

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 KA 0805

STATE OF LOUISIANA

VERSUS

RONDELL DELANEY

Judgment Rendered: DEC 21 2012

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 502481-1

Honorable William J. Burris, Judge

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BEFORE: CARTER, C.J., GUIDRY, AND GAIDRY, JJ.

Handwritten signatures and initials in black ink on the left side of the page. The top signature appears to be 'W.P. Reed', followed by 'K.W. Landry', and 'L.T.V. Clark' at the bottom.

GUIDRY, J.

Defendant, Rondell Delaney, and two codefendants were charged by bill of information with one count of armed robbery, a violation of La. R.S. 14:64.¹ He pled not guilty and, after a jury trial, was found guilty as charged. The trial court denied defendant's motions for new trial and postverdict judgment of acquittal and sentenced defendant to serve thirty-five years at hard labor, without benefit of parole, probation, or suspension of sentence. Defendant filed a motion to reconsider sentence, but the trial court denied that motion. Defendant now appeals, alleging that the trial court erred in denying his motion to reconsider sentence and in imposing an excessive sentence. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

On the evening of December 23, 2010, Dylan Wood was delivering pizzas for Domino's Pizza in Slidell when he was assigned to make a delivery to 59320 Banner Road. As he drove down Banner Road attempting to locate the address for his delivery, Wood was flagged down by a black male who informed him that he had placed the order. The black male instructed Wood to bring the pizza to the door of a nearby residence, where his aunt would pay for it. Wood reversed his car into the residence's driveway, gathered the pizzas for delivery, and exited his vehicle.

As Wood began to walk toward the residence, the black male approached him with a silver or chrome object that appeared to be a semiautomatic pistol. He positioned himself behind Wood and pressed the weapon into Wood's back as he ordered Wood to get onto his hands and knees. The perpetrator then searched Wood's pockets and removed his wallet, delivery "bank," cell phone, and keys. During this time, approximately four other black males emerged from behind a

¹ Codefendants Henry Banks and Damion Stevenson both later pled guilty to accessory after the fact to armed robbery, a violation of La. R.S. 14:25 and 14:64. They are not parties to this appeal.

nearby tree and approached the area where Wood knelt on the ground. After waiting for a few minutes, Wood looked around and discovered that he appeared to be alone. He noticed at that time that his insulated pizza carrier had also been taken from where he presumably dropped it near his vehicle. He ran approximately one quarter of a mile back to his Domino's store and called the police.

Later on the same evening, the police were able to "ping" the cell phone used to place the delivery call, and they traced its location to a house in a subdivision near to where the offense occurred. At this location, the police encountered defendant, his two codefendants, and a juvenile who was also charged in connection with the instant offense. During a search of the premises and the suspects, police officers were able to recover Wood's wallet, keys, cell phone, insulated pizza carrier, and a couple items of discarded clothing. Defendant was also found to possess currency in the same denominations carried by Wood in his personal wallet and his delivery "bank." Defendant later gave a recorded statement to detectives where he admitted committing the robbery, but insisted that he had only used a pipe instead of a gun during the offense.

ASSIGNMENTS OF ERROR

In his two assignments of error, defendant argues that the trial court erred in denying his motion to reconsider sentence and in imposing a constitutionally excessive sentence. Specifically, defendant argues that his sentence of thirty-five years at hard labor, without benefit of parole, probation, or suspension of sentence, is excessive in light of his youth at the time of the offense and his lack of a significant felony history. Because defendant's two assignments of error involve the same arguments, we address them together.

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. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979). See also State v. Lanieu, 98-1260 (La. App. 1st Cir. 4/1/99), 734 So. 2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So. 2d 962. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. See State v. Dorthey, 623 So. 2d 1276, 1280 (La. 1993). 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. State v. Hogan, 480 So. 2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. State v. Lobato, 603 So. 2d 739, 751 (La. 1992).

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. C.Cr.P. art. 894.1. The trial court need not cite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the guidelines. State v. Herrin, 562 So. 2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So. 2d 942 (La. 1990). In light of the criteria expressed by 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. Watkins, 532 So. 2d 1182, 1186 (La. App. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982).

For his conviction for armed robbery, defendant was eligible to receive a sentence of ten to ninety-nine years at hard labor, without benefit of parole, probation, or suspension of sentence. La. R.S. 14:64(B). He actually received a

sentence of thirty-five years at hard labor, without benefit of parole, probation, or suspension of sentence.

Prior to imposing sentence on defendant, the trial court considered the contents of a victim impact statement from Dylan Wood, in which he testified to the lingering adverse psychological effects that he has experienced since the robbery. The trial court also considered testimony from defendant's grandfather which detailed defendant's troubled childhood, including a diagnosis of attention deficit disorder. Finally, the trial court ordered and received a presentence investigation report ("PSI") that detailed defendant's prior, but minimal, criminal history.

In considering the Article 894.1 factors, the trial court noted that neither a probated nor a suspended sentence would be available to defendant for his offense. The trial court also found that defendant was in need of correctional treatment in a custodial environment that can be provided most effectively by his commitment to an institution. The trial court also believed that a lesser sentence would deprecate the seriousness of defendant's offense. The trial court stated that defendant's conduct during the armed robbery manifested a deliberate cruelty to the victim and that defendant used threats of violence and a dangerous weapon in the commission of the offense. Finally, the trial court found that defendant acted as a leader in concert with other persons in committing the armed robbery. In mitigation, the trial court noted defendant's youth and his relative lack of a criminal history.

Considering the reasons stated by the trial court and based on the entire record before us, we find no abuse of discretion by the trial court in sentencing defendant. The trial court adequately considered those mitigating factors raised by defendant in his instant appeal and clearly found them to be outweighed by the aggravating factors cited in its reasons for sentence. Defendant's sentence of thirty-five years at hard labor, without benefit of parole, probation, or suspension

of sentence, is neither grossly disproportionate to the severity of the crime, in light of the harm to society, nor so disproportionate as to shock our sense of justice.

These assignments of error lack merit.

For the foregoing reasons, we affirm defendant's conviction and sentence.

SENTENCE AND CONVICTION AFFIRMED.