

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 KA 0747

STATE OF LOUISIANA

VERSUS

BRITTANY D. MONK

Judgment Rendered: NOV 06 2018

* * * * *

APPEALED FROM THE 19th JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH, LOUISIANA
DOCKET NUMBER 09-15-0123

HONORABLE ANTHONY J. MARABELLA JR., JUDGE

* * * * *

Holli Herrle-Castillio
Marrero, Louisiana

Attorney for Defendant/Appellant
Brittany D. Monk

Hillar C. Moore III
District Attorney
Allison Miller Rutzen
Assistant District Attorney
Baton Rouge, Louisiana

Attorneys for Appellee
State of Louisiana

BEFORE: McDONALD, CRAIN, and HOLDRIDGE, JJ.

Crain J. concurs

Handwritten marks:
A large stylized signature or set of initials on the left side of the page.

McDONALD, J.

By grand jury indictment, the State charged defendant, Brittany Monk, with second degree murder as a principal, a violation of LSA-R.S. 14:30.1 and LSA-R.S. 14:24.¹ She pled not guilty.² During the pendency of the case, the State and defendant entered into a plea agreement whereby defendant offered to cooperate against her co-defendant, Jace Crehan, in exchange for a plea to the lesser included offense of manslaughter. There was no agreement as to a specific sentence, instead only a recognition that defendant would be exposed to the full range statutorily allowed. Following Crehan's trial, at which she testified, the district court sentenced defendant to 35 years imprisonment at hard labor. Defendant now appeals, challenging her sentence as excessive. For the following reasons, we affirm the conviction and sentence.

FACTUAL BACKGROUND

Because defendant's case arises from the same factual basis as Jace Crehan's case, the factual background here is largely derived from her testimony at his trial.

On the afternoon of July 4, 2015, the Zachary Police Department (ZPD) was notified by Delmonico Noce that he had found a large amount of blood in his brother Robert's residence. Delmonico had stopped by Robert's trailer to return some borrowed lawn equipment when he noticed a large amount of water pouring out of the trailer. After entering and seeing the blood, Delmonico immediately left the trailer and called ZPD.

During the initial ZPD walk-through at the scene, officers discovered a blue 55-gallon barrel in the kitchen. Detectives were called and the East Baton Rouge Parish Sheriff's Office (EBRSO) assumed the lead in the investigation. Police determined the residence belonged to the victim, Robert Noce Jr. (Noce).

During their investigation, police noticed a window-unit air conditioner next to the trailer under an open window. Police reasoned this was the perpetrators' point of

¹ The State also charged Jace Crehan by the same indictment with the same offense. He was found guilty as charged and separately appeals to this court. *See State v. Crehan*, 18-0746 (La. App. 1 Cir. ___/___/18), ___ WL ____.

² There is no indication in the record of when defendant pled guilty, but the district court permitted her to withdraw a not guilty plea and enter one of guilty.

entry into the trailer. Police also saw a large amount of water pouring from the trailer, coming from at least one purposefully stopped-up sink. Upon further examination, police found a body in the blue barrel, along with used latex gloves. Near the barrel, in the center of the adjacent master bedroom, was a large portion of carpet saturated with blood. There was also blood splatter on several objects in the room. A can of Axe spray deodorant and a wallet were found on the bed.

Later forensic examination of the victim's body showed his hands had been posthumously tied together with a necktie and a black leather belt had been wrapped around his neck. Though the body was assumed to be that of Noce, DNA and fingerprint samples later confirmed this. An expert forensic witness testified Noce died from multiple stab wounds and strangulation.

Twelve days before his death, and after having been indicted for aggravated rape, Noce had pled no contest to felony carnal knowledge of a juvenile for sexually abusing defendant, the daughter of Noce's former live-in girlfriend Margaret Dixon. Noce abused defendant between the ages of 4 and 12 and would give her drugs to make her more compliant. For that offense, as part of a negotiated plea, Noce had been sentenced to 10 years imprisonment at hard labor. That entire sentence was suspended and Noce was placed on supervised probation for five years with conditions, including a requirement that he register as a sex offender. Defendant testified at Crehan's trial that she had told Noce's prosecutor that she did not wish to testify against Noce, that she wanted to move on with her life, and wanted the case dismissed. At Noce's June 22, 2015 sentencing for felony carnal knowledge of a juvenile, the prosecutor informed the court that "the victim is about eighteen, nineteen now, and this plea was her decision." As part of Noce's plea, the court imposed a condition that Noce have no contact with defendant.

