

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 KA 0669**

**STATE OF LOUISIANA**

**VERSUS**

**LEON TERRANCE ROUNDS, III**

Judgment Rendered: **FEB 25 2013**

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On Appeal from the 19th Judicial District Court  
In and for the Parish of East Baton Rouge  
Trial Court Number 01-09-0304

The Honorable Richard D. Anderson, Judge Presiding

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Leon Terrance Rounds, III

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**BEFORE: PARRO, HUGHES, AND WELCH, JJ.**

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**HUGHES, J.**

The defendant, Leon Terrance Rounds, III, was charged by an amended bill of information with one count of second degree battery (Count I), a violation of LSA-R.S. 14:34.1, and one count of illegal use of weapons (Count II), a violation of LSA-R.S. 14:94; he pled guilty. On Count I, he was sentenced to five years at hard labor. On Count II, he was sentenced to two years at hard labor. The trial court ordered that the sentences imposed on Counts I and II would run concurrently with each other. The defendant now appeals, contending that the trial court imposed unconstitutionally excessive sentences and that his trial counsel's failure to make or file a motion to reconsider sentence constituted ineffective assistance of counsel. For the following reasons, we affirm the convictions and sentences.

**FACTS**

Due to the defendant's guilty pleas, there was no trial, and thus, no trial testimony concerning the offenses. The State, however, set forth the following factual basis for the guilty pleas, which the defendant accepted.

On October 28, 2008, the defendant "got into a disagreement" with the victim, Tanisha Stokes, the mother of one of his children. During the argument, the defendant armed himself with a gun and fired the weapon at the victim in a residential neighborhood. The victim was struck in the arm by the gunfire, causing her serious bodily injury and extreme physical pain.

**LAW AND ANALYSIS**

In his first assignment of error, the defendant argues that imposition of "the greatest possible sentence" is grossly out of proportion to the seriousness of the offenses and is nothing more than a purposeless and needless infliction of pain and

suffering. In his second assignment of error, the defendant argues that this court should consider the constitutionality of the sentences, even though his trial counsel failed to file a motion to reconsider the sentence; and, in the event this court finds the failure of trial counsel to make or file a motion to reconsider the sentence precludes consideration of the constitutionality of the sentences, then the trial counsel's failure to make the motion constitutes ineffective assistance of counsel.

We will address the defendant's first assignment of error, even though no timely motion to reconsider the sentence imposed or contemporaneous objection was made before the trial court, since it would be a necessary part of the analysis of his assigned error as to ineffective assistance of counsel, and to do so is in the interest of judicial economy. See State v. Bickham, 98-1839 (La. App. 1 Cir. 6/25/99), 739 So.2d 887, 891-92.

#### Excessive Sentences

Article I, Section 20, of the Louisiana Constitution, prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. State v. Hardeman, 2004-0760 (La. App. 1 Cir. 2/18/05), 906 So.2d 616, 627; State v. Hurst, 99-2868 (La. App. 1

Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

In the instant case, with respect to Count I, LSA-R.S. 14:34.1 (prior to its amendment by 2009 La. Acts, No. 264, § 1, and 2012 La. Acts, No. 40, § 1) provided that “[w]hoever commits the crime of second degree battery shall be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.” On Count I, the defendant was sentenced to five years at hard labor. With respect to Count II, LSA-R.S. 14:94(B) provides that “whoever commits the crime of illegal use of weapons or dangerous instrumentalities shall be fined not more than one thousand dollars, or imprisoned with or without hard labor for not more than two years, or both.” On Count II, the defendant was sentenced to two years at hard labor. The trial court ordered that the sentences imposed on Counts I and II would run concurrently with each other.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. See LSA-C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. In light of the criteria expressed in Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court’s stated reasons and factual basis for its sentencing decision. **State v. Hardeman**, 906 So.2d at 626-27; **State v. Hurst**, 797 So.2d at 83.

