**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 KA 1547

STATE OF LOUISIANA

VERSUS

ALLEN CHARLES BRIDGET, SR.

Judgment Rendered: MAR 22 2013

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On Appeal from the
16th Judicial District Court,
In and for the Parish of St. Mary,
State of Louisiana
Trial Court No. 165527 and 178667

Honorable Gerard B. Wattigny, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

**HIGGINBOTHAM, J.**

The defendant, Allen Charles Bridget, Sr., was charged by bill of information with possession of a Schedule II controlled dangerous substance, cocaine, a violation of La. R.S. 40:967(C).[1] See also La. R.S. 40:964 Schedule II(A)(4). On September 29, 2004, the defendant initially entered a plea of not guilty. On December 1, 2005, after he withdrew his initial plea and entered a plea of guilty as charged, the trial court sentenced the defendant to two years imprisonment at hard labor. On December 8, 2005, the State filed a habitual offender bill of information. On January 30, 2006, the defendant filed a pro se motion to reconsider sentence which was denied by the trial court on February 1, 2006. On March 3, 2006, the habitual offender hearing was held, wherein the defendant was adjudicated a second-felony habitual offender, the original sentence was vacated, and an enhanced sentence of ten years imprisonment at hard labor was imposed.

On April 10, 2006, the defendant's counseled motion to reconsider sentence was filed, asking the court to reconsider the enhanced sentence.[2] On December 15, 2008, the defendant again filed a pro se motion to reconsider the original, two-year sentence. On January 21, 2009, the trial court denied the pro se motion to reconsider sentence, in part noting that a prior motion to reconsider the original sentence had been denied and that the sentence had been vacated. The trial court also noted, "Furthermore, the court is not inclined to reconsider Defendant's ten-year sentence, which he is serving pursuant to his conviction as a second multiple offender."

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[1] The name suffix on the defense brief submitted on appeal indicates that the defendant is a junior. However, the name suffix used herein is as consistently stated throughout the record. Also, a charge of indecent behavior with a juvenile listed in the bill of information was severed by the State.

[2] While it appears that the defendant's motion to reconsider sentence was untimely pursuant to La. Code Crim. P. art. 881.1(A)(1), resulting in an untimely motion for appeal, in the interest of judicial efficiency, the instant appeal will not be dismissed. See **State v. Shay**, 2007-0624 (La. 10/26/07), 966 So.2d 562.

On November 2, 2011, the defendant filed a pro se motion to correct illegal sentence contending that the trial court failed to give him credit for time served on the original sentence. On January 11, 2012, the trial court held a hearing on the defendant's motion to correct illegal sentence and granted the motion insofar as the sentence was clarified to note that the defendant's credit for time served would include the time served on the original sentence imposed in this case. The sentence was otherwise unchanged. The defendant now appeals, assigning error to the trial court's denial of his motion to quash the habitual offender bill of information, to the habitual offender adjudication, and to the constitutionality of the sentence. For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

## STATEMENT OF FACTS

Since the defendant pled guilty to the instant offense, the facts were not fully developed. However, the following factual basis was presented at the **Boykin** hearing and agreed upon by the defendant and his counsel. On August 4, 2004, Officer Paul Scott of the Patterson Police Department attempted to execute a warrant for the defendant. The defendant removed his hat as Officer Scott approached him, and a piece of white rock-like substance fell from the defendant's hat. The substance was seized, and was later tested by the Acadiana Crime Lab and determined to contain cocaine.

## ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant argues that the trial court erred in not granting his motion to quash the habitual offender bill of information. The defendant specifically argues that a habitual offender proceeding must be completed before the defendant serves the sentence which is to be enhanced. The defendant notes that in this case he fully served the original sentence of two years prior to the date of the hearing on his motion to correct an illegal sentence. The

defendant argues that the State and trial court failed to act with reasonable diligence to bring a proper habitual offender proceeding against him.

On April 9, 2008, the defendant filed a motion opposing the habitual offender bill of information in the trial court, but the motion did not raise the speedy-trial issue. Accordingly, he failed to preserve this issue for appeal. La. Code Crim. P. art. 841. Nevertheless, even if we address the defendant's speedy-trial argument, we find that it is without merit.

