NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 KA 1638

STATE OF LOUISIANA

VERSUS

WILLIAM M. BRANCH

Judgment Rendered: JUN 05 2015

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 539204-2

Honorable August J. Hand, Judge

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

WELCH, J.

The defendant, William M. Branch, was charged by amended bill of information on count one with armed robbery with the use of a firearm, in violation of La. R.S. 14:64 and La. R.S. 14:64.3, and on count two with being a convicted felon in possession of a firearm, in violation of La. R.S. 14:95.1.[1] The defendant pled not guilty on both counts. After a trial by jury, he was found guilty as charged on both counts. The trial court denied the defendant's motion for new trial and motion for postverdict judgment of acquittal. The State filed habitual offender bills of information to enhance both counts pursuant to La. R.S. 15:529.1.[2] As to both counts, the trial court adjudicated the defendant a fourth-felony habitual offender and imposed sentences of life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence, to be served concurrently. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning as error that the sentences are unconstitutionally excessive. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

STATEMENT OF FACTS

On July 21, 2013, Adriena Williams contacted an acquaintance, Boris Allen (the victim), and told him that her vehicle had broken down and that she needed his assistance. When the victim arrived to assist Williams, the defendant and Bernell

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[1] The defendant was charged along with co-defendants Adriena Williams and Bernell Earl. Williams pled guilty to simple robbery before the instant trial and testified as a witness herein. Earl's case was tried separately. His conviction and sentence were affirmed by this court. **State v. Earl**, 2014-1534 (La. App. 1st Cir. 04/24/15) (*unpublished*). The predicate offense for count two (a convicted felon in possession of a firearm) is a 2005 conviction of distribution of cocaine in the 22nd Judicial District Court.

[2] As to count one (armed robbery with the use of a firearm), the habitual offender adjudication is based on the following 22nd Judicial District Court predicate offenses: a 2010 bank fraud conviction, a 2005 conviction of possession of cocaine, a 2005 conviction of theft between three hundred and five hundred dollars, and the 2005 conviction of distribution of cocaine. As to count two (a convicted felon in possession of a firearm), the habitual offender adjudication is based on the same predicate offenses, except the 2005 conviction of distribution of cocaine, which was already used as a predicate for the underlying offense.

Earl were waiting behind nearby bushes. The victim instructed Williams to crank the engine, as he looked under the front hood of the vehicle.[3] At that point, the defendant and Earl approached the victim and demanded his wallet at gunpoint. Williams panicked and drove off from the scene. Seconds later, Williams stopped the vehicle and the defendant and Earl got into the vehicle and instructed her to turn left. The police were dispatched to the scene, as the victim reported the robbery. The police located and stopped the vehicle within minutes of it leaving the scene, between 6:30 and 7:00 p.m. The victim's wallet was located in Williams's purse. The defendant was seated in the rear-passenger seat and two firearms were located in the panel on the back of the front-passenger seat, directly in front of the defendant. The victim's compact disc case was also located on the floorboard of the rear-passenger seat.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court abused its discretion under the circumstances of this case by imposing constitutionally excessive life sentences on both counts. The defendant contends that the evidence showed that Earl owned the guns, that the armed robbery was Earl's idea, and that Earl was the one who demanded the victim's wallet at gunpoint. Thus, the defendant argues that his role in the offenses was minor in comparison to the role of Earl, whom he contends conceived, orchestrated, recruited and/or coerced his assistance, and took the lead in carrying out the scheme. The defendant further notes that Williams, who pled guilty to simple robbery, was punished far less severely for her role in the armed robbery. The defendant also notes that the trial court did not order a presentence investigation (PSI) and contends that the trial court failed to consider his personal history. Finally, the defendant contends that he does not have a history of violent offenses,

[3] Williams's young child was in the vehicle at the time of the offenses.

that the instant offenses were not violent or cruel, and that there was minimal harm to society as a result of his actions.

