STATE OF LOUISIANA	*	**NO. 2001-KA-2060**
VERSUS	*	**COURT OF APPEAL**
JOSEPH C. MAJOR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 248-586, DIVISION "D"
HONORABLE KIRK A. VAUGHN, JUDGE
* * * * * *
JAMES F. MCKAY, III
JUDGE
* * * * * *

(Court composed of Judge James F. McKay, III, Judge Michael E. Kirby, Judge David S. Gorbaty)

WILLIAM R. CAMPBELL, JR.
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorney for Defendant/Appellant

AFFIRMED

On February 2, 2001, Joseph C. Major was charged by bill of information

with hit-and-run driving in violation of La. R.S. 14:100. He was arraigned on February 13th and pleaded not guilty. However, on May 8th the day set for trial, he withdrew his earlier plea and entered a plea of guilty as charged. The court ordered a pre-sentencing investigatory report, and on July 9th, after the court reviewed the report, Mr. Major was sentenced to serve ten years at hard labor. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

Because no trial occurred, a full statement of the facts is found only in the pre-sentencing report; it states as follows:

> The subject Joseph Major was driving a 1980 Oldsmobile Delta 88 westbound on LA 45 on December 25, 2000, with, [sic] Emery Duplessis, Cornell Anderson and Jarmin Reed. The vehicle struck a highly intoxicated Frank Joseph, who was walking along the shoulder of the highway. The subject fled the scene and traveled with his passengers to his sister's residence, blocks away. Anderson called 911 and reported a body on the side of the road. The group returned to the scene in another vehicle where authorities had arrived, but did not indicate that they were involved. The victim was pronounced deceased and all parties left the scene and went their separate ways.
> On December 26th, St Bernard narcotics Officers obtained information regarding the driver and passengers of the vehicle. Sheriff's Officers and State Police investigated further, taking statements from the subject and his passengers. The said vehicle was located at the subject's brother's residence in New Orleans East. It had sustained damage consistent with the scene of the accident.
> On December 27, 2000, Joseph Major was charged

with Hit and Run.

The 34th Judicial District Court Bill of Information states that on or about th [sic] 25th day of December, 2000, Joseph C. Major, "being the driver of a vehicle involved in an accident, did intentionally fail to stop said vehicle at the scene of said accident to give his identity and render reasonable aid to Frank L. Joseph."

In a single assignment of error, the defendant argues that his ten-year sentence is excessive. He complains that no reasons for the sentence were given and many mitigating factors were not considered.

La. R.S. 14:100(A) defines hit—and—run driving as the "intentional failure of the driver of a vehicle involved in or causing any accident, to stop such vehicle at the scene of the accident, to give his identity, and to render aid." Under R.S. 14:100(C)(2) where death is a result of the accident and the driver should have known that death or serious injury occurred, the penalty for hit-and-run driving is a fine of not more than $5,000 or imprisonment with or without hard labor for not more than ten years, or both. The defendant received the maximum term of imprisonment of ten years

La. Const. art. I, § 20 prohibits excessive sentences. State v. Baxley, 94-2982, p. 4, (La. 5/22/95), 656 So. 2d 973, 977. "Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment." State v. Brady, 97-1095, p. 17 (La. App. 4 Cir. 2/3/99), 727 So. 2d 1264, 1272. However, the

penalties provided by the legislature reflect the degree to which the criminal conduct is an affront to society. Baxley, 94-2984 at p. 10, 656 So. 2d at 979. A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than 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, 676. "A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice." Baxley, 94-2984 at p. 9, 656 So. 2d at 979.

