

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 1320

STATE OF LOUISIANA

VERSUS

CHRISTOPHER JOHNSON

Judgment Rendered: FEB 13 2012

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. 08-08-0692

Honorable Anthony Marabella, Judge Presiding

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Hillar C. Moore, III
District Attorney

Counsel for Appellee
State of Louisiana

Allison Miller Rutzen
Assistant District Attorney
Baton Rouge, Louisiana

Frederick Kroenke
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Christopher Johnson

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

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McCLENDON, J.

The defendant, Christopher Johnson, was charged by bill of information with two counts of attempted first degree murder, violations of LSA-R.S. 14:30 and 14:27; and one count of possession of a firearm by a convicted felon, a violation of LSA-R.S. 14:95.1. The defendant pled not guilty to the charges. Subsequently, the defendant withdrew his not guilty pleas and, following a **Boykin** hearing, entered pleas of guilty. At the sentencing hearing, for each of the attempted first degree murder convictions, the defendant was sentenced to fifty years at hard labor without benefit of parole, probation, or suspension of sentence. For the possession of a firearm by a convicted felon conviction, the defendant was sentenced to fifteen years at hard labor without benefit of parole, probation, or suspension of sentence. The trial court ordered that each sentence was to run consecutively to the other sentences. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. For the following reasons, we affirm the convictions and sentences.

FACTS

Because the defendant pled guilty, the facts were not fully developed. According to a probable cause affidavit, which was made a part of the appellate record, on June 20, 2008, the defendant fled an attempted traffic stop by Baton Rouge police officers. Three males, including the defendant, were in the suspect vehicle. When the suspect vehicle arrived at the Suburban Apartments on Hanks Drive in Baton Rouge, the defendant exited the vehicle, entered one of the apartments, and ran to a rear bedroom. Three police officers pursued the defendant on foot. When the officers ordered the defendant to exit the bedroom, the defendant fired multiple gunshots at the officers. Two officers were struck by gunfire, and the third officer was not injured. The defendant was struck approximately nine times by return gunfire. The defendant then ran from the bedroom where he continued to resist the officers. A Taser was used, and the defendant was subdued and taken into custody.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court erred in imposing excessive sentences. Specifically, the defendant contends his three sentences should have been ordered to run concurrently rather than consecutively.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel 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 done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1 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. 1 Cir. 1988). 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 Article 894.1 need not be recited, the record must reflect that the trial court adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of Article 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 Article 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial court 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).

At sentencing, the trial court stated in pertinent part:

All right. Mr. Johnson, I've reviewed the facts of this case. Officer Myron Daniels conducted a traffic stop on you after having witnessed you run a red light. You were uncooperative during the traffic stop. And, while Officer Daniels waited behind the door of the vehicle, ordering you to produce your license, you said you're going to have to catch me; and you took off. You got back in your vehicle and you took off. Officer Daniels pursued you to an apartment complex; and, during this pursuit, he radioed for help. He observed which apartment you went into and he and Officer Brandon Ogden entered that apartment. A female was in that apartment and they asked where you were. She pointed towards the back of the apartment. Officer Daniels took the lead; and, when they rounded the corner into the room of the back of the apartment, you were kneeling on the floor, pointing your gun in the dri - in the doorway. Officer Daniels stated, as soon as he saw you, you opened fire on him. He then returned fire. Officer Daniels was struck by three bullets, one which grazed his leg, one which was stopped by his bullet-proof vest and one which entered his abdomen. After Daniels was down, Officer Ogden entered in gunfire with you and, also, sustained a bullet wound. You gave a statement to the probation officer indicating that you were pulled over at the traffic stop. You knew you had an outstanding bench warrant for possession of a firearm by a convicted felon and you were, also, carrying a gun on your person when you were stopped and did not want to get caught with another possession of a firearm charge. That is why you took off and ran. You further state: I feel like that both the officers and me were in the wrong. I can't, for the life of me, see that logic; but that's what you told the probation officer; and I believe that's what you believe; and that's a problem, a real problem. One of the victims in this case, Corporal Myron Dan -- Myron Daniels, was struck by a total of three bullets. He spent nearly two weeks in a hospital undergoing multiple surgeries; and this was in a coma for several days while he was in the hospital. Corporal Daniels stated in the presentence investigation he and his family have suffered tremendously as a result of this offense and that they are reminded of it every time he puts on his uniform. I want to talk a little bit about you. You have four previous felony convictions as an adult. On December the 7th of 1998, you were arrested by the Baton Rouge Police Department for two counts of armed robbery. You were billed with armed robbery in docket number 1-99-0357; and, on July 29th of 1999, you pled guilty as charged and were sentenced to seven years, hard labor, to run concurrent with all sentences serving. That was in December of '98. In February of '99, you were arrested by the Baton Rouge Police Department for the offense of armed robbery. You were billed with two counts of armed robbery under docket number 3-99-1018; and, on July 29, you pled guilty as charged and got eight years, concurrent with the other armed robberies you had convicted -- had committed. Also, on July the 29th, you pled guilty to an armed robbery that you committed on March the 2nd of 1999 and were sentenced on July 29th, 1999, to serve eight years at hard labor, all running concurrent with each other. You were released on parole in July of -- in January of 2006. On June 20th