Police suspected defendant and her then-boyfriend, Crehan, of being involved in Noce's death, and the forensic evidence eventually confirmed their involvement. DNA from the latex gloves was matched to a DNA sample taken from defendant, and a latent fingerprint from the bedpost was matched to Crehan. Police also learned the pair had

purchased batteries and latex gloves from Walmart during the early morning hours of July 4, 2015.

At Crehan's trial, defendant explained that the pair had begun to discuss confronting Noce "about two weeks" after Noce had pled guilty to sexually abusing defendant, which is when defendant claimed to just have learned that Noce was not going to spend any time in prison. She said she and Crehan did not want to move out of their house but that she did not feel safe there with Noce not incarcerated. She admitted Noce had not posed any threats to her and that neither she nor Crehan had any contact with him between when he was arrested in 2012 until July 4, 2015, the day of his death. Defendant testified that Crehan was "ok with" the case against Noce being dismissed, because Crehan "didn't believe there would be enough evidence to convict" Noce. Defendant explained that, because they did not want to move, she and Crehan discussed on several occasions that they would scare Noce so he would stay away from them. Specifically, defendant testified Crehan talked about tying Noce to a chair, beating him, and "making sure that he knows why we are there." Defendant also testified that she had told Crehan that Noce had raped her, but she never told Crehan specifics about the abuse.

Those discussions between defendant and Crehan culminated on the night of July 3, 2015. Defendant testified Crehan had the idea of getting batteries for their walkie talkies and gloves to prevent them from leaving fingerprints or DNA at the scene. The pair went to Walmart, where they purchased batteries and gloves. They returned home, removing one pair of gloves from the box and leaving the rest there. Crehan looked up Noce's address on the sex offender registry, as neither he nor defendant knew where he lived. The trip to Noce's trailer took between 45 minutes and one hour, with Crehan driving from their residence in Walker to Noce's trailer in Zachary, with one stop for defendant to use the bathroom. Defendant testified she wanted to be there and Crehan asked her about this several times. On the way, Crehan asked defendant if anyone else lived with Noce and she replied there should not be.

Upon their arrival at Noce's trailer, Crehan removed the air conditioner from the window with a screwdriver. Crehan climbed in first, and then helped the seven-month-

pregnant defendant up through the window into the trailer. Navigating through the trailer with a cell phone light, the pair made their way toward the master bedroom. Defendant explained she saw a blue barrel in the kitchen that she knew Noce used to make wine. Both removed their shoes, Crehan removed his watch so it would not get lost in a struggle, and defendant put her hair up to keep it from getting in the way. Crehan handed defendant a can of Axe body spray with instructions to defend herself with it should the need arise.

Defendant acknowledged the pair still had an option to leave the trailer before opening Noce's bedroom door. She described a door to the outside immediately next to the bedroom door and that they both had the option of walking out. Crehan opened the door to the master bedroom, turned on the light, and ran to the side of the Noce's bed. Noce immediately began screaming, pulling the covers back. First remaining near the door, defendant then moved toward the bed as Crehan and Noce began to struggle. Crehan grabbed Noce and tried to pull him out of the bed onto the floor. As Crehan did this, defendant sprayed Noce in the face with the Axe spray. Crehan then got Noce into a chokehold and they both dropped to the floor on their knees, with Crehan behind Noce. Noce attempted to strike Crehan in the head with a cordless drill battery pack, but failed. According to defendant, Crehan then said Noce "chose to do this the hard way." Defendant testified she screamed at Noce that he ruined her life and eventually he began to beg for forgiveness. Defendant punched Noce "ten or fifteen" times, while Crehan continued to choke him.

After some time, as Noce lay motionless, Crehan told defendant to go get a knife. Defendant went to the kitchen and selected a knife, believing Crehan was about to kill Noce. Defendant dropped the knife onto the ground by Crehan and went into the master bathroom. Unable to see the two men, defendant described hearing a "crunching sound" as Crehan stabbed Noce in the head and neck. When she walked out of the bathroom, she saw blood squirting out of Noce's body, covering the floor. Crehan told defendant to get something with which to tie up the body, and she again left the room to retrieve a belt and neckties from the closet in another bedroom. Crehan wrapped the belt around Noce's neck, placed his foot on Noce's back, and

pulled the belt for "probably a minute." After they moved the barrel into the bedroom and pushed the body in it, Crehan moved the barrel back into the kitchen. They then attempted to clean up the blood, and Crehan clogged the sink drains to flood the trailer with the intention of destroying evidence. The pair then put their shoes back on and Crehan retrieved his watch. Crehan told defendant to put her gloves in the barrel and the lid was put back on. They took a tablet computer with the intention of selling it for money because Noce's wallet contained no cash. Crehan later destroyed the tablet because he was concerned it could be electronically traced back to them. Defendant estimated the entire transaction at the trailer lasted about two hours.

