

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 KA 0758**

**STATE OF LOUISIANA**

**VERSUS**

**RICKY BOLDEN**

—  
**On Appeal from the 23rd Judicial District Court  
Parish of Assumption, Louisiana  
Docket No. 07-CR-000158, Division "C"  
Honorable Guy Holdridge, Judge Presiding**  
—

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Ricky Bolden**

**BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.**

**Judgment rendered October 29, 2010**

*RHB*  
*GB*  
*Guy*

**PARRO, J.**

The defendant, Ricky Bolden, was originally charged by grand jury indictment with second degree murder, but the indictment was amended to charge manslaughter, a violation of LSA-R.S. 14:31. He entered a plea of not guilty and elected a trial by jury. On the second day of trial, the defendant changed his plea to guilty, which the court accepted. The court sentenced the defendant to serve twenty years of imprisonment at hard labor, ten years of which were to be suspended. The defendant filed a motion to reconsider sentence, which was denied.

The defendant appeals, asserting the following assignments of error:

1. The trial court erred in imposing an excessive sentence.
2. The trial court erred by failing to comply with LSA-C.Cr.P. art. 894.1.
3. The trial court erred in denying the motion to reconsider sentence.

Finding no error, we affirm the conviction and sentence.

**FACTS**

On June 21, 2007, around 4:30 p.m., the defendant was cutting the grass at the Family Dollar Store in Paincourtville when he was approached by several men who threatened him. Charles Richard, who confronted the defendant with a gun, and Troy Tunson were among the group of men. The defendant went into a nearby business and asked the workers to call the police, because he feared for his life. Assumption Parish Sheriff's Deputy Philip Theriot responded to the call. The defendant explained that Richard had pointed a gun at him and that Tunson told Richard not to shoot. The defendant told Theriot that he "had something for them" if confronted again. Theriot told the defendant not to do anything to get himself into trouble. Theriot described the defendant as "very loud," "animated," and "just wanted me to help him."

Less than an hour later, the sheriff's office received a 911 call indicating that a fight involving a stabbing had occurred in front of the caller's house. Tunson was identified as the victim. Deputy Theriot, who was first on the scene, heard his name called from the crowd by the defendant. After receiving his

**Miranda** warnings, the defendant told Theriot that he caused Tunson's injuries. Eyewitnesses confirmed that the defendant caused the injuries.

The defendant stated that, as he was walking home, Tunson approached him holding a long pipe and began yelling at him for divulging his name to the police. According to the defendant, Tunson struck him several times with a pipe before the defendant retrieved a kitchen knife, which he had hidden in his pants, and began stabbing Tunson. After Tunson collapsed, the defendant hit him several times with the pipe and then stabbed him several more times. The defendant indicated that he stabbed Tunson approximately ten to fifteen times. Tunson died as a result of his injuries.

### **EXCESSIVE SENTENCE**

In three assignments of error, the defendant contends that the court erred in sentencing him to serve twenty years at hard labor, with ten years to be suspended. Specifically, he argues that the court failed to give adequate consideration to the facts and to the LSA-Cr.P. art. 894.1 factors in tailoring the sentence.

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. 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. **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.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing 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. **State v. Leblanc**, 04-1032 (La. App. 1st Cir. 12/17/04), 897 So.2d 736, 743, writ denied, 05-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005); **State v. Faul**, 03-1423 (La. App. 1st Cir. 2/23/04), 873 So.2d 690, 692. Failure to comply with Article 894.1 does not necessitate the invalidation of a sentence or warrant a remand for resentencing if the record clearly illumines and supports the sentencing choice. See **State v. Smith**, 430 So.2d 31, 46 (La. 1983). A trial court is entitled to consider the defendant's entire criminal history in determining the appropriate sentence to be imposed. **State v. Ballett**, 98-2568 (La. App. 4th Cir. 3/15/00), 756 So.2d 587, 602, writ denied, 00-1490 (La. 2/9/01), 785 So.2d 31.

The defendant was originally charged with second degree murder. The indictment was amended to reflect the lesser charge of manslaughter, which provides for a sentence of imprisonment at hard labor of not more than forty years. LSA-R.S. 14:31(B). The defendant's sentence of twenty years, with ten years being suspended, is not nearly the maximum that could have been imposed, and is less than the twenty years without suspension of sentence recommended in the PSI report. In imposing sentence, the court stated that it found "some extenuating circumstances in this case." At the hearing on the motion to reconsider sentence, the court stated, "[Defendant], considering exactly what happened, what I did was, I cut your sentence in half. The sentence that was recommended was twenty (20) years and I cut your sentence in half. It looks like you got a pretty good deal out of the matter." Furthermore, in its written reasons for sentence, the court found 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 a lesser sentence would deprecate the

seriousness of the crime, adding that “[t]he defendant used excessive force in killing the victim with a small knife, more than was necessary to prevent any harm to himself.”

It is clear from the record that the court carefully considered the facts of the case and the defendant’s history in imposing the sentence. The court tailored the sentence to fit the defendant’s crime. Although the defendant initially felt threatened, he admitted to continuously beating and stabbing the victim after he was incapacitated, resulting in his death. The sentence imposed is not excessive. These assignments of error are without merit.

### **REVIEW FOR ERROR**

Our review for error is pursuant to LSA-C.Cr.P. art. 920, which provides that 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.” LSA-C.Cr.P. art. 920(2).

The trial court suspended a portion of the defendant’s sentence, contrary to the prohibition in LSA-C.Cr.P. art. 893(A) against doing so for the crime of violence of manslaughter.<sup>1</sup> Because the trial court’s suspension of a portion of the defendant’s sentence was not raised as error 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, 05-2514 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So.2d 1277.

### **CONCLUSION**

Having found no merit in the defendant’s assignments of error, we affirm the conviction and sentence.

### **CONVICTION AND SENTENCE AFFIRMED.**

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<sup>1</sup> In particular, Article 893(A) provides, in pertinent part, “[t]he court shall not suspend the sentence of a conviction for a crime of violence as defined in R.S. 14:2(B) ... (4)[.]”