**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 1731

STATE OF LOUISIANA

VERSUS

CARDELL DEMOND ROBINSON

**Judgment rendered April 26, 2013.**

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 11-10-0063
Honorable Donald R. Johnson, Judge

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CARDELL DEMOND ROBINSON

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**BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.**

**PETTIGREW, J.**

The defendant, Cardell Demond Robinson, was charged by bill of information with one count of domestic abuse battery involving strangulation (count I), a violation of La. R.S. 14:35.3(L); and one count of possession with intent to distribute marijuana (count II), a violation of La. R.S. 40:966(A). He pled not guilty on both counts. Thereafter, the State severed the charges and proceeded to trial on count II only. Subsequently, the State dismissed count I. The defendant waived his right to a jury trial on count II, and following a bench trial, was found guilty as charged. The State then filed a habitual offender bill of information against the defendant.[1] Following a hearing, the defendant was adjudged a fourth-felony habitual offender and was sentenced to life at hard labor without the benefit of probation, parole, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending that the sentence imposed was unconstitutionally excessive and that the trial court erred in denying the motion to reconsider sentence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence on count II.

**FACTS**

On September 8, 2010, Baton Rouge City Police Department Sergeant Kenneth Brewer and other police officers responded to a call for the police from Karla Brown at 12254 La Margie in Baton Rouge. Upon entering the residence, Sergeant Brewer noticed a faint odor of marijuana. Additionally, he saw a box of sandwich bags in the bedroom. The bags had their corners torn off, which was consistent with the packaging of marijuana. Subsequently, Sergeant Brewer located fourteen small baggies of marijuana and one medium bag of marijuana in a cookie can in the kitchen. Sergeant Brewer testified, in his opinion, the smaller baggies were packaged for sale. The defendant initially claimed the marijuana was for his personal use. Thereafter, however, he stated,

[1] Predicate #1 was set forth as the defendant's September 29, 2005 conviction, under Nineteenth Judicial District Court Docket #12-03-0380, for simple burglary. Predicate #2 was set forth as the defendant's September 29, 2005 convictions, under Nineteenth Judicial District Court Docket #11-04-0619, for theft (value over $500) and possession of cocaine. Predicate #3 was set forth as the defendant's September 29, 2005 conviction, under Nineteenth Judicial District Court Docket #05-05-0683, for simple burglary.

"I might, you know, sell one of my boys a blunt every now and then, but I'm not a bad guy."

**EXCESSIVE SENTENCE**

The defendant combines assignments of error numbers 1 and 2 for argument. He argues the mandatory life sentence imposed upon him was unconstitutionally excessive because he was twenty-seven years old and "given a life sentence for the offense of occasionally selling marijuana to his friends."

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, pp. 10-11 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

In **State v. Dorthey**, 623 So.2d 1276, 1280-1281 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," he is duty bound to reduce the sentence to one that would not be constitutionally excessive.

However, the holding in **Dorthey** was made only after, and in light of, express recognition by the court that, "the determination and definition of acts which are punishable as crimes is purely a legislative function. It is the Legislature's prerogative to

determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional." **Dorthey**, 623 So.2d at 1278 (citations omitted).

In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show that he "is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case." **Johnson**, 97-1906 at 8, 709 So.2d at 676 (citation omitted).

Any person who violates La. R.S. 40:966(A) with respect to a substance classified in La. R.S. 40:964, Schedule I, shall upon conviction be sentenced to a term of imprisonment at hard labor for not less than five nor more than thirty years, and pay a fine of not more than fifty thousand dollars. La. R.S. 40:966(B)(3).

Louisiana Revised Statutes 15:529.1, in pertinent part, provides:

> A. Any person who, after having been convicted within this state of a felony ... thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:
>
> . . . .
>
> (4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:
>
> . . . .
>
> (b) If the fourth felony and two of the prior felonies are felonies defined as a ... violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or of any other crime punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

At the habitual offender hearing, the defendant argued that on September 29, 2005, he had pled guilty to charges under five different bills of information without

knowledge that each guilty plea would be counted as a separate conviction under the Habitual Offender Law in the event that he committed a subsequent offense.[2]

The defendant failed to clearly and convincingly show that because of unusual circumstances he was a victim of the legislature's failure to assign sentences that were meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Accordingly, there was no reason for the trial court to deviate from the provisions of La. R.S. 15:529.1(A)(4)(b) in sentencing him. Additionally, the sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. Contrary to the defendant's argument, he was not "given a life sentence for the offense of occasionally selling marijuana to his friends." Rather, he was sentenced as a recidivist, and punished for the instant offense in light of his continuing disregard for the laws of our state. See **Johnson**, 97-1906 at 8, 709 So.2d at 677.

This assignment of error is without merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE ON COUNT II AFFIRMED.**

[2] In **State v. Johnson**, 2003-2993, pp. 17-18 (La. 10/19/04), 884 So.2d 568, 579, the Louisiana Supreme Court overruled its earlier decision in **State ex rel. Mims v. Butler**, 601 So.2d 649, 650 (La. 1992) (on reh'g), which had found Act 688 of 1982, amending the Habitual Offender Law, did not eliminate a sequential requirement for enhanced penalties in the sentencing of multiple offenders. Thereafter, the legislature enacted 2005 La. Acts No. 218, § 1, amending La. R.S. 15:529.1(B) to provide that "[m]ultiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section."