NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 KA 1448

STATE OF LOUISIANA

VERSUS

JAMES MICHAEL LAWRENCE

Judgment Rendered: MAR 06 2015

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On Appeal from
The 22nd Judicial District Court, Parish of St. Tammany,
State of Louisiana
Trial Court No. 542222-1 "F"
The Honorable Martin E. Coady

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

CRAIN, J.

The defendant, James Michael Lawrence, was charged by amended bill of information with simple burglary, in violation of Louisiana Revised Statute 14:62. The defendant pled not guilty and, after a jury trial, was found guilty of the responsive offense of attempted simple burglary, in violation of Louisiana Revised Statutes 14:27 and 14:62. The trial court sentenced the defendant to six years imprisonment at hard labor and imposed a fine of two thousand dollars. The trial court denied motions for post-verdict judgment of acquittal, new trial, and reconsideration of sentence. The defendant was then adjudicated a fourth or subsequent felony habitual offender, the previously imposed sentence was vacated, and the defendant was resentenced to twenty years imprisonment at hard labor. The trial court denied the defendant's motion to reconsider the enhanced sentence. The defendant now appeals. We affirm the defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On October 20, 2013, during the early morning hours, Deputy Scott Seals of the St. Tammany Parish Sheriff's Office was dispatched to the Folsom residence of David Cardwell, who, along with his wife, had called 911 and reported a burglary in progress. Deputy Seals proceeded to the residence where he observed a white truck and two white males later identified as the defendant and Justin R. Lee. Based on the 911 calls, the testimony of Mr. Cardwell, and photographs taken of the scene, several items, including a refrigerator, a computer, two Sony high-definition cameras, an aluminum case of equipment, and a gas can, were taken from an office building and shed detached from and adjacent to the Cardwell residence.

SUFFICIENCY OF THE EVIDENCE

In the sole counseled and fourth pro se assignments of error, the defendant contends that the evidence presented was insufficient to support his conviction. Specifically, the defendant argues that the State failed to prove that he entered the office or took any equipment or that he had the specific intent to enter the building or take any equipment. In support of his argument, the defendant points to his own testimony that he was banging on the Cardwells' door to ask to purchase gasoline, which he contends was corroborated by Mr. Cardwell's testimony. The defendant argues that, if he had the specific intent to commit a burglary or theft, he would not have tried to awaken the inhabitants of the residence. The defendant also relies on the recording of Mr. Cardwell's 911call as proof that he did not enter the office. The defendant further contends that the jury's verdict was improper because the jury was uncertain as to whether he entered the office and took any equipment, noting that during deliberations the jury asked "If we are not sure (defendant) removed equipment from building but knew (saw) the equipment in truck, is he still guilty?"[1]

The constitutional standard for testing the sufficiency of evidence enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979), and codified in Louisiana Code of Criminal Procedure article 821, is whether the evidence, when viewed in the light most favorable to the prosecution, is sufficient to convince a rational trier of fact that all of the elements of the crime have been proved beyond a reasonable doubt. *See State v. Morgan*, 12-2060 (La. App. 1 Cir. 6/7/13), 119 So. 3d 817, 821. The *Jackson* standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for

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[1] The trial judge declined to answer the question, noting that he could not comment on the evidence. The trial judge provided requested definitions of principal to a crime and attempted simple burglary. The jury also requested, but was denied access to, photographs and the 911 recording during deliberations.

reasonable doubt. *State v. Toups*, 13-1371 (La. App. 1 Cir. 4/3/14), 144 So. 3d 1052, 1056. When analyzing circumstantial evidence, Louisiana Revised Statute 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. *Id.* When a case rests primarily on circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defendant, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. *See State v. Smith*, 12-2358 (La. 12/10/13), 130 So. 3d 874, 878.

Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *State v. Cobb*, 13-1593 (La. App. 1 Cir. 3/27/14), 144 So. 3d 17, 24. It is not the function of an appellate court to assess credibility or reweigh the evidence. Appellate review for minimal constitutional sufficiency of evidence is a limited one restricted by the *Jackson* standard. *State v. Rosiere*, 488 So. 2d 965, 968 (La. 1986).

Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific intent is a legal conclusion to be resolved by the trier of fact. *State v. Lavy*, 13-1025 (La. App. 1 Cir. 3/11/14), 142 So. 3d 1000, 1005, *writ denied*, 14-0644 (La. 10/31/14), 152 So. 3d 150. Since specific criminal intent is a state of mind; it need not be proven as a fact, but it may be inferred from the circumstances present and actions of the defendant. *See Id.* "Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended[.]" La. R.S. 14:27(A). Louisiana Revised Statute 14:62(A) provides, in pertinent part: "[s]imple burglary is the unauthorized entering of any dwelling …

or other structure ... with the intent to commit a felony or any theft therein[.]" Thus, to be found guilty of attempted simple burglary (as the defendant was), a person must have had the specific intent to enter a structure without authorization, with the specific intent to commit a felony or theft therein. *See State v. Jones*, 596 So. 2d 1360, 1369-70 (La. App. 1 Cir.), *writ denied*, 598 So. 2d 373 (La. 1992). "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals." La. R.S. 14:24.

Mr. Cardwell testified that at approximately 1:30 a.m., Mrs. Cardwell awakened him after she heard a noise.[2] As Mr. Cardwell proceeded downstairs, he heard loud banging and "hollering" at their front door. Mr. Cardwell denied hearing anyone ask to purchase gas. Mr. Cardwell did not open the door since he did not know who was outside, went back upstairs, and called 911.

Mr. Cardwell testified that while talking to the 911 operator he looked out of the upstairs bedroom window and saw a pickup truck in his driveway. He also noticed that the door to his office, which had been converted from a detached garage, was open, though it was usually closed. Mr. Cardwell observed an individual walk out of the office carrying a dorm-sized refrigerator, which the individual put in the bed of the pickup truck. He then observed a second individual carry a computer (an I-Mac All-In-One Monitor/Computer) out of the office and place it in the bed of the pickup truck, while the first individual ran back to the office.

Mr. Cardwell confirmed that he did not know the perpetrators or give them permission to enter his property or remove his items. During the trial, Mr. Cardwell positively identified the items that were removed from his office when

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[2] Mrs. Cardwell did not testify at the trial.

showed photographs depicting the items in the bed of the pickup truck, including a refrigerator, a computer, two Sony high-definition cameras, and an aluminum case of equipment. He further positively identified a photograph of a gas can as being the one that he kept in a storage shed located next to his office. Mr. Caldwell also confirmed the monetary value of the individual items.

The recording of Mr. Cardwell's 911 call was introduced into evidence and played for the jury. During the call, Mr. Cardwell reported that someone entered his detached office. When the dispatcher asked how many individuals were on his property, he indicated he was uncertain, but believed that there was one individual. However, he subsequently used the word "they" in reporting his observations of items being removed and placed in the back of the white pickup truck.

Deputy Seals testified that he was on patrol and passed the Cardwell residence just before the dispatch, noticing the white, four-wheel-drive truck in the driveway. After being notified that a burglary-in-progress had been reported, Deputy Seals traveled approximately one mile back to the residence, looking for two white males in a white truck. He pulled into the Cardwells' driveway, where he observed an F-150 truck. The defendant was pouring gas in the gas tank, and Lee was in the driver's seat. Deputy Seals immediately detained the defendant and Lee. On cross-examination, Deputy Seals confirmed that he smelled alcohol on the defendant and Lee.

Deputy Seals testified that Mr. Cardwell stated he had seen two white males removing items from his office and placing them in the back of the white truck. The defendant and Lee were then arrested and charged. Deputy Seals identified the photographs showing the items identified by Mr. Cardwell in the truck bed.

As the sole defense witness, the defendant testified that he and Lee had been drinking on the night in question. The defendant explained that he and Lee were traveling from Franklinton, where they had attended the fair, to Folsom. The

defendant testified that he had warned Lee that they needed gas, that the gas stations in Franklinton had long lines, and that "Folsom would close early." According to the defendant, when the low gas light came on, they stopped at a few houses trying to find someone to provide them with gasoline, but were unsuccessful.

