NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 0613

STATE OF LOUISIANA

VERSUS

JAMES HOWARD BURT

Judgment Rendered: NOV 07 2014

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Appealed from the
22nd Judicial District Court
In and for the Parish of Washington, Louisiana
Trial Court Number 12-CR8-119845

Honorable Scott Gardner, Judge

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BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

WELCH, J.

The defendant, James Howard Burt, was charged by bill of information with indecent behavior with juveniles (victim under the age of thirteen), a violation of La. R.S. 14:81. The defendant pled not guilty and, following a jury trial, was found guilty. The defendant was sentenced to twenty years imprisonment at hard labor with two years of that sentence to be served without benefit of parole, probation, or suspension of sentence. At sentencing, the defendant orally moved for reconsideration of sentence, which was denied. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

On November 18, 2012, twelve-year-old C.G.[1] was at the defendant's house in Bogalusa. C.G. and her family were good friends with the defendant's family. C.G. was in the living room when the defendant came out of the bathroom. The defendant was wearing a jacket (casual with a zipper), but was naked from the waist down. While pointing at his penis, the defendant told C.G., "Come touch me, please." C.G. refused, and the defendant got dressed. Later that day, C.G. told the defendant's wife and her (C.G.'s) mother what had occurred. The following day, C.G. was interviewed at the Children's Advocacy Center (CAC) in Bogalusa. The CAC interview was played at trial.

ASSIGNMENTS OF ERROR NOS. 1 and 2

In these related assignments of error, the defendant argues that the trial court erred in denying the motion to reconsider sentence, and the sentence imposed is unconstitutionally excessive.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of cruel or excessive punishment. Although a sentence falls within statutory limits, it may be excessive.

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[1] The victim is referred to by her initials. See La. R.S. 46:1844(W).

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 the sense of justice. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). 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. C.Cr.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. C.Cr.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. C.Cr.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. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981). On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. **State v. Thomas**, 98-1144 (La. 10/9/98), 719 So.2d 49, 50 (*per curiam*).

In the instant matter, the defendant, facing a maximum sentence of twenty-

five years at hard labor, was sentenced to twenty years at hard labor. See La. R.S. 14:81(H)(2). The defendant argues in his brief that, since he is a first-time felony offender with no prior convictions and since his asking C.G. to touch him was not the worst kind of indecent behavior with juveniles, his sentence is excessive.

It is clear in its reasons for sentence that the trial court thoroughly considered La. C.Cr.P. art. 894.1, as well as the above-mentioned issues raised by the defendant. In arriving at an appropriate sentence, the trial court was clearly cognizant of the emotional and psychological damage of C.G.[2] caused by the defendant:

The trial court stated in pertinent part:

> This Court does recall this trial vividly. I recall a twelve year-old [sic] who was, I believe thirteen at the time that she was called to the Court. I recall her testifying from start to finish, so ashamed that she had her face buried in her t-shirt [sic]. She turned around facing that wall, answering every single question.
>
> This Court recognizes that she's at further risk because of your actions to satisfy your own sexual desires. She's at further risk for suicide, alcohol and drug abuse, trust issues. She is much more likely than her peers to be damaged for the rest of her life. For those reasons, although, there may not have been touching, it was certainly your desire that she would touch your private parts.
>
> This Court has reviewed Article 894.1, and in fashioning this sentencing, I find specifically that there's an undue risk that during the period of a suspended sentence or probation, the defendant would commit another crime. The defendant is in need of correctional treatment or custodial environment that can be best provided most effectively by his commitment to an institution, that a lesser sentence would deprecate the seriousness of the defendant's crime. Specifically, the defendant knew or should have known that the victim of the offense was particularly vulnerable or incapable of resisting, due to extreme youth.

The record before us clearly established an adequate factual basis for the

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[2] Just prior to sentencing, C.G.'s father made an impact statement in open court, providing in part:

> He took her innocence. Do you know what it's like waking up at night hearing her scream? That's what you've done. Not being able to hold her because she's scared of me because she sees you every time she looks at me, huh?
>
> * * * * *
>
> She's had nightmares. She's went to rape counseling on account of you. . . . I've stayed up night after night after night after night with her because of you.

sentence imposed. C.G. testified at trial that she was close to the defendant's family, especially their daughter, whom C.G. felt "was like my sister." C.G. also thought of the defendant as a "second father," and the defendant used this relationship to exploit her trust. See **State v. Kirsch**, 2002-0993 (La. App. 1st Cir. 12/20/02), 836 So.2d 390, 395-96, writ denied, 2003-0238 (La. 9/5/03), 852 So.2d 1024. Considering the trial court's review of the circumstances and the nature of the crime, we find no abuse of discretion by the trial court. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive. The trial court did not err in denying the motion to reconsider sentence.

These assignments of error are without merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.