

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2015 KA 1133

STATE OF LOUISIANA

VERSUS

BRADLEY JOSEPH BOUDREAUX

Judgment Rendered: DEC 23 2015

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On Appeal from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
No. 672498

The Honorable John R. Walker, Judge Presiding

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Joseph L. Waitz, Jr.
District Attorney
And
Marian M. Hamilton
Assistant District Attorney
Houma, LA

Attorneys for Plaintiff/Appellee
State of Louisiana

Bertha M. Hillman
Louisiana Appellate Project
Covington, LA

Attorney for Defendant/Appellant
Bradley Joseph Boudreaux

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

HOLDRIDGE, J.

The defendant, Bradley Joseph Boudreaux, was charged by bill of information with molestation of a juvenile (victim under the age of seventeen), a violation of La. R.S. 14:81.2(A)(1). The defendant pled not guilty and, following a jury trial, was found guilty as charged. The defendant was sentenced to twenty-five years imprisonment at hard labor with ten years of the sentence to be served without benefit of parole, probation, or suspension of sentence; five years of the sentence were suspended and, upon completion of his sentence, the defendant is to be placed on five years of supervised probation. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

In 1997, the defendant and his girlfriend had a daughter, K.B.¹ K.B.'s mother left when K.B. was fourteen years old, and the defendant took custody of K.B. In October of 2013, it came to the attention of K.B.'s teacher at her vocational-technical school (where she went following regular school) that the defendant had been molesting K.B. According to K.B.'s trial testimony, K.B.'s interview at the Children's Advocacy Center, and the trial testimony of Dana Davis, a clinical psychotherapist providing therapy to K.B., the defendant began molesting K.B. when she was fourteen or fifteen years old and continued to molest her until she was sixteen years old. On different occasions, the defendant touched K.B.'s breasts and vagina, rubbed his penis on her vagina, and performed oral sex on her.

¹The defendant did not testify at trial.

¹ The victim is referred to by her initials. See La. R.S. 46:1844(W).

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues his sentence is excessive.

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. Code Crim. 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. Code Crim. 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. Code Crim. 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 forty years at hard labor, was sentenced to, in effect, twenty years of imprisonment at hard labor with the first ten years without benefits (the full sentence was twenty-five years at hard labor, but the trial court suspended five years of the sentence). See La. R.S. 14:81.2(C)(1).² The defendant argues in brief that adequate consideration was not given to the total guidelines (of La. Code Crim. P. art. 894.1) in particularizing his sentence. The defendant notes he is a first offender and that of the twenty aggravating circumstances listed under Article 894.1, “sixteen do not apply” to him.

It is clear in its reasons for sentence that the trial court adequately considered La. Code Crim. P. art. 894.1. The trial court stated in pertinent part:

The Court listened to the testimony as well as the jury in this case, and the jury returned a verdict of guilty as charged. The law requires that his verdict be a unanimous verdict.

In addition to the verdict that was returned, there was a special interrogatory or question to the jury as to whether they found that the events in this case had reoccurred during a period of more than one year. In accordance with Paragraph C of Title 14 Section 81.2, the jury rendered a finding that it had, which allows the penalty to be enhanced in connection with this matter.

I think it goes without saying that the events in this case are serious enough that the issue of enhancement is -- I don't see that as

² The defendant was sentenced under this provision, which provides for a sentence of five to forty years when the incidents of molestation recur during a period of more than one year.

truly an issue, I think it's all part of the circumstances that go to the seriousness of the crime in this matter. Whether it's one event, more than one event, certainly these are serious, these are traumatic, and especially that they occur within the context of a relationship between a father and his daughter; and then we have a victim who is mentally challenged and developmentally disabled.

The jury heard the testimony of all the witnesses, they heard the testimony of the victim, they saw the video taped interview at the Child Advocacy Center, they heard the testimony from the various law enforcement officers, and they made their decision accordingly.

The facts of this case I believe as the testimony presented itself probably would have supported a charge which is more serious than this. Certainly this is a very -- has the potential for a very lengthy sentence considering the age of Mr. Boudreaux and the circumstances that are present. The evidence that was produced to the jury certainly supported the verdict that was rendered in connection with this case.

The record before us clearly established an adequate factual basis for the sentence imposed. In arriving at an appropriate sentence, the trial court was clearly cognizant of the emotional and psychological damage the defendant caused K.B., especially in light of her disability. Moreover, even had there not been full compliance with La. Code Crim. P. art. 894.1, remand would be unnecessary because the record before us clearly established an adequate factual basis for the sentence imposed on the defendant for the molestation of his own daughter, the one person he was supposed to protect from such evils, but instead exploited. See State v. Kirsch, 2002-0993 (La. App. 1st Cir. 12/20/02), 836 So.2d 390, 395-96, writ denied, 2003-0238 (La. 9/5/03), 852 So.2d 1024. Considering the trial court's review of the circumstances, the nature of the crime, and the fact that the defendant was sentenced to half of what he could have received, we find no abuse of discretion by the trial court. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.