NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 1044

STATE OF LOUISIANA

VERSUS

ALFRED HARRISON

DATE OF JUDGMENT: DEC 2 3 2015

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 378037, DIVISION "D", PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE PETER J. GARCIA, JUDGE

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Warren L. Montgomery District Attorney Covington, Louisiana and Kathryn W. Landry Special Appeals Counsel Baton Rouge, Louisiana	Counsel for Appellee State of Louisiana
Bertha M. Hillman Covington, Louisiana	Counsel for Defendant-Appellant Alfred Harrison
Alfred Harrison Kinder, Louisiana	Defendant-Appellant In Proper Person

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Disposition: CONVICTIONS AND SENTENCES AFFIRMED.

H. Holdridge J., agrees in part and dissents in part and will assign reasons

CHUTZ, J.

The defendant, Alfred Harrison, was charged by amended bill of information[1] with six counts of forcible rape, violations of La. R.S. 14:42.1.[2] The defendant entered pleas of not guilty and not guilty by reason of insanity. After a hearing, the trial court granted the defendant's motion to waive his right to a trial by jury. After a bench trial, the defendant was found guilty as charged on all six counts.[3] The trial court denied the defendant's motion for post-verdict judgment of acquittal and motion for new trial. The defendant was sentenced on each count to forty years imprisonment at hard labor with two years to be served without the benefit of parole, probation, or suspension of sentence, all sentences to be served concurrently. The defendant now appeals, assigning as error in a counseled brief that the trial court lacked jurisdiction over the matter because the case was not properly transferred from juvenile court to the district court. In a pro se brief, the defendant adopts the assignment of error raised in the counseled brief and also asserts claims of ineffective assistance of counsel, the denial of due process of law, and excessive sentences. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

As noted, the defendant pled not guilty and not guilty by reason of insanity. At the trial, the parties stipulated[4] that the defendant committed the acts constituting forcible rape as charged in the bill of information in St. Tammany

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[1] On March 8, 2004, the defendant was originally charged by grand jury indictment with six counts of aggravated rape. On August 16, 2010, the trial court granted the defendant's motion to quash the indictment based on the occurrence of some of the offenses prior to the defendant's fifteenth birthday. The State subsequently filed a bill of information charging six counts of forcible rape, which was amended in open court during trial as to the date of the offenses in counts one and two.

[2] Prior to amendment by 2015 La. Acts No. 184, § 1.

[3] At trial, the State and the defense stipulated that the witnesses would testify in accordance with the Children's Advocacy Center (CAC) videotapes and their statements, and the trial court considered expert testimony in concluding that the defendant was not insane at the time of the offenses.

[4] While the defendant agreed to the stipulation, it was noted during trial testimony that he denied committing the offenses during pretrial interviews by physicians.

Parish, against S.H., J.O., J.O., C.H., N.R., and T.O., the six victims.[5] Thus, the facts of the instant offenses were not fully developed. The offenses occurred between July 16, 2002 and January 9, 2004. Further, the State's exhibits, consisting of the interviews of the victims at the CAC, were presented in support of the factual basis for the offenses.

COUNSELED AND PRO SE ASSIGNMENT OF ERROR NUMBER ONE

In the sole counseled assignment of error, also adopted as assignment of error number one of the defendant's pro se brief, the defendant notes that he was arrested and held at a juvenile detention center and was transferred from juvenile court to adult court after the grand jury indicted him on charges of aggravated rape. The defendant argues that it was error for the district court to retain jurisdiction over this matter after the court quashed the indictment that transferred the matter from juvenile court to district court. The defendant specifically contends that the thirty-day time period for charging him with forcible rape as an adult pursuant to La. Ch.C. art. 305(B)(3) had expired before the State filed the bill of information in this case. Thus, the defendant argues the district court had no jurisdiction once the indictment for six counts of aggravated rape was quashed.

