**NOT DESIGNATED FOR PUBLICATION**

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| **STATE OF LOUISIANA** | * | **NO. 2000-KA-1056** |
| **VERSUS** | * | **COURT OF APPEAL** |
| **GERALDINE CRAWFORD** | * | **FOURTH CIRCUIT** |
| | * | **STATE OF LOUISIANA** |
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-980, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE
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**JUDGE MAX N. TOBIAS, JR.**

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(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer and Judge Max N. Tobias, Jr.)

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**AFFIRMED**

The defendant, Geraldine Crawford, was charged by bill of information with theft of goods valued at $100.00 or more, but less than a value of $500.00, a violation of La. R.S. 14:67.10. She filed motions to suppress the evidence and to quash the bill of information, which the trial court denied. Later, she pled guilty as charged pursuant to *State v. Crosby*, 338 So.2d 584 (La. 1976), reserving her right to seek review of the trial court's denial of her motion to quash. After the State filed a multiple bill of information, she pled guilty to being a second offender, and the trial court sentenced her to one year at hard labor. The defendant now appeals.

ERRORS PATENT:

We note that the minute entry of the sentencing is not in the record; however, the transcript of 17 February 2000 establishes the defendant's sentence. Therefore, we find no error patent requiring our affirmative attention.

FACTS:

Katina Brown, a Macy's Department Store security officer, testified at the motion to suppress hearing that she saw the defendant shoplifting $176.00 of merchandise from the store.

ASSIGNMENT OF ERROR ONE:

The defendant argues that the trial court erred in denying her motion to quash. In her motion and on appeal, the defendant argues that the penalty provisions of La. R.S. 14:67 and La. R.S. 14:67.10 are discriminatory and violate the equal protection clause of La. Const. art. I, § 3. Specifically, the defendant argues that La. R.S. 14:67.10, relative to theft of goods, allows for a sentence of no more than two years when the stolen merchandise is valued at least at $100.00, but La. R.S. 14:67, relative to theft, allows for a sentence of no more than two years only when the value of the thing stolen is at least $300.00. The defendant claims that the statutes provide penalties based on the status of the victim, affording commercial entities such as retail stores greater protection than ordinary citizens. Finally, she argues that the stiffer penalty provision of La. R.S. 14:67.10 for theft of goods valued at least $100.00 has no rational relationship to a legitimate state interest.

La. Const. art. I, § 3, provides:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person

> because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

In *Morgan v. Whaley*, 99-1103 (La. App. 4 Cir. 5/31/00), 765 So. 2d 408, addressing an equal protection claim, this Court stated:

> Both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the Louisiana Constitution provide that all persons are entitled to equal protection of the law. These provisions mandate "that persons similarly situated receive like treatment." *Whitnell v. Silverman*, 95-0112, pp. 9-10 (La.12/6/96), 686 So.2d 23, 29-30. While claims may be subject to a different analysis under the federal and state guarantees, a minimal standard of review applies under both provisions where, as here, there is no fundamental right, suspect class, or enumerated characteristic alleged as the basis for discrimination. *Progressive Security Ins. Co. v. Foster*, 97-2985, pp. 17-19 (La. 4/23/98), 711 So.2d 675, 685-87. Under these standards, an individual claiming an equal protection violation has the burden of establishing that a discriminatory classification "is not rationally related to any legitimate governmental interest" or that it "does not suitably further any appropriate state interest." *Id.*

*Morgan v. Whaley*, 99-1103 at pp. 10-11, 765 So.2d at 414.

Neither La. R.S. 14:67 nor La. R.S. 14:67.10 contains a classification based on any factor enumerated in La. Const. art. I, § 3 - race, religion, sex, birth, age, culture, physical condition, or political affiliation. This being the case, the defendant has the burden of proving that the classifications of the presumptively constitutional statutes do not further legitimate governmental interests. She must show that the legislature's decision to provide a stiffer penalty for theft of goods valued at $100.00 but less than $500.00, [La. R.S. 14:67.10 B(2)], than for theft from a person of anything of a value less than $300.00, [La. R.S. 14:67B(3)], is not rationally related to a legitimate state interest.

The definition of criminal conduct and provisions for penalties for violating the conduct are purely a legislative function. *State v. Debrow*, 33,592, p. 11 (La. App. 2 Cir. 6/21/00), 763 So.2d 791, 799. The Louisiana Legislature amended La. R.S. 14:67 in 1999 to raise the value of felony theft from $100.00 to $300.00 but did not amend La. R.S. 14:67.10 to increase the value for felony theft of goods from $100.00. In effect, the legislature chose to retain the stiffer penalty for shoplifters. As the State argues, punishing a person who steals from a merchant more harshly than a person who steals from another person serves a legitimate governmental interest. The stiffer

penalty deters shoplifting, which directly affects the costs of doing business for merchants, the costs of consumer goods, and the sales tax revenue for local and state governments. The defendant has not shown that protecting merchants, the price of consumer goods, and the source of tax revenue are not rationally related to a legitimate governmental interest. Thus, the trial court did not err in denying the defendant's motion to quash.

