NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 KA 1050

STATE OF LOUISIANA

VERSUS

PATRICK C. PARKER

Judgment Rendered: FEB 2 0 2014

* * * * * *

On appeal from the
Twenty-Third Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Docket Number 17543, Division A
Honorable Ralph Tureau, Judge Presiding

* * * * * *

Terri R. Lacy
Assistant Attorney General
Baton Rouge, LA

Counsel for Plaintiff/Appellee
State of Louisiana

David A. Weilbaecher
Assistant Attorney General
Baton Rouge, LA

Mary E. Roper
Louisiana Appellate Project
Baton Rouge, LA

Counsel for Defendant/Appellant
Patrick C. Parker

* * * * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

GUIDRY, J.

The defendant, Patrick Calvin Parker, was charged by amended grand jury indictment with two counts of second degree murder, violations of La. R.S. 14:30.1, and pled not guilty on both counts. Following a jury trial, he was found guilty, on each count, of the responsive offense of manslaughter, violations of La. R.S. 14:31, with ten of twelve jurors voting guilty. On count I, he was sentenced to thirty-five years at hard labor. On count II, he was sentenced to thirty-five years at hard labor, to run consecutively with the sentence imposed on count I. He moved for reconsideration of sentence, but the motion was denied. He now appeals, contending his conviction by nonunanimous verdicts violated his federal constitutional rights to equal protection and jury trial, and the trial court abused its sentencing discretion. For the following reasons, we affirm the convictions and sentences on counts I and II.

FACTS

On May 11, 2004, Penny Williams[1] and Katrice "Sally" Bell, age twenty-three years, lived on Nolan Street in Donaldsonville and were friends. Williams and Bell had grown up in the same area, and Williams frequently visited Bell's mobile home. Williams and Albert "June" Landry were also friends. The defendant was believed to be the father of Bell's youngest child. After dark on May 11, 2004, Williams, Bell, Bell's two children, ages seven years and two years, Landry, and the defendant were watching TV and talking in Bell's mobile home. Bell's children sat on the large couch, and Williams and Landry shared the small couch. The defendant and Bell went into Bell's bedroom at the back of the mobile home. Hours later, Williams heard Bell crying, "no, please, not in front of the

[1] Williams indicated her surname was Cheatham prior to marriage.

baby." Thereafter, gunshots rang out in the back of the mobile home, and Williams heard a loud noise "like something fell." Williams testified the defendant exited Bell's bedroom and told her, "don't fucking run." He had a gun in his hand. He then shot Landry, and Williams ran out of the mobile home. She heard another gunshot as she ran up the street. She hid under some tin, and then knocked on a door and asked the resident to call the police.

Bell was shot in her left arm, and also suffered a fatal gunshot to her left breast. Landry suffered a fatal gunshot to his upper right chest.

CONSTITUTIONALITY OF NONUNANIMOUS VERDICT

In assignment of error number 1, the defendant argues his conviction by a nonunanimous verdict on counts I and II violated his federal constitutional right to equal protection. In assignment of error number 2, he argues his conviction by a nonunanimous verdict on counts I and II violated his federal constitutional right to a jury trial under the Sixth and Fourteenth Amendments.

La. Const. art. I, §17(A) and La. C. Cr. P. art. 782(A) are constitutional and do not violate the Fifth, Sixth, and Fourteenth Amendments. State v. Bertrand, 08-2215 (La. 3/17/09), 6 So. 3d 738, 743; State v. Jones, 09-0751 (La. App. 1st Cir. 10/23/09), 29 So. 3d 533, 540. There is no authority to the contrary. Accordingly, we are not at liberty to ignore the controlling jurisprudence of superior courts on this issue. See Bertrand, 6 So. 3d at 743.

These assignments of error are without merit.

EXCESSIVE SENTENCES

In assignment of error number 3, the defendant argues the trial court abused its discretion in imposing excessive, consecutive sentences on him.

Louisiana Constitution Article I, Section 20 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. Hurst, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So. 2d 962.

The Louisiana Code of Criminal Procedure sets forth items which must be considered by the trial court before imposing sentence. La. 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 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. Hurst, 797 So. 2d at 83. Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. State v. Harper, 07-0299 (La. App. 1st Cir. 9/5/07), 970 So. 2d 592, 602, writ denied, 07-1921 (La. 2/15/08), 976 So. 2d 173.

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. La. C. Cr. P. art. 883. Thus, La. C. Cr. P. art. 883 specifically excludes from its scope sentences which the court expressly directs to be served consecutively. Furthermore, although the imposition of consecutive sentences requires particular justification when the crimes arise from a single course of conduct, consecutive sentences are not necessarily excessive. State v. Palmer, 97-0174 (La. App. 1st Cir. 12/29/97), 706 So. 2d 156, 160.

As applicable here, whoever commits manslaughter shall be imprisoned at hard labor for not more than forty years. La. R.S. 14:31(B). On count I, the defendant was sentenced to thirty-five years at hard labor. On count II, he was sentenced to thirty-five years at hard labor, to run consecutively with the sentence imposed on count I. Prior to sentencing, the trial court ordered a presentence investigation report (PSI) and attached the PSI to, and made it a part of, its reasons for sentencing. The Department of Public Safety and Corrections, Division of Probation and Parole, recommended the defendant be sentenced, on each count, to forty years at hard labor, sentences to run consecutively.

At sentencing, defense counsel argued against the recommendation of the PSI that consecutive sentences be imposed. Defense counsel argued that although the defendant had killed two people, he did so during the same act or transaction. Defense counsel also argued the defendant was not "a danger" because his prior crime of violence (aggravated assault) was a misdemeanor.

The trial court specifically found consecutive sentences were appropriate. The court noted the defendant had used a handgun during the commission of the crimes. He shot Bell twice, Landry once, and shot Landry in an attempt to "wip[e] out all the witnesses in the case." Additionally, the court noted the defendant

placed Williams and Bell's children in danger, because they were in the room when he shot Landry.

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 La. C. Cr. P. art. 894.1(B)(5), (B)(8), & (B)(10). Additionally, the sentences imposed on counts I and II were not grossly disproportionate to the severity of the offenses and thus, were not unconstitutionally excessive.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED ON COUNTS I AND II.