The issue raised in this assignment of error is whether the district attorney's failure to timely file a bill of information under La. Ch.C. art. 305(B)(3) precluded the vesting of jurisdiction in district court. The State filed the bill of information in this case on November 2, 2010, charging six counts of forcible rape, after the trial court quashed the 2004 grand jury indictment for six counts of aggravated rape.[6]

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[5] The victims' ages at the time of the offenses ranged from approximately two to ten years of age. The victims are identified only by their initials in this opinion. See La. R.S. 46:1844(W).

[6] The record reflects the defendant did not file a motion to quash the bill of information or otherwise raise the issue of its timeliness under La. Ch.C. art. 305 below. Nonetheless, this Court has addressed error under La. Ch.C. art. 305 as a part of the routine review for patent error pursuant to La. C.Cr.P. art. 920(2). ***State ex rel. A.N.***, 03-2776 (La. App. 1st Cir. 6/25/04), 886 So.2d 514, 515. Out of an abundance of caution, this Court will address the defendant's jurisdictional argument raised herein. Under La. C.Cr.P. art. 920(2), we are limited in our patent error review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence.

A juvenile who is alleged to have committed a crime prior to his seventeenth birthday is entitled to the protections of special juvenile procedures. La. Const. art. V, § 19. However, the Louisiana Constitution specifically authorizes the legislature to exclude juveniles arrested for certain enumerated offenses from the jurisdiction of the juvenile courts. ***State v. Hamilton***, 96-0107 (La. 7/2/96), 676 So.2d 1081, 1082. Louisiana Children's Code article 305 provides that jurisdiction over juvenile criminal offenses initially vests exclusively in the juvenile court. Only when a divesting event occurs does the district court obtain jurisdiction over the proceedings. See ***State v. Lacour***, 398 So.2d 1129, 1132 (La. 1981). When a child is fifteen years of age or older at the time of the commission of certain offenses punishable by death or life imprisonment, the juvenile court is automatically divested of jurisdiction when an indictment is returned or when the juvenile court finds probable cause that the accused committed the offense. La. Ch.C. art. 305(A)(1). Subsection B of Article 305 creates a method for transferring less serious offenses to the district court. Accordingly, when a child is fifteen years of age or older at the time of the commission of forcible rape and other certain enumerated offenses, he is subject to the exclusive jurisdiction of the juvenile court until either an indictment is returned or the juvenile court finds probable cause that the accused committed the offense and a bill of information charging the offense is filed. La. Ch.C. art. 305(B)(1) & (2); see ***State ex rel. T.C.***, 09-1852 (La. App. 1st Cir. 2/12/10), 35 So.3d 1088, 1090, writ denied, 10-0575 (La. 3/31/10), 31 So.3d 352; ***Hamilton***, 676 So.2d at 1082.

Although the decision to charge the juvenile as an adult under Article 305(B) is entirely within the discretion of the district attorney, the prosecutor is faced with a time limitation in subsection (B)(3). ***Hamilton***, 676 So.2d at 1083. That subsection, in pertinent part, provides: "If the child is being held in detention, the district attorney shall make his election and file the indictment, bill of

information, or petition in the appropriate court within thirty calendar days after the child's arrest, unless the child waives this right." La. Ch.C. art. 305(B)(3).

While La. Ch.C. art. 305 is silent as to the sanction for failure to make the timely election, the Louisiana Supreme Court has held that the thirty-day limit on prosecutorial election was never intended to be a limit on jurisdiction. ***Hamilton***, 676 So.2d at 1083. As the Court noted in ***Hamilton***, the comments to La. Ch.C. art. 305(B) indicate that the focus of the thirty-day limit is on detention, not jurisdiction. Specifically, Comment (g) reads, in pertinent part:

> In order to minimize the length of pre-charging (and preadjudication) detention, the district attorney, however, must make his election within thirty days after the child's arrest, unless this right is waived by the child. Since such a child can be held only in a detention facility pending the district attorney's election, this special provision appears compatible with the federal Juvenile Justice and Delinquency Prevention Act, P.L. 93-415, 42 U.S.C. § 5601.

