

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 KA 0014R

STATE OF LOUISIANA

VERSUS

BRANDON BOYD

Judgment Rendered: MAY 09 2019

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 06-14-0783**

Honorable Beau Higginbotham, Judge Presiding

**Hillar C. Moore, III
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Baton Rouge, LA**

**Counsel for Appellee,
State of Louisiana**

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Brandon Boyd**

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

WHIPPLE, C.J.

The defendant, Brandon Boyd, was charged by grand jury indictment with one count of second degree murder, a violation of LSA-R.S. 14:30.1. On July 3, 2014, the defendant pled not guilty and was subsequently found competent to stand trial on November 6, 2014. Following a trial by jury, the defendant was found guilty as charged. The trial court imposed a term of life imprisonment at hard labor, to be served without the benefit of probation, parole, or suspension of sentence. On appeal to this court, the defendant argued that the evidence was insufficient to support his conviction and that his sentence was excessive. State v. Boyd, 2017-0014, p. 3 (La. App. 1st Cir. 9/15/17), (unpublished). We found that the evidence was sufficient, but pretermitted consideration of whether the defendant's sentence was excessive because we found the defendant had not expressly waived the twenty-four hour delay between sentencing and denial of the defendant's motions for new trial and postverdict judgment of acquittal, as required by LSA-C.Cr.P. article 873. State v. Boyd, 2017-0014 at p. 8. Accordingly, we affirmed the conviction, vacated the sentence, and remanded to the trial court for resentencing. State v. Boyd, 2017-0014 at p. 8. On review, the Louisiana Supreme Court concluded that an explicit waiver of the sentencing delay had occurred, and, therefore, reversed our previous opinion, reinstated the sentence, and remanded to this court for consideration of any pretermitted claims. State v. Boyd, 2017-1749 (La. 8/31/18), 251 So. 3d 407, 408 (per curiam). For the following reasons, we affirm the defendant's sentence.

STATEMENT OF FACTS

We herein adopt the facts of this case as already set forth in State v. Boyd, 2017-0014 at pp. 2-3.

EXCESSIVE SENTENCE

The defendant, who was seventeen years old at the time of the offense, claims that his sentence is excessive and that the State did not prove “irreparable corruption” or that the defendant’s case and circumstances represent the “worst case” and “worst offender.” He claims that the State presented no evidence in support of its request for a life sentence without parole, and he points out that the two individuals who gave live victim impact statements—Carolyn Carter, the victim’s mother, and Latoya Carrier, the victim’s cousin¹—did not ask for the defendant to receive a sentence of life without parole. The defendant points out that Carter asked for the trial court to have “leniency” on the defendant. The defendant claims that the trial court ignored the defendant’s “level of family support,” his academic accomplishments, and the loss of his father at the age of fourteen.

The defendant further claims that during his mother’s testimony at the Miller hearing, the State established that the defendant had been to juvenile court for his use of marijuana, but claims that the State did not present any juvenile offense records or witnesses regarding the defendant’s alleged “gang activity.” The defendant also points out that his mother testified that shortly after the death of the defendant’s father, two of his grandparents died. After their deaths, he was in a fight on a school bus and took an anger management and substance abuse course.

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 falls within statutory limits, it may be excessive. 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

¹The defense brief identifies Latoya Carrier as the victim’s aunt, but the record indicates that she is the victim’s first cousin.

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. 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 LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. State v. Reese, 2013-1905, p. 1 (La. App. 1st Cir. 6/25/14), (unpublished), writ denied, 2014-1592 (La. 3/6/15), 161 So. 3d 13.

The articulation of the factual basis for a sentence is the goal of LSA-C.Cr.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 LSA-C.Cr.P. art. 894.1. 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. Reese, 2013-1905 at p. 2.

Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. LSA-R.S. 14:30.1(B).

In Miller v. Alabama, 567 U.S. 460, 478-489, 132 S. Ct. 2455, 2469-2475, 183 L. Ed. 2d 407 (2012), the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. The Miller Court, however, made clear that it did not prohibit life imprisonment without parole for juveniles, but instead required that a sentencing court consider an offender's youth and attendant characteristics as mitigating circumstances before deciding whether to impose the harshest possible penalty for juveniles who have committed a homicide offense.

Under Miller, 567 U.S. at 488-489, 132 S. Ct. at 2474-2475, for homicide-related offenses, a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. See Reese, 2013-1905 at p. 2. Maximum sentences may be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. Reese, 2013-1905 at p. 5.

In the instant case, the sentencing judge, who also presided over the trial, noted the defendant's youth, but specifically stated that firing a gun several times into a crowd of people involved in a fight in which the defendant was not even engaged rendered the defendant "the worst of the worst type of person." In her victim impact statement, the victim's first cousin, Latoya Carrier, noted that although the family has forgiven the defendant, the family felt that the defendant should be held accountable for his actions.

The trial court complied with Miller and adequately considered the factors set forth in Article 894.1. See LSA-C.Cr.P. art. 878.1. As the State pointed out in its closing argument, the defendant "brought a gun to a fist fight"—a fist fight in which he was not even involved, and one in which the participants had expressly agreed there would be no weapons—and proceeded to come over there and start blasting" into the crowd, resulting in the victim's death by gunshot wound to the back of the head and endangering the other participants in the fight. We find that the record provides ample support for the trial court's sentence of life imprisonment at hard labor, without the benefit of probation, parole, or suspension of sentence. See LSA-C.Cr.P. arts. 894.1(B)(5), (B)(10), & (B)(18). The fact that the defendant was a first-time offender does little to mitigate the atrocity of the crime. See Reese, 2013-1905 at p. 6. We find no abuse of discretion by the trial court. Accordingly, we find that the sentence imposed is not grossly

disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

This assignment of error is without merit.

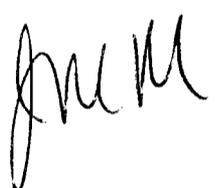
SENTENCE AFFIRMED.

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McDONALD, J. AGREEING:

While I agree with the majority opinion, I take this opportunity to make additional comments. The defendant suggests that his sentence of life imprisonment is excessive because of his age and that this is his first offense as an adult. He submits that he was only 17 years old at the time of the offense and there was no showing that he was the “worst case” or the “worst offender.” The hypocrisy of this argument is not lost on me. The facts indicate he shot several times into a crowd where a fist fight was taking place in which he had no involvement. He injured one person and killed another who was 24 years old at the time. He could have killed or injured anyone or more people. I believe the sentencing judge was correct in finding the defendant to be “the worst of the worst type of person” and there should be no deviation from the mandatory sentence. He is a threat to society and earned this sentence. For these additional reasons, I affirm the sentence.