

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0142

STATE OF LOUISIANA

VERSUS

NAKAI ROMAN BUTLER

*DATE OF JUDGMENT:* **NOV 01 2013**

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
NUMBER 11 CR8 114051, DIVISION "G", PARISH OF WASHINGTON  
STATE OF LOUISIANA

HONORABLE WILLIAM J. CRAIN, JUDGE

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

**Disposition: CONVICTION AND SENTENCE AFFIRMED.**

KUHN, J.,

The defendant, Nakai Butler, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1. He pled not guilty and, following a jury trial, was found guilty of the responsive offense of attempted manslaughter, a violation of La. R.S. 14:27 and 14:31. He was sentenced to eighteen years imprisonment at hard labor. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating two assignments of error challenging the sentence imposed. For the following reasons, we affirm the conviction and sentence.

### FACTS

On June 2, 2011, a group of people had gathered at Tiffany Anderson's house in Bogalusa, Louisiana. While several people were shooting dice in the kitchen, the defendant and Anthony Smith, who were friends, sat in the living room. When the defendant walked toward the kitchen, Anthony struck the defendant and they began fist fighting. Several witnesses testified that they saw the fight, but they had no explanation for what caused the initial conflict. Robert Peters, Tiffany's boyfriend, broke up the fight and walked Anthony outside to the street. At the same time, the defendant and Conterrio Johnson walked to their vehicle, which was parked in front of the house. Anthony told Robert he needed to get his book bag and began walking back toward the house. As the defendant was entering the vehicle, preparing to leave, Anthony walked toward him. When Anthony was within several feet of the defendant, they exchanged words. The defendant then pulled a revolver from his waistband and shot at Anthony, who was unarmed, striking him in the neck. Anthony stumbled about briefly and collapsed, while the defendant fled on foot. The defendant was arrested approximately two weeks later; the weapon used in the shooting was never recovered. Although Anthony survived the shooting, his sister

testified at trial that he is confined to a wheelchair and is unable to respond to questions.

### ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

In these related assignments of error, the defendant argues, respectively, that the trial court erred in denying his motion to reconsider sentence and that the sentence imposed is unconstitutionally excessive. Specifically, the defendant contends his eighteen-year sentence as a first offender is excessive.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive 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. 1st 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. 1st 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 La. C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. *State v. Brown*, 02-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. C.Cr.P. art. 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 La. C.Cr.P. art. 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). On appellate review of a sentence, the relevant question is whether the 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).

In the instant matter, the defendant was exposed to a maximum sentence of twenty years imprisonment. See La. R.S. 14:27(D)(3) & 14:31(B). He received a sentence of eighteen years at hard labor. On appeal, he argues that given his youth (twenty-two years old on the date of the offense) and the absence of any criminal history, his sentence is excessive, particularly considering that the victim instigated the fight.

It is clear from its reasons for sentence that the trial court thoroughly considered La. C.Cr.P. art. 894.1, including any mitigating factors, in arriving at an appropriate sentence. The trial court stated, in pertinent part:

The victim in this case was shot by Mr. Butler at point-blank range in the neck, and remains paralyzed from the neck down, unable to communicate, unable to independently perform any functions to this date, and just by outward appearances, in all likelihood for the remainder of his natural life.

I have received a presentencing investigation report in which it is recommended that Mr. Butler receive the maximum sentence, which in this case would be twenty years on the attempted manslaughter conviction.

I have considered the factors under Article 894.1. I would note the aggravating factors are the fact that this was a crime of violence, the fact that a firearm was used, the offense resulted in significant permanent injury to the victim, all of those are aggravating factors.

I have also considered the mitigating factors in this case, the most significant of which is Mr. Butler's age, which I believe now to be right at twenty-two, twenty-three years old.

I also note that prior to this instance Mr. Butler does not have a criminal record.

Mr. Butler, you maimed someone in a senseless act of violence. In addition to that, there is a part of the evidence that was introduced that sticks with me. And that was testimony by one of the ladies in the case about the ride that was taken in a vehicle at a point in time prior to the shooting during which you exposed a pistol or a weapon in the vehicle for no reason other than to just show a weapon. I'm also impressed by the fact that there were several guns that were brought to this I think dice game that day. And the number of guns and the violence that's going on right now in our community is absolutely unacceptable.

Based on all of those factors, both aggravating and mitigating, it is my opinion that incarceration is necessary. I do not believe that any type of confinement outside of a prison system would be appropriate for the nature of the crime.

Considering the trial court's review of the circumstances, the nature of the crime, and the lifelong debilitated condition of the victim, Anthony Smith, we find no abuse of discretion by the trial court. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. The trial court did not err in denying the defendant's motion to reconsider sentence.

These assignments of error lack merit.

**CONVICTION AND SENTENCE AFFIRMED.**