

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1032

STATE OF LOUISIANA

VERSUS

LARONDRIC JOHNSON

Judgment Rendered: FEB 14 2014



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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 12-09-0749

Honorable Richard D. Anderson, Judge Presiding

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* * * * *

J. Theriot concurs

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

HIGGINBOTHAM, J.

Defendant, Larondric Johnson, was charged by bill of information with armed robbery, a violation of La. R.S. 14:64 (count one), and aggravated burglary, a violation of La. R.S. 14:60 (count two).¹ He pled not guilty. Following a jury trial, defendant was found guilty as charged. He filed a motion in arrest of judgment and a motion for post-verdict judgment of acquittal, which were both denied. On count one, the trial court sentenced defendant to twenty-five years at hard labor, without benefit of parole, probation, or suspension of sentence. On count two, the trial court sentenced defendant to twenty-five years at hard labor, with the first year to be served without benefit of parole, probation, or suspension of sentence. The trial court ordered these sentences to run concurrently. Defendant filed a motion to reconsider his sentences, and the trial court denied that motion as well. Defendant now appeals, alleging three related counseled assignments of error that all address the sentences imposed by the trial court. He has also filed a pro se brief, which itself alleges two assignments of error – one raising the issue of ineffective assistance of counsel, and the other alleging that his trial transcript is incomplete. For the following reasons, we affirm defendant's convictions and his sentence on count one. We amend defendant's sentence on count two and affirm that sentence as amended.

FACTS

Around 1:00 a.m. on July 30, 2009, Corey Roberson was standing in the driveway of his home on Warfield Drive in Baton Rouge, smoking a cigarette. He watched as a truck pulled by the front of his house and then reversed into his driveway. Roberson recognized the driver of the truck as Tekoah Woodson, his former brother-in-law. Woodson exited the vehicle and began to converse with Roberson.

¹ The same bill of information also charged Tekoah M. Woodson, a codefendant, with the same offenses. From the record, it appears that Woodson pled guilty to a lesser offense prior to defendant's trial. He is not a party to the instant appeal.

After a few minutes, defendant exited the parked vehicle and introduced himself to Roberson as "Joe." Defendant stood around while Roberson and Woodson talked for a few more minutes. Shortly thereafter, defendant pulled out a semiautomatic pistol equipped with a laser sight and pointed it at Roberson, demanding his money. Roberson complied and gave defendant his money and cell phone. Defendant then forced Roberson inside his home, where he made Roberson get down on his hands and knees. Defendant then forced Roberson to crawl and to follow him throughout the house as he looked for additional money and valuables. In the rear bedroom of the house, defendant found Roberson's sleeping girlfriend, and he told her to tell him where they kept their money. Defendant eventually found and took her purse containing money and identification cards.

From the rear bedroom, defendant forced Roberson back into the hallway and instructed him to crawl toward the living room. As Roberson made his way back toward the front of the house, he noticed that defendant reentered the rear bedroom. At that point, Roberson stood up and ran out of the front of the house. He jumped a neighbor's fence and eventually found someone who allowed him to use a phone. Upon making contact with the police, he identified Woodson as one of the men who he had encountered that night. Woodson later identified defendant to detectives as the man with the gun. At trial, Roberson unequivocally identified defendant as the person who had robbed him on the night of the incident.

COUNSELED ASSIGNMENTS OF ERROR

In two related assignments of error, defendant asserts that the trial court erred in denying his motion to reconsider his sentences because the sentences are constitutionally excessive. In a third assignment of error, defendant asserts that the sentence imposed on count two is illegal because it improperly restricts the possibility of parole, probation, or suspension of sentence for one year.

We first address defendant's assignment of error alleging an illegal sentence on count two. Upon being convicted for aggravated burglary on count two,

defendant was sentenced by the trial court to serve a term of twenty-five years at hard labor, with the first year of that sentence to be imposed without benefit of parole, probation, or suspension of sentence. However, the sentencing provision for aggravated burglary provides only that whoever commits the crime of aggravated burglary shall be imprisoned at hard labor for not less than one nor more than thirty years. See La. R.S. 14:60. Thus, defendant is correct in arguing that the trial court's one-year restriction of benefits on this sentence rendered this sentence illegal.