At sentencing, the trial court noted that the defendant had originally been arrested for, and booked with, five counts of attempted first degree murder<sup>1</sup> in

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<sup>1</sup> While the record in this case shows that the defendant was arrested for five counts of attempted first degree murder, the bill of information filed by the district attorney originally charged the defendant with attempted second degree murder.

connection with the incident. The court also noted that the defendant had fired three to five shots in the incident. Additionally, the court stated that it had ordered, reviewed, and considered a presentence investigation report (PSI) in the case, as well as letters from "family and friends and ministers." The PSI indicated that, while out on bond in connection with the instant offenses, the defendant was charged with simple battery, second degree battery, and aggravated assault following another attack on the victim. The second incident resulted from the defendant demanding \$30 from the victim for transporting her to a doctor's appointment, and her refusal to pay him any more than \$10. Thereafter, the defendant pushed the victim to the ground "striking her head several times on the concrete." The victim told the defendant she would have him arrested for shooting her in the incident that resulted in the initial charges filed against him. The defendant responded by removing a gun from his vehicle and threatening to shoot the victim again.

In sentencing the defendant, the court noted that: the defendant was thirty-three years old; he was a first-felony offender; he was single; and he had a four-year-old daughter from his five-year-long relationship with the victim. The court further recited the defendant's employment and education history. The court also stated that, in connection with the PSI, the defendant had been interviewed and claimed that he was sorry for what had happened to the victim, his daughter, and the other persons involved; he also claimed he had "become closer to God" while incarcerated and was "a changed man."

The trial court further pointed out that the defendant had greatly reduced his

penalty exposure by agreeing to plead guilty to amended charges in this matter.<sup>2</sup> A trial judge must consider every circumstance surrounding the offense, including plea bargaining. To do otherwise would be to ignore clearly relevant information that has an important bearing on the true nature of the defendant's conduct and the type of punishment most appropriate for that conduct. Therefore, a trial court may permissibly consider, in imposing sentence, the fact that a defendant has reduced his penalty exposure by plea bargaining. See State v. Lanclos, 419 So.2d 475, 478 (La. 1982).

A thorough review of the record reveals the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentences herein. See LSA-C.Cr.P. art. 894.1(A)(1), (A)(3), (B)(5), (B)(10), (B)(12), (B)(18), (B)(21), and (B)(33). Further, the sentences imposed were not grossly disproportionate to the severity of the offenses and, thus, were not unconstitutionally excessive. See State v. Letell, 2012-0180 (La. App. 1 Cir. 10/25/12), 103 So.3d 1129, 1139.

We further conclude that maximum sentences were justified under the particular facts and circumstances of this case. Maximum sentences may be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. State v. Miller, 96-2040 (La. App. 1 Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459. We deem the defendant's offenses as among the most serious offenses; he repeatedly fired a gun in a residential neighborhood, which resulted in a risk of death or serious bodily harm to

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<sup>2</sup> The defendant was originally charged with the attempted second degree murder of Tanisha Stokes, a violation of LSA-R.S. 14:30.1 and LSA-R.S. 14:27, but, with the consent of the victim and as part of a plea bargain, the bill of information was amended to reduce the charges to second degree battery and illegal use of weapons, as stated hereinabove.

the victim, who was shot, and everyone else present in the neighborhood. Further, the defendant is among the most serious of offenders, since, while out on bond on the shooting offense, he attacked the victim and threatened to shoot her again. The defendant was originally charged with the attempted second degree murder of the victim, his child's mother, and the charges were amended to the present lesser charges as a result of a plea bargain and the victim's consent to the amendment, greatly lessening the sentence he faced for his actions.<sup>3</sup>

#### Ineffective Assistance of Counsel

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for the defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that, but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate

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<sup>3</sup> We note that the crime of attempted second degree murder would have carried a potential sentence of imprisonment at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence, pursuant to LSA-R.S. 14:27(D)(1)(a) and LSA-R.S. 14:30.1(B).

showing on one of the components. **State v. Lucas**, 99-1524 (La. App. 1 Cir. 5/12/00), 762 So.2d 717, 728; **State v. Serigny**, 610 So.2d 857, 859-60 (La. App. 1 Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

Assuming, arguendo, that the defendant's trial counsel performed deficiently in failing to timely move for reconsideration of the sentences, the defendant suffered no prejudice from the deficient performance, since this court considered the defendant's excessive sentences argument in connection with the ineffective assistance of counsel claim.

These assignments of error are without merit.

**CONVICTIONS AND SENTENCES AFFIRMED.**