Louisiana Code Criminal Procedure article 874 provides that a sentence shall be imposed without unreasonable delay. Under La. R.S. 15:529.1(D)(1)(a), a multiple bill may be filed against a defendant who has been convicted of a felony "at any time, either after conviction or sentence." While La. R.S. 15:529.1 does not establish a time limit for habitual offender proceedings, the jurisprudence holds that a habitual offender bill must be filed within a reasonable time after the State learns the defendant has prior felony convictions. **State v. Muhammad**, 2003-2991 (La. 5/25/04), 875 So.2d 45, 54. This rationale is based upon a defendant's constitutional right to a speedy trial and to know the full consequences of the verdict within a reasonable time. See **State v. Broussard**, 416 So.2d 109, 110-11 (La. 1982).

Though cited by the defendant herein on appeal, the Louisiana Supreme Court overruled **State ex rel. Williams v. Henderson**, 289 So.2d 74 (La. 1974) and **State ex rel. Glynn v. Blackburn**, 485 So.2d 926 (La. 1986), to the extent that they established a bright line rule that multiple offender proceedings must be completed before the defendant satisfies his sentence on the underlying felony. **Muhammad**, 875 So.2d at 56. The **Muhammad** Court held that an evaluation of the circumstances surrounding the multiple offender proceedings should be conducted on a case-by-case basis. **Muhammad**, 875 So.2d at 54. In **Muhammad,** the Court recognized that "[t]here are two concepts at issue in this case-the timely *filing* of a multiple offender bill of information and the timely

*hearing or completion* of the proceeding." **Muhammad**, 875 So.2d at 56. In **Muhammad**, the original multiple offender bill of information was filed on the date of the defendant's sentencing, which was before he was released from custody. Due to a series of events, including remands following two appeals, the defendant was not finally adjudicated a multiple offender until four months after his sentence completion date. The issue was whether the multiple offender adjudication was timely completed. The Court found that the State did not unduly or unreasonably delay in completing the multiple offender proceedings, noting the "[d]efendant was never released from prison only to have the State thereafter file enhancement proceedings." **Muhammad**, 875 So.2d at 56.

As a general matter, the United States Supreme Court has set forth four factors for courts to consider in determining whether a defendant's right to a speedy trial has been violated. Those factors are the length of the delay, the reasons for the delay, the accused's assertion of his right to a speedy trial, and the prejudice to the accused resulting from the delay. **Barker v. Wingo**, 407 U.S. 514, 530–33, 92 S.Ct. 2182, 2192-93, 33 L.Ed.2d 101 (1972). While these factors are neither definitive nor dispositive in the context of a habitual offender proceeding, they are instructive. See **Muhammad**, 875 So.2d at 55; see also **State v. Reaves**, 376 So.2d 136, 138 (La. 1979).

In this case, the guilty plea and the imposition of the original sentence took place on December 1, 2005. The State filed the habitual offender bill of information on December 8, 2005, only seven days later. On January 30, 2006, the defendant filed a pro se motion to reconsider sentence, which was denied by the trial court on February 1, 2006. On February 17, 2006, the State filed a motion to set the habitual offender hearing date. Approximately three months after the original sentence was imposed, on March 3, 2006, the habitual offender hearing took place, wherein the defendant was adjudicated a second-felony habitual offender, the original sentence was vacated, and the defendant was resentenced to

ten years imprisonment at hard labor. Clearly, the multiple offender adjudication was timely completed in this case. At his original sentencing hearing, the defendant was made aware that the State would be filing a habitual offender bill of information. The defendant has made no showing of nor do we find, any prejudice resulting from the brief delay. Further, there is nothing in the record before us that indicates any abusive or vindictive behavior by the State. Thus, the defendant's due process rights were not violated. Assignment of error number one is without merit.

## ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant contends that the State failed to meet its burden of proof at the habitual offender hearing. The defendant notes that his trial counsel not only failed to object to hearsay testimony presented at the habitual offender hearing, but also did not ask any questions about the validity of the 1996 predicate plea. The defendant contends that there was no mention of a **Boykin** transcript or an examination to see if his predicate guilty plea was valid. The defendant argues that since the State failed to prove that his 1996 guilty plea was informed, free and voluntary, and made with an articulated waiver of his constitutional rights, the trial court erroneously adjudicated him a second-felony offender. Further, the defendant adds that the failure of the trial court to advise him of the sentencing range at the time of the predicate plea renders the plea constitutionally suspect. Finally, the defendant claims that because his predicate plea was made pursuant to former La. R.S. 40:983, it cannot be used to enhance a sentence for purposes of a habitual offender adjudication.