This assignment is without merit.

ASSIGNMENTS OF ERROR TWO AND THREE:

The defendant argues that the trial court did not comply with La.C.Cr.P. art. 894.1 and that her sentence is excessive.

La. Const. art. I, § 20 explicitly prohibits excessive sentences. *State v. Baxley*, 94-2982, p. 4 (La. 5/22/95), 656 So. 2d 973, 977. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. *State v. Brady*, 97-1095, p. 17 (La. App. 4 Cir. 2/3/99), 727 So. 2d 1264, 1272, *rehearing granted on other grounds*, (La. App. 4 Cir. 3/16/99); *State v. Francis*, 96-2389, p. 6 (La. App. 4 Cir. 4/15/98), 715 So.2d 457, 461, *writ denied*, 98-2360 (La. 2/5/99), 737 So. 2d 741. The penalties provided by the legislature reflect the degree to which the criminal conduct affronts society. *State v. Baxley*, *supra at p. 10*, 656 So. 2d at 979, citing *State v. Ryans*, 513

So. 2d 386, 387 (La. App. 4 Cir. 1987), *writ denied*, 516 So. 2d 366 (La. 1988). A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. *State v. Johnson*, 97-1906, pp. 6-7 (La. 3/4/98), 709 So. 2d 672, 677. 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. Baxley*, *supra* at p. 10, 656 So. 2d at 979.

In reviewing a claim that a sentence is excessive, an appellate court generally must determine whether the trial judge has adequately complied with statutory guidelines in La. C.Cr.P. art. 894.1, and whether the sentence is warranted under the facts established by the record. *State v. Trepagnier*, 97-2427, p. 11 (La. App. 4 Cir. 9/15/99), 744 So. 2d 181, 189. If adequate compliance with La. C.Cr.P. art. 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 the case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. *State v. Ross*, 98-0283, p. 8 (La. App. 4 Cir. 9/8/99), 743 So. 2d 757, 762.

However, in *State v. Major*, 96-1214 (La. App. 4 Cir. 3/4/98), 708 So. 2d 813, *writ denied*, 98-2171 (La. 1/15/99), 735 So. 2d 647, this court stated:

> The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. *State v. Lanclos*, 419 So.2d 475 (La.1982). The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La.C.Cr.P. art. 881.4(D).

Id. at p. 10, 708 So. 2d at 819.

In *State v. Soraparu*, 97-1027 (La. 10/13/97), 703 So. 2d 608, the Louisiana Supreme Court stated:

> On appellate review of sentence, the only relevant question is " 'whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate.' " *State v. Cook*, 95-2784, p. 3 (La. 5/31/96), 674 So.2d 957, 959 (quoting *State v. Humphrey*, 445 So.2d 1155, 1165 (La.1984)), cert. denied, --- U.S. ----, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996). For legal sentences imposed within the range provided by the legislature, a trial court abuses its discretion only when it contravenes the prohibition of excessive punishment in La. Const.

> art. I, § 20, i.e., when it imposes "punishment disproportionate to the offense." *State v. Sepulvado*, 367 So.2d 762, 767 (La.1979). In cases in which the trial court has left a less than fully articulated record indicating that it has considered not only aggravating circumstances but also factors militating for a less severe sentence, *State v. Franks*, 373 So.2d 1307, 1308 (La.1979), a remand for resentencing is appropriate only when "there appear[s] to be a substantial possibility that the defendant's complaints of an excessive sentence ha[ve] merit." *State v. Wimberly*, 414 So.2d 666, 672 (La.1982).

Id.

In this case, the trial court made no reference to La. C.Cr.P. art. 894.1. However, the defendant received the minimum sentence as a second offender pursuant to La. R.S. 15:529.1. If she had not agreed to the plea bargain, she could have been sentenced as a third offender as the sentencing transcript indicates. Minimum sentences under the habitual offender law are presumed to be constitutional. *State v. Johnson*, *supra*. When the trial judge fails to sufficiently set forth the factors considered in the imposition of sentence, a need to remand the matter for re-sentencing is not demonstrated if the record clearly establishes an adequate factual basis which supports the sentence imposed. *State v. Black*, 98-0457, p. 9 (La. App. 4 Cir. 3/22/00),

757 So.2d 887, 892. The defendant's sentence of one year at hard labor as a second offender is not excessive.

These assignments of error are without merit.

Accordingly, for the above reasons, the defendant's conviction and sentence are affirmed.

**AFFIRMED**