STATE OF LOUISIANA	*	**NO. 2000-KA-0766**
VERSUS	*	**COURT OF APPEAL**
BERNARD MORGAN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 377-018, SECTION "H"
Honorable Camille Buras, Judge

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Charles R. Jones
Judge

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(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, and Judge Patricia Rivet Murray)

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AFFIRMED

Bernard Morgan appeals his twenty year sentence as a fourth felony offender under La. R.S. 15: 529.1, the habitual offender law. His fourth conviction was for simple burglary. We affirm.

PROCEDURAL HISTORY

On June 22, 1995, Morgan was charged by Bill of Information with simple burglary in violation of La. R.S. 14:62. After a preliminary hearing and a Motion to Suppress Evidence hearing, the district court found probable cause and denied his Motion to Suppress. He was found guilty as charged after a jury trial on October 12, 1995. The State subsequently filed a Multiple Bill of Information; at the hearing held on January 30, 1996, Morgan pled guilty to the Multiple Bill of Information. The district court adjudicated him to be a fourth felony offender and sentenced him to serve seven years at hard labor. The State sought supervisory writs of review alleging the sentence imposed was illegally lenient. This Court vacated the sentence and remanded for resentencing. State v. Morgan, 96-0354 (La. App. 4 Cir. 4/17/96), 673 So.2d 256, writ denied, 97-2629 (La. 4/24/98), 717 So.2d 1161. On August 22, 1996, the district court resentenced Morgan to

seven years at hard labor. The State sought supervisory writs from the district court's ruling. This Court granted the writ application, vacated the sentence imposed and resentenced Morgan to twenty years at hard labor without benefit of probation or suspension of sentence. State v. Morgan, 96-1944 (La. App. 4 Cir. 12/12/96). On April 1, 1999, this Court transferred Morgan's Motion to Withdraw his guilty plea to the Multiple Bill of Information to the district court. On June 2, 1999, the district court granted his Motion to Withdraw his guilty plea to the Multiple Bill of Information and ordered a multiple bill hearing to be held on March 23, 2000. On that date, the district court adjudicated Morgan to be a fourth felony offender and sentenced him to twenty years at hard labor. The district court denied his Motion to Reconsider sentence but granted his Motion for Appeal.

ERRORS PATENT

A review of the record for errors patent reveals none.

DISCUSSION

ASSIGNMENTS OF ERROR NUMBERS 1 AND 5

In these assignments of error, Morgan contends that the State failed to prove that two of his prior guilty pleas were knowingly and validly made.

In State v. Shelton, 621 So.2d 769 (La. 1993), the Louisiana Supreme Court reviewed the jurisprudence concerning the burden of proof in habitual

offender proceedings and found it proper to assign a burden of proof to a defendant who contests the validity of his guilty plea. In State v. Winfrey, 97-427, p. 30 (La. App. 5 Cir 10/28/97), 703 So.2d 63, 80, writ denied, 98-0264 (La. 6/19/98), 719 So.2d 481, the Fifth Circuit Court of Appeal set out the procedure for determining the burden of proof in a multiple offender hearing:

> If the defendant denies the multiple offender allegations then the burden is on the State to prove (1) the existence of a prior guilty plea, and (2) that defendant was represented by counsel when the plea was taken. Once the State proves those two things, the burden then shifts to the defendant to produce affirmative evidence showing (1) an infringement of his rights, or (2) a procedural irregularity in the taking of the plea. Only if the defendant meets that burden of proof does the burden shift back to the State to prove the constitutionality of the guilty plea. In doing so, the State must produce either a "perfect" transcript of the Boykin colloquy between the defendant and the judge or any combination of (1) a guilty plea form, (2) a minute entry, or (3) an "imperfect" transcript. If anything less than a "perfect" transcript is presented, the trial court must weigh the evidence submitted by the defendant and the State to determine whether the State met its burden of proof that defendant's prior guilty plea was informed and voluntary.

In the present case, the district court adjudicated Morgan to be a fourth felony offender. The court concluded that the State had proven that Morgan's prior guilty pleas were validly and knowingly made. In this

assignment, Morgan argues that the guilty pleas from his prior convictions for forgery and possession of stolen property were not validly and knowingly made. He argues that the Boykin colloquies were defective.

On October 14, 1987, Morgan pled guilty to twelve counts of forgery. He, his counsel and the trial judge all signed the waiver of rights/guilty plea form. The form advised him of the rights he was waiving by pleading guilty, including his right to trial by jury, right to confront his accusers, right against self-incrimination, and right to appeal. The minute entry states that he was advised of his rights prior to pleading guilty. The transcript of the Boykin hearing reveals that the district court advised him of the rights he was waiving by entering a plea of guilty.