The Children's Code provides no time limits for the institution of prosecution for those juveniles who are not held in custody. Children's Code article 104(1) states that when procedures are not provided for in the Children's Code, the Code of Criminal Procedure governs. Therefore, the time limits set forth in La. C.Cr.P. art. 701(B)(2) are applicable to juveniles not being held in custody. Article 701(B)(2) provides that in felony cases where an accused is not being held in custody, the district attorney must file an indictment or a bill of information within 150 days after arrest. If the district attorney fails to do so, the accused shall be released from any bail obligation. La. C.Cr.P. art. 701(B)(2). Accordingly, the remedy for failure to timely file charges against juveniles not held in custody is release from bail, not dismissal. La. C.Cr.P. art. 701(B)(2); ***Hamilton***, 676 So.2d at 1084.

Louisiana Children's Code article 305(B)(3) concerns the time limits the prosecution has to file charges. This provision is not jurisdictional but exists merely to ensure that charges are filed quickly to minimize the juvenile's

preadjudication detention. ***Hamilton***, 676 So.2d at 1083; see also La. Ch.C. art. 305(D) (providing that a plea to or conviction of a lesser included offense shall not revest jurisdiction in the court exercising juvenile jurisdiction over such a child). Thus, the trial court did not err in maintaining jurisdiction over the instant case. The sole counseled assignment of error (adopted as pro se assignment of error number one) lacks merit.

PRO SE ASSIGNMENT OF ERROR NUMBER TWO

In pro se assignment of error number two, the defendant argues that he was denied effective assistance of counsel and his fundamental right to a fair trial. The defendant notes that despite his insistence of innocence and recantations by several alleged victims, his counsel determined that the only plausible defense in this case was to enter a plea of not guilty and not guilty by reason of insanity. The defendant contends that he received unreasonable legal assistance that was outside professional norms due to a less than complete investigation.[7]

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), sets out a two-pronged test for proof of ineffective assistance of counsel: the defendant must show that his attorney's performance was deficient and that the deficiency prejudiced him so that the outcome would have been different absent counsel's ineffectiveness. An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial or "a trial whose result is reliable." ***Strickland***, 466 U.S. at 687, 104 S.Ct. at 2064.

In evaluating the performance of counsel, the inquiry must be whether counsel's assistance was reasonable considering all the circumstances. **State v.**

[7] We note the defendant incorrectly asserts in his pro se brief that there was no testimony at trial regarding his competency at the time of the offenses. As elsewhere noted herein, expert testimony regarding the defendant's sanity at the time of the offenses was presented at trial. The defendant also notes that his trial counsel did not file a motion to reconsider sentence or a notice of appeal. The trial counsel's failure to file a motion to reconsider sentence will be addressed in conjunction with the defendant's fourth pro se assignment of error, challenging the sentences as excessive.

Morgan, 472 So.2d 934, 937 (La. App. 1st Cir. 1985). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. ***State v. Robinson***, 471 So.2d 1035, 1038-39 (La. App. 1st Cir.), writ denied, 476 So.2d 350 (La. 1985).

A claim of ineffective assistance of counsel is more properly raised by an application for post-conviction relief in the district court, where a full evidentiary hearing may be conducted. However, where the record discloses sufficient evidence to decide the issue of ineffective assistance of counsel when raised by assignment of error on appeal, it may be addressed in the interest of judicial economy. ***State v. Carter***, 96-0337 (La. App. 1st Cir. 11/8/96), 684 So.2d 432, 438. The allegation of ineffectiveness, as contained in the pro se brief herein relating to the choice made by counsel to pursue one line of defense as opposed to another, constitutes an attack upon a decision of strategy made by the defendant's trial counsel.