The Eighth Amendment to the United States Constitution and Article I, Section 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence may fall within statutory limits, it may nevertheless violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). 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 caused to society, it is so disproportionate as to shock one's sense of justice. **State v. Reed**, 409 So.2d 266, 267 (La. 1982).

Louisiana Code of Criminal Procedure article 894.1 sets forth what must be considered by the trial court before imposing sentence. The trial court need not recite the entire checklist of factors, but the record must reflect that it adequately considered the guidelines. 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. Lanclos**, 419 So.2d 475, 478 (La. 1982). See also **State v. Savario**, 97-2614 (La. App. 1st Cir. 11/6/98), 721 So.2d 1084, 1089, writ denied, 98-3032 (La. 4/1/99), 741 So.2d 1280.

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). Whoever commits the crime of possession of a firearm by a person convicted of certain felonies shall be imprisoned at hard labor for not less than ten nor more

than twenty years without the benefit of probation, parole, or suspension of sentence and be fined not less than one thousand dollars nor more than five thousand dollars. La. R.S. 14:95.1. As noted, the defendant's fourth-felony offender adjudication was based on predicate convictions of bank fraud, possession of cocaine, theft at a value between three hundred and five hundred dollars, and distribution of cocaine (as to the enhancement of count one only). Pursuant to La. R.S. 15:529.1(A)(4)(a), if the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the person shall be sentenced to imprisonment for the fourth or subsequent felony 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. Accordingly, the defendant was subject to a sentencing range of ninety-nine years to life imprisonment on count one, and to a sentencing range of twenty years to life imprisonment on count two.[4] Thus, in imposing two life sentences, the trial court imposed the maximum sentence on both counts.

The determination and definition of acts that are punishable as crimes is purely a legislative function. **State v. Dorthey**, 623 So.2d 1276, 1278 (La. 1993). It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. **Dorthey**, 623 So.2d at 1278. Generally, maximum sentences are reserved for cases involving the most serious violations of the offense charged and the worst type of offender. However, the trial judge is afforded wide discretion in determining a sentence, and the court of appeal will not set aside a sentence for excessiveness if the record supports the sentence imposed. **State v. Magee**, 2005-171 (La. App. 5th Cir. 10/6/05), 916

[4] In **State v. Dickerson**, 584 So.2d 1140 (La. 1991) (*per curiam*), the Supreme Court prohibited the imposition of a fine under the habitual offender law, noting that La. R.S. 15:529.1 only

So.2d 1178, 1185, writs denied, 2006–0461 (La. 9/22/06), 937 So.2d 377 & 2006–0464 (La. 9/22/06), 937 So.2d 377.

As noted by the defendant, there is no mandate that a PSI report be ordered, and the trial court's failure to order a PSI report will not be reversed absent an abuse of discretion. See La. C.Cr.P. art. 875(A)(1); **State v. Wimberly**, 618 So.2d 908, 914 (La. App. 1st Cir.), writ denied, 624 So.2d 1229 (La. 1993). In denying the motion to reconsider the sentences, the trial court noted its consideration of the record, the defendant's history, and the gravity of the offenses. A thorough review of the record reveals the trial court did not manifestly abuse its discretion in imposing the sentences. We find that the trial court adequately considered the facts of the case. The testimony presented during the trial clearly indicated that both the defendant and codefendant Earl had guns in carrying out the robbery, a fact which is undisputed on appeal. Further, the intent of the Legislature in passing the Habitual Offender Law was to deter and punish recidivism. Under this statute, a defendant with multiple felony convictions is treated as a recidivist who is to be 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. We also note that a young child was present during the commission of the offenses and the use of firearms in this case increased the dangerous and inherent threat of death or great bodily harm. See **State v. Gould**, 395 So.2d 647, 655-56 (La. 1980). The record supports the sentences imposed herein. The sentences imposed were not grossly disproportionate to the severity of the offenses, and thus, are not unconstitutionally excessive. The sole assignment of error is without merit.

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

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provides for enhanced sentences relating to the term of imprisonment and does not authorize the imposition of a fine. Thus, we find no error in the lack of a fine on count two.

CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.