In reviewing a claim that a sentence is excessive, an appellate court generally must determine whether the trial judge has adequately complied with statutory guidelines in La. C.Cr.P. art. 894.1, and whether the sentence is warranted under the facts established by the record. State v. Trepagnier, 97-2427, p. 11 (La. App. 4 Cir. 9/15/99), 744 So. 2d 181, 189. If adequate compliance with La. C.Cr.P. art. 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. Ross, 98-0283, p. 8 (La. App. 4 Cir. 9/8/99),

743 So. 2d 757, 762.

However, in State v. Major, 96-1214 (La. App. 4 Cir. 3/4/98), 708 So. 2d 813, this court stated:

> 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). The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La. C.Cr.P. art. 881.4(D).

96-1214 at p. 10, 708 So. 2d at 819.

In State v. Soraparu, 97-1027 (La. 10/13/97), 703 So. 2d 608, the Louisiana Supreme Court stated:

> 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.'" [Cite omitted]. For legal sentences imposed within the range provided by the legislature, a trial court abuses its discretion only when it contravenes the prohibition of excessive punishment in La. Const. art. I, § 20, i.e., when it imposes "punishment disproportionate to the offense." State v. Sepulvado, 367 So.2d 762, 767 (La.1979). In cases in which the trial court has left a less than fully articulated record indicating that it has considered not only aggravating circumstances but also factors militating for a less severe sentence, State v. Franks, 373 So.2d 1307, 1308 (La.1979), a remand for resentencing is

> appropriate only when "there appear[s] to be a substantial possibility that the defendant's complaints of an excessive sentence ha[ve] merit." State v. Wimberly, 414 So.2d 666, 672 (La.1982).

Id.

At sentencing, the victim's mother addressed the court and asked that the defendant receive the longest term possible because he did not stop immediately to help her son and he never told her he was sorry for her son's death. The defense attorney then noted that the police report stated that the victim was "highly intoxicated" and that the defendant did not stop immediately because he was on probation and did not want to go back to jail. Additionally, he noted one of the occupants of the car called for help for the victim, and the defendant returned to the scene after changing cars. Then prior to announcing the sentence, the trial court simply stated, "Court agrees with the victim's family. It's a very difficult thing for any family. It's inexcusable conduct."

Thus, the defendant received the maximum term, and the trial court did not state any reasons when imposing the sentence. However, the pre-sentencing investigatory report recommended an "extensive period of incarceration" for the defendant. Moreover, the information about the defendant in the report does not support a lesser sentence. Joseph Major was twenty-two at the time of sentencing, and he acknowledged that he started

selling crack cocaine when he was fifteen. He denied being addicted to drugs or alcohol but claims he sold only to make money. His criminal record indicates that he was arrested twice as a juvenile, once for simple battery in 1993 and once for a juvenile warrant in 1994. The defendant told the probation officer that he was placed on juvenile probation when he was sixteen for possession of cocaine, and he spent a year in Scottsville Juvenile Facility in Baton Rouge where he completed his GED. As an adult he was convicted for possession of crack cocaine in 1998 and placed on probation; however, he did not comply with the terms of his probation. When he tested positive for cocaine and marijuana in 1999, his probation was revoked. He was convicted for a second possession of cocaine offense in December of 1999 and was released in October of 2000. The hit-and-run offence occurred in December of 2000 while he was on probation. Thus, the defendant committed three offenses between 1998 and 2000. He was given lenient sentences and probation twice, and both times he violated the terms of probation. The pre-sentencing report also indicates that the defendant was outside his parole district and in the company of two convicted felons when the hit-and-run occurred.

The defendant maintains that the court should have considered that he had no serious prior offenses; however, he has been in the criminal system

for six years, and the evidence is that he has not benefited from receiving any leniency. Mr. Major also contends that his crime was not premeditated and there was no evidence that he was drunk, speeding, or reckless when it occurred. The fact that he did not turn himself in or attempt to help the victim immediately precludes our consideration of such possible mitigating factors. The defendant waited two days to tell his story, and the victim died. Any mitigating evidence that could have been obtained on the scene that night was lost.

The record supports the ten-year sentence imposed on the defendant. We do not find merit in his claim that his sentence is excessive.

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

AFFIRMED