Generally, the issue of ineffective assistance of counsel is a matter more properly addressed in an application for post-conviction relief, filed in the trial court where a full evidentiary hearing can be conducted.[3] **State v. Prudholm**, 446

[3] The defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, *et seq.*, to receive such a hearing.

So.2d 729, 737 (La. 1984). But an evidentiary hearing is not necessary where the record on appeal is sufficient to permit a determination of counsel's effectiveness at trial. **State v. Seiss**, 428 So.2d 444, 448-49 (La. 1983). Under such circumstances, it is in the interest of judicial economy to dispose of the issue on appeal. **State v. Calhoun**, 96-0786 (La. 5/20/97), 694 So.2d 909, 914.

Under **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), a defendant must show both that his counsel's performance was deficient and that the deficient performance prejudiced him. With regard to counsel's performance, the defendant must show that counsel made errors so serious that counsel was not functioning as "counsel" guaranteed by the Sixth Amendment. As to prejudice, the defendant must show that counsel's errors were so serious as to deprive him of a fair trial, i.e., a trial whose result is reliable. Thus, it must be shown to a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.

If the defendant denies an allegation of the habitual offender bill of information, the burden is on the State to prove the existence of the prior guilty plea and that the defendant was represented by counsel when the plea was taken. **State v. Shelton**, 621 So.2d 769, 779 (La. 1993). If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts back to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one that reflects a colloquy between the judge and the defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. **Shelton**, 621 So.2d at 779-80.

If the State introduces anything less than a perfect transcript, for example, a guilty plea form, a minute entry, an imperfect transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three **Boykin** rights. **Shelton**, 621 So.2d at 780; **State v. Bickham**, 98-1839 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 889-90. The purpose of the rule of **Shelton** is to demarcate sharply the differences between direct review of a conviction resulting from a guilty plea, in which the appellate court may not presume a valid waiver of rights from a silent record, and a collateral attack on a final conviction used in a subsequent recidivist proceeding, as to which a presumption of regularity attaches to promote the interests of finality. See **State v. Deville**, 2004-1401 (La. 7/2/04), 879 So.2d 689, 691 (per curiam).

As noted by the defendant on appeal, at the habitual offender proceeding, the defense counsel did not object to the testimony and evidence presented by the State to establish the defendant's habitual offender status. While the defendant filed a pro se motion in opposition to the habitual offender bill of information, challenging the validity and use of his predicate conviction, the motion was filed two years after the habitual offender hearing. At any rate, a careful review of the testimony and documentation introduced by the State in support of the use of the 1996 predicate to establish the defendant's habitual offender status convinces us that the State met its initial burden under **Shelton**. Specifically, the State proved the existence of the February 8, 1996 guilty plea to possession of cocaine and that the defendant was represented by counsel by introducing into evidence the bill of information, the minutes, and transcript for the guilty plea conviction under St. Mary Parish docket number of 95-142339. The State also introduced the testimony of Ryan Stevens, the probation officer who identified the defendant as the person

he supervised after he was placed on probation for the predicate offense under St. Mary Parish docket number of 95-142339.

Thereafter, the defendant failed to produce any affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. Accordingly, the State had no burden to prove the constitutionality of the predicate at issue by "perfect" transcript or otherwise.

Nonetheless, as noted the State's evidence included a full transcript of the predicate guilty plea proceeding. Although the defendant contends otherwise, the transcript shows that his 1996 guilty plea was informed, free and voluntary, and made with an articulated waiver of his constitutional rights. The transcript also shows that the trial court advised the defendant of the sentence he would receive. Further, former La. R.S. 40:983 was repealed by 1995 La. Acts No. 1251, § 2, before the guilty plea at issue took place, and there is no indication that the predicate plea was made pursuant to former La. R.S. 40:983. We note that counsel is not required to engage in futility. See **State v. Pendelton**, 96-367 (La. App. 5th Cir. 5/28/97), 696 So.2d 144, 156, writ denied, 97-1714 (La. 12/19/97), 706 So.2d 450. Considering the record in support of the habitual offender adjudication in this case, the defendant has failed to show any deficiency in his trial counsel's performance or prejudice in this regard. Based on the foregoing, assignment of error number two lacks merit.

