

**STATE OF LOUISIANA**

\*

**NO. 2002-KA-1739**

**VERSUS**

\*

**COURT OF APPEAL**

**MICHEL J. PORCHE**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 418-022, SECTION "J"

Honorable Leon Cannizzaro, Judge

\* \* \* \* \*

**JOAN BERNARD ARMSTRONG**

**JUDGE**

\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G.  
Waltzer, and Judge Michael E. Kirby)

**Harry F. Connick**, District Attorney  
**Leslie Parker Tullier**, Assistant District Attorney  
619 South White Street  
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

**Laura Pavy**  
LOUISIANA APPELLATE PROJECT  
P.O. Box 750602  
New Orleans, LA 70175-0602

COUNSEL FOR DEFENDANT/APPELLANT

**SENTENCE AFFIRMED.**

This appeal concerns a sentencing only.

Michel J. Porche was convicted, after trial on March 6, 2001, of four counts of first degree robbery in violation of La. R.S. 14:64.1, one count of second degree kidnapping in violation of La. R.S. 14:44.1, one count of aggravated sexual battery in violation of La. R.S. 14:43.2, and one count of armed robbery in violation of La. R.S. 14:64. He was sentenced on May 21, 2001, to forty years for the conviction on count one for first-degree robbery, to twenty years for the conviction on count two for second degree kidnapping, to twenty years on the conviction on count three for aggravated sexual battery, to forty years for the conviction on count four for first degree robbery, to forty years for the conviction on count six for first degree robbery, to forty years for the conviction on count seven for first degree robbery, and to fifty years for the conviction on count eight for armed robbery; the sentences on the convictions for counts one, two and three are to run concurrently, and the sentences for the convictions on counts four, six, seven and eight are to run consecutively to each other and to the sentences for the convictions on counts one, two and three. The trial court imposed the sentences without the benefit of probation, parole, or suspension of sentence.

The state filed a multiple bill of information charging Porche to be a

second felony offender. Porche was adjudicated a second felony offender on July 11, 2001, after a hearing. The trial court vacated the sentences on count one, first-degree robbery, count three, aggravated sexual battery, and count eight, armed robbery. The trial court sentenced Porche, as a second felony offender, to forty years on the conviction for first-degree robbery (count one), to twenty years on the conviction for aggravated sexual battery (count three), and to fifty years on the conviction for armed robbery (count eight). The trial court imposed these sentences without benefit of probation, parole, or suspension of sentence and ordered the sentences on the convictions on counts one, two and three to run concurrently and the sentences on the convictions on counts four, six, seven and eight to run consecutively to each other and to the sentences on the convictions on counts one, two and three.

He appealed, and in State v. Porche, 2001-2086 (La. App. 4 Cir. 5/22/02), 819 So. 2d 1122, this court affirmed his convictions and his adjudication as a second felony offender on counts one and eight. This court found that the trial court erred in sentencing the defendant as a multiple offender on count three because counts one and three arose out of the same incident. This court vacated his multiple offender sentences and remanded the case for resentencing.

The facts of the case, as presented in the earlier appeal, are as follows:

On 26 March 1999, a man robbed Latesha Warren of \$22

at the intersection of South Claiborne Avenue and General Taylor Street. Warren described the perpetrator as a black male subject, light skinned, forty to fifty years old, with green-gray eyes. The perpetrator used force by threatening the victim's life and implying that he had a gun. On 21 January 2000 the police presented a photographic line-up to Warren and Warren identified Porche as the perpetrator. At trial she again identified Porche as the man who robbed her on 26 March 1999.

R. H. testified that on 10 January 2000, she was robbed on South Claiborne Avenue at its intersection with Napoleon Avenue. R.H. testified that the perpetrator told her he had a gun in his pocket, and he demanded she give him her money. After she gave the robber her money, he demanded that she accompany him. As they walked, the perpetrator demanded that R.H. give him her watch and rings. After walking a few blocks with the assailant, R.H. testified that he ordered her to stop in a grassy area and squat down. As the victim complied the perpetrator exposed his penis and ordered her to perform oral sex on him. She testified that he ejaculated in her mouth and ordered her to spit it out and walk away slowly. She then ran for help and called the police, via a 911 call. R.H. described the perpetrator for the police that night as a light-skinned black male with light colored eyes and missing bottom teeth. R.H. identified Porche as the perpetrator both in a photographic line-up in January 2000 and at trial.