An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review. La. Code Crim. P. art. 882(A). Under the circumstances of this case, we do not believe it is necessary to remand for the trial court to correct this sentencing error. First, we note that the trial court ordered defendant's sentence on count two to run concurrently with his sentence on count one, which itself is a sentence of twenty-five years at hard labor, all of which is to be served without benefit of parole, probation, or suspension of sentence. Further, the trial court only attempted to restrict the benefits of parole, probation, and suspension of sentence for one year of defendant's sentence on count two. Accordingly, we deem it unlikely that the trial court would have imposed a longer term on count two if it had realized that it could not restrict benefits on the sentence for that conviction. In the interest of judicial economy and pursuant to Article 882(A), we amend defendant's sentence on count two to delete the portion of the sentence that provides it shall be served without benefit of parole, probation, or suspension of sentence for the first year.

Having amended defendant's sentence on count two, we turn now to defendant's related assignments of error alleging that the trial court erred in denying his motion to reconsider his sentences because the sentences imposed are constitutionally excessive. 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). 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. Code Crim. 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 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).

Under La. R.S. 14:64(B), whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence. For his armed robbery conviction, defendant was sentenced to twenty-five years at hard labor, without benefit of parole, probation, or suspension of sentence. Under La. R.S. 14:60, whoever commits the crime of aggravated burglary shall be

imprisoned at hard labor for not less than one nor more than thirty years. As amended, defendant's sentence for his aggravated burglary conviction is twenty-five years at hard labor. The trial court ordered defendant's sentences to run concurrently.

Prior to sentencing defendant, the trial court stated extensive oral reasons as a basis for the sentences imposed. The trial court noted that it had ordered a presentence investigation ("PSI") report in the instant case and that it had taken into consideration all of the factors alleged therein. The trial court recognized that defendant was twenty-four years old at the time of his sentencing and that he was a first-felony offender. The trial court also stated that a supplemental PSI was filed into the record and that it reflected defendant was determined at an early age to be mildly mentally retarded, causing him to enroll in special education classes in high school, where he made the A/B honor roll.

In reflecting on defendant's instant offenses, the trial court stated that Roberson expressed his fear that he, his girlfriend, and his children would be killed during the incident. As a result of the robbery, in which over \$500.00 and a food stamp card were taken from them, Roberson and his family were evicted from their home and forced to live with family for several months before they could afford another residence.

The trial court then addressed defendant's adult criminal record. Although the instant offenses were defendant's first convictions, defendant had been charged previously with armed robbery, possession of marijuana, possession of or dealing in firearms with an obliterated serial number, and illegal carrying of weapons. However, those charges had been dismissed due to a lack of cooperation by the victim. Defendant also had another dismissed armed robbery charge. Finally, at the time of sentencing, defendant had pending charges of illegal possession of stolen things, armed robbery, and second degree murder.

Prior to imposing the twenty-five year sentences on each count, the trial court noted that the PSI report recommended sentences totaling at least fifty years. Thus, the trial court's ultimate sentences on each count deviated downward from the period of actual imprisonment suggested by the PSI report.

In his brief, defendant cites his youth, lack of prior criminal history, and his mental retardation as factors warranting lesser sentences in this case. However, the trial court clearly enunciated and considered all of these factors at the time of defendant's sentencing. Further, although the instant offenses were defendant's first felony convictions, the trial court recited his considerable list of dismissed and pending charges. A trial court is entitled to consider the defendant's entire criminal history in determining the appropriate sentence to be imposed. See State v. Ballett, 98-2568 (La. App. 4th Cir. 3/15/00), 756 So.2d 587, 602, writ denied, 2000-1490 (La. 2/9/01), 785 So.2d 31.

Considering the trial court's extensive stated reasons and the facts and circumstances of the case, we find that defendant's imposed sentence on count one and his amended sentence on count two are not constitutionally excessive. Therefore, defendant's assignments of error related to the excessiveness of his sentences are without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

In his first pro se assignment of error, defendant alleges that his counsel was ineffective. Specifically, he argues that his counsel's failure to object to inadmissible hearsay testimony by Detective Tillmon Cox, of the Baton Rouge Police Department, in which Detective Cox related Tekoah Woodson's identification of defendant, prejudiced him and unfairly contributed to the jury's verdicts.

A claim of ineffective assistance of counsel is generally relegated to postconviction proceedings, unless the record permits definitive resolution on

appeal. **State v. Miller**, 99–0192 (La. 9/6/00), 776 So.2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001).