The defendant testified that they arrived at the Cardwells' residence and he beat on the door, hoping to ask the occupants for gas. No one answered the door, but he heard some "stirring around." As he walked back toward the truck, he saw Lee carrying a mini-fridge and what he thought was a television. The defendant testified that he panicked, grabbed a gas can, and proceeded back to the truck. The defendant indicated that he and Lee argued as Lee went back for other items. The defendant admitted to taking the gas can and putting it in the back of the truck, but testified that he did not assist Lee with taking any of the other items or putting them in the back of the truck.

The defendant denied entering the office, but testified that he was in front of it and may have been seen at that point. He indicated that he was in the truck when Lee attempted to drive off, but the truck would not start. The defendant then exited the truck and began pouring gas into the gas tank. The defendant testified that he was only guilty of taking gas and maintained that he tried to ask for it first and did not go to the residence with the intention of stealing anything.

The jury's verdict indicates that it accepted the testimony offered against the defendant and rejected any hypothesis of innocence. Though not specifically indicated on the 911 call, according to the testimony presented at the trial, Mr. Cardwell was certain that he saw two individuals removing items from his office. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. *State v. Graham*, 13-1806 (La. App. 1 Cir. 7/3/14), 148 So. 3d 601, 606. On appeal, this court will not assess the credibility of witnesses

or reweigh the evidence to overturn a fact finder's determination of guilt. *Id.* at 607.

Considering the evidence, the jury could have reasonably concluded that the defendant had the specific intent to enter the office without authorization, with the specific intent to commit a felony or theft therein. Thus, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. *See State v. Ordodi*, 06-0207 (La. 11/29/06), 946 So. 2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *See State v. Calloway*, 07-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam). We find that the evidence in this case, when considered in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that the defendant committed attempted simple burglary. The sole counseled and fourth *pro se* assignments of error are without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

In *pro se* assignment of error number one, the defendant contends that his trial counsel's performance was prejudicially deficient in that his counsel did not enter the 911 recordings into evidence; did not play the recording of Mrs. Cardwell's 911 call for the jury; failed to allow the defendant to see the photographs or hear the 911 recordings before the trial; failed to act after being told that the defendant and one of the jurors had known one another since childhood and did not have an amicable relationship; did not have a copy of his prior convictions during the habitual offender proceeding and failed to object to the State's use of multiple convictions obtained on the same day; failed to inform the court that the defendant was incarcerated on the date that the habitual offender bill

of information indicated that he committed one of the offenses; and failed to conduct investigations, inform the defendant of available defense options before trial, or, despite the existence of internal inconsistencies, impeach the complainant such that a recantation would occur.

A defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Louisiana Constitution. In assessing a claim of ineffectiveness, a two-pronged test is employed. The defendant must show that (1) his attorney's performance was deficient, and (2) the deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674 (1984). The error is prejudicial if it was so serious as to deprive the defendant of a fair trial or "a trial whose result is reliable." *Id.* Thus, in order to show prejudice, the defendant must demonstrate that there is a reasonable probability that but for counsel's unprofessional conduct, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068; *State v. Felder*, 00-2887 (La. App. 1 Cir. 9/28/01), 809 So. 2d 360, 369-70, *writ denied*, 01-3027 (La. 10/25/02), 827 So. 2d 1173. A claim of ineffectiveness is generally relegated to postconviction proceedings, unless the record permits definitive resolution on appeal. *State v. Miller*, 99-0192 (La. 9/6/00), 776 So. 2d 396, 411, *cert. denied*, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed. 2d 111 (2001).

In his *pro se* brief, the defendant generally complains of his counsel's deficient investigation and poor strategy choices. However, decisions relating to investigation, preparation, and strategy cannot possibly be evaluated on appeal because an evidentiary hearing was not held on this issue.[3] *State v. Loper*, 10-0582 (La. 10/29/10), 48 So. 3d 1263, 1268-69. Further, under our adversary

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[3] To receive such a hearing, the defendant would have to satisfy the requirements of Louisiana Code of Criminal Procedure article 924 *et seq.*

system, once a defendant has the assistance of counsel, the vast array of trial decisions, strategic and tactical, which must be made before and during trial rest with an accused and his attorney. The fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel. *State v. Pierre*, 12-0125 (La. App. 1 Cir. 9/21/12), 111 So. 3d 64, 70-71, *writ denied*, 12-2227 (La. 4/1/13), 110 So. 3d 139.

