NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 0213

STATE OF LOUISIANA

VERSUS

CHARLES VINCENT DAUGHTRY JR.

Judgment rendered September 19, 2014.

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Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 534874-1
Honorable Peter J. Garcia, Judge

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BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

Defendant, Charles Vincent Daughtry, Jr., was charged by bill of information with two counts of simple burglary of an inhabited dwelling, violations of La. R.S. 14:62.2.[1] He pled not guilty and, following a jury trial, was found guilty as charged on both counts. Subsequently, the State filed a habitual offender bill of information, and the trial court adjudicated defendant a fourth-felony habitual offender.[2] On count one, the trial court sentenced defendant as a fourth-felony habitual offender to the mandatory term of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence. On count two, the trial court sentenced defendant to ten years at hard labor. These sentences were ordered to run concurrently. The trial court denied defendant's motion to reconsider his sentences. Defendant now alleges two assignments of error, both of which relate to his habitual offender sentence. For the following reasons, we affirm defendant's convictions, habitual offender adjudication, and sentences. We also remand with instructions.

FACTS

On April 23, 2013, Karen Wintz's home on Joyce Drive in Mandeville was broken into while she and her family were not present. The perpetrator kicked in her back door to enter the home. The house's bedrooms were ransacked, and the perpetrator took multiple items of jewelry from the family's jewelry boxes. On April 26, 2013, Kelly Doolittle's home on Montgomery Street in Mandeville was broken into in a similar way. While she and her husband were away, someone kicked in their back door, ransacked their bedrooms, and made off with multiple items of jewelry.

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[1] The same instrument also charged a Robert J. Klein with the same offenses, but the district attorney amended the bill of information with respect to Klein only. In exchange for his testimony against defendant, Klein pled guilty to two reduced charges of simple burglary. Klein's case is not at issue in this appeal.

[2] The State's habitual offender bill of information asked that defendant be sentenced pursuant to La. R.S. 15:529.1(A)(3)(b), the provision relevant to third-felony habitual offenders, but it actually listed four instances of alleged predicate offenses. Those offenses were: 1) an April 4, 1985 conviction in Orleans Parish for simple burglary of an inhabited dwelling (six counts) under case number 306911; 2) a July 22, 1991 conviction in Jefferson Parish for simple burglary of an inhabited dwelling (six counts) under case number 90-5579; 3) a January 24, 2001 conviction in St. Tammany Parish for simple burglary of an inhabited dwelling (two counts) under case number 321158; and 4) a January 24, 2001 conviction in St. Tammany Parish for illegal possession of stolen things valued over $500 under case number 321155.

None of the victims ever saw who committed the robberies. Pursuant to a neighborhood canvass related to the Montgomery Street burglary, the police spoke with a neighbor who had noted the license plate number of a suspicious white van she had seen in the neighborhood.[3] Based upon this information, the police discovered that the white van was registered to defendant's sister, who lived in Texas. The police questioned defendant about the Joyce Drive and Montgomery Street burglaries. He admitted to committing both and gave the interviewing detectives explicit details about how he first knocked on the homes' front doors to make sure no one was present before he proceeded to the homes' back doors to make his entrance there. Defendant admitted that he looked primarily for jewelry in these burglaries.

EXCESSIVE SENTENCE

In related assignments of error, defendant asserts that the trial court erred in denying his motion to reconsider sentence, which alleged that his habitual offender sentence is unconstitutionally excessive.

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. **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. **State v. Hurst**, 99-2868, p. 10 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. 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

[3] Klein, defendant's co-conspirator, testified at trial that as defendant committed the Montgomery Street burglary, he was approached by a woman while he was sitting in a white van. The record is not explicit about whether this woman was the same neighbor who reported the suspicious van.

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

In the instant case, defendant was sentenced as a fourth-felony habitual offender under the provisions of La. R.S. 15:529.1(A)(4)(b). That section states, in pertinent part, that if a defendant's fourth felony and two of his prior felonies are crimes punishable by imprisonment for twelve years or more, he shall be imprisoned for the remainder of his natural life, without the benefit of parole, probation, or suspension of sentence. See La. R.S. 15:529.1(A)(4)(b). Here, defendant's fourth felony – simple burglary of an inhabited dwelling – is punishable by imprisonment for twelve years. See La. R.S. 14:62.2. Similarly, at least two of his predicate convictions – his six Orleans Parish, six Jefferson Parish, and two St. Tammany Parish (docket number 321158) convictions – were for simple burglary of an inhabited dwelling. Therefore, defendant's fourth-felony habitual offender sentence of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence, was mandatory under La. R.S. 15:529.1(A)(4)(b).

