NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-1348**
VERSUS	*	**COURT OF APPEAL**
CHRISTOPHER J. POWELL	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 427-690, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., and Judge Michael E. Kirby)

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AFFIRMED

Christopher J. Powell was charged by bill of information on January 31, 2002, with possession of cocaine in violation of La. R.S. 40:967(C). At his arraignment on February 6th he pleaded not guilty. After a trial on February 27th a six-person jury found the defendant guilty of attempted possession of cocaine. On May 6th Powell was sentenced to serve thirty months at hard labor under La. R.S. 15:574.5, the About Face Program in Orleans Parish Prison.

Officer Matthew McCleary and Sergeant Bryan Lampart were on proactive patrol on January 9, 2002, when they observed the defendant walking southbound on Elysian Fields toward North Roman Street. At the intersection, the defendant walked in front of the police car. On seeing the officers, the defendant turned quickly and began walking the opposite way. His right hand was in his back pocket, and he pulled his hand out and discarded a small object that appeared to be a clear plastic bag. Powell was only ten feet from the officers when he discarded the object. The officers stopped, detained the defendant, and picked up the object which was near the curb. After being arrested and advised of his Miranda warnings, Powell

stated that he had been addicted to drugs for ten years and it was for his personal use. When he was searched incident to arrest, a spoon was found in Powell's left pants pocket.

The parties stipulated that the rock found in the plastic bag the defendant threw down was tested and proved to be crack cocaine.

Christopher Powell, the thirty-four year old defendant, testified that he was walking on Touro Street near Prieur Street when a police car stopped, and the officers detained and questioned him. They put his name into the police computer but got no information about Powell. However, after finding the spoon in his back pocket, the officers handcuffed him. Powell was placed in the backseat and taken first to his home where his father attested to his name. Then as he was being driven to Central Lock Up, the officers discussed "where . . . [they would] put him." They determined he should be on North Roman Street and Elysian Fields. The officers also declared, "we'll put maybe one or two bags on him," in order to arrest him for possession of cocaine. The defendant denied having a rock of cocaine or dropping it when he crossed the street. He admitted he was carrying the spoon because of his heroin problem.

Officer McCleary testified in rebuttal that Powell was stopped on Elysian Fields, that he was never taken to his home, and that the officers had

no trouble finding his name in the police computer.

In a single assignment of error, the defendant claims that the trial court erred in imposing an unconstitutionally excessive sentence.

La. Const. art. I, § 20 explicitly 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, rehearing granted on other grounds, (La. App. 4 Cir. 3/16/99); State v. Francis, 96-2389, p. 6 (La. App. 4 Cir. 4/15/98), 715 So.2d 457, 461. 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, citing State v. Ryans, 513 So. 2d 386, 387 (La. App. 4 Cir. 1987). 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; State v. Lindsey, 99-3256 (La. 10/17/00), 770 So. 2d 339. 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; 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; State v. Robinson, 98-1606, p. 12 (La. App. 4 Cir. 8/11/99), 744 So. 2d 119, 127. 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; State v. Bonicard, 98-0665, p. 3 (La. App. 4 Cir. 8/4/99), 752 So. 2d 184, 185.

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.

At sentencing the trial court, after considering the Pre-Sentence Investigatory Report, stated,

> I learned from the Probation Officer that . . . you have at least two prior felony convictions prior to this conviction [of] which you were found guilty during this year. Now you pled guilty in 1985 to the charge of Possession of Valium and Possession of Marijuana. You were given a one year sentence. That sentence, that probation was eventually revoked in 1987. In addition to that, you have another felony conviction for Obtaining Drugs by False Prescription in Jefferson Parish. In 1992 you were given a two year sentence for that. You have a number of arrests since that '92 conviction. Essentially and several of the arrests have led to convictions for misdemeanor charges, minor charges in Municipal Court. The Probation Officers do not recommend probation for you. Also because you are a third offender you are not eligible to receive a suspended sentence or be placed on probation.

In his brief the defendant, through counsel, argues that he should not have received the maximum sentence under La. R.S. 40:979 (R.S. 40:967(C)) of thirty months because the record indicates he is a drug addict, and he was harshly sentenced for that status.

As the trial court stated, the defendant's prior felonies are for drug offenses. However, we do not agree that defendant was sentenced harshly because of "status" offenses. It is not his condition or status as an addict that is at issue, but rather it is his continued action in violation of the laws of this

state concerning controlled dangerous substances. After his first drug conviction when he was on probation, he was offered help in overcoming his addiction; however, he did not attend a drug rehabilitation clinic and was then put in an intensive incarceration program. Yet he was convicted of another drug offense in Jefferson Parish. The trial court recognized his problem, and his current sentence is under La. R.S. 15:574.5, the About Face Program in Orleans Parish Prison.

In State v. Monette, 99-1870 (La. App. 4 Cir. 3/22/00), 758 So. 2d 362, the defendant, a first-felony offender convicted of attempted possession of cocaine, received the maximum sentence, thirty months at hard labor. In that case, the sentence was suspended and the defendant was placed on probation with special conditions intended to break her drug habit. In reviewing the defendant's excessive sentence claim this court held that the trial court sentenced the defendant to the maximum sentence in order to persuade her to comply with the terms of her probation and dissuade her from a life of cocaine addiction.

In the instant case, the defendant was not eligible for probation because of his criminal record. However, his sentence is tailored to offer him help in overcoming his dependence on illegal substances. We do not find the thirty month sentence excessive in this case.

Accordingly, the defendant's conviction and sentence are affirmed.

AFFIRMED