On 12 January 2000, both Christian Elloie and Vickie Robbins were robbed. Elloie testified that the perpetrator approached her at approximately 3:30 p.m. near a bus stop on Elysian Fields Avenue and Gentilly Blvd. on her way home from school. Robbins testified that she was approached at the same bus stop at approximately 9:15 p.m. on her way home from work. Each victim testified that the perpetrator told her that he would kill her if she did not hand over her money. Both Elloie and Robbins identified Porche in a photographic line-up and at trial as the man who robbed them.

On 22 January 2000, Jamie Fortenberry was robbed of approximately \$90 as she sat at a bus stop near South Claiborne and Napoleon Avenues. The perpetrator showed Fortenberry a

gun and demanded her money. She described the perpetrator to the police as a light-skinned black man with light colored eyes. She identified Porche as the perpetrator both from a photographic line-up and at trial.

State v. Porche, 2001-2086, pp. 3-4, 819 So. 2d at 1125.

Porche was resentenced on June 11, 2002, on count three to serve fifteen years at hard labor without benefit of parole, probation, or suspension of sentence. The sentence was imposed to run concurrently to the sentences imposed on counts one and two and consecutively to the sentences imposed in counts four, six, seven, and eight. The court then resentenced the defendant as a multiple offender. As to count one, he was resentenced to serve forty years at hard labor without benefits of parole, probation, or suspension of sentence. On count eight, he was resentenced to serve fifty years at hard labor without benefits of parole, probation, or suspension of sentence. Count one is to run concurrently with counts two and three and consecutively with counts four, six, seven, and eight; count eight is to run consecutively to counts one, four, six and seven.

In a single assignment of error, the defendant through counsel argues that the sentences are excessive. He objects that the trial court gave no basis for the sentences which add up to more than two hundred years.

Article 1, 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. Caston, 477 So.2d 868, 871 (La. App. 4 Cir. 1985). 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 (La. 1983); State v. Quebedeaux, 424 So. 2d 1009 (La. 1982).

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. Quebedeaux, 424 So. 2d 1009 (La. 1982); State v. Guajardo, 428 So.2d 468 (La. 1983).

At the resentencing hearing, the court did not give reasons for the sentences.

Porche was sentenced under the Habitual Offender Statute on counts one and eight, for first degree and armed robbery respectively. For a second offender convicted under La. R.S. 15:529.1, the sentencing range for first

degree robbery is twenty to eighty years without benefits, and the defendant received a forty-year term which is mid-range. For armed robbery the range is forty-nine and one-half years to one hundred ninety-eight years without benefits. The defendant received a term close to the minimum.

As to count three, the aggravated sexual battery conviction, Porche received the maximum sentence of fifteen years without benefits. He also received the maximum sentence of forty years on three first degree robbery convictions (counts four, six and seven), and twenty years on the second degree kidnapping conviction which is one-half of the maximum sentence.

The defendant claims that the trial court asserted no basis for imposing these long, consecutive sentences. However, we note that all seven of the defendant's convictions are for violent crimes; moreover, he has two prior convictions: one for aggravated rape in 1987 and the other for simple kidnapping in 1997. Moreover, the defendant's longest sentence, fifty years as a second offender for armed robbery, is six months less than the minimum term for that offense.

The statute governing concurrent and consecutive sentences, La. C.Cr.P. art. 883, provides:

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of

imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. (Emphasis added)

Louisiana law favors concurrent sentences; however, a trial judge retains the discretion to impose consecutive sentences on the basis of other factors, including the offender's past criminality, violence in the charged crimes, or the risk that the defendant poses to the general safety of the community. State v. Thomas, 98-1144 (La. 10/9/98), 719 So.2d 49. In the case at bar, the consecutive sentences are based on separate incidents, and the judge obviously found the defendant a great risk to public safety. Clearly, the judge believed that the defendant was the worst sort of offender of the crimes for which he was convicted. In light of these factors, we find no abuse of discretion in ordering the sentences to be served consecutively. State v. Lee, 94-2584 (La. App. 4 Cir. 1/19/96), 668 So. 2d 420, 427.

There is no merit to this argument.

For the foregoing reasons, the defendant's sentences are affirmed.

**SENTENCE AFFIRMED.**