

STATE OF LOUISIANA

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NO. 2000-KA-2764

VERSUS

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COURT OF APPEAL

PAUL D. PETERSON

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
PLAQUEMINES 25TH JUDICIAL DISTRICT COURT
NO. 99-2627, DIVISION "A"
HONORABLE ANTHONY RAGUSA, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, Judge
Max N. Tobias Jr.)

HON. RICHARD P. IEYOUB, ATTORNEY GENERAL
HON. DARRYL W. BUBRIG, SR., DISTRICT ATTORNEY
25TH JUDICIAL DISTRICT, PARISH OF PLAQUEMINES
COURTHOUSE
POINTE-A-LA-HACHE, LA 70082

AND

GILBERT V. ANDRY IV, ASSISTANT DISTRICT ATTORNEY
610 BARONNE STREET
NEW ORLEANS, LA. 70113
COUNSEL FOR PLAINTIFF/APPELLEE

SHERRY WATTERS
LOUISIANA APPELLATE PROJECT
P. O. BOX 58769
NEW ORLEANS, LA 701588769
COUNSEL FOR DEFENDANT/APPELLANT

The defendant, Paul D. Peterson, was charged by bill of information on July 6, 1999, with simple burglary, a violation of La. R.S. 14:62. At his arraignment on July 26, 1999 he pleaded not guilty. Probable cause was found and the motions to suppress the evidence and identification were denied on October 13, 1999. On February 2, 2000, Peterson withdrew his earlier plea and entered a plea of guilty as charged. He was sentenced on May 18, 2000 to serve nine years at hard labor. The defendant's motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

The facts of the case were recited by the assistant district attorney at the hearing when the defendant pleaded guilty. They are as follows:

The defendant Paul Peterson went into a camp up here on the east bank on June 23, 1999 located in Carlisle, the camp belonged to a few people They went to the camp on that particular day to go fishing or hunting and when arriving they noticed, thought someone was inside. When someone went inside they found Mr. Peterson inside the place in a bed or actually he jumped up and then he tried to run out. They said he was buck naked. He had been there—when they questioned him he said he was there two days. Also in a previous hearing we had in this matter when those people testified they caught him there before and let him go. And in addition there was some damage done to the property, under five hundred, some locks or some windows, something

of that sort is what took place.

In a single assignment of error, the defendant argues that the nine-year sentence imposed is excessive. Under La. R.S. 14:62, the sentencing range is up to twelve years and/or payment of a \$2,000.00 fine. The forty-seven year old Peterson maintains that because he has been employed and has no violent convictions, he should not have received a sentence that is three-fourths of the maximum term.

Article I, Section 20 of the Louisiana Constitution of 1974 provides that “[n]o law shall subject any person ... to cruel, excessive or unusual punishment.” A sentence within statutory limits is constitutionally 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. Caston, 477 So.2d 868, 871 (La. App. 4 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. Soco, 441 So.2d 719 (La. 1983); State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

If adequate compliance with the 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 so charged. State v. Caston, 477 So.2d 868 (La. App. 4 Cir. 1985).

In this case, the trial judge ordered a pre-sentencing investigatory report. At the sentencing hearing he referred to that report, stating:

It reflects here that Mr. Peterson has convictions or adjudications of negligent homicide on January 18 of 1980. Simple escape of 1983. Felony theft of January 6, 1986. Unauthorized use of a moveable on November 26, 1986. D.W.I. on June 18 of 1990, also battery of an officer, resisting arrest on that particular date. Simple burglary on February 19th of 1991.

After the defendant acknowledged that this criminal history was correct, the trial court considered whether there was an undue risk the defendant would commit another crime and concluded that he would because the defendant “has been on probation a number of times and has never completed more than one year of being on probation without it being revoked.” The court also concluded that the defendant was in need of a custodial environment. As to the question of a lesser sentence deprecating the seriousness of the crime, the court noted that the circumstances of this crime are not particularly serious but the defendant has at least five prior felony convictions. His plea of guilty was predicated on the State’s promise not to

multiple bill him. The aggravating and mitigating factors of La. C.Cr.P. art. 894.1 were each discussed. The court then asked the defendant about his family and learned that Peterson has two adult children living in other states and whom he had not seen in more than a year. After a thorough review under La. C.Cr.P. art. 894.1, the judge sentenced Peterson to nine years at hard labor.

Finding adequate compliance with the Article 894.1, we turn to a consideration of whether the sentence is too severe in light of other similar cases. In State v. Cox, 604 So. 2d 189 (La. App. 2 Cir. 1992), a couple pleaded guilty to simple burglary, and the man, who like Peterson had a criminal record but was not multiple billed, received a nine-year sentence. The Second Circuit found that the defendant had significantly benefited from his plea agreement and the sentence was not excessive. See State v. Petty, 99-1307 (La. App. 5 Cir. 4/12/00), 759 So. 2d 946, writ denied, 2000-1718 (La. 3/16/01), 2001 WL 263706, ___So. 2d ____, (defendant convicted of simple burglary with four prior felonies received a twelve- year sentence); State v. Burns, 32,904 (La. App. 2 Cir. 2/1/00), 750 So. 2d 505, (defendant convicted of simple burglary with two prior felonies and probation violations received a ten-year sentence); State v. Goldman, 29, 456 (La. App. 2 Cir. 4/2/97), 691 So. 2d 354, (defendant convicted of simple

burglary, who had an alcohol abuse problem and probation violations, received a twelve-year term).

Although the middle-aged Peterson has been able to maintain employment in a life marked by alcohol abuse and many felony offenses, we find his criminal career overshadows his work record. The pre-sentence investigatory report refers to his “reckless lifestyle” and recommends a long incarceration. Thus, the record, the trial court’s reasons under La. C.Cr.P. art. 894.1, and the jurisprudence all support the nine-year sentence, and we find it is not excessive.

Accordingly, for reasons stated above, the defendant’s conviction and sentence are affirmed.

AFFIRMED