

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 KA 0920



STATE OF LOUISIANA

VERSUS

HENRY LEWIS

Judgment Rendered: DEC 22 2016

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Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 32,287

Honorable Jason Verdigets, Judge

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

WELCH, J.

Defendant, Henry Lewis, was charged by bill of information with molestation of a juvenile, a violation of La. R.S. 14:81.2. He pled not guilty. Following a jury trial, defendant was found guilty as charged, with the jury making a special finding that the victim, C.J.,¹ was under thirteen years of age at the time of the offense. Defendant filed a motion for postverdict judgment of acquittal and/or new trial, which the trial court denied. Thereafter, the trial court sentenced defendant to fifty years at hard labor, with twenty-five years to be served without the benefit of parole, probation, or suspension of sentence. Defendant filed a motion to reconsider sentence that the trial court also denied. Defendant now appeals, alleging two assignments of error related to his sentence. For the following reasons, we affirm defendant's conviction and sentence.

FACTS

Defendant is C.J.'s uncle by marriage. C.J. was born on December 27, 2002. On September 28, 2013, C.J. attended church with her aunt, her brother, and defendant. After church, C.J. and her brother went home with their aunt and defendant in order to spend the night.

At defendant's home, C.J. worked on a math project while her aunt and brother slept, and defendant washed dishes. At approximately 9:00 or 10:00 p.m., C.J. went into the computer room at defendant's home. Defendant entered the room, picked C.J. up, and placed her in his lap as he sat in a chair. Defendant told C.J. that she was beautiful and "stuck his tongue" in her mouth. When C.J. attempted to speak out in resistance, defendant told her that she could not talk or she might wake her aunt. C.J. stated that defendant then briefly stuck his "private" in her underwear and rubbed it around, making skin-to-skin contact with her "private." Defendant

¹ In accordance with La. R.S. 46:1844(W), the victim herein is referenced only by her initials, or is referred to as "the victim."

eventually stopped and went into the bathroom; C.J. went into the living room.

In the living room, C.J. sat on a couch and covered herself with a blanket. Defendant entered the living room and caused C.J. to lie down on the couch. At that point, defendant pushed C.J.'s shirt and bra upward, exposing her chest, which he began to lick or suck. Defendant then pulled C.J.'s pants and underwear down before licking her "private." Defendant eventually stopped and told C.J. that she could go to bed, which she did. The following day, upon returning home, C.J. told her parents and other relatives what happened at defendant's home. At trial, C.J. annotated anatomical drawings of a female and male in order to demonstrate each of the body parts involved throughout the incidents. Defendant did not testify at trial.

EXCESSIVE SENTENCE

In related assignments of error, defendant argues that the trial court erred in denying his motion to reconsider sentence because the sentence is unconstitutionally excessive. Defendant contends that the instant sentence is "essentially a life sentence" that fails to take into account his relative lack of a criminal history and the isolated occurrence of the offense.

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, 2000-3053 (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. **State v. Hogan**, 480 So.2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences

within statutory limits, and the sentence imposed by it will not be set aside as excessive absent an abuse of discretion. **State v. Lobato**, 603 So.2d 739, 751 (La. 1992).

An excessive sentence is reviewed by examining whether the trial court adequately considered the guidelines established in La. C.Cr.P. art. 894.1. The goal of La. C.Cr.P. art. 894.1 is to have the sentencing court articulate a factual basis for the sentence, not rigid or mechanical compliance with the article's 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 Article 894.1. See **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial court 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*).

Whoever commits the crime of molestation of a juvenile when the victim is under the age of thirteen years shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence. La. R.S. 14:81.2(D)(1). Defendant was sentenced to fifty years at hard labor, with twenty-five years to be served without the benefit of parole, probation, or suspension of sentence.

Prior to sentencing defendant, the trial court considered letters it received from family members. Additionally, the trial court ordered and considered a presentence investigation report ("PSI"), which it attached to the record and partly adopted as

reasons for the sentence. The trial court noted that defendant had a criminal history, including “multiple arrests for crimes against the person” and a prior conviction for illegal use of a weapon, which was a plea resulting from an original assault-by-drive-by-shooting charge. In imposing the instant sentence, the trial court deviated downward from the sentence recommended in the PSI: seventy-five years at hard labor, with the first twenty-five to be served without the benefit of parole, probation, or suspension of sentence.

Considering the record as a whole, the trial court’s stated reasons for sentencing, and the contents of the PSI, we conclude that the trial court did not err or abuse its discretion in sentencing the defendant to fifty years at hard labor, without the benefit of parole, probation, or suspension of sentence for the first twenty-five years. In imposing this mid-range sentence, the trial court adequately considered all of the relevant factors related to defendant, his history, and the offense.

These assignments of error are without merit.

For the foregoing reasons, the defendant’s conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.