The defendant contends that his counsel failed to ensure that the jury heard the recording of Mrs. Cardwell's 911 call, which was made simultaneous to Mr. Cardwell's call.[4] Both recordings are contained on a single compact disc that the State introduced into evidence; therefore, although it was not played for the jury, the recording of Mrs. Cardwell's call is part of the record before us and we are able to review its content. The defendant is incorrect in asserting that Mrs. Cardwell's call would have proven that he was at the door and not in the shed. At the beginning of her call, Mrs. Cardwell stated that someone was in the process of stealing items from their building adjacent to their home, and noted that the person was observed *after* she heard banging at the front door. Thus, Mrs. Cardwell's call establishes that the banging at the door occurred before, and not while, items were being removed from the office and shed. The details relayed during Mrs. Cardwell's call were consistent with those provided by Mr. Cardwell and would not have rendered the jury's rejection of the defendant's hypothesis of innocence unreasonable. Additionally, the defendant has not indicated how he was prejudiced by his counsel's alleged failure to allow him to hear the 911 calls or view the photographs before trial.

There is also nothing in the record to support the defendant's claim that he and one of the jurors, Jeffery Barfield, knew and did not get along with each other.

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[4] During Mr. Cardwell's call, Mrs. Cardwell can be heard speaking in the background. The 911 operator speaking to Mr. Cardwell confirmed that Mrs. Cardwell was on another line with another 911 operator.

Mr. Barfield was appropriately responsive during the *voir dire* examination and never indicated that he had any reason to be biased or unfair in this case. Further, when the trial court specifically asked the potential jurors if anyone was familiar with the defendant, Mr. Barfield did not indicate that he was. There were no objections or challenges regarding Mr. Barfield.

Neither does the record support the defendant's claim that his counsel's performance was deficient regarding the habitual offender adjudication. The defendant's habitual offender adjudication is predicated on (1) a 2002 guilty plea in Louisiana to theft of between $300 and $500; (2) a 2004 guilty plea in Louisiana to felon in possession of a firearm; (3) a 2004 guilty plea in Louisiana to two counts of unauthorized entry of an inhabited dwelling; and (4) a 2011 guilty plea in Mississippi to possession of a controlled dangerous substance (oxycodone). The defendant claims that he was incarcerated in the St. Tammany Parish Jail on October 28, 2011, the date that the habitual offender bill of information indicates that the Mississippi offense was committed. However, the Mississippi indictment, as well as the Mississippi Criminal History Record and FBI Identification Record that were offered as evidence, indicate that the offense took place on the date of the defendant's arrest, which was on or about December 18, 2009. We also note that, despite the defendant's claim that he was incarcerated in St. Tammany Parish at the time, the defendant's FBI record indicates that he was arrested in Mississippi on October 28, 2011, for another drug offense. Regardless of whether the defendant was in fact in Louisiana or Mississippi on that date, as noted, the indictment in evidence indicates that the offense at issue was committed in 2009, not 2011. Further, the indictment occurred in the January 2010 term and therefore could not have been based on an October 28, 2011 arrest, or any other 2011 offense. Accordingly, there is nothing in the record to indicate that the defendant

was incarcerated in St. Tammany Parish Jail at the time of the Mississippi drug offense under case number K-2010-188P.

We find that the defendant has failed to establish any deficiency in performance or prejudice resulting from his counsel's performance. Considering the foregoing and after careful consideration of the defendant's specific claims, we find no merit in *pro se* assignment of error number one.

