

**STATE OF LOUISIANA**

\*

**NO. 2000-KA-1698**

**VERSUS**

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**COURT OF APPEAL**

**MICHELLE COLEMAN**

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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. 414-054, SECTION "J"  
HONORABLE LEON CANNIZZARO, JUDGE

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**CHARLES R. JONES**  
**JUDGE**

\*\*\*\*\*

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

***HARRY F. CONNICK***  
***DISTRICT ATTORNEY***  
***JULIE C. TIZZARD***  
***ASSISTANT DISTRICT ATTORNEY***  
***NEW ORLEANS, LOUISIANA 70119***  
***COUNSEL FOR STATE OF LOUISIANA***

***PAMELA S. MORAN***  
***LOUISIANA APPELLATE PROJECT***  
***NEW ORLEANS, LOUISIANA 70184-0030***  
***COUNSEL FOR MICHELLE COLEMAN***

**AFFIRMED**

A six-member jury found the defendant/appellant, Michelle Coleman, guilty of simple possession of cocaine. After the State filed a multiple bill, Coleman was found to be a third-felony offender. The district court subsequently sentenced her to serve forty months with the Department of Corrections. Coleman filed a Motion for Reconsideration of the Sentence, by the trial court denied her motion. From this judgment, Coleman filed the instant appeal. After reviewing the record, we hereby affirm the trial court's judgment.

***FACTS***

Police Officers Bryant Louis and Melvin Williams testified at trial that they were on routine patrol in the 1900 block of Second Street on April 5, 2000, when they noticed Michelle Coleman. The officers recognized Coleman as having had a municipal attachment issued for her failure to appear in court. The officers stopped Coleman, confirmed that an attachment had been issued for her arrest, and then arrested her. They took her to Central Lockup, where she admitted to them that she was carrying a glass crack cocaine pipe. When Coleman surrendered the pipe to the

officers, they arrested her for possession of drug paraphernalia. Upon closer inspection of the object, the officers noticed that the pipe contained a residue, which was later tested and determined to be cocaine. The officer then amended the charges to simple possession of cocaine on Coleman's bill of information.

### ***EXCESSIVE SENTENCE***

In her sole assignment of error, Coleman contends the district court imposed a constitutionally excessive sentence. Though Coleman admitted to pleading guilty to the prior offenses at the multiple bill hearing, she argues that forty-month sentence was constitutionally excessive given the facts and circumstances of her present and prior convictions. More specifically, Coleman argues that as per *State v. Dorthey*, 623 So. 2d 1276 (La. 1993), the district court should have imposed a lesser sentence below the mandatory minimum.

Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. *State v. Sepulvado*, 367 So. 2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless and needless imposition of pain and suffering, and is grossly out of proportion to

the severity of the crime. *State v. Lobato*, 603 So. 2d 739 (La. 1992); *State v. Telsee*, 425 So. 2d 1251 (La. 1983).

The minimum sentences imposed on multiple offenders by the Habitual Offender Law are presumed to be constitutional. *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So. 2d 672. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. *State v. Short*, 96-2780 (La. App. 4 Cir. 11/18/98), 725 So. 2d 23, *writ denied* 99-0198 (La. 5/14/99), 745 So.2d 11. A court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it that would rebut the presumption of constitutionality. *State v. Johnson*, 97-1906 at p. 7, 709 So. 2d at 676. The Louisiana Supreme Court recently reviewed the law on point when the defendant receives the mandatory minimum sentence. In citing *Johnson* and *State v. Young*, 94-1636 (La. App. 4 Cir. 10/26/95), 663 So. 2d 525, 529, *writ denied*, 95-3010 (La. 3/22/96), 669 So.2d 1223, the Supreme Court stated:

To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that:

[he] is exceptional, which in this context 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.

*State v. Lindsey*, 99-3256, p. 5 (La. 10/17/00), 770 So.2d 339. (Emphasis added).

In the instant case, Coleman argues the mandatory sentence of forty months at hard labor is excessive because her present and prior convictions were for non-violent offenses, and the two prior convictions were felony thefts of goods valued under \$500. At sentencing on the multiple bill, the trial court adequately advised Coleman of her rights prior to accepting her plea to the bill and also advised her of the minimum sentence she could receive under the bill. Coleman did not set forth any arguments as to why the minimum sentence would be excessive in her case. Given her prior convictions and her failure to specify a justification for a lesser sentence pursuant to *Lindsey* and *Johnson*, we find the trial court correctly imposed the mandatory minimum sentence in this case. Accordingly, we affirm Michelle Coleman's conviction and sentence.

**AFFIRMED**

