

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1047

STATE OF LOUISIANA

VERSUS

BLAINE VINCENT HEBERT

Judgment Rendered: MAR 09 2015

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On Appeal from the  
22<sup>nd</sup> Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
No. 537471-1

The Honorable William J. Burris, Judge Presiding

\* \* \* \* \*

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

*Guidry, J. concurs.*

**DRAKE, J.**

The defendant, Blain Vincent Hebert, was charged by bill of information with aggravated burglary (count 1), a violation of La. R.S. 14:60 and fourteen counts of simple burglary of a vehicle (counts 2 through 15) in violation of La. R.S. 14:62. The State severed counts 1, 10, 14, and 15. The counts were renumbered for purposes of trial; as such, the defendant was charged with eleven counts of simple burglary of a vehicle (counts 1 through 11).<sup>1</sup> The defendant pled not guilty to the charges and, following a trial, he was found guilty as charged on all counts, except for count 3, for which he was found guilty of the responsive offense of attempted simple burglary, a violation of La. R.S. 14:27 and La. R.S. 14:62. The defendant filed a motion for postverdict judgment of acquittal. The trial court denied the motion as to all counts except for count 13 (count 11 at trial). For this count (13), wherein a tackle box was taken from the back of a pickup truck, the trial court found that a simple burglary had not been proven; however, the trial court found that under the facts, the defendant was guilty of attempted simple burglary. The State then filed habitual offender bills of information, seeking to have the defendant adjudicated a habitual offender as to each of his ten convictions for simple burglary.<sup>2</sup> Following the habitual offender hearing, the defendant was adjudicated a second-felony habitual offender as to each count and received an enhanced sentence for each of his remaining ten convictions. For each count of 2, 5, 6, and 7, the defendant was sentenced to eighteen years imprisonment at hard labor; for count 4, he was sentenced to twelve years imprisonment at hard labor (this was count 3 for trial purposes wherein the

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<sup>1</sup> The State also severed the two codefendants, Kenneth Smith and Amber Ward. Inexplicably, the trial court sentenced the defendant under the original count scheme, so that he received sentences for counts 2 through 9, and counts 11 through 13.

<sup>2</sup> The defendant had a prior conviction for simple burglary. For purposes of habitual offender adjudication, the State did not seek to enhance the sentence for the attempted simple burglary conviction (count 13) entered by the trial court.

defendant was found guilty of attempted simple burglary and the State sought to enhance this sentence in its habitual offender bill of information); for each count of 3, 8, 9, 11, and 12, he was sentenced to eighteen years imprisonment at hard labor; for count 13, he received the unenhanced sentence of six years imprisonment at hard labor. The trial court ordered that counts 2, 4, 5, 6, 7, and 13 run concurrent with each other, and that counts 3, 8, 9, 11, and 12 run concurrent with each other; it further ordered that counts 2, 4, 5, 6, 7, and 13 run consecutive to counts 3, 8, 9, 11, and 12. The defendant filed a motion to reconsider sentences, which was denied. The defendant now appeals, designating one assignment of error. We affirm the convictions, habitual offender adjudications, and sentences.

### **FACTS**

In the very early morning hours of June 8, 2013, the defendant, Kenneth Smith, and Amber Ward drove around the Slidell and Pearl River areas of St. Tammany Parish in Smith's white Saturn. Ward drove the Saturn to houses that had a vehicle or vehicles in the driveway. The defendant and Smith entered the vehicles that were unlocked and grabbed whatever could be easily removed. The defendant and Smith then took their loot back to Smith's apartment at Lakeside Apartments off of Lakeshore Boulevard in Slidell. The burglaries were clustered mainly around the Lakeshore Boulevard area and between Slidell and Pearl River and Highway 1091. At trial, ten victims testified that they had had an item or items taken from their vehicles. An eleventh victim, Dennis Miller, testified he did not have anything taken from his wife's vehicle because the doors were locked. The Millers had a surveillance system at their home that recorded someone trying to enter Mrs. Miller's vehicle. Search warrants were executed for the Saturn and Smith's apartment. The items that all victims had testified about being taken were found in the Saturn or the apartment and returned to them. The defendant was interviewed by three detectives at three different times (two from the St. Tammany

Parish Sheriff's Office and one from the Slidell Police Department) and admitted to stealing the items. The defendant did not testify at trial.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant argues his sentences are excessive. Specifically, the defendant contends the trial court erred in sentencing him "on the higher end" and in ordering some of his sentences to run consecutively to other sentences.