HABITUAL OFFENDER ADJUDICATION AND SENTENCE

In his second and third *pro se* assignments of error, the defendant challenges the habitual offender adjudication and sentence. The defendant again argues that he was incarcerated in Louisiana on the date that the habitual offender bill of information alleges that the Mississippi predicate offense was committed, and therefore the State failed to prove that he was the same person who committed that predicate offense. The defendant also argues that the habitual offender adjudication was based on multiple convictions obtained on the same day.[5] Finally, the defendant contends that the "maximum" sentence imposed by the trial court is excessive.

In a case such as this, where the State relies on prior convictions based on guilty pleas to prove the allegations of the habitual offender bill, and the defendant denies those allegations, the State bears the initial burden of proving the existence of the prior guilty pleas and that the defendant was represented by counsel when they were taken. *State v. Shelton*, 621 So. 2d 769, 779 (La. 1993). Upon satisfaction, the burden shifts to the defendant to produce some affirmative evidence of an infringement of his rights or a procedural irregularity in the taking of the plea. *Id.* If the defendant meets this burden, then the burden reverts to the State to prove the constitutionality of the plea. *Id.* The State will carry its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, which

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[5] In his first *pro se* assignment of error, the defendant raised these arguments as a basis for finding that his trial counsel's performance was prejudicially deficient.

reflects a colloquy between the judge and the defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. *Id.* at 779-80. If the State introduces anything less than a "perfect" transcript, the judge must weigh the evidence submitted by both sides to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three *Boykin* rights.[6] *Id.* at 80; *see also State v. Deville*, 04-1401 (La. 7/2/04), 879 So. 2d 689, 691 (per curiam).

As to each of the Louisiana predicate offenses, the State introduced certified copies of the bills of information and guilty plea minute entries, showing that the defendant was represented by counsel and advised of his *Boykin* rights at the time of the guilty pleas. The State also introduced a fingerprint card with prints taken on the date of the habitual offender proceeding. Further, the State introduced evidence of the defendant's record from Mississippi including his fingerprint card, a Department of Corrections Offender Data Sheet, the grand jury indictment, and the Order of Conviction stating that the defendant was represented by counsel at the time of the Mississippi plea and that the plea was in conformity with uniform rules and constitutional provisions. Further, the State presented expert testimony from Lloyd Thomas Morse of the St. Tammany Parish Sheriff's Office Crime Lab concerning fingerprint analysis.

As previously noted in addressing the defendant's ineffective assistance of counsel claims, the defendant's fourth-felony habitual offender adjudication is based on predicate convictions consisting of guilty pleas that were entered on

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[6] In *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969), the United States Supreme Court reversed five robbery convictions founded upon guilty pleas because the court accepting the pleas had not ascertained that the defendant voluntarily and intelligently waived his right against compulsory self-incrimination, right to trial by jury, and right to confront his accusers. *Boykin* only requires a defendant be informed of these three rights, and the jurisprudence has been unwilling to extend the scope of *Boykin* to include advising the defendant of any other rights he may have. *State v. Jenkins*, 11-1436 (La. App. 1 Cir. 3/23/12), 91 So. 3d 1075, 1078.

March 22, 2002, March 23, 2004, and December 1, 2011. Thus, the defendant's fourth or subsequent felony habitual offender adjudication does not rely on convictions obtained on the same day. Further, there is nothing in the record to indicate that the defendant was incarcerated in the St. Tammany Parish Jail at the time of the Mississippi drug offense under case number K-2010-188P. While the defendant claims that he was incarcerated in St. Tammany Parish Jail on October 28, 2011, the Mississippi indictment indicates that the offense took place on or about December 18, 2009 (noted as one of several arrest dates in the defendant's Mississippi Criminal History Record and FBI Identification Record).

The State met its initial burden of proving the existence of the prior guilty pleas and that the defendant was represented by counsel. Thereafter, the defendant failed to produce any affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the pleas. Consequently, *pro se* assignment of error number three, which challenges the habitual offender adjudication, lacks merit.

In challenging the habitual offender sentence imposed, the defendant maintains that he did not commit or attempt to commit simple burglary, claiming that he stayed on the porch the whole time, only attempting to get someone to open the door so that he could obtain gasoline. The defendant further argues that he is not a threat to society, and that St. Tammany Parish is "addicted to imprisonment." Finally, the defendant contends that the trial court failed to produce an explanation or reason for imposing a "maximum sentence."