Defendant and Crehan then returned to their house in Walker, where they placed all of their clothing and the remaining gloves in a trash bag. They then threw the trash bag away at a nearby car wash, and Crehan threw the knife in a water retention pond across the street from the car wash. They later went to a family barbeque, feeling it would appear suspicious if they did not.

That night, defendant received a text message from the East Baton Rouge Parish assistant district attorney who had prosecuted Noce, asking for Crehan's phone number. Crehan told her to give it to the assistant district attorney, explaining they did not want to appear to be acting strangely. Defendant said Crehan told her that if any detectives came, they would just have to ask for a lawyer. A few hours later, after EBRSO called, both voluntarily went to a Louisiana State Police building where they gave recorded interviews with detectives in the violent crimes unit. While testifying, defendant admitted she lied to investigators during her interview, but did consent to a DNA swab. The pair also began clearing out their house and selling items in anticipation of moving in with Crehan's mother before what they believed was their imminent arrest. They were arrested two or three days later.

EXCESSIVE SENTENCE

In her sole assignment of error, defendant contends the district court erred by imposing a sentence of 35 years imprisonment at hard labor. Defendant argues that due to the extensive sexual abuse she suffered at the hands of Noce over the course of eight years, Crehan's manipulation and control of her, and her status as a juvenile at

the time of the offense, she is undeserving of such a harsh sentence. Reasoning that *Miller v. Alabama*, 567 U.S. 460, 461, 132 S.Ct. 2455, 2457-58, 183 L.Ed.2d 407, 412 (2012) (holding that a juvenile sentence of life without possibility of parole is unconstitutional) should be instructive, defendant claims her culpability was diminished due to her age at the time of the offense when compared to an adult, such that she was more "vulnerable than a similarly situated adult to the negative influences of her environment and peers," and her sentence does not recognize that as a juvenile she is more "capable of positive change."

The State argues defendant approached the State first to determine if a plea negotiation was possible and she knew she was pleading to a sentencing range of zero to 40 years. Additionally, the State argues defendant got a benefit by being permitted to plead to manslaughter, rather than being found guilty of second degree murder, thus making her parole eligible and "subject to the Department of Corrections' more lenient sentencing calculations" In the State's view, defendant approved of how Noce was going to be sentenced and only later claimed confusion when seeking justification for his brutal murder in which she willingly participated. Moreover, the fact she was permitted to plead to manslaughter recognized her diminished culpability.

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 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 grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it shocks the sense of justice. *State v. Andrews*, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So.2d 448, 454. The district court has great discretion in imposing a sentence within statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of that discretion. *Id.* Louisiana Revised Statute 14:31B provides, in pertinent part, that "[w]hoever commits manslaughter shall be imprisoned at hard labor for not more than forty years."

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the district court to consider when imposing sentence. It states three general conditions under which a court should impose a prison sentence: (1) if there is an undue risk that the defendant will commit another crime during the period of a suspended sentence or probation; (2) if the defendant is in need of correctional services or a custodial environment that can be most effectively provided by an institution; or (3) if a lesser sentence will deprecate the seriousness of the crime. Other factors for review by the district court before determining the sentence are the defendant's personal history (age, marital status, dependents, family stability, employment, mental, emotional, and physical health); defendant's prior criminal history; the seriousness of the crime; the circumstances of the offense; the likelihood that the defendant will commit another crime; and the potential for rehabilitation. *State v. Lang*, 430 So.2d 1239, 1242 (La. App. 1 Cir. 1983). Finally, LSA-C.Cr.P. art. 894.1C requires the district court to state for the record the considerations taken into account and the factual basis therefor in imposing sentence. While the district court need not recite the entire checklist of LSA-C.Cr.P. art. 894.1, the record must reflect that the district court adequately considered the criteria. *State v. Brown*, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569. In light of the statutory criteria, a review for individual excessiveness must consider the circumstances of the crime and the district court's stated reasons and factual basis for its sentencing decision. *State v. Watkins*, 532 So.2d 1182, 1186 (La. App. 1 Cir. 1988). Remand for full compliance with LSA-C.Cr.P. art. 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. *State v. Lanclos*, 419 So.2d 475, 478 (La. 1982).

During defendant's guilty plea, the district court heard her acknowledge the full sentencing range to which she would be subject. Defendant also acknowledged that she fabricated her prior claim that she suffered "physical infirmities" (described as trauma, nightmares, etc.) as a result of Noce's abuse. She confirmed that any allegations of physical threats by Noce were also not true. She admitted to the factual basis presented by the State, which followed her testimony in Crehan's trial and was summarized above. Most importantly, she acknowledged that detailed statements she

made to law enforcement and the media that she was unaware of the sentence Noce was to receive were not true, and that she had participated in -- and agreed to -- the negotiations leading to Noce's ultimate sentence. The district court also ensured defendant understood it had not "agreed to reduce any sort of sentence" in her case.

At defendant's sentencing, the State acknowledged her extensive cooperation at Crehan's trial and her testimony in that case. Prior to the imposition of sentence, defense counsel argued that defendant, who was 20 years old at the time of sentencing, should be given a chance for rehabilitation. In support, counsel noted defendant had become a trustee in jail and was a "model inmate." For her part, defendant explained to the sentencing court she wanted to re-establish a relationship with her half-sister (Noce's daughter), acknowledged regret for the harm done to Noce's family, and that she made an impulsive decision to take the "law into [her] own hands."

Prior to imposing the 35 year sentence, the district court pointed out defendant had no prior criminal history and was 17 years old at the time of the offense. The court noted it had ordered a presentence investigation, the report of which it had reviewed thoroughly. It also had reviewed copies of defendant's journal provided by defense counsel. The court went on to note observations it had made during the pendency of defendant's case. Specifically the court observed:

[Defendant] exhibited anger on the witness stand at the fact that Robert Noce only spent eleven days in jail. She exhibited an attitude of revenge and appeared cold and emotionless on the stand. Her journal indicates that things were not going well with [her] and Jace Crehan. Jace Crehan may have been cheating on her or she believed that he was. She was displeased that he was playing video games all the time and that he took money from her. She wrote a lot about how she needed to serve him and lose lots of weight as soon as she has the baby to make him happy. There was a lot going on between the co-defendants leading up to this crime.

The court then went on to describe some of the 267 pages of documents defendant had submitted to the court and then stated:

If true, what happened to Ms. Monk, it is horrible, what occurred to her, if those things are true, while she lived with Robert Noce. While the psychological reports clearly indicate this defendant had a very stressed life, these reports indicate that they were caused not only by what allegedly occurred in Mr. Noce's household but also what happened in the home of her mother and her stepfather. The record reflects the deal

called for probation for Mr. Robert Noce. Testimony at trial even suggested that Ms. Monk agreed to that sentence and even wanted the charges dismissed. At the trial she testified[,] however, that she was unaware he was going to get probation. She was very upset that he served only eleven days in jail. She said the same thing to probation and parole. At the trial, we were all left with the impression that the judge was the one who came up with probation. This court ... reviewed the sentence and the plea of Mr. Noce, [which] clearly [indicate] that it was an agreed-upon sentence. Everyone knew he was getting probation. However, Ms. Monk at trial, apparently, said no. However, her lawyers in their memo, now say that's not so. She knew and was aware of the sentence Mr. Noce was to receive. I believe that. I'm not sure why there's this contradiction, but there is. This case has been painted as, he got what he deserved; we did our own justice. As I stated earlier and very significantly here, Ms. Monk testified that she had had no contact with Mr. Noce for several years; however, it was the fact that he pled guilty, that she agreed to, that caused all of these actions. Who began this plot, again, as I stated earlier, is not completely known. The evidence at trial from letters, phone calls, statements clearly outlined this plan to kill and scheme and to murder Mr. Noce because of what is alleged to have happened to Ms. Monk and then covered up by attempting to justify this action ... by attempting to manipulate the facts, the police, the media, and the justice system, itself. The trial and all of the evidence presented painted a clear picture of planning, plotting, and effort to create an appearance of justification. While there is no question if the allegations against Robert Noce were true, what Ms. Monk went through was horrific and tragic, still this does not give her the right to extract vigilante justice some three to four years later.

