

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 1368

JEW
J
SM.

STATE OF LOUISIANA

VERSUS

STEPHEN DANIEL VANDERHOFF, JR.

Judgment Rendered: MAR 06 2015

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 538045

Honorable Allison Penzato, Judge

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Defendant – Stephen Daniel Vanderhoff, Jr.

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

The defendant, Stephen Daniel Vanderhoff, Jr., was charged by bill of information with two counts of distribution of methadone, in violation of La. R.S. 40:967(A)(1). The defendant pled not guilty and, following a jury trial, was found guilty as charged on both counts. The State filed a habitual offender bill of information, and, following a hearing on the matter, the defendant was adjudicated, as to each count, a fourth or subsequent felony habitual offender.¹ For each count, the trial court imposed an enhanced sentence of forty-nine years imprisonment at hard labor, with the first two years of the sentences to be served without benefit of parole, probation, or suspension of sentence. The sentences were ordered to run concurrently. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the convictions, habitual offender adjudications, and sentences.

FACTS

In the summer of 2009, Detective Julie Boynton, with the St. Tammany Parish Sheriff's Office, was in contact with a confidential informant (CI), who provided information that the defendant was selling methadone. On July 16, 2009, Detective Brandon Stephens, with the St. Tammany Parish Sheriff's Office, drove to a predetermined place chosen by the defendant. Detective Stephens was in an undercover capacity, and the CI rode with him. Both the detective and CI were provided cash from the police department. Detective Stephens wore a listening and recording device (KEL) so that Detective Boynton could monitor the drug purchase from a distance. They met the defendant on Tranquility Road, near the

¹ The defendant has prior convictions for felony theft, possession of hydrocodone, and simple burglary.

Tammany Trace. The defendant and a male passenger were in a green truck. The defendant got out of the truck and approached the CI. The defendant gave the CI five methadone pills, and the CI gave him the money. Detective Stephens told the defendant that he also wanted some pills. The defendant went to the truck, then returned to the detective and sold him five methadone pills for \$50. Detective Stephens identified the defendant in court as the one who sold him the methadone, and the KEL tape was played at trial.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues the trial court abused its discretion in imposing a constitutionally excessive sentence. There are two forty-nine-year sentences at issue, but since the trial court ran the sentences concurrently, it appears that the defendant is treating it as a total sentence of forty-nine years.

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. 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. See **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 life imprisonment at hard labor, was sentenced to a total of forty-nine years at hard labor. See La. R.S. 15:529.1(A)(1)(c)(i) (prior to amendment by 2010 La. Acts Nos. 911, § 1 and 973, § 2) & La. R.S. 40:967(B)(4)(b). The defendant argues that the trial court should have ordered a presentence investigation report (PSI) so that it would have been able to consider his personal history and potential for rehabilitation. According to the defendant, "It was a needless imposition of pain and suffering to mete out such a severe punishment for selling ten pills of methadone."

Our review of the record reveals that at no time prior to sentencing did the defendant (defense counsel) request a PSI. Where the defendant does not request a

PSI, it is not error for the trial court to fail to order one. **State v. Walker**, 540 So.2d 1059, 1061 (La. App. 2nd Cir. 1989). The purpose of a PSI is to assist the sentencing judge in making a proper articulation in accordance with La. C.Cr.P. art. 894.1. *Id.* The determination, however, of whether or not to order a PSI lies within the discretion of the trial court. **State v. Scales**, 558 So.2d 702, 703 (La. App. 1st Cir. 1990); La. C.Cr.P. art. 875(A)(1). Further, following sentencing, the defendant did not object to the trial court not ordering a PSI.

Moreover, the defendant did not receive a total forty-nine-year sentence for distributing methadone, “where the total amount distributed was only ten pills,” as suggested by the defendant. The defendant was not sentenced for the instant offense alone. Rather, under the Habitual Offender Law, the defendant, a recidivist with multiple felony convictions, including felony theft, simple burglary, and possession of hydrocodone, was punished for the instant crime in light of his continuing disregard for the laws of our State. See State v. Johnson, 97-1906 (La. 3/4/98), 709 So.2d 672, 677.

The trial court was clear, in its reasons for the sentences, that it considered La. C.Cr.P. art. 894.1, as well as the above-mentioned issues raised by the defendant. In arriving at appropriate sentences, the trial court stated in pertinent part:

The Court in imposing the herein sentences considers both aggravating and mitigating circumstances. Under the provisions of Louisiana Code of Criminal Procedure Article 894.1, the Court finds that there is an undue risk that during the period of a suspended sentence or probation the defendant will commit another crime and a lesser sentence will deprecate the seriousness of the defendant’s crime.

The record before us clearly established an adequate factual basis for the sentences imposed. Considering the trial court’s review of the circumstances, the nature of the crimes, and the defendant’s repeated criminality, we find no abuse of

discretion by the trial court. Accordingly, the sentences imposed by the trial court are not grossly disproportionate to the severity of the offenses and, therefore, are not unconstitutionally excessive.

The assignment of error is without merit.

For the foregoing reasons, the defendant's convictions, habitual offender adjudications and sentences are affirmed.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.