The Eighth Amendment to the United States Constitution and Article I, Section 20 of the Louisiana Constitution prohibit the imposition of excessive punishment. Even a sentence that falls within statutory limits is unconstitutionally excessive when it imposes punishment grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and

suffering. *State v. Smith,* 01-2574 (La. 1/14/03), 839 So. 2d 1, 4; *State v. Sepulvado,* 367 So. 2d 762, 767 (La. 1979). Sentences must be individualized according to the offender and the offense, taking into consideration certain factors enumerated in Louisiana Code of Criminal Procedure article 894.1,[7] as well as 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). A trial judge has broad discretion in imposing a sentence within statutory limits, and such sentence will not be set aside absent a manifest abuse of discretion. *State v. Taves,* 03-0518 (La. 12/3/03), 861 So. 2d 144, 147.

A conviction for attempted simple burglary carries a maximum sentence of six years imprisonment at hard labor pursuant to Louisiana Revised Statutes 14:27(D)(3) and 14:62(B). Under the Habitual Offender Law, the penalty for a fourth-felony offender is imprisonment "for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life." La. R.S. 15:529.1(A)(4)(a). Pursuant to this statute, the defendant faced a sentencing range of twenty years to life. Thus, the trial court in this case imposed the mandatory minimum sentence.

Courts are charged with imposing a statutorily mandated sentence unless it is unconstitutional. *State v. Dorthey,* 623 So. 2d 1276, 1278 (La. 1993). The Louisiana Supreme Court has recognized that although "it is apparent that the Legislature's determination of an appropriate minimum sentence should be

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[7] While the trial court need not recite the entire checklist of Article 894.1, the record must reflect that it adequately considered the factors. *State v. Brown,* 02-2231 (La. App. 1 Cir. 5/9/03), 849 So. 2d 566, 569. However, the goal of Article 894.1 is the articulation of the factual basis for a sentence, not rigid or mechanical compliance with its provisions. *State v. Lanclos,* 419 So. 2d 475, 478 (La. 1982). 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 Article 894.1. *Id.* at 478.

afforded great deference by the judiciary," it is well-settled that "courts have the power to declare a sentence excessive under Article I, Section 20 of the Louisiana Constitution, although it falls within the statutory limits provided by the Legislature." *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So. 2d 672, 676. Nonetheless, it is presumed that a mandatory minimum sentence under the Habitual Offender Law is constitutional. Id. at 675.

In *State v. Dorthey*, 623 So. 2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no measurable contribution to acceptable goals of punishment, or that the sentence amounts to nothing more than the purposeful imposition of pain and suffering, and is grossly out of proportion to the severity of the crime, he is duty bound to reduce the sentence to one that would not be constitutionally excessive. However, the court so recognized only after, and in light of, express recognition that the determination and definition of acts that are punishable as crimes is purely a legislative function. *Dorthey*, 623 So. 2d at 1278. It is the Legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. *Id.* Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. *Id.*

In *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So. 2d 672, the Louisiana Supreme Court re-examined the issue of when a downward departure from a mandatory minimum sentence of the Habitual Offender Law is permitted. The court held that to rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that he is exceptional, meaning that because of unusual circumstances he is a victim of the Legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the

case. *Johnson*, 709 So. 2d at 676. The court cautioned that such downward departures should occur only in rare instances. *Id.* at 677.

At the original sentencing hearing, the trial court noted its consideration of the facts, the defendant's use of poor judgment, and the traumatic effect that the offense had on the victims. The defendant has not presented any particular facts or special circumstances that would support a deviation from the habitual offender mandatory minimum sentence. In fact, the record establishes that up to this point in his life, the defendant is a habitual criminal offender against whom the enhanced sentencing statutes are designed to protect. Based on the record before us, we find that the defendant has failed to show that he is exceptional or that the minimum mandatory sentence is not meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Thus, a downward departure from the mandatory minimum sentence of twenty years imprisonment is not warranted in this case. The sentence imposed is not excessive and *pro se* assignment of error number two lacks merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.