NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1111

STATE OF LOUISIANA

VERSUS

DWAIN WILLIAMS

Judgment Rendered: FEB 28 2014

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
No. 05-09-0400, Sec. 2

The Honorable Richard D. Anderson, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.,

The defendant, Dwain Williams, was charged by grand jury indictment with second degree murder, a violation of Louisiana Revised Statute 14:30.1. He pled not guilty and, following a jury trial, was found guilty of the responsive offense of manslaughter, a violation of Louisiana Revised Statute 14:31. The State filed a habitual offender bill of information, and the defendant was adjudicated a third-felony habitual offender. He was sentenced to sixty-five years at hard labor without benefit of parole, probation, or suspension of sentence. He filed a motion to reconsider sentence, which was denied.

The defendant appealed, challenging, among other things, his sentence and the sufficiency of the evidence in support of his conviction. This court affirmed his conviction and habitual offender adjudication. We vacated and remanded his habitual offender sentence because the district court improperly included a parole restriction. See **State v. Williams**, 12-0147 (La. App. 1st Cir. 9/21/12), 2012 WL 4335435 (unpublished), *writ denied*, 12-2310 (La. 4/19/13), 111 So.3d 1028. On remand, the district court sentenced the defendant to sixty-five years at hard labor and removed the restriction on parole eligibility. The defendant made an oral motion to reconsider sentence, and the district court denied that motion. The defendant now appeals, challenging his new sentence and the district court's denial of his motion to reconsider. For the following reasons, we affirm the defendant's sentence.

STATEMENT OF FACTS

The facts surrounding the defendant's instant offense are derived from the record as revealed in our original opinion and are as follows. In the very early morning hours of April 29, 2009, the defendant was driving around Baton Rouge in his mother's car with his friends, Larry Ledoux and Jonathan Milliken. They

stopped and bought a rock of crack cocaine. According to Ledoux, who testified at trial, the defendant drove to Tanner Street and parked so they could divide up the cocaine rock and smoke it. The defendant broke off a piece of the rock for Milliken and placed it on the seat. Angered at how small the piece was, Milliken said he did not want it and knocked it off the seat. The defendant and Milliken exchanged words and then jumped out of the car. Ledoux stayed in the car and watched the defendant and Milliken approach each other at the front of the car. Milliken punched the defendant in the face, knocking him to the ground. Ledoux got out of the car and told them to "chill out." The defendant jumped back up with a pocketknife and unfolded the blade. The defendant moved toward Milliken with the knife. Milliken took off running, and the defendant chased after him. Ledoux got back in the car and searched for the discarded piece of rock cocaine. About five minutes later, the defendant returned to the car without Milliken. When Ledoux asked where Milliken was, the defendant replied, "J's straight." The defendant then dropped off Ledoux at his mother's house. Shortly thereafter, Ledoux gave a taped statement to the police.

Between 2:00 a.m. and 3:00 a.m., Anthony Kirk, who was homeless, was sitting in his truck in the driveway of his ex-wife's house on Tanner Street. Kirk testified at trial that he saw a man chasing another man. They ran out of sight; then about two minutes later, Kirk saw only one man walking. It was dark and Kirk could not identify the man. Kirk watched the man walk to the dead-end of Tanner Street. Kirk saw headlights in that area come on, then saw a car leave. Kirk heard moaning and someone asking for help. Kirk walked over to a vacant lot and found Milliken on the ground, bleeding. Kirk called 911. While Kirk was on the phone with the 911 operator, Milliken identified the defendant as the person who stabbed him. Milliken suffered stab wounds to his chest, back, shoulder, and thigh. He

was brought to the hospital and received ten units of blood. Ultimately, his injuries proved fatal.

DISCUSSION

In two related assignments of error, the defendant argues that his sentence is excessive and that the district court erred in denying his motion to reconsider his sentence.

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). 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. **State v. Reed**, 409 So.2d 266, 267 (La. 1982).

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. Lanclos**, 419 So.2d 475, 478 (La. 1982). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the district court to consider when imposing sentence. While the entire checklist of Article 894.1 need not be recited, the record must reflect that the district court adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The defendant was convicted of manslaughter and adjudicated a third-felony habitual offender. Louisiana Revised Statute 14:31(B) provides, in pertinent part,

"[w]hoever commits manslaughter shall be imprisoned at hard labor for not more than forty years." Pursuant to Louisiana Revised Statute 15:529.1(A)(1)(b)(i) (prior to the 2010 amendments), if the third felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then he shall be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction. Thus, the defendant was exposed to a maximum sentence of eighty years at hard labor. In this matter, the district court sentenced the defendant to sixty-five years at hard labor. The defendant contends that this sentence is excessive because nothing in his past shows that he is a violent offender, the State offered a twenty-five year sentence deal to him prior to trial, and his prior offenses occurred almost fifteen years before the instant offense.

Prior to trial, the State offered the defendant a plea deal, wherein the State would reduce his charge to manslaughter and ask the court to impose a sentence of twenty-five years. Defense counsel stated that he and his client discussed the plea offer at length, and the defendant also discussed the offer with his family members. The State made it clear that if the defendant rejected its offer and the jury returned a verdict of guilty of manslaughter, it would pursue sentencing as a third-felony habitual offender. It stated that as a third-felony offender, the defendant would be subject to a minimum of twenty-six and a maximum of eighty years, and that it would ask the court to impose the maximum sentence. The district court asked the defendant if he understood the State's comments, and the defendant responded affirmatively. The defendant, clearly aware of the sentencing range he faced if found guilty, rejected the State's offer. Contrary to the defendant's argument, the State's plea offer has no bearing on the constitutionality of the sentence imposed.

A preconviction offer of a lenient sentence should not be viewed as setting a limit for the justifiable sentence following conviction. See **State v. Barkley**, 412 So.2d 1380, 1383 (La. 1982).

At the original sentencing hearing, the district court indicated that it reviewed a presentence investigation report detailing the defendant's personal and criminal history. The court listed the defendant's prior criminal offenses, including his guilty pleas to resisting an officer, felony theft, possession with intent to distribute cocaine, and simple battery. It noted that the defendant's "rap sheet" listed several other arrests and that his record revealed that he had "absconded from probation supervision as well as parole supervision and he continued to receive new criminal arrests and failed to address any conditions set forth by the court." The court went on to say that the defendant failed several attempts to rehabilitate himself and remain in the community, did not appear to have learned from his past encounters with the court, and was a great risk to the community as shown by his taking the life of the victim in the instant offense.

It is clear that the district court carefully reviewed the information provided in the presentence investigation report and considered mitigating circumstances prior to sentencing the defendant. Considering the circumstances of the case and the defendant's propensity to continue criminal activity, we find no abuse of discretion by the district court. Accordingly, the sentence imposed by the district court is not grossly disproportionate to the severity of the offense and, therefore, is not excessive. Thus, the district court correctly denied the motion to reconsider sentence.

These assignments of error lack merit.

AFFIRMED.