

**STATE OF LOUISIANA**

\*

**NO. 2000-KA-1368**

**VERSUS**

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**COURT OF APPEAL**

**BEVERLY J. MACK**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 393-774, SECTION "H"  
Honorable Camille Buras, Judge

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**Charles R. Jones**  
**Judge**

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(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, and Judge Dennis R. Bagneris, Sr.)

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## **COUNSEL FOR BEVERLY J. MACK**

**AFFIRMED**

Beverly J. Mack appeals his conviction for possession of cocaine, and his sentence as a second felony offender to a term of ten years imprisonment. In his lone assignment of error, he argues that his sentence is excessive. We affirm.

At trial, Police Officer Eugene Smothers testified that he was working at about 3 a.m. on September 11, 1997, when he observed Mack at the intersection of Prieur and Dumaine Streets. The officer said Mack was standing with a woman in front of 1927 Dumaine Street, and it appeared a drug transaction was occurring. Mack had a metal tube in his hand, and he was showing the woman what it contained. When Officer Smothers, who was driving a marked police car, approached them, they turned to walk back to the house. The officer parked, got out of the car, and began to follow

them; he then saw Mack drop the metal tube behind a dresser that was standing at the side of the house at 1927 Dumaine Street. Officer Smothers detained the couple and retrieved the metal tube, which contained four rocks.

Karen Lewis Holmes, an expert in the analysis of controlled dangerous substances, testified that she performed a crystal test and a gas chromatography/mass spectrometer test on the four rocks introduced by the State. Both tests indicated the rocks were cocaine.

Mr. Jimmy Emerson testified for the defense that he knows Mack and the area of Dumaine Street where Mack lived on September 11, 1997. Mr. Emerson testified there was no street light at all in front of 1927 Dumaine Street. In his only assignment of error, Mack complains that his ten-year sentence is excessive. He argues that the prosecutor suggested a lesser sentence, and that the sentence was not tailored to him. Mack was sentenced under La. R.S. 40:967(C) and La. R.S. 15:529.1(A)(2)(a). Those statutes mandate a term between two and one-half and ten years imprisonment. He was sentenced to the maximum sentence.

An appellate court reviews sentences for constitutional excessiveness under La. Const. Art. I, §20. A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment or is the purposeless imposition of pain and suffering and is grossly out of

proportion to the severity of the crime. State v. Johnson, 97-1906, pp. 6-7 (La. 3/4/98), 709 So. 2d 672, 677.

Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So. 2d 719 (La. 1983). If adequate compliance with La. C.Cr.P. article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Guajardo, 428 So. 2d 468 (La. 1983).

When the trial judge fails to sufficiently set forth the factors considered in the imposition of the sentence, there is no need to remand the matter for resentencing if the record clearly shows an adequate factual basis which supports the sentence imposed. State v. Welch, 550 So. 2d 265 (La. App. 4th Cir. 1989).

Mack first argues that the prosecutor suggested a two-year sentence; however, the defense counsel made that statement. The prosecutor recited Mack's criminal history, noting that he was convicted of attempted possession of a firearm by a convicted felon in 1996, possession of cocaine

with intent to distribute in 1985, and simple robbery in 1978.

At the multiple bill sentencing on March 26, 1999, the fingerprint expert compared Mack's fingerprints taken in court that day with those on documents from his 1996 attempted possession of a firearm by a convicted felon conviction and found them to be identical. The trial court then asked Mack if he was ready for sentencing, and Mack asked to make a statement. Mack then told the court that he had been misrepresented throughout the trial, and even if he was sentenced that day, he “will be back” because he is innocent.

The court then noted Mack's criminal history and observed that he could have been sentenced as a third felony offender and received a life term. The court stated that the guidelines in La. C.Cr.P. art. 894.1 had been considered, as had the serious nature of his prior offenses.

Mack has two drug convictions, a weapons conviction, and a crime of violence conviction. Even though the trial court did not give extensive reasons for imposing the sentence, we find no abuse of discretion and that Mack's sentence is warranted. See State v. Soraporu, 97-1027 (La. 10/13/97), 703 So.2d 608.

There is no merit in this assignment.

Thus, for the foregoing reasons, Beverly J. Mack's conviction and

sentence are affirmed.

**AFFIRMED**