sentences.

For these reasons I respectfully dissent, would vacate the sentences and remand the case for resentencing.