NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-0251**
VERSUS	*	**COURT OF APPEAL**
KENARD ROBINSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 391-976, SECTION "G"
Honorable Julian A. Parker, Judge

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Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes, III, Judge Steven R. Plotkin, and Judge James F. McKay, III)

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AFFIRMED

Defendant, Kenard Robinson, appeals his resentencing. We affirm.

After a trial on January 22, 1998, a twelve-member jury found Robinson guilty of armed robbery. The trial court sentenced him to thirty years at hard labor, without benefit of probation, parole, or suspension of sentence on February 26, 1998. He appealed and this court affirmed his conviction and vacated his sentence, remanding the case for resentencing in compliance with La. C.Cr.P. art. 894.1. *State v. Robinson*, 98-1606 (La. App. 4 Cir. 8/11/99), 744 So.2d 119. The trial court resentenced Robinson on June 9, 2000, to serve thirty years at hard labor without benefit of parole, probation, or suspension of sentence. Robinson appeals the re-imposition of the thirty-year sentence.

Robinson contends that the trial court failed to justify re-imposing the thirty-year sentence. Robinson did not file a written motion for reconsideration of sentence pursuant to La. C.Cr.P. art. 881.1. Because Robinson's counsel orally objected to the sentence at the conclusion of the sentencing hearing, Robinson is limited to having this court review the claim

of excessive sentence. *State v. Mims*, 619 So.2d 1059 (La. 1993); *State v. Thompson*, 98-0988 (La. App. 4 Cir. 1/26/00), 752 So.2d 293, *writ denied, sub nom. State ex rel. Thompson v. State,* 2001 -0087 (La. 11/2/01), 800 So.2d 870.

The Louisiana Constitution explicitly prohibits excessive sentences. Article I, § 20; *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*, *supra*, 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, 677. 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*, *supra,* 94-2984 at p. 9, 656 So.2d at 979; *State v. Hills*, 98-0507, p. 5 (La. App. 4 Cir. 1/20/99), 727 So.2d 1215, 1217.

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, p. 10 (La. App. 4 Cir. 3/4/98), 708 So.2d 813, 819, *writ denied*, 98-2171 (La. 1/15/99), 735 So.2d 647, 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). . . .

In *State v. Soraporu*, 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.' " *State v. Cook,* 95-2784, p. 3 (La. 5/31/96), 674 So.2d 957, 959 (quoting *State v. Humphrey*, 445 So.2d 1155, 1165 (La.1984)), cert. denied, 519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996). 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.*

Robinson was subject to a sentence of not less than five nor more than ninety-nine years at hard labor, without benefit of parole, probation or suspension of sentence. La. R.S. 14:64 (as in effect at the time of the 1997 offense).

At the resentencing hearing, the trial court found that Robinson

required correctional treatment and a custodial environment which could best be provided by commitment to a penal institutional, that a suspended sentence would offer an undue risk that Robinson would commit another crime, and that any lesser sentence would deprecate the seriousness of the crime. The judge noted that the jury had not found Robinson's testimony at trial creditable and added that he agreed with the jury's finding. A pre-sentence investigatory report had been ordered prior to sentencing and was cited. The trial court stated that:

> . . . the defendant has a lengthy rap sheet which includes a juvenile record for truancy, simple criminal damage to property under $500.00, simple battery, simple battery, disturbing the peace, assault—adult record of arrest including disburbing [sic] the peace, assault, battery, battery, aggravated assault, simple criminal damage to property in the amount of $500.00 to $5000.00, possession of a concealed weapon, misrepresentation of name and address, criminal trespass, an armed robbery which was refused by the Orleans Parish District Attorney's Office on the 1st of April, 1997 because the victim refused to come forward. He was arrested again shortly after his release from custody in connection with that matter on the 6th of July, 1997 for battery, said charge being dismissed on the 24th of July, 1997. And once again, he was arrested for armed robbery on August 21, 1997 which is the instant offense . . . .

The trial court also read from the pre-sentence investigatory report the probation agent's comment:

> . . . Subject is a 22 year old black male classified as a first offender; however, he was arrested three times for battery, once for aggravated assault, once for concealed weapon on his person and a previous arrest for armed robbery. The subject has only one conviction but has a pattern of arrests for violent offenses. . . .

In imposing the thirty-year sentence, the trial court considered the facts of the case and Robinson's criminal history. Although he is a first offender, Robinson's criminal history as well as the facts of the current offense, indicate he has no respect for law and is a danger to the community. He sought to justify his version of the robbery of the victim by explaining that it was the result of a drug deal in which the victim did not pay him what was owed. The trial court adequately complied with the statutory guidelines.

Youthful first offenders have received thirty-year or longer sentences for armed robberies in recent cases. In *State v. Johnson*, 99-0385 (La. App. 1 Cir. 11/5/99), 745 So.2d 217, *writ denied,* 2001-0829 (La. 11/13/00), 774 So.2d 971, the First Circuit affirmed concurrent sentences of thirty and fifty-five years at hard labor, respectively, for aggravated burglary and armed robbery, as well as a consecutive ten-year sentence for armed robbery. The defendant, who was fifteen years old at the time of the offenses, was a first-felony offender. However, he had eighteen juvenile arrests, including some for armed robbery.

In *State v. Carter*, 99-2234 (La. App. 4 Cir. 1/24/01), 779 So.2d 125, *writ denied*, 2001-0903 (La. 2/1/01), 808 So.2d 331, this court affirmed six thirty-five year sentences, running concurrently, for a twenty-one year old first offender who robbed several couples at gun point as they were parking or getting into cars late at night. In *Carter* this court noted that the trial court complied with La. C.Cr.P. art. 894.1 at sentencing and also ordered a pre-sentencing investigatory report. The report indicated that the defendant had been adjudicated a delinquent and had several arrests as an adult. Furthermore, the defendant failed to specify any mitigating factors that might have been considered by the trial court.

In the present case, Robinson argues that at his resentencing, the trial court used his criminal history as the basis for the thirty-year term, and he points out that he has only arrests for crimes and not convictions. However, a trial court can consider the entire criminal record of a defendant in determining the appropriate sentence to be imposed. *State v. Ballett*, 98-2568, p. 25 (La. App. 4 Cir. 3/15/00), 756 So.2d 587, 602, *writ denied sub nom. State ex rel. Ballet v. State,* 2000-1490 (La. 2/9/01), 785 So.2d 31. Furthermore, as in *Carter, supra,* Robinson did not specify any mitigating factors that should have been considered.

The record shows that Robinson is a dangerous individual with a long

record of juvenile and adult arrests. The trial court considered aggravating factors and the pre-sentence investigation report. It cannot be said that Robinson's sentence 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. Nor can it be said that when the crime and sentence are considered in light of the harm done to society, it shocks the sense of justice.

Accordingly, the defendant's sentence is affirmed.

AFFIRMED