

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

2018 KA 0221

STATE OF LOUISIANA

VERSUS

JOHN TICKLES

Judgment rendered: NOV 06 2018

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On Appeal from the  
Twenty-First Judicial District Court  
In and for the Parish of Tangipahoa  
State of Louisiana  
No. 1600300, Div. "B"

The Honorable Charlotte H. Foster, Judge Presiding

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**BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.**

## **HOLDRIDGE, J.**

The defendant, John E. Tickle, was charged by bill of information with distribution of a schedule II controlled dangerous substance (cocaine), a violation of La. R.S. 40:967(A)(1). Following a jury trial, he was found guilty as charged. Thereafter, the court sentenced the defendant to twenty years imprisonment at hard labor.<sup>1</sup> The defendant filed a motion to reconsider sentence, which the trial court denied. The defendant now appeals, asserting that his sentence is excessive under the circumstances. For the following reasons, we affirm the defendant's conviction and sentence.

### **FACTS**

On August 12, 2015, Detective Victor Marler of the Ponchatoula Police Department, acting in an undercover capacity, was accompanied by a confidential informant to a residence located at 780 West<sup>2</sup> Street in Ponchatoula, which belonged to Glenn Foster. After arriving at the residence, the informant introduced Detective Marler to the defendant. Detective Marler purchased rocks of crack cocaine from the defendant for \$80.00 (eighty-dollars), which was placed inside a Garcia Vega cigar package. After the purchase, the defendant began to walk towards the door. As the defendant was walking, he instructed Detective Marler to remain inside and wait until he pulled off. At that time, the informant exited the residence to pull Detective Marler's truck inside the yard. Moments after the defendant's departure, Detective Marler and the informant exited the residence and entered Detective Marler's truck. Thereafter, Detective Marler returned to the

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<sup>1</sup> Although the trial court failed to impose the two-year restriction on parole, probation, or suspension of sentence, pursuant to La. R.S. 15:301.1(A), the court's failure to do so "shall not in any way affect the statutory requirement that all or a portion of the sentence be served without benefit of probation, parole, or suspension of sentence."

<sup>2</sup> In the video recording of the transaction, Detective Marler indicated he was turning onto West Street, but at trial, he testified that the transaction took place on East Street.

office and turned over the suspected cocaine to the evidence custodian who sent the substance to the Louisiana State Police Crime Laboratory, where drug analysis certified the substance was cocaine. Detective Marler then prepared a warrant for the defendant's arrest.

On December 10, 2015, while on patrol, Lieutenant Melvin McGary of the Ponchatoula Police Department saw the defendant, who he had known his entire life, driving south on North First Street and subsequently turning onto East Street. After ascertaining that the warrant for the defendant's arrest was still active, Lieutenant McGary initiated a traffic stop of the vehicle and arrested the defendant.

During the subsequent trial, Detective Marler and Lieutenant McGary both testified regarding their respective interactions with the defendant and identified the defendant in court as the perpetrator. The initial transaction for cocaine between Detective Marler and the defendant was video-recorded and subsequently shown to the jury during the trial. Additionally, Bryan Guidry, an analyst with the Louisiana State Police Crime Lab, testified he received and tested the substances in this case, which "were determined to contain cocaine." The defendant did not testify at trial.

### **ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant contends his twenty-year sentence for distribution of cocaine is excessive under the circumstances. The defendant acknowledges he was sentenced within the statutory limits, but he contends that as the current penalty for the instant offense is no more than ten years imprisonment at hard labor when the controlled dangerous substance is less than twenty-eight grams, his sentence is excessive. The defendant further contends that the change in the law "reflects the public's shift in attitude regarding appropriate

sentences in drug cases.” The defendant relies on **State v. Clark**, 391 So.2d 1174 (La. 1980) to support his position.

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. 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. **State v. Andrews**, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So.2d 448, 454.