> BY THE COURT:
> Mr. Morgan, raise your right hand. Do you solemnly swear that you've been advised of your constitutional rights; that you have a right to a trial by jury. And if convicted, a right to appeal. You (sic) understanding by entering a plea of guilty to the crime of forgery, twelve counts, that by doing so, you're waiving your right to trial by jury and appeal, and this is what you, yourself, wish to do; is that correct?
> BY THE DEFENDANT
> Yes, sir.
> BY THE COURT:
> Put your hand down. I have before me in your case, a waiver of constitutional rights and plea of guilty form, and ask you under oath whether or not your attorney has explained to you what this form is.
> BY THE DEFENDANT:

Yes.
BY THE COURT:
Any questions about it?
BY THE DEFENDANT:
No.

The colloquy and the waiver of rights form executed by Morgan reveals that he was advised of his rights prior to pleading guilty to the twelve counts of forgery. Therefore, the district court correctly held that the guilty plea entered in that case was validly and knowingly made.

Morgan also argues that his guilty plea to possession of stolen property on November 16, 1991 was not knowingly made. A review of the waiver of rights form signed by Morgan, his counsel and the trial court reveals that he was advised of his right to confront his accusers, right against self-incrimination, right to trial and appeal, and right to appointed counsel. The minute entry of the hearing also provides that the district court advised him of these rights. The transcript of the Boykin colloquy also reveals that the district court advised him of these rights. Defendant does not contest that the district court advised him of these rights. Rather, he suggests that because some of his responses to the district court's questions were inaudible to the court reporter, the colloquy was defective. However, a review of the entire colloquy reveals that he understood that he was waiving his rights by pleading guilty. Thus, the waiver of rights, minute entry and

colloquy indicate that he was advised of his rights prior to entering the guilty plea of possession of stolen property.

Accordingly, the district court did not err when it adjudicated him to be a fourth felony offender. The documents and transcripts reveal that Morgan's prior guilty pleas were knowingly and validly made.

These assignments of error are without merit.

ASSIGNMENT OF ERROR NUMBER 2

In this second assignment of error, Morgan contends that the district court erred when it denied his motion to remove his counsel on the basis of a conflict of interest. A review of the transcript from the multiple bill hearing held on March 23, 2000 reveals that Morgan did not file such a motion. The transcript indicates that the State filed a motion to recuse defendant's counsel. Morgan objected to the motion and argued that there was no need to recuse his counsel. The district court agreed and denied the motion. Thus, Morgan cannot now raise this issue on appeal. La. C.Cr. P. article 841.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 3

By his third assignment of error, Morgan further suggests that the district court committed error when it held a multiple bill hearing on March

23, 2000, as he had not yet been provided with a transcript of the Boykin colloquy from his prior conviction for twelve counts of forgery. On September 29, 1999, this Court ordered the trial court to provide Morgan with transcripts of the Boykin colloquies from his prior convictions. The record contains a letter dated November 17, 1999 to Morgan from Marsha Mackie, court reporter for Section "E", indicating that the transcript was sent to him on that day. Therefore, it appears that Morgan had been provided with the transcript prior the multiple bill hearing on March 23, 2000. Further, it must be noted that defense counsel did not object to proceeding with the multiple bill hearing on March 23, 2000 although he did not have a copy of the Boykin transcript. Thus, the district court did not err when it proceeded with the multiple bill hearing on March 23, 2000.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 4

Lastly, in his fourth assignment of error, Morgan argues that the sentence imposed is unconstitutionally excessive.

Article 1, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person . . . to cruel, excessive or unusual punishment."

A sentence within the statutory limit is constitutionally excessive if it

is "grossly out of proportion to the severity of the crime" or is "nothing more than the purposeless imposition of pain and suffering." State v. Caston, 477 So.2d 868, 871 (La. App. 4th Cir. 10/11/85). Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La. 1983); State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

If adequate compliance with Louisiana Code of Criminal Procedure article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, supra; State v. Guajardo, 428 So.2d 468 (La. 1983).

After the district court adjudicated Morgan to be a fourth felony offender, the court sentenced him to serve twenty years at hard labor. Morgan received the minimum sentence under La. R.S. 15:529.1. The district court recognized that Morgan had prior convictions for: 1.) theft between one hundred and five hundred dollars, 2.) forgery, and 3.) possession of stolen property. A closer look at these convictions reveals that

in the first case, he was originally charged with simple burglary. The state amended the Bill of Information to charge him with theft between one hundred and five hundred dollars as part of a plea bargain. In the second case, he was originally charged with twenty-four counts of forgery. He pled guilty to twelve counts of forgery, and the State nolle prosequied the other twelve charges. In addition, he had been convicted of aggravated battery in January of 1980. These convictions, including the present conviction, occurred within a fifteen-year period. Given Morgan's criminal history, the minimum sentence of twenty years at hard labor is not unconstitutionally excessive.

This assignment of error is without merit.

DECREE

Accordingly, for the reasons above indicated, Bernard Morgan's adjudication and sentence as a fourth felony offender are affirmed.

AFFIRMED