STATE OF LOUISIANA	*	**NO. 2001-KA-1274**
VERSUS	*	**COURT OF APPEAL**
JOEL R. JACKSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 417-859, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge Terri F. Love
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Patricia Rivet Murray, Judge Terri F. Love)

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AFFIRMED

On November 6, 2000, Joel R. Jackson was charged by bill of information with indecent behavior with a juvenile in violation of La. R.S. 14:81. He entered a plea of not guilty at his arraignment on November 16, 2001. After trial on January 4, 2001, a six-member jury found the defendant guilty of attempted indecent behavior with a juvenile. He was sentenced on March 19, 2001, to serve forty-two months at hard labor. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial E.J., who was then nine years old, identified the defendant as the "T.V. guy" and named him as the man who touched her. She said that she first noticed the man when he was on her front porch. He asked her for water and then to use the telephone. She denied both requests. E.J. took her little sister upstairs to watch television. She explained that she told him she did not have a telephone because she thought he might come into the house and "do something to one of us." She told her little sister to lock the door, but as she was watching cartoons, she heard someone come in downstairs. The defendant appeared at the door of her room and told her to come

downstairs but to tell her brother and sister to stay upstairs. He told her not to listen "to what your mama say because you're [sic] mama telling you the wrong thing." The defendant then put his hand under her dress and touched her on her "private part." He also told her to watch him use the bathroom, but she closed her eyes so as not to see him. After she told the man to leave, he said, "I should shoot you, but I ain't going to shoot you." When her uncle came home, she told him what had happened. Sometime later, E.J. selected the defendant's picture from a photo lineup and named him as the man who touched her. E.J. stated that she was born on December 17, 1991, and she was seven-years-old when the incident occurred.

Detective Arnold Williams of the NOPD child abuse unit testified that he interviewed E.J., her mother, and her younger sister on the day after the incident. After the conversations the detective developed a suspect. He prepared a photographic lineup that he showed to E.J. in the presence of her mother. E.J. selected Joel Jackson's picture.

J. W., who was living with E.J.'s mother at the time of the incident, testified that when he came home from work on November 19, 1999, he found E.J. crying. She told him the "T.V. man" had touched her. J. W. recalled that two days prior he and Joel Jackson had discussed J.W.'s buying a television from Jackson. J.W. told Jackson to come back after 4 p.m., but

Jackson came earlier when only E.J. and her sister were in the house. When J.W. heard what had occurred to E.J., he went out to find Jackson. As he was approaching the defendant, J.W. asked what happened, and, prior to any accusation, Jackson said, "She's lying. I'm cool." J. W. had not mentioned E.J. at that point. J.W. insisted Jackson accompany him back to E.J.'s house, where in front of E.J. he accused Jackson of fondling her. Jackson denied the charge, and E.J., who was crying, said, "You did do it." J.W. then sent E.J. upstairs and told Jackson that the matter would be reported to E.J.'s mother and the authorities.

J.J., the victim's mother, testified that the defendant came to her house trying to sell a television; E. J. was at home at the time. J.J. left E.J. and her younger brother and sister in the care of a neighbor when she went to work that day. As she was leaving J.J. noticed that the defendant was still in the courtyard. After work, J.J. learned from E.J. what had happened. J.J. asked E.J. why she was at home instead of at the neighbor's house, and E.J. responded that she had come home because of a headache. J.J. went out to find the defendant, and when she did, she asked him why he came into her house and touched her child. He answered that he "was only playing with her." J.J. went home and called the police. Later she met with Detective Williams.

The defense recalled Detective Arnold Williams, who reiterated that after he spoke with J.W., J.J., and E.J., he composed the police report. The detective read the paragraph in his report where he recorded his interview with J.W; he noted that he had not written anything about J.J. having a confrontation with Jackson in which Jackson made an incriminating remark.

The state recalled J.W. who said that he did not remember whether or not he told