of 2008, you were arrested in East Baton Rouge Parish for this charge, three counts of first degree murder, possession of a firearm by a convicted felon, resisting an officer, aggravated flight from an officer and for a bench warrant for felon in possession of a firearm. You were billed with two counts of first -- attempted first degree murder and possession of a firearm which you pled guilty to on October the 25th of 2010. Your first conviction back in '98, July of '98, was for simple burglary. While you were awaiting sentencing for your simple burglary, you committed those armed robberies I just talked about. At 30 years old you're already classified officially as a third felony offender. While awaiting sentence for your first felony conviction for simple burglary, you committed your first two armed robberies which occurred less than three months after your initial simple burglary conviction. Then, within another three months of committing the first armed robberies, you committed two more separate armed robberies. In addition to these convictions, on May the 22nd of 2007, right before this all happened and the reason, according to you, why you ran, you were arrested and charged with possession of a firearm by a convicted felon. You were billed with possession of a firearm by a convicted felon and didn't show up for court. And that's apparently why you said you ran. Those charges were dismissed when you pled to this. Throughout your extensive, violent criminal history, you have repeatedly shown complete disregard for human life. In addition, you have disrespected the authority of law enforcement, the judicial system and all citizens of East Baton Rouge Parish. You continued your criminal activity. You have no intention or desire to become a productive, law-abiding citizen. And, again, your statement to the probation officer, it was both our faults, mystifies me. The court, after considering the guidelines as outlined in Code of Criminal Procedure Article 894.1, finds that there is without question, an undue risk that during a period of probation or suspension of sentence, you will commit more crimes, that you are in need of correctional treatment or a custodial environment and can be provided most effectively by his commitment to an institution and that a lesser sentence would deprecate the seriousness of the defendant's crime. Mr. Johnson, Mr. Traylor made a statement. He said, you know, we don't want to send messages, we just want justice in this case as it applies to you. Mr. Johnson, I have tried my very best to fashion a sentence based upon what you did and who you are and what I expect you to be. Department of Corrections has often asked of me and other judges, when we sentence someone to a long period of time, take into account, when they get old, they're going to get sickly and we don't have the money to keep them in the hospital when they get old. And I respect that and I've always tried to do that. I'm not doing that in this case. It is my intention that you spend the rest of your natural life in the penitentiary.

The defendant suggests that his three sentences should run concurrently because the three separate counts were all based on a single incident. Concurrent rather than consecutive sentences are the general rule for multiple convictions arising out of a single course of criminal conduct, at least for a defendant without a prior criminal record. See LSA-C.Cr.P. art. 883. However,

even if convictions arise out of a single course of conduct, consecutive sentences are not necessarily excessive; other factors must be taken into consideration in making this determination. For instance, consecutive sentences are justified where an offender poses an unusual risk to public safety. **State v. Breland**, 97-2880 (La. App. 1 Cir. 11/6/98), 722 So.2d 51, 53.

In the instant matter, the trial court specifically found that the defendant: had an extensive, violent criminal history; that he had repeatedly shown complete disregard for human life; and that he had disrespected the authority of law enforcement, the judicial system, and all citizens of East Baton Rouge Parish. Given these factors, along with the defendant's extraordinarily violent behavior in attempting to murder police officers, the defendant clearly poses an unusual risk to the safety of the public. It is within the sentencing court's discretion to order that sentences run consecutively, rather than concurrently. **State v. Conway**, 588 So.2d 1369, 1374 (La. App. 2 Cir. 1991). Under these circumstances, the imposition of consecutive sentences for the crimes committed by the defendant does not render these sentences excessive.

The defendant was sentenced to the maximum sentence for each of his convictions. See LSA-R.S. 14:27(D)(1)(b); 14:30(C)(2); 14:95.1(B) (prior to the 2010 amendment). As a general rule, maximum or near maximum sentences are to be reserved for the worst offenders and the worst offenses. **State v. James**, 02-2079 (La. App. 1 Cir. 5/9/03), 849 So.2d 574, 586. Also, maximum sentences permitted under a statute may be imposed when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. See **State v. Hilton**, 99-1239 (La. App. 1 Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 00-0958 (La. 3/9/01), 786 So.2d 113.

The trial court adequately considered the factors set forth in Article 894.1. Considering the trial court's careful review of the circumstances, the presentence investigation report, the defendant's previous convictions, his violent history, and the nature of the instant crimes, we find no abuse of discretion by the trial court. The trial court provided ample justification for the imposition of the maximum

sentences allowed by law and found, noting in particular that the defendant had four previous felony convictions as an adult and that he had no intention or desire to become a productive, law-abiding citizen. See State v. Mickey, 604 So.2d 675, 678-79 (La. App. 1 Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Accordingly, the sentences imposed are not grossly disproportionate to the severity of the offenses and, therefore, are not unconstitutionally excessive.

The assignment of error is without merit.

SENTENCING ERROR

Under LSA-C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record, we have found a sentencing error. See State v. Price, 05-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-24 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So.2d 1277.

For his possession of a firearm by a convicted felon conviction, the defendant was sentenced to fifteen years at hard labor without benefit of probation, parole, or suspension of sentence. Whoever is found guilty of violating the possession of a firearm by a convicted felon provision shall be imprisoned at hard labor for not less than ten nor more than fifteen years without benefits and be fined not less than one thousand dollars nor more than five thousand dollars. La. R.S. 14:95.1(B) (prior to the 2010 amendment). The trial court failed to impose the mandatory fine.¹ Accordingly, the defendant's sentence, which did not include the mandatory fine, is illegally lenient. However, since the sentencing error is not inherently prejudicial to the defendant, and neither the State nor the defendant has raised this sentencing issue on appeal, we decline to correct this error. See Price, 952 So.2d at 123-25.

¹ The minutes reflect that no fine was imposed.

CONCLUSION

For the foregoing reasons, we affirm the defendant's convictions and sentences.

SENTENCES AND CONVICTIONS AFFIRMED.