## ASSIGNMENT OF ERROR NUMBER THREE

In the final assignment of error, the defendant argues that the trial court imposed an excessive sentence when a lesser sentence would have better served the defendant and the State of Louisiana. The defendant notes that his personal history was barely discussed at the time of the sentencing, that the trial court considered a 1976[4] simple burglary conviction even though it could not be used for

[4] In his appeal brief, the defendant makes reference to a 1974 simple burglary conviction, while the record reflects that the considered conviction took place in 1976.

enhancement purposes, that the trial court considered his stepdaughter's molestation allegation despite the charge never being prosecuted, and that there was no inquiry to assess his potential for rehabilitation. Noting that Louisiana is in a state of fiscal crisis and in need of sentencing reform, the defendant contends that the excessive incarceration in this case serves no acceptable goal of punishment and is a waste of the State's limited resources. The defendant argues that society would be served by reducing his sentence and providing him with help in overcoming his drug problem. The defendant notes that his crimes were not crimes of violence.

The Eighth Amendment to the United States Constitution and Article I, Section 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks one's sense of justice. The sentence imposed will not be set aside absent a showing of manifest abuse of the trial court's wide discretion to sentence within the statutory limits. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454.

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569. The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate

factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. Code Crim. P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

In the instant matter, the defendant was sentenced to the maximum sentence of ten years at hard labor. See La. R.S. 40:967(C)(2). As a general rule, maximum or near maximum sentences are to be reserved for the worst offenders and the worst offenses. **State v. James**, 2002-2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 586. Also, maximum sentences permitted under a statute may be imposed when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Hilton**, 99-1239 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113.

The defendant notes that the trial court heard and considered testimony regarding a non-prosecuted claim of indecent behavior with a juvenile and also considered a 1976 simple burglary conviction. The sources of information from which a sentencing court may draw are extensive, and traditional rules of evidence are not bars to consideration of otherwise relevant information. A sentencing judge may consider any prior criminal activity of a defendant, even if that activity did not result in conviction or arrest. See **State v. Washington**, 414 So.2d 313, 315 (La. 1982); **State v. Brown**, 410 So.2d 1043, 1045 (La. 1982). With equal force, the sentencing judge may consider a conviction even though it is very old, provided the guidelines of article 894.1 are substantially followed. **State v. McKethan**, 459 So.2d 72, 74 (La. App. 2d Cir. 1984). In addition to the criminal activity noted above, the trial court herein considered the defendant's age and criminal record. The defendant's extensive criminal history consists of several

arrests and convictions beginning in 1975 and including the following: 1975 arrests for theft, a 1976 conviction of simple burglary, 1990 arrests for criminal damage to property and aggravated assault, 1993 arrests for failure to appear for criminal neglect of family and conspiracy to distribute cocaine, the 1996 possession-of-cocaine guilty plea, and a 1998 arrest for attempted possession of cocaine. The trial court concluded that there was an undue risk that during the period of a suspended sentence the defendant would commit another crime, and that a lesser sentence than the one imposed would deprecate the seriousness of the defendant's crimes.[5]

We find that the trial court's reasons for the sentence adequately demonstrate compliance with Article 894.1. Considering the trial court's review of the circumstances, the defendant's extensive criminal record, and the nature of the instant crime, we find no abuse of discretion by the trial court. The record contains ample justification for the imposition of the maximum sentence allowed by law. This court will not set aside a sentence on the ground of excessiveness if the record supports the sentence imposed. La. Code Crim. P. art. 881.4(D). The sentence imposed is not grossly disproportionate to the severity of the offense or shocking to the sense of justice and, therefore, is not unconstitutionally excessive. Thus, we find no merit in assignment of error number three.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**

[5] The trial court reiterated these considerations in denying the defendant's application for post conviction relief on the grounds of ineffective assistance of counsel and inappropriate reasons for sentence.