Under our adversary 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. Folse***, 623 So.2d 59, 71 (La. App. 1st Cir. 1993). In ***State v. Martin***, 607 So.2d 775, 788 (La. App. 1st Cir. 1992), this Court held that the choice between a plea of not guilty or not guilty and not guilty by reason of insanity, as well as the decision of whether or not to call certain witnesses at the trial, obviously relates to strategy decisions and could not possibly be reviewed on appeal. Accordingly, the claim of ineffectiveness regarding defense counsel's choice of defense theories is not subject to appellate review. See ***State v. Allen***, 94-1941 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1271, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433. See also ***State v. Albert***, 96-1991 (La. App. 1st Cir. 6/20/97), 697 So.2d

1355, 1363-64; ***State v. Johnson***, 06-1235 (La. App. 1st Cir. 12/28/06), 951 So.2d 294, 302. Accordingly, we decline to address pro se assignment of error number two.

PRO SE ASSIGNMENT OF ERROR NUMBER THREE

In pro se assignment of error number three, the defendant notes that through counsel he stipulated that he committed the crimes charged in the bill of information but alleged that he was insane at the time of the commission of the crimes. The defendant argues the combination of a plea of not guilty and not guilty by reason of insanity and a stipulation to his guilt is reversible error under the due process clause of the Fourteenth Amendment where the record does not disclose that he voluntarily and knowingly entered such a plea. Noting that he did not address the court, the defendant contends that the record is silent as to whether the district court judge asked him questions concerning his plea. The defendant notes that he has an IQ of 70 and a third-grade education in arguing that it cannot be said that he knowingly and voluntarily waived his constitutional right against compulsory self-incrimination or his right to confront his accusers. Noting that the district court made a determination on the record of his competence to waive his right to a trial by jury, the defendant argues that the district court's failure to make the same inquiry as to his waiver against compulsory self-incrimination and the right to confront his accusers demands a reversal of his convictions.

The tendering of a plea of "not guilty and not guilty by reason of insanity" is tantamount to an alternative admission of the criminal conduct. The entry of such a plea gives the State notice that the defendant intends to attempt to avoid the consequences of any criminal act he may be found to have committed by setting forth this plea of insanity. ***State v. Clark***, 305 So.2d 457, 462-63 (La. 1974) (on rehearing). Evidence of a mental condition or defect is inadmissible unless the defendant enters a dual plea of not guilty and not guilty by reason of insanity.

Moreover, a mental defect or disorder short of insanity cannot serve to negate specific intent and reduce the degree of the crime. ***State v. LeCompte***, 371 So.2d 239, 243 (La. 1978); see also La. R.S. 14:14; La. C.Cr.P. art. 651. Therefore, the entry of the dual plea provides the defendant with the opportunity to establish his insanity, i.e., his exemption from criminal culpability, in exchange for relinquishing the right to stand mute and require the State to prove guilt beyond a reasonable doubt in a trial upon a simple "not guilty" plea. ***Clark***, 305 So.2d at 463.

A defendant asserting that he was insane at the time of the offense may urge at trial all other defenses available under the law, including that the defendant did not commit the act, that he was justified by self-defense, that he was not responsible by reason of insanity, and other possible defenses on the merits. ***State v. Branch***, 99-1484 (La. 3/17/00), 759 So.2d 31, 32 (per curiam) (citing La. C.Cr.P. art. 552, Official Revision Comment (c)). Once the State has established beyond a reasonable doubt all necessary elements of the offense and shown that defendant has committed a crime, the defendant bears the burden of establishing his defense of insanity in order to escape punishment. La. C.Cr.P. art. 652; ***State v. Marmillion***, 339 So.2d 788, 796 (La. 1976).