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the 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, a 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 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 showing on one of the components. **State v. Serigny**, 610 So.2d 857, 859–60 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

In the instant case, defendant alleges that defense counsel's performance was deficient in allowing Detective Cox to testify at trial to Tekoah Woodson's identification of defendant during an interrogation as "Debo," and then as Larondric Johnson. Woodson did not testify at trial. Therefore, to the extent this testimony was offered to prove defendant's identity as one of the perpetrators, we can conclude that it was hearsay testimony that should have been excluded had defense counsel objected. See La. Code Evid. art. 801(C). However, even if we adopt this view and assume it to be deficient performance, the fact remains that defendant has not made an adequate showing of prejudice to support his ineffective

assistance claim. The victim himself unequivocally testified at trial that defendant held him at gunpoint and robbed him. This direct testimony alone was sufficient to support defendant's convictions. Therefore, we cannot say that there was any reasonable probability, had defense counsel objected to Detective Cox's testimony, that the outcome of defendant's trial would have been different.

This assignment of error is without merit.

INCOMPLETE TRIAL TRANSCRIPT

In his second pro se assignment of error, defendant contends that his right to appeal his felony convictions and sentences has been violated because of the lack of a complete record. Specifically, he argues that the court reporter's choice not to transcribe the entirety of the closing arguments and jury instructions violated his right to an appeal based upon the complete record of his case.

A criminal defendant has a right of appeal based upon a complete record of all evidence upon which the judgment is based. See La. Const. art. I, § 19; see also **State v. Hoffman**, 98-3118 (La. 4/11/00), 768 So.2d 542, 586, cert. denied, 531 U.S. 946, 121 S.Ct. 345, 148 L.Ed.2d 277 (2000). Additionally, in felony cases, the court stenographer shall record all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, statements, and arguments of counsel. See La. Code Crim. P. art. 843.

Material omissions from the transcript of the proceedings at trial bearing on the merits of an appeal will require reversal. See **State v. Robinson**, 387 So.2d 1143, 1144-45 (La. 1980). However, an incomplete record may be adequate for full appellate review. See **State v. Hawkins**, 96-0766 (La. 1/14/97), 688 So.2d 473, 480. Where a defendant cannot show any prejudice from the missing portions, he is not entitled to relief based on the missing portions. See **Hawkins**, 688 So.2d at 480 (citing **State v. Rodriguez**, 93-0461 (La. App. 4th Cir. 3/29/94), 635 So.2d 391, writ denied, 94-1161 (La. 8/23/96), 678 So.2d 33).

In the instant case, defendant contends that he is prejudiced by the missing portions of the record simply because they are missing. However, the court reporter's note indicates that the portions of the closing arguments and jury instructions which were not transcribed contained no objections or assignments of error. Moreover, of the brief portion of the state's closing argument that was transcribed, defense counsel objected to a statement, and the trial court sustained that objection. While defendant states in his pro se brief that he is unable to "raise all assignments of errors in his direct appeal" as a result of the omitted portions of the record, he does not specify exactly what assignments of error he would raise if the omitted portions were available. Because he has not even attempted to articulate any further assignments of error, defendant has made no showing of prejudice as a result of the omitted portions of the record.²

This assignment of error is without merit.

CONVICTIONS AFFIRMED; SENTENCE ON COUNT ONE AFFIRMED; SENTENCE ON COUNT TWO AMENDED, AND AFFIRMED AS AMENDED.

² As an aside, this court does not sanction the court reporter's unilateral decision to omit from the record the transcripts of the majority of the closing arguments and all of the jury instructions. However, the court reporter's note states that the omitted portions of the record contained no objections or assignments of error. Therefore, we anticipate that any claims defendant might raise pursuant to these omitted portions of the record would involve further allegations of ineffective assistance of counsel. Those potential claims would almost necessarily be predicated on counsel's failure(s) to object or on the substance of counsel's closing argument. Such claims would call into question decisions involving trial strategy, which cannot possibly be reviewed on appeal. See *State v. Martin*, 607 So.2d 775, 788 (La. App. 1st Cir. 1992). Only in an evidentiary hearing in the district court, where the defendant could present evidence beyond that contained in the instant record, could these potential allegations be sufficiently investigated. See *State v. Albert*, 96-1991 (La. App. 1st Cir. 6/20/97), 697 So.2d 1355, 1363-64. Defendant would have to satisfy the requirements of La. Code Crim. P. art. 924, et seq., in order to receive such a hearing.