Even though a sentence is the mandatory minimum sentence, it may still be excessive if it makes no "measurable contribution to acceptable goals of punishment" or amounts to nothing more than the "purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime." **State v. Dorthey**, 623 So.2d 1276, 1280-1281 (La. 1993). In **State v. Johnson**, 97-1906, p. 8 (La. 3/4/98), 709 So.2d 672, 676, the Louisiana Supreme Court found that to rebut the presumption of the constitutionality of a mandatory minimum sentence, the defendant must "clearly and convincingly" show that he is exceptional, which means that because of unusual circumstances, the 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. Departures downward from the minimum sentence should only occur in rare situations. **Johnson**, 97-1906 at 9, 709 So.2d at 677.

In the instant case, defendant contends that his sentence on count one is excessive due to his prior convictions' nature as non-violent property crimes, his age (sixty-one years old), his status as a heroin addict, and his cooperation with the police upon his arrest. Defendant asserts that the trial court did not adequately tailor his habitual offender sentence in a way that considered all of these circumstances.

We have reviewed the record and find that it supports the sentence imposed. Based on our review, we cannot say that the trial court erred or abused its discretion in imposing the mandatory sentence under La. R.S. 15:529.1(A)(4)(b). The mitigating factors cited by defendant in his brief are not sufficient to warrant a downward departure from the minimum mandatory sentence of life imprisonment at hard labor, without the benefit of parole, probation, or suspension of sentence. Moreover, we do not find that defendant has "clearly and convincingly" shown that he is "exceptional." **Johnson**, 97-1906 at 8, 709 So.2d at 676. He has failed to cite any unusual or exceptional circumstances to show that he is a victim of the legislature's failure to assign a sentence meaningfully tailored to his culpability, to the circumstances of his case, and to his status as a fourth-felony habitual offender. Through his behavior, defendant has shown a propensity toward repeated criminality over a period of nearly thirty years. Therefore, there was no reason for the trial court to deviate from the mandatory minimum sentence. Accordingly, we find no abuse of discretion in the sentence imposed on count one.

These assignments of error lack merit.

REVIEW FOR ERROR

In accordance with La. Code Crim. P. art. 920(2), we are limited in our review for unassigned errors to those errors discoverable by a mere inspection of the pleadings and proceedings, without inspection of the evidence. See **State v. Price**, 2005-2514, p. 18 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123 (en banc), writ denied, 2007–0130 (La. 2/22/08), 976 So.2d 1277. After a careful review of the record, we have found a sentencing error with respect to count two.

For his unenhanced sentence on count two, defendant was subject to a sentence of imprisonment at hard labor for not less than one year, without the benefit of parole, probation, or suspension of sentence, nor more than twelve years. See La. R.S. 14:62.2. The trial court sentenced defendant to ten years at hard labor on this count, but it failed to impose the first year of that sentence without the benefit of parole, probation, or suspension of sentence. However, pursuant to La. R.S. 15:301.1(A), if a criminal statute requires that all or a part of a sentence imposed for a violation of that statute be served without the benefit of parole, probation, or suspension of sentence, each sentence that is imposed under that statute shall be deemed to contain the provisions relating to the service of the sentence without the benefit of parole, probation, or suspension of sentence. Only the first year of defendant's simple burglary sentence can be imposed without the benefit of parole, probation, or suspension of sentence, so no discretion is required in restricting these benefits. See **State v. Boowell**, 406 So.2d 213, 215-216 (La. 1981). As a result, the provisions of La. R.S. 15:301.1(A) operate as a matter of law in this case. Therefore, the first year of defendant's ten-year sentence on count two is deemed to contain the restrictions of parole, probation, and suspension of sentence. We remand this matter to the district court for correction of the minute entry and commitment order, in accordance with this opinion.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND SENTENCES AFFIRMED; REMANDED WITH INSTRUCTIONS.