Louisiana Code Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of Article 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

The defendant was convicted of distribution of cocaine in 2017, but committed the offense in 2015. In 2015, a conviction for distribution of cocaine carried a potential penalty of imprisonment at hard labor for not less than two years and no more than thirty years, with the first two years of the sentence being without benefit of parole, probation, or suspension of sentence and a potential fine of no more than fifty thousand dollars. See La. R.S. 40:967(B)(4)(b) (2016). The defendant was sentenced to twenty years imprisonment at hard labor. In 2017

(when the defendant's sentence was imposed), the penalty for distribution of cocaine was amended. See 2017 La. Acts No. 281, § 2. Under the current penalty provision, the instant offense (as the aggregate weight of the cocaine was under twenty-eight grams) carries a potential penalty of imprisonment "with or without hard labor, for not less than one year nor more than ten years." La. R.S. 40:967(B)(1)(a).

The Louisiana Supreme Court has consistently held that the law in effect at the time of the commission of the offense is determinative of the penalty which the convicted accused must suffer. A defendant must be sentenced according to sentencing provisions in effect at the time of the commission of the offense. "The mere fact that a statute may be subsequently amended, after the commission of the crime, so as to modify or lessen the possible penalty to be imposed, does not extinguish liability for the offense committed under the former statute." **State v. Sugasti**, 01-3407 (La. 6/21/02), 820 So.2d 518, 520.

Furthermore, the defendant's reliance on **Clark** is misplaced. In **Clark**, the defendant argued that his sentence was excessive, as the trial court failed to consider the amendment to the statute (theft of livestock, first offense), which lessened the penalty for a first offense. **Clark**, 391 So.2d at 1175. In evaluating excessiveness, the Louisiana Supreme Court concluded, "the trial judge erred by not giving the legislative change of penalties any weight in his sentence determination." **Id.** at 1176. However, the Court noted that "it is the rule in this state that the penalty provision in effect at the time of the offense is the applicable provision." **Id.** In reaching its conclusion, the Court noted that the "defendant had no previous criminal convictions or history of criminal proclivity. Thus, there was no basis for finding an undue risk that during a period of suspended sentence or probation the defendant would commit another crime or that defendant was in need

of a custodial environment.” **Clark**, 391 So.2d at 1177. The Court also took into consideration the plight of the defendant’s family and the fact that his lengthy imprisonment would “entail excessive hardship to his dependents,” reflecting on the fact that his wife was very ill. **Id.**

In the instant case, the defendant has a prior criminal history and there is nothing in the record to support that the defendant’s lengthy imprisonment would entail excessive hardship to any dependents. Furthermore, **Clark** predates **Sugasti** and its progeny.

The defendant further contends that the trial court failed to explain why it imposed the twenty-year sentence and never considered the mitigating factors such as his age and “whether he was merely a drug user who was selling small amounts of drugs to support his habit.” Additionally, the defendant indicates he was fifty years old when the sentence was imposed and would not be released until he is nearly seventy years old.

In its reason for sentence, the trial court stated, “[h]aving heard the testimony in this matter, and considering everything, I’m going to sentence you to twenty (20) years at hard labor with the Department of Corrections.” The court further indicated, “[i]t’s my understanding that you have prior convictions and the state will have to decide whether or not they’re going to file what’s called a ‘bill of information’ or ‘habitual offender.’”

The articulation of the factual basis for imposing a sentence is the goal of La. Code Crim. Proc. 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. Proc. art. 894.1. **State v. Dickerson**, 16-1336 (La. App. 1 Cir. 4/12/17), 218 So.3d 633, 641, writ denied, 2017-1147 (La.

8/31/18), 251 So.3d 1062. 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. **Id.** 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 case, the record before us clearly supports that the trial court reviewed and considered the defendant's prior criminal record and the likelihood that he would commit another crime. At the sentencing hearing, the trial court noted that the defendant had prior criminal convictions and the state reserved its right to file a habitual offender bill of information. The court also took into consideration the ample amount of evidence presented in this case. Despite the defendant's criminal history and the overwhelming evidence of the defendant's guilt, the court still imposed a mid-range sentence. Considering these facts, we cannot say the trial court abused its broad discretion in imposing the twenty-year sentence at hard labor for distribution of cocaine. Further, the sentence imposed was not grossly disproportionate to the severity of the offense and thus, was not unconstitutionally excessive. This assignment of error lacks merit.

**CONVICTION AND SENTENCE AFFIRMED.**