There has been an argument, there has been a suggestion, there has been legal memorandum written about the *Miller* case. The *Miller* case, of course, is a case that involves life without parole for juveniles. That is not the case here. I suggest and suspect that that is exactly what the district attorney took into account when they offered the deal to allow Ms. Monk to plead guilty to manslaughter. The court having taken into account this defendant's youth, the mitigating factors presented both at trial and in documents, and the nature of the crime committed in this case, and after reviewing the information contained in the pre-trial - - the pre-sentence investigation in its entirety, information presented by the defense along with the sentencing guidelines as outlined in Code of Criminal Procedure article 894.1, the court finds that this defendant, as a result of her actions in committing this crime, is in need of correctional treatment or a custodial environment that can be provided most effectively by her commitment to an institution and that a lesser sentence would deprecate the seriousness of this defendant's crime. It is, therefore, the sentence of this court that the defendant be confined to the custody of the Department of Corrections for a period of thirty-five years at hard labor.

Despite defendant's arguments, our review shows the evidence was sufficient to support her sentence. The district court presided over the trial and noted that, before imposing the sentence, it found defendant was in need of correctional services provided by incarceration, that a lesser sentence would deprecate the seriousness of the offense, the circumstances of the crime, as well as defendant's personal history and criminal history. The court reasoned the mitigating factors clearly present in defendant's case

had already been considered when the State agreed to her cooperation in the case resulting in a plea to the lesser offense of manslaughter. Given her almost-certain parole eligibility and the possibility to earn good time with that plea, she was far better situated than she would be receiving a life sentence with only a consideration for parole eligibility through operation of *Miller*.

High and maximum sentences have been imposed on first time or young offenders who have been convicted of manslaughter under a variety of circumstances. *See State v. Soraparu*, 97-1027 (La. 10/13/97), 703 So.2d 608 (per curiam), *reversing*, 93-1636 (La. App. 4 Cir. 1/19/95), 649 So.2d 1100 (district court finding that 21 year old defendant committed a "cold and deliberate act" that fully justified verdict of second degree murder adequately supported the 40 year manslaughter sentence imposed); *State v. Lambert*, 09-1223 (La. App. 1 Cir. 12/23/09), 2009 WL 5647224 *2 (unpublished) (finding 40 year sentence at hard labor imposed on responsive offense of manslaughter was not constitutionally excessive in light of the violent nature of the offense, and though defendant claimed she had a history of mental illness and that the victim physically attacked her and anally raped her); *State v. Black*, 28,100 (La. App. 2 Cir. 2/28/96), 669 So.2d 667, 670 (finding a 40 year sentence for a 20 year old defendant who pled guilty to manslaughter was not excessive).

A thorough review of the record reveals that the district court adequately considered the criteria of LSA-Cr.P. art. 894.1 and did not manifestly abuse its discretion in imposing the sentence herein. Additionally, the sentence imposed was not grossly disproportionate to the severity of the offense, and thus, was not unconstitutionally excessive. In short, the district court considered mitigating factors, and those led to defendant's plea to manslaughter in a case where the facts supported a conviction for second degree murder. *See State v. Lee*, 51,167 (La. App. 2 Cir. 2/15/17), 216 So.3d 205, 209-10 (finding substantial advantage obtained by means of a plea bargain is a legitimate consideration in sentencing); *see also State v. White*, 48,788 (La. App. 2 Cir. 2/26/14), 136 So.3d 280, 282 (upholding a 40 year sentence for manslaughter and noting "[t]he fact that the evidence might have supported a verdict of second degree murder is an appropriate sentencing consideration in a case such as

this one in which defendant has been convicted of the lesser offense of manslaughter”); *State v. Sullivan*, 12-0709 (La. App. 1 Cir. 12/21/12), 2012 WL 6681818 *4 (unpublished) (finding the district court has great discretion in imposing maximum sentence possible for the pled offense, where defendant pled guilty to an offense that does not adequately describe conduct, particularly where a significant reduction in potential exposure to imprisonment was obtained through plea bargaining, and offense involved violence to victim); *State v. Givens*, 45,354 (La. App. 2 Cir. 6/23/10), 42 So.3d 451, 453-54 (noting that near maximum sentences are reserved for worst offenders and worst offenses; however, in a case where defendant pled guilty to an offense that does not adequately describe conduct, the general rule does not apply and the district court has great discretion in imposing the maximum sentence possible for the pled offense); *State v. Victorian*, 09-1273 (La. App. 1 Cir. 12/23/09), 2009 WL 4981484 *2 (unpublished) (finding the district court has great discretion in imposing the maximum sentence possible for the pleaded offense, where defendant pled guilty to offense that does not adequately describe conduct or received significant reduction in potential exposure to confinement through plea bargain).

Based on the foregoing, we find that the district court did not abuse its discretion in imposing an upper-range sentence of 35 years. Accordingly, this assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.