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. *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. 1 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. See *State v. Holts*, 525 So. 2d 1241, 1245 (La. App. 1 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*, 02-2231 (La. App. 1 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).

The defendant states in brief that the alleged illegal activity was all part of a common scheme or plan with each alleged act being part of the whole illegal course of conduct. Thus, according to the defendant, the trial court should not have imposed consecutive sentences since the statutory presumption for sentencing a person for acts constituting parts of a common scheme or plan is to have the sentences run concurrently, and the trial court did not explain why the sentences were being made to run consecutively. With a total thirty-six-year sentence, the defendant contends the trial court abused its discretion in sentencing him to eighteen years on the majority of the convictions and, further, ordering some of them to run consecutively.

Concurrent rather than consecutive sentences are the general rule for multiple convictions arising out of a single course of criminal conduct, at least for a defendant without a prior criminal record. See La. C.Cr.P. art. 883. However, even if convictions arise out of a single course of conduct, consecutive sentences are not necessarily excessive; other factors must be taken into consideration in making this determination. For instance, consecutive sentences are justified where an offender poses an unusual risk to public safety. *State v. Breland*, 97-2880 (La. App. 1 Cir. 11/6/98), 722 So. 2d 51, 53.

It is clear in its reasons for sentence that the trial court thoroughly considered La. C.Cr.P. art. 894.1. In arriving at appropriate sentences, particularly in its determination to run some of the sentences consecutively, the trial court stated, in pertinent part:

Okay. Referring to Article 894.1 of the Code of Criminal Procedure, I find that if Mr. Hebert was eligible for probation or suspended [sic] of sentence, there would be an undue risk that he would commit another crime.

I find that the defendant is in need of correctional treatment or custodial environment which can be provided most effectively by his commitment to an institution. A lesser sentence would deprecate the seriousness of the defendant's crime.

And specifically, also as an aggravating factor, the offender was persistently involved in similar offenses not already considered. It appears he has a record. He has the prior burglary and theft which was the predicate offense.

Also, not used by the State was another matter in which he had other burglaries. And, of course, these instances were also burglaries and attempted burglaries.

Also, his record on supervision has been abysmal. He got a suspended sentence on the burglary that was the predicate offense. He was revoked on that. He was given another chance through the Impact Program, got out on the intensive supervision on the Impact Program and his parole was revoked.

Despite the trial court not specifically articulating reasons why he imposed consecutive sentences, remand is not necessary because the record provided a more-than-adequate factual basis to support consecutive sentences. See *State v. Hampton*, 38,017 (La. App. 2 Cir. 1/28/04), 865 So. 2d 284, 295, *writs denied*, 04-0834 (La. 3/11/05), 896 So. 2d 57 and 04-2380 (La. 6/3/05), 903 So. 2d 452. In addition to the trial court's review of the defendant and his history at sentencing, the record clearly shows a course of repeated criminal conduct by the defendant, the defendant's disregard for the property of others, and an indication of little to no potential for the defendant's rehabilitation - all of which are factors that favor consecutive sentences. See *Hampton*, 865 So. 2d at 294.

Moreover, despite the defendant's contention that these offenses were part of a common scheme, these many acts of simple burglary did not arise out of a single

course of criminal conduct. See La. C.Cr.P. art. 883. While all the burglaries occurred during the course of a single night, there were eleven distinct victims who had their property stolen at different times in different places and, as such, constituted eleven distinct events of criminality. See *State v. Massey*, 08-839 (La. App. 3 Cir. 12/10/08), 999 So. 2d 343, 348-49. See also *State v. H.B.*, 06-1436 (La. App. 3 Cir. 4/4/07), 955 So. 2d 255, 260 (review of the jurisprudence shows that different victims, places, or dates mean different transactions and different schemes or plans). Finally, La. C.Cr.P. art. 883 specifically excludes from its scope sentences which the court expressly directs to be served consecutively. The trial court expressly directed that several sentences were to be served consecutively with other sentences. As such, those sentences are outside the scope of La. C.Cr.P. art. 883. See *State v. Palmer*, 97-0174 (La. App. 1 Cir. 12/29/97), 706 So. 2d 156, 160.

The trial court adequately considered the factors set forth in Article 894.1. Considering the trial court's careful review of the circumstances and the nature of the crimes, we find no abuse of discretion by the trial court. The trial court provided, and the record provides, sufficient justification in imposing these sentences and ordering that some of them be served consecutively. Accordingly, the sentences imposed are not grossly disproportionate to the severity of the offenses and, therefore, are not unconstitutionally excessive.

The assignment of error is without merit.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.**