NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2001-KA-0974**
VERSUS	*	**COURT OF APPEAL**
PATRICE CLAUDE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 417-962, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge David S. Gorbaty
* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge David S. Gorbaty)

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AFFIRMED

On November 13, 2000, Patrice A. Claude was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967(C). The defendant pled not guilty at her arraignment on November 20, 2000. After a trial on December 7,2000, a six-person jury found her guilty as charged. On February 21, 2001, the trial court sentenced the defendant to serve five years at hard labor. The sentence was suspended, and she was placed on five years active probation with special conditions. Defendant subsequently filed this appeal.

FACTS

Officer Mike Baldassaro testified at trial that on July 18, 1999, at about seven o'clock in the morning, he participated in a stop of a stolen vehicle. When he walked up to the car, he noticed a clear plastic bag containing vegetable matter resting on the console. He asked the passenger, Patrice Claude, to get out of the car, handcuffed her, and made a search of her purse for other controlled dangerous substances. The officer found a crack pipe in her purse and observed that the metal screen at the end of the pipe contained a residue the officer believed to be cocaine.

Mr. Nhon Hoang, an expert in the testing and analysis of controlled dangerous substances, testified that he performed three tests on the residue

in the pipe taken from the defendant, and the residue proved to be crack cocaine. Under cross-examination, Mr. Hoang stated that the amount of cocaine in the pipe was approximately one millionth of a gram.

ERRORS PATENT

A review for errors patent on the face of the record reveals none.

ASSIGNMENT OF ERROR NUMBER ONE

In her sole assignment of error, the defendant argues that her five-year sentence is excessive because as a first offender she received the maximum term, and even though the sentence is suspended, she must serve the five-year sentence if she violates the conditions of her probation.

An appellate court reviews sentences for constitutional excessiveness under La. Const. Art. I, §20. A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment or is 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.

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). If adequate compliance with La. C.Cr.P. 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. Guajardo, 428 So. 2d 468 (La. 1983).

When the trial judge fails to sufficiently set forth the factors considered in the imposition of the sentence, there is no need to remand the matter for resentencing if the record clearly shows an adequate factual basis which supports the sentence imposed. State v. Welch, 550 So. 2d 265 (La. App. 4th Cir. 1989).

In State v. Soraporu, 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.

Before imposing sentence, the trial court noted that the presentence investigation report showed that defendant was a first felony offender, and the probation department recommended that she be given a suspended sentence and probation. The trial court followed the recommendation.

The defendant contends that the sentence is excessive, because when arrested, she possessed less than one millionth of a gram of cocaine. This argument is without merit. The penalty under La. R.S. 40:967(C), the statute under which she was convicted and sentenced, is not based on the amount of the prohibited substance possessed, and this court has held that a conviction for the possession can stand on possession of the slightest amount of cocaine. State v. Bullock, 99-2124, 99-2125 (La. App. 4 Cir. 6/14/00), 766 So. 2d 585, 591.

Furthermore, although the defendant possessed only a trace of residue when she was arrested, the record indicates that at her arraignment she tested positive for cocaine, and she admitted to having a drug problem. Under these circumstances, we find the probated sentence requiring her to participate in drug court, complete substance abuse counseling, and maintain full time employment is the best program for her rehabilitation. Moreover, the possibility of a five-year prison term is likely to serve as powerful stimulus to prompt her to meet the conditions of her probation and thereby come to terms with her addiction.

In State v. Monette, 99-1870 (La. App. 4 Cir. 3/22/00), 758 So. 2d 362, a first-felony offender convicted of attempted possession of cocaine, received the maximum sentence of thirty months at hard labor. The defendant had two prior municipal convictions. (In the case at bar, the defendant has one misdemeanor conviction). As in the instant case, in Monette the sentence was suspended and the defendant was placed on probation with special conditions intended to break her drug habit.

CONCLUSION

In light of the facts and evidence presented at trial, as well as the relevant case law, we do not find the sentence imposed to be

unconstitutionally excessive. Accordingly, for the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED