

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

WBN
TMT
JMC
NO. 2012 KA 1897

STATE OF LOUISIANA

VERSUS

DONALD E. BAILEY

Judgment Rendered: JUN 07 2013

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 11-09-0395

Honorable Richard "Chip" Moore, III, Judge Presiding

* * * * *

James D. Caldwell, Atty. Gen.
Colin Clark, Asst. Atty. Gen.
Baton Rouge, LA

Frederick Kroenke
Baton Rouge, LA

Attorneys for Plaintiff-Appellee,
State of Louisiana

Attorney for Defendant-Appellant,
Donald E. Bailey

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

Defendant, Donald E. Bailey, was charged by grand jury indictment with public bribery, a violation of La. R.S. 14:118 (count one); corrupt influencing, a violation of La. R.S. 14:120 (count two); and malfeasance in office, a violation of La. R.S. 14:134 (count three). Defendant initially pled not guilty to all counts, but he later withdrew those pleas and pled *nolo contendere* to counts one and two.¹ The trial court sentenced defendant to three years of imprisonment at hard labor for his conviction on count one. For his conviction on count two, the trial court sentenced defendant to five years of imprisonment at hard labor, consecutive to the term on count one, but that sentence was suspended, and defendant was placed on five years of probation with special conditions and ordered to pay a fine of \$1,000.00. Defendant filed a motion to reconsider his sentences, but the trial court denied that motion. He now appeals, raising one assignment of error challenging the constitutionality of his sentences. For the following reasons, we affirm defendant's convictions and sentences.

FACTS

Because defendant pled *nolo contendere*, the facts of his offenses were not developed at trial. The following facts are adapted from the police report and presentence investigation ("PSI") report, both of which were introduced into the record and considered by the trial judge prior to defendant's sentencing hearing.

According to the police report, defendant was a corporal in the Baton Rouge City Police Department where he served as the coordinator of the Targeted Violent Offender Program. As coordinator, defendant was responsible for tracking repeat offenders and ensuring that probation agents and assistant district attorneys were aware when those repeat offenders were arrested on new charges. The circumstances leading to defendant's arrest and conviction began when defendant

¹ The state agreed to *nolle pros* the charge on count three.

attempted to extort money from Melvin Vernell and Marcus Roach, who were affiliated with the subject of a federal investigation regarding Trill Entertainment. Vernell and Roach were also awaiting trial in the shooting of a local rapper, Bruce "Beelow" Moore.

Defendant met with an individual named Gregory Lollis and instructed him to inform Vernell and Roach that he would keep the "feds" off of them in exchange for \$30,000.00 in cash. Defendant also showed Lollis a warrant for his arrest for the offense of failure to return leased movables, implying that Lollis would be arrested on that warrant if he did not arrange the transaction with Vernell and Roach. Vernell and Roach did not give defendant the money, and Lollis was subsequently arrested on the warrant defendant had shown him. Later, the charge against Lollis was dismissed, and he was released from jail.

Subsequently, Lollis was arrested on a drug violation, and a parole hold was placed on him. Investigating officers made arrangements for Lollis to call defendant from a recorded inmate telephone. Lollis told defendant that he needed assistance getting out of jail. Defendant made arrangements for Lollis to be transported from East Baton Rouge ("EBR") parish prison to Baton Rouge Police Department ("BRPD") headquarters to meet with him on September 15, 2009. Lollis told investigators that defendant informed him that it would cost him \$12,000.00 for the charge to be dismissed and the parole hold lifted. Lollis also told investigators that defendant had instructed Lollis, upon his release, to call him from a home phone and to meet him with the money in the parking lot of Conn's department store on Airline Highway.

On September 16, 2009, defendant approached District Attorney Hillar Moore and advised him that Lollis was an informant who could help with the Trill Entertainment investigation, and he requested that the charges against Lollis be

dismissed.² On September 28, 2009, the date of his release, Lollis was wired with an audio and video device and given \$1,400.00 cash as a down payment to defendant for his assistance. Lollis met defendant in the Conn's parking lot and provided him with the \$1,400.00 in cash. Later that day, defendant was found to be in possession of the same \$1,400.00 in currency at BRPD headquarters. Defendant was arrested and charged with public bribery, corrupt influencing, and malfeasance in office.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant requests review of his sentences for constitutional excessiveness. Specifically, defendant contends that the trial court inadequately considered his lack of prior criminal history before imposing the sentences in this case.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may amount to a violation of a defendant's constitutional right against excessive punishment and is subject to appellate review. ***State v. Sepulvado***, 367 So.2d 762, 767 (La. 1979). A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. See ***State v. Dorthey***, 623 So.2d 1276, 1280 (La. 1993). A sentence is 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. Hogan***, 480 So.2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the

² District Attorney Moore assisted the police in their investigation of defendant by providing e-mails sent by defendant to his office and by detailing conversations defendant had initiated with him about Lollis. He and an assistant district attorney reviewed Lollis's case file and found that the pending charges against Lollis lacked enough evidence to prosecute, so those charges were dismissed and Lollis's parole hold was lifted.

sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Lobato**, 603 So.2d 739, 751 (La. 1992).

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. Code Crim. P. art. 894.1. 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. 1st 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. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982).

For his conviction on count one, defendant was eligible to receive a fine of up to \$1,000.00, or a sentence of imprisonment, with or without hard labor, for not more than five years, or both. See La. R.S. 14:118(C) (prior to 2010 amendment). His sentence for count one was three years of imprisonment at hard labor. For his conviction on count two, defendant was eligible to be imprisoned, with or without hard labor, for not more than ten years, or fined up to \$10,000.00, or both. See La. R.S. 14:120(B) (prior to 2010 amendment). Defendant's sentence on count two was ordered to be consecutive to his sentence on count one and he received a suspended sentence of five years of imprisonment at hard labor, was placed on five years probation, and was ordered to pay a \$1,000.00 fine.

Prior to sentencing defendant, the trial court noted review of the PSI report and the sentencing guidelines of La. Code Crim. P. art. 894.1. Additionally, the trial court noted as aggravating factors defendant's receipt of something of value in association with the commission of these offenses and defendant's use of his

position or status to facilitate the commission of the offenses. The trial court noted as a mitigating factor defendant's lack of prior criminal activity. In addition to the Article 894.1 factors, the trial court highlighted the serious nature of defendant's offenses, and opined that these types of offenses cause society to lose trust in government and the justice system.

Considering the trial court's stated reasons and the record as a whole, we cannot say that the trial court abused its discretion in sentencing defendant for public bribery and corrupt influencing. The trial judge adequately considered the Article 894.1 factors including the mitigating factor that defendant lacked any prior criminal history, and carefully crafted appropriate sentences for defendant's offenses.

CONCLUSION

Finding no merit in the sole assignment of error, we affirm defendant's convictions and sentences.

CONVICTIONS AND SENTENCES AFFIRMED.