NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1408

STATE OF LOUISIANA

VERSUS

NORMAN LIGHTFOOT

Judgment Rendered: MAR 2 4 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. 05-10-0868

Honorable Richard "Chip" Moore, Judge Presiding

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

HIGGINBOTHAM, J.

The defendant, Norman Lightfoot, was charged by bill of information, with five counts of armed robbery (counts I-V), violations of La. R.S. 14:64, and initially pled not guilty on all counts. Thereafter, pursuant to a plea agreement, he pled guilty on count I in exchange for the State's agreement to dismiss counts II-V. He was sentenced to seventy-five years at hard labor without benefit of probation, parole, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals contending: the trial court erred in denying the motion to reconsider sentence; and the trial court erred in imposing an unconstitutionally excessive sentence. For the following reasons, we affirm the conviction and sentence on count I.

FACTS

Due to the defendant's guilty plea, there was no trial, and thus, no trial testimony concerning the offense. At the **Boykin**[1] hearing, however, the State set forth a factual basis for the charge as follows.

On March 26, 2010, at approximately 11:00 a.m., the defendant entered Cash-to-Go, a business located on South Sherwood Forest in Baton Rouge. He approached the counter and threw an empty plastic bag at the victim, S.D., an employee of the business. He also pulled out a firearm from his waistband, cocked the weapon, aimed it at the victim, and jumped over the counter. He demanded the victim empty the contents of the cash register. The victim complied and gave the defendant a certain amount of U.S. currency. Thereafter, the defendant ordered the victim to take him to the safe, which was located in a small closet in the business. The victim complied with the defendant's demands, and gave the defendant loose change from the safe. The defendant then ordered the victim to enter the restroom of the business. Once in the restroom, he ordered her to take off her clothes. She

[1] **Boykin v. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

undressed except for her underwear. The defendant ordered her to take off all of her clothes, and she complied. Thereafter, he took the victim's purse and cell phone and left the business. The victim dressed herself and locked the door. As she was calling for help, she noticed keys in the business that had not been present before the robbery.

Officer Kenneth Bowman arrived at the scene and took possession of the keys. A 2004 Cadillac CTS responded to a panic button on the keys. Following the execution of a search warrant for the vehicle, a check stub and lease agreement with the defendant's name were recovered from the vehicle. A Snap Fitness Gym card belonging to the defendant was also located on the keys. Additionally, shortly after the robbery, the victim's cell phone was used to call David Dykes, the defendant's roommate. Dykes indicated the defendant had called him on the victim's cell phone and requested that Dykes pick him up from a Starbucks located a few blocks away from the scene of the robbery. The defendant agreed with the factual basis with the exception of the allegations concerning the safe and the taking of the victim's purse.

EXCESSIVE SENTENCE

In assignment of error number 1, the defendant argues the trial court erred in denying the motion to reconsider sentence. In assignment of error number 2, he argues the sentence imposed was unconstitutionally excessive because he is a twenty-seven-year-old man who has been given essentially a life 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. 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, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence. La. R.S. 14:64(B). The defendant was sentenced to seventy-five years at hard labor without benefit of probation, parole, or suspension of sentence.

The defendant was initially represented by Benjamin Gibson at sentencing. However, after he attacked Gibson in court, Shea Smith was appointed to represent him. Thereafter, the trial court indicated it had reviewed the presentence investigation report. The court noted: the defendant left school in the 11th grade, but later earned a GED; he had two sisters who were nurses; the instant offense was his third felony conviction; and pursuant to a plea agreement, counts II, III, IV, and V had been dismissed. The court also noted: pursuant to La. Code Crim. P. art. 894.1(A)(2), the defendant was in need of a custodial environment that could be provided most effectively by his commitment to an institution; pursuant to La. Code Crim. P. art. 894.1(A)(3), a lesser sentence than the sentence the court was imposing would deprecate the seriousness of the offense; pursuant to La. Code Crim. P. art. 894.1(B)(1), the defendant's conduct during the commission of the offense manifested deliberate cruelty to the victim by making her strip naked after she thought she was going to die; the defendant knowingly created a risk of death

or great bodily harm to more than one person;[2] he used threats of actual violence in the commission of the offense by pointing a gun at the victim's head;[3] and pursuant to La. Code Crim. P. art. 894.1(B)(10), he used a dangerous weapon in the commission of the offense.

The trial court did not err in denying the motion to reconsider sentence. The sentence imposed was not grossly disproportionate to the severity of the offense, and thus, was not unconstitutionally excessive. Additionally, the defendant benefitted from plea bargaining in this case. A defendant's reduced penalty exposure as a result of plea bargaining is a valid factor for consideration in imposing sentence. See **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982).

These assignments of error are without merit.

CONVICTION AND SENTENCE ON COUNT I AFFIRMED.

[2] The PSI indicated the owner of the business was also in the store during the robbery. See La. Code Crim. P. art. 894.1(B)(5).

[3] See La. Code Crim. P. art. 894.1(B)(6).