NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-2522**
VERSUS	*	**COURT OF APPEAL**
MANUEL TRUEBLOOD	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 371-746, SECTION "F"
Honorable Dennis J. Waldron, Judge
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Judge Terri F. Love
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(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge Max N. Tobias, Jr.)

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AFFIRMED; MOTION TO WITHDRAW GRANTED

Manuel Trueblood was found guilty after a two-day jury trial on February 2 and 7, 1995, of possession of more than twenty-eight grams but less than two hundred grams of cocaine. After a multiple bill hearing on May 19 and June 1, 1995, the trial court found the defendant to be a third felony offender and sentenced him to twenty years at hard labor and payment of a $15,000 fine. On November 7, 1995, the trial court granted defendant's motion for an out-of-time appeal. We affirmed the conviction, but vacated the sentence and remanded for resentencing. State v. Trueblood, 96-0409 (La. App. 4 Cir. 1/15/97), 686 So.2d 188.

At resentencing on February 7, 1997, the defendant received a twenty year sentence as a third felony offender under La. R.S. 15:529.1 with credit for time served.

The defendant was sentenced to twenty years pursuant to La. R.S. 15:529.1(A)(2)(a) which in 1994 provided:

> (2) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:
> (a) The person shall be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible

sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction

The sentencing range under La. R.S. 40:967(F)(1)(a) in 1994 was five to thirty years; therefore, the defendant faced a term of between twenty and sixty years, and he concedes he received the minimum term.

Even though a sentence under the Habitual Offender Law is the minimum provided by that statute, the sentence may still be unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or is nothing more than the purposeful 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; State v. Dorthey, 623 So. 2d 1276, 1280-81 (La. 1993). However, the entire Habitual Offender Law has been held constitutional, and, thus, the minimum sentences it imposes upon habitual offenders are also presumed to be constitutional. Johnson, 97-1906, at pp. 5-6, 709 So. 2d at 675; see also State v. Young, 94-1636, p. 5 (La. App. 4 Cir. 10/26/95), 663 So.2d 525, 527. There must be substantial evidence to rebut the presumption of constitutionality. State v. Francis, 96-2389, p. 7 (La. App. 4 Cir. 4/15/98), 715 So. 2d 457, 461.

Recently, the Louisiana Supreme Court in State v. Lindsey, 99-3256

(La. 10/17/00), 770 So. 2d 339, mandated that the guidelines set forth in State v. Johnson, 97-1906 (La. 3/4/98), 709 So. 2d 672, govern the review of mandatory minimum sentencing under an excessive sentence claim. In Lindsey, the Court stated:

> "[a] court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it which would rebut [the] presumption of constitutionality" and emphasized that "departures downward from the minimum sentence under the Habitual Offender Law should occur only in rare situations."

Id. at p. 5, 770 So. 2d at 343. (Quoting Johnson, 709 So. 2d at 676-77). The Court further stated that in departing from the mandatory minimum sentence, the court should examine whether the defendant has clearly and convincingly shown there are exceptional circumstances to warrant the departure. Under the Habitual Offender Law, a defendant with more than one felony conviction is treated as a recidivist who is to be punished for the instant crime in light of his continuing disregard for the law. Such a multiple offender is subjected to a longer sentence because he continues to break the law.

The defendant claims that his sentence is excessive because he has no crimes of violence on his record. However, he was originally charged with having three prior offenses which would have made him a fourth felony offender. He has a simple escape conviction from 1989, a simple burglary

conviction from 1990, and another simple escape conviction from 1991. At his sentencing in 1990, the trial court addressed his juvenile criminal history and noted that he was sentenced to five years at the Louisiana Training Institute for two counts of burglary and one count of possession of stolen things, but (as an adult by then) he fled from LTI. He was sentenced to two and one-half years, but he escaped again in June of 1989. He received a six-year term for the simple burglary in 1990, and in 1991, he was again convicted of simple escape. In 1994 he was convicted of possession of more than twenty-eight but less than two hundred grams of cocaine. He is a thirty-year-old offender who has spent most of teenage years as well as his adult years in prison.

Considering the defendant's history, and the fact that he has not presented evidence to support a downward departure from the mandatory sentence, we find that his twenty year sentence as a third felony offender is not excessive.

This assignment is without merit.

Counsel filed a brief requesting review for errors patent. Counsel complied with the procedures outlined by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in State v. Benjamin, 573 So.2d 528 (La. App. 4th Cir. 1990). Counsel's detailed review of the

procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf.

As per State v. Benjamin, this Court performed an independent, thorough review of the minute entries, bill of information, and transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 40:967(F)(1)(a), and the bill was signed by an assistant district attorney. The defendant was present and represented by counsel at sentencing, and the sentence is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal. Defendant's sentence is affirmed. Appellate counsel's motion to withdraw is granted.

AFFIRMED; MOTION TO WITHDRAW GRANTED