

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 KA 1556

STATE OF LOUISIANA

VERSUS

DAQUINE BANKS

Judgment Rendered: APR 30 2013

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Appealed from the  
32<sup>nd</sup> Judicial District Court  
In and for the Parish of Terrebonne, Louisiana  
Trial Court Number 586,365

Honorable George J. Larke, Jr., Judge

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**BEFORE: PARRO, WELCH, AND KLINE,<sup>1</sup> JJ.**

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<sup>1</sup> Hon. William F. Kline, Jr., retired, is serving as judge *ad hoc* by special appointment of the Louisiana Supreme Court.

## **WELCH, J.**

The defendant, Daquine Banks, was charged by bill of information with two counts of armed robbery, in violation of La. R.S. 14:64. He pled not guilty and, after trial by jury, was convicted as charged. The defendant received two concurrent sentences of twenty-five years at hard labor, without benefit of parole. The defendant filed a motion to reconsider sentence. After a hearing, the trial court denied the motion.

The defendant has appealed the instant sentences, alleging that the trial court erred in imposing excessive sentences and in denying the motion to reconsider sentence. We affirm the convictions and sentences.

### **FACTS**

Early on the morning of September 14, 2010, the defendant and an unidentified accomplice committed two armed robberies in Houma, Louisiana. The first victim, Arthur Normand, was walking to work shortly after 6:00 a.m., when a maroon SUV (later identified as a Mitsubishi Montero Sport) approached and the passenger twice requested a cigarette. When Mr. Normand refused, the two occupants exited the vehicle and confronted him. The driver had a gun. They ordered Mr. Normand to strip, but he refused. They took Mr. Normand's wallet (which contained fifteen dollars), cell phone, and CD player. They also took his clothing from a previous job at McDonald's, consisting of a hat, name tag, uniform pants and two shirts, as well as an ice chest containing some Dr. Pepper cans.

A short time later, the second victim, sixty-nine-year-old Marvin Porche, was taking his morning walk when a "maroonish/reddish SUV" approached him from behind. One perpetrator, armed with a gun, confronted him screaming: "Give it up. Give it up." Mr. Porche offered his pocket knife. The second perpetrator tackled Mr. Porche from the side and together they pulled off his pants, leaving him naked from the waist down. Laughing, they returned to the SUV and

fled. Mr. Porche recovered his pocket knife at the scene. Two days later, Mr. Porche found his pants lying on the ground about two blocks from the scene of the robbery.

Less than two hours after the robbery of Mr. Porche, the defendant was spotted driving the suspect vehicle. After a low-speed chase, the defendant wrecked the vehicle in a trailer park and fled on foot, but he was soon apprehended. After he was arrested, a pat-down search yielded Mr. Normand's cell phone and a five dollar bill. A search of the Mitsubishi SUV revealed Mr. Normand's McDonald's hat, name tag, uniform pants and two shirts, and some Dr. Pepper cans. A gun was never located.

Although neither victim could positively identify the defendant, he confessed to the first robbery, although he denied having a gun. He explained that he needed gas money. The defendant denied the second robbery, and he refused to identify his accomplice.

### ASSIGNMENTS OF ERROR

The defendant contends that the trial court erred in imposing excessive sentences and in denying the motion to reconsider sentence. Specifically, the defendant complains that the trial court failed to give appropriate consideration to his youth (age sixteen at the time of the offenses) and lack of a prior criminal record. Noting that the statutory minimum sentence for armed robbery is ten years, he concludes minimum sentences would be more appropriate under the circumstances.

The Code of Criminal Procedure sets forth items to 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 guidelines. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1<sup>st</sup> Cir.), writ denied, 565 So.2d 942 (La. 1990). 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. **State v. Watkins**, 532 So.2d 1182, 1186 (La. App. 1<sup>st</sup> Cir. 1988).

Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). However, 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 manifest abuse of discretion. **State v. Latiolais**, 563 So.2d 469, 473 (La. App. 1<sup>st</sup> Cir. 1990).

At the sentencing hearing, the trial court initially observed that it had not received any type of statements from the defendant's family members. The court then reviewed the facts of the offenses and the defendant's juvenile record, which the court noted was several pages in length and included charges for being uncontrollable, curfew problems, simple battery, disturbing the peace by abusive language, resisting an officer, simple assault, aggravated battery, obstruction of justice, marijuana possession, and probation violation. The only mitigating factors noted by the court were the defendant's youth and the fact that he did not shoot the first victim, Mr. Normand, despite being urged to do so by his accomplice. Among the many aggravating factors noted by the court were the defendant's apparent lack of remorse and his refusal to cooperate by identifying his accomplice. In imposing sentence, the trial court found probation was not authorized and that there was an undue risk the defendant would commit further crimes. The court concluded the defendant was in need of correctional treatment or a custodial environment and that lesser sentences would deprecate the seriousness of the defendant's crimes.

While the defendant complains in his brief that the trial court did not order a presentence investigation report (PSI), it is well settled that ordering a PSI is discretionary with the trial court. **State v. Wimberly**, 618 So.2d 908, 914 (La. App. 1<sup>st</sup> Cir.), writ denied, 624 So.2d 1229 (La. 1993). See La. Code Crim. P. art. 875A(1). Our review of the sentencing transcript indicates that the trial court adequately complied with the Article 894.1 guidelines.

For each of his armed robbery convictions, the defendant was exposed to a

minimum sentence of ten years at hard labor and a maximum sentence of ninety-nine years at hard labor, without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:64B. The defendant received two concurrent sentences of twenty-five years at hard labor without parole. While these sentences are certainly harsh for such a youthful offender, the sentences were clearly within the lower sentencing range for the offense of armed robbery.

Considering the circumstances of the instant offenses, the defendant's prior juvenile record, and the reasons for sentencing given by the trial court, we conclude that the instant sentences are not excessive. We note the particularly egregious conduct by the defendant and his accomplice in the humiliating way they treated Mr. Porche, the elderly victim of the second robbery. Finally, this Court is mindful that on appellate review of a sentence, the relevant question is whether a trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. **State v. Thomas**, 98-1144 (La. 10/9/98), 719 So.2d 49, 50 (*per curiam*). Accordingly, the trial court correctly denied the defendant's motion to reconsider sentence.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

**CONVICTIONS AND SENTENCES AFFIRMED.**