NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-1389**
VERSUS	*	**COURT OF APPEAL**
JIMMIE C. HINTON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 427-802, SECTION "J"
HONORABLE LEON CANNIZZARO, JUDGE

* * * * * *

Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes, III, Judge Dennis R. Bagneris, Sr., and Judge David S. Gorbaty)

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AFFIRMED

Jimmy C. Hinton appeals his sentence for his conviction for attempted of possession of cocaine as a multiple offender. We affirm.

Court Procedure

On February 4, 2002, Jimmie C. Hinton, Jr., was charged by bill of information with possession of cocaine with intent to distribute in violation of La. R.S. 40:967(A). After a trial on February 28, 2002, a six-member jury found the defendant guilty of attempted possession of cocaine. The State filed a multiple bill charging Hinton as a triple offender, and on April 4, 2002, after being advised of his rights, Hinton pleaded guilty to the multiple bill. He was sentenced to serve thirty months at hard labor under La. R.S. 15:529.1(A)(1)(b)(i). He was also sentenced under La. R.S. 15:574.5, the About Face Program. The trial court denied Hinton's motion for reconsideration of sentence, and granted his motion for an appeal.

Facts

At trial Detective Eric Smith testified that he was wearing plain clothes and driving an unmarked car, when he set up a surveillance in the

900 block of Robertson Street on December 5, 2001. He observed Hinton engaged in a hand-to-hand drug transaction. He radioed his backup team, and they planned to conduct an investigatory stop of Hinton. However, as the detective was leaving, Hinton flagged him down. When the detective stopped, Hinton asked what he needed. The detective asked, "What you got?" and Hinton answered that he had powder. The detective was not prepared to buy, and he told Hinton that he had to leave to get some money. Again Detective Smith radioed his team to describe the incident, and the support unit arrived and arrested Hinton.

Detective Patrick Evans testified that as he drove to the address that Detective Smith gave him, he was wearing plain clothes and driving an unmarked car that night. Detective Evans detained Hinton while Detective Smith drove around the block to check that the person detained was the person who had offered to sell cocaine. Detective Smith indicated that Detective Evans had stopped the right man. In a search pursuant to arrest, Detective Evans found a bag of white powder in Hinton's back pocket. A black bag directly behind Mr. Hinton held a spoon with a white powder residue and two syringes, one of which contained a brown liquid.

The parties stipulated that the white powder in the bag, the white powder residue on the spoon, and the brown liquid in the syringe were all

tested and proved to be cocaine.

Excessive Sentence

On appeal, Hinton claims that the trial court erred in imposing an unconstitutionally excessive sentence. As a third offender under La. R.S. 40:979 and La. R.S. 15:529.1(A)(1)(b) (i), the defendant faced a sentence of twenty to sixty months at hard labor. He received a thirty-month term.

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). 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, 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. Lindsey*, 99-3302 (La. 10/17/00), 770 So.2d 339, *certiorari denied sub nom. Lindsey v. Louisiana*,

532 U.S. 1010, 121 S.Ct. 1939, 149 L.Ed.2d 663 (2001). 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,* 94-2982 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, *writ denied*, 99-2632 (La. 3/17/00), 756 So.2d 324.

However, in *State v. Major*, 96-1214 (La. App. 4 Cir. 3/4/98), 708

So.2d 813, *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).
> . . .
> 96-1214 at p. 10, 708 So. 2d at 819.

At the sentencing hearing, the trial court, after considering the pre-sentence investigatory report, stated:

> . . . The probation department informs me he has two prior felony convictions. In 1989, he pled guilty to the charge of aggravated battery, given a suspended sentence and placed on probation for that charge. That probation was terminated unsatisfactory. 1990, the defendant – 1991 entered a plea in this court of guilty to possession of cocaine, sentenced to two and one half years. He was given probation. Looks like the probation was also revoked. In both cases, he was given suspended sentences and placed on probation both times. In one case, the probation was terminated unsatisfactory and the second probation was revoked.
>
> This is the charge in which the jury gave Mr. Hinton some significant consideration by finding him guilty of a lesser charge of attempted possession of cocaine. He was initially billed with possession with the intent to distribute cocaine. There was some evidence to support the fact that he was involved and engaged in the dealing of substances if for no other reason to, unfortunately, support his own nasty habit. . . .

In his brief Hinton, through counsel, argues that he should not

have received the thirty-month sentence because the record indicates he has not had a conviction since 1991, and he should have been given some credit for that ten-year crime-free period.

As the trial court stated, Hinton received suspended sentences and probation for each of his prior offenses. According to the pre-sentence investigatory report, after Mr. Hinton's 1991 conviction, he was placed on five years probation. The docket master for the 1991 conviction indicates that Mr. Hinton tested positive for drugs in 1995. He was again released on probation with special conditions. When he tested positive for drugs again in 1996, he was imprisoned for thirty months. Thus, he was under the supervision of the Department of Corrections during almost the entire decade of the 1990's.

Mr. Hinton's 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