STATE OF LOUISIANA	*	**NO. 2001-KA-1493**
VERSUS	*	**COURT OF APPEAL**
DAVID L. BROWN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 420-629, SECTION "F"
Honorable Dennis J. Waldron, Judge

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JUDGE

JOAN BERNARD ARMSTRONG

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge Terri F. Love)

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AFFIRMED.

The defendant, David L. Brown, was charged by bill of information with possession of a firearm by a convicted felon on March 27, 2001. After a hearing on April 12, 2001, the trial court found probable cause and denied the motions to suppress the statement and the evidence. A twelve-member jury found him guilty as charged after trial on April 24, 2001. He was sentenced on May 1, 2001, to serve ten years at hard labor without benefit of parole, probation, or suspension of sentence; a fine of $1000 was imposed. The trial court denied the motion to reconsider the sentence and granted the motion for an appeal.

At trial Mr. William Sabel, the security supervisor for Channel 4, testified that he works at 1021 North Rampart Street. On February 28, 2001, he looked from his window and saw the defendant walking with another man and showing him a .22 pistol. They were walking on Rampart Street towards Canal Street. Mr. Sabel left his office and rushed onto the street. The police officers found the gun in the defendant's coat pocket. Mr. Brown was across the street from the First District Police Station when he was

stopped.

Officer Edgar Baron testified that he was driving to work when he was stopped by a man who reported that someone was “displaying” a gun to people on the street. When the man was pointed out, Officer Baron detained him. During a pat down, a gun was found in his coat, and the officer arrested the defendant who told him that the gun was on the ground outside his workplace. Officer Baron said that the rain had just stopped, but the gun’s leather holster was completely dry. When the defendant’s name was entered into the police computer, the officer learned that the defendant had been convicted of a felony, and he was arrested for possession of a firearm in violation of La. R.S. 14:95.1.

The defendant testified that he had finished unloading a trailer of furniture in the 1000 block of Rampart Street when he saw a gun on the brick sidewalk near the Armstrong Park fence. At first he thought it was a toy, but he realized after he picked it up and felt its weight that it was real. The defendant showed it to a co-worker and told him that the gun should be turned in at the police station to keep it from children. As he was walking toward the station on Rampart Street, he was arrested. He acknowledged having prior convictions for second degree battery in 1998, and possession of crack cocaine in 1992. The defendant said the rain had stopped at 10

a.m., and he found that gun around 2 p.m. Under cross-examination, he admitted to having additional convictions for aggravated assault in 1976 and robbery in 1977.

Officer Baron was recalled. He said that when the defendant was arrested nothing was said about his taking the gun to the police department. Furthermore, the defendant told the officer he found the gun outside his workplace. Mr. Baron

reiterated that the ground was wet when the defendant was arrested. In a single assignment of error, the defendant argues that his sentence is excessive. While acknowledging that he received the minimum sentence under La. R.S. 14:95.1, the defendant maintains that the trial court did not consider the mitigating factor that he was simply transporting the gun to the police station.

Article I, Section 20, of the Louisiana Constitution of 1974 provides that "No law shall subject any person . . . to cruel, excessive or unusual punishment." A sentence within the statutory limit 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. Brogdon, 457 So.2d 616, 625 (La. 1984). 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, 720 (La. 1983).

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 his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, 424 So.2d 1009, 1014 (La. 1982); State v. Guajardo, 428 So.2d 468, 472-73 (La. 1983).

In State v. Cook, 95-2784, (La. 5/31/96), 674 So.2d 957, the Louisiana Supreme Court held that on appellate review of sentence, the only relevant question is "whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate." Id. at p.3, 674 So.2d at 959 (quoting State v. Humphrey, 445 So.2d 1155, 1165 (La. 1984)).

At the sentencing hearing, the trial court simply noted that the defendant was receiving the minimum term under the statute. Because the minimum sentence is presumed constitutional, a trial court, in considering whether the minimum sentence for a particular crime would be unconstitutional if applied to a particular defendant, may do so only if there

is clear and convincing evidence to rebut the presumption of constitutionality. State v. Johnson, 97-1906 (La. 3/4/98), 709 So.2d 672, 677. Here there was no evidence presented to the court to establish that this defendant is an exception and should received a lesser term of imprisonment.

Furthermore, the defendant's argument that the trial court should have taken into account his position that he was turning the gun into the police is misdirected. That argument was more properly made to the jury who might have found him not guilty; however, the jury evidently did not believe his testimony and found him guilty as charged. Given the facts of this case, we do not find the trial court erred in sentencing him to ten years at hard labor.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.