

**STATE OF LOUISIANA**

\*

**NO. 2000-KA-2662**

**VERSUS**

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**COURT OF APPEAL**

**KENAN ALLEN**

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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. 413-342, SECTION "F"  
Honorable Dennis J. Waldron, Judge

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

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(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray,  
and Judge Dennis R. Bagneris, Sr.)

Laura Pavy  
**LOUISIANA APPELLATE PROJECT**  
P.O. Box 750602  
New Orleans, LA 70175-0602  
**COUNSEL FOR KENAN ALLEN**

**CONVICTION AFFIRMED;**  
**SENTENCE VACATED AND**  
**REMANDED FOR RESENTENCING**

Kenan Allen appeals his conviction and sentence for distribution of a counterfeit controlled dangerous substance. We affirm.

At trial, Sergeant John Gagliano of the New Orleans Police Department, testified that he was working in an undercover capacity in the French Quarter, walking in the 600 block of Bourbon Street when he was approached by a man, later identified as Allen, who asked if he wanted to buy cocaine. Sergeant Gagliano answered affirmatively, and Allen suggested they walk to the 700 block of St. Louis Street where the Compact Food Store is located. Allen said that his “boy” had “the stuff” there, and he went in to get it. The sergeant waited outside the store, and Allen returned to the sidewalk and told Gagliano to quit looking into the place because he was making everyone nervous. The sergeant moved to the side of the building, and Allen returned about five minutes later with a cellophane package of white powder which he handed to the sergeant. Allen said it cost \$100. The sergeant reached for his badge as though he were reaching for his wallet and told Allen he was under arrest. Allen punched the officer in the face and tried to fight with him, but Sergeant Gagliano grabbed him and they fell to the ground. The sergeant’s backup officer was able to come to his aid, and Allen was arrested.

Detective Vincent George testified at trial that he was Sergeant Gagliano's partner when Allen was arrested. The detective was acting as a cover officer so as to provide safety for his partner when he saw that the sergeant was in an altercation. He rushed to help his partner and arrested Allen.

There was a stipulation between the parties at trial that the white powder was tested and did not prove to be cocaine. A six person jury found Allen guilty as charged, and the court sentenced him to serve 5 years imprisonment at hard labor. This timely appeal followed.

In a single assignment of error, Allen argues that his sentence is excessive

Article I, Section 20 of the 1974 Louisiana Constitution prohibits the imposition of excessive punishment. A sentence may be reviewed for excessiveness even though it is well within statutory guidelines. La.C.Cr.P. art. 881.2; State v. Cann, 471 So.2d 701 (La. 1985). The imposition of a sentence may be unconstitutionally excessive if it is grossly out of proportion to the severity of the crime or is nothing more than the purposeless imposition of pain and suffering. State v. Lobato, 603 So.2d 739 (La. 1992). State v. Telsee, 425 So.2d 1251 (La. 1983); State v. Caston, 477 So.2d 868 (La. App. 4th Cir. 1985). 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. Quebedeaux, 424 So.2d 1009 (La. 1982.) If adequate compliance with 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 the case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense charged. State v. Guajardo, 428 So.2d 468 (La. 1983). The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. State v. Lanclos, 419 So.2d 475 (La. 1982).

Allen was sentenced under La. R.S. 40:971.1, which provides that a sentence of imprisonment with or without hard labor of not more than five years and a fine of five thousand dollars may be imposed. Allen received the maximum term of five years.

Allen asserts that the imposition of a five-year sentence is excessive because the trial court failed to set forth reasons pursuant to La. C.Cr.P. art.

894.1. We agree. A review of the sentencing transcript indicates that the court simply imposed the maximum sentence. As such, the record does not reflect that the sentence is warranted in light of the particular circumstances of this case. Thus, we remand for resentencing in accordance with La. C.Cr.P. art. 894.1.

For reasons stated above, Kenan Allen's conviction is affirmed, but his sentence is vacated. The matter is remanded to the district court for resentencing.

**CONVICTION AFFIRMED;**  
**SENTENCE VACATED AND**  
**REMANDED FOR RESENTENCING**