In ***State v. Clark***, 02-1463 (La. 6/27/03), 851 So.2d 1055, 1081-82, the appellate counsel claimed that trial counsel introduced insufficient evidence to support defendant's dual plea of not guilty and not guilty by reason of insanity, effectively constituting an admission of guilt on his behalf in violation of La. C.Cr.P. art. 557. In pertinent part, the Louisiana Supreme Court stated that, "Counsel's failure to present any affirmative evidence in support of the insanity portion of the dual plea, by either lay or expert testimony, does not amount to a tacit submission on the question of guilt or innocence." The Court further held that given the dual nature of the plea, defendant's failure to present evidence of insanity

did not amount to an unconditional plea of guilty in violation of La. C.Cr.P. art. 557. ***Clark***, 851 So.2d at 1082.

In ***State v. Harris***, 470 So.2d 601 (La. App. 1st Cir.), writ denied, 477 So.2d 1123 (La. 1985), the defendant was charged with simple burglary of an inhabited dwelling. He stipulated to the testimony adduced at his preliminary hearing for trial purposes and was found guilty as charged. On appeal, the defendant argued that the trial court erred in finding him guilty on the basis of the stipulation. The defendant argued that the language of the stipulation was unclear as to whether or not the defendant was stipulating to the evidence elicited at the preliminary hearing or to his guilt of the charge of simple burglary of an inhabited dwelling. He also argued that the stipulation was "in actuality" a guilty plea, entitling him to the constitutional protections set forth in ***Boykin v. Alabama***, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). This Court found the stipulation regarding the testimony from the preliminary hearing did not constitute an admission of guilt; thus, the defendant had never pled guilty. The court noted that the defendant was convicted based upon testimony introduced by stipulation and concluded "[w]e find this testimony sufficient to convict the defendant as charged." ***Harris***, 470 So.2d at 603.

In this case, at the hearing on the defendant's motion to waive his right to a jury trial, defense counsel stated he was in possession of six videotapes consisting of CAC interviews with the victims and, at that point, he delivered the videotapes back to the State. The trial court questioned the defendant, as well as Dr. John Thompson and Dr. Rafael Salcedo (the physicians who previously examined the defendant for competency to stand trial and who were appointed by joint motion to report to the court on the defendant's sanity at the time of the offense). After the trial court found a knowing and intelligent waiver of the right to a trial by jury, the bench trial began. The State offered a stipulation that the defendant committed the

acts as alleged in the bill of information, introducing the CAC videotapes as a factual basis in support of the stipulation. Noting his review of the CAC videotapes, the defense counsel informed the trial court that he would enter into the stipulation based on his understanding that, if called at trial, the witnesses would testify in accordance with their statements and the CAC videotapes. The trial court reiterated that the CAC videotapes formed the basis for the stipulation. Dr. Salcedo, Dr. Thompson, and Susan Johannsen, an expert in the field of psychology and social work, were called to present evidence regarding the defendant's sanity at the time of the crimes and his ability to distinguish right from wrong. The trial court granted a recess at the request of the defense, and when the trial resumed on a later date, the defense rested.

We find no due process violation in this case. The defendant's dual plea of not guilty and not guilty by reason of insanity does not amount to an unconditional plea of guilty. See ***Clark***, 851 So.2d at 1082. The defendant specifically urged at the trial that he was not responsible by reason of insanity, a defense on the merits. See ***Branch***, 759 So.2d at 32. Regardless of the stipulation, the dual plea afforded the defendant the opportunity to establish an exemption from criminal culpability. See ***Clark***, 851 So.2d at 1082. Further, Louisiana courts have consistently upheld stipulations entered into by a defendant and his defense counsel and the State. See ***State v. Fabacher***, 362 So.2d 555, 558 (La. 1978); ***State v. Henry***, 352 So.2d 643, 648 (La. 1977); ***Harris***, 470 So.2d at 603; ***State v. Hall***, 47,564 (La. App. 2d Cir. 12/12/12), 108 So.3d 188, 196-97; ***State v. Wry***, 591 So.2d 774, 780 (La. App. 2d Cir. 1991). Considering the foregoing, we find no merit in pro se assignment of error number three.

PRO SE ASSIGNMENT OF ERROR NUMBER FOUR

In the fourth pro se assignment of error, the defendant contends that the sentences imposed by the trial court are excessive in this case. The defendant

notes that the offenses occurred in his youth and further notes that he would be in his late fifties when released if the sentences are allowed to stand. Without any specificity, the defendant generally argues that based on "all of the mitigating factors" and "the facts of this case" the sentences are grossly out of proportion to the severity of the crime and shock the sense of justice.

The record in this case does not contain an oral or written motion to reconsider sentence. Louisiana Code of Criminal Procedure article 881.1E provides that the failure to file or make a motion to reconsider sentence precludes the defendant from raising an excessive sentence argument on appeal. See also ***State v. Duncan***, 94-1563 (La. App. 1st Cir. 12/15/95), 667 So.2d 1141, 1143 (*en banc per curiam*). Nevertheless, because this pro se assignment can be construed as arguing that defense counsel was ineffective in failing to file a motion to reconsider sentence, we will address the excessive sentences claim as a necessary part of addressing the defendant's claim of ineffective assistance of counsel. See ***State v. Bickham***, 98-1839 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 891-92.

The failure to file a motion to reconsider sentence in itself does not constitute ineffective assistance of counsel. However, if the defendant can show a reasonable probability that, but for counsel's error, his sentence would have been different, a basis for an ineffective assistance claim may be found. See ***State v. Felder***, 00-2887 (La. App. 1st Cir. 9/28/01), 809 So.2d 360, 370, writ denied, 01-3027 (La. 10/25/02), 827 So.2d 1173.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may 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). A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain

and suffering. See ***State v. Hurst***, 99-2868 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So.2d 962. A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. ***State v. Lobato***, 603 So.2d 739, 751 (La. 1992).

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the district court to consider when imposing sentence. While the entire checklist of Article 894.1 need not be recited, the record must reflect that the district court adequately considered the criteria. ***State v. Brown***, 02-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569. Forcible rape is punishable by imprisonment at hard labor for not less than five nor more than forty years. La. R.S. 14:42.1(B). As a general rule, maximum or near maximum sentences are to be reserved for the worst offenders and the worst offenses. ***State v. James***, 02-2079 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 586. Also, maximum sentences permitted under a statute may be imposed when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. ***State v. Hilton***, 99-1239 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 00-0958 (La. 3/9/01), 786 So.2d 113.

Herein, at the post-trial motions and sentencing hearing, the defense counsel conceded that the defendant was ultimately found competent to stand trial and that the expert witnesses at trial concluded that they could find no evidence of insanity at the time of the offenses. However, the defense counsel noted that there was evidence to show that the defendant long suffered from schizophrenia. The defense counsel also made reference to the presentence investigation report, specifically noting that the defendant had been a victim himself and comes from a

dysfunctional family. The trial court noted the painstaking measures taken to address the defendant's competency before proceeding. Before imposing the sentences, the trial court pointed out that while the defendant had been a victim of abuse, there were six victims involved in this case. The trial court noted that some of the family members supported victims who made recantations but further noted the victims' statements in their CAC interviews and other pretrial statements. The trial court further indicated that the physicians convinced him that the defendant knew right from wrong when he committed the offenses and knew he was affecting the child victims.

The trial court adequately considered the factors set forth in Article 894.1. Considering the trial court's careful review of the circumstances, the presentence investigation report, and the nature of the instant crimes, we find no abuse of discretion by the trial court. Further, the trial court provided ample justification for the imposition of the maximum sentences allowed by law. We note that while the trial court imposed maximum sentences, he ordered that the sentences be served concurrently. Because the defendant's sentences are not excessive, the defense counsel's failure to make or file a motion to reconsider sentence, even if constituting deficient performance, did not cause any prejudice to defendant. Therefore, the defendant's ineffective assistance of counsel claim in this regard fails to meet the prejudice prong of ***Strickland v. Washington***. The defendant has not proved that it is likely the outcome would have been different if defense counsel had filed a motion to reconsider sentence. Pro se assignment of error number four lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.