

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 2262

STATE OF LOUISIANA

VERSUS

RICHARD G. PRAMANN

Judgment Rendered: May 7, 2010

**Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 425695
Honorable William J. Knight, Judge Presiding**

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Richard G. Pramann**

BEFORE: WHIPPLE, HUGHES AND WELCH, JJ.

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WHIPPLE, J.

The defendant, Richard G. Pramann, was charged by bill of information with aggravated battery, a violation of LSA-R.S. 14:34. The defendant pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to nine years at hard labor. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

On January 13, 2007, Kenny Kellett had a New Orleans Saints game party at his house in Covington. The defendant and Kenneth Wayne Kreider (known as "Wayne"), who were at the party, became engaged in an altercation. The defendant and Wayne were next-door neighbors who knew each other. The defendant was asked to leave, which he did. Wayne remained at the party.

At about 3:00 o'clock a.m. (January 14), Wayne was walking home. He began crossing through the defendant's yard to get to his trailer. The defendant was standing on the porch of his own trailer. Wayne and the defendant began arguing again. After cursing at each other, Wayne walked toward his home. Moments later, Wayne felt a sharp pain in his back and right side. Wayne spun around to find the defendant had just cut him with a knife. They began fighting. Wayne was not armed. As they wrestled on the ground, Michael Kellett, Kenny's brother who was at the defendant's trailer, broke up the fight. The defendant had cut Wayne in several places with the knife. Wayne received a laceration to his forehead, lacerations to his midsection, and a puncture wound to his shoulder.

The defendant told Deputy Bubba Stipe, an investigating officer with the St. Tammany Parish Sheriff's Office, that Wayne was in his yard trespassing, and he had to defend himself. The defendant did not testify at trial.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these assignments of error, the defendant argues, respectively, that his sentence was excessive and the trial court abused its discretion in denying the motion to reconsider the sentence. Specifically, the defendant contends that his mental disabilities impaired his ability to follow societal norms for conflict resolution and, as such, he should have been given probation.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction 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 shocks the sense of justice. State v. Andrews, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So. 2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See State v. Holts, 525 So. 2d 1241, 1245 (La. App. 1st Cir. 1988). On appellate review of a sentence, the relevant question is “whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate.” State v. Thomas, 98-1144, pp. 1-2 (La. 10/9/98), 719 So. 2d 49, 50 (per curiam) (quoting State v. Humphrey, 445 So. 2d 1155, 1165 (La. 1984)).

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. State v. Brown, 2002-2231, p. 4 (La. App. 1st

Cir. 5/9/03), 849 So. 2d 566, 569. 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. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with LSA-C.Cr.P. art. 894.1. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See State v. Jones, 398 So. 2d 1049, 1051-52 (La. 1981).

It is clear in its reasons for the sentence that the trial court thoroughly considered LSA-C.Cr.P. art. 894.1, as well as the defendant's medical maladies, in arriving at an appropriate sentence for the defendant:

The Court, in considering sentencing in connection with this matter, has considered the pre-sentence investigation which is dated July 2, 2009, provided by Probation and Parole. The Court also reviewed in preparation for sentencing today a pre-sentence investigation report dated July 29, 1987, from a prior conviction that Mr. Pramann has on a misdemeanor of aggravated assault.

The Court has considered the sentencing guidelines under 894.1 and makes the following findings. The Court notes that during the course of this trial several things became abundantly clear. Mr. Pramann was in a situation where the jury felt th[at] he was guilty of the crime of aggravated battery, and returned a verdict in connection with that matter on May 11, 2009. As the Court listened to the testimony throughout the course of the trial, it was very apparent that Mr. Pramann has had a lengthy history of mental illness and self-medication with marijuana for that mental illness which was fairly clear, for the record. It's also very clear to the Court that the case which was before the Court involves great risk of death or great bodily harm. I think there was a point during the course of the trial when, out of the presence of the jury, the Court was compelled to quip, "Now that's a knife," a la Crocodile Dundee when I saw the weapon which was utilized in this particular crime. The weapon utilized for the assault being what I'll call a fantasy knife, for lack of a better term, approximately a foot in length, with significant blade length of probably 9 to 10 inches.

The Court notes that based on the information received in both the pre-sentence investigations that a long history of aggressive behavior and a long history of non-compliance with prescribed

medications exists, so there is a very high likelihood that any action, other than either confinement in a psychiatric facility or confinement in a prison setting, would result in further crimes being committed. There was obviously great danger of death in this case because of the weapon previously mentioned.

The fact that Mr. Pramann and the victim in this crime are next-door neighbors, mitigates strongly against any consideration of probation in this case. The Court further notes that because of the non-compliance on the mental health issues and because of the history, that although this is the first felony offense for Mr. Pramann, it is a continuation of a long pattern of behavior.

For those reasons, the Court feels that a sentence of nine years in the Department of Corrections at hard labor is appropriate in this case. The Court will hold the matter open under the provisions of Article 881.1 for a period of 90 days for consideration of any request alternative to a prison setting under the Nicola Cotton legislation. I will allow counsel, for that limited purpose only, to appear in these proceedings and will set a hearing upon request. I'm not going to set a hearing unless requested.

The defendant faced a maximum sentence of ten years at hard labor and a five thousand dollar fine, and was sentenced to nine years at hard labor. See LSA-R.S. 14:34. Considering the trial court's careful analysis of the circumstances and the defendant's history of aggressive behavior and drug abuse, the nine-year sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. Accordingly, the trial court did not abuse its discretion in denying the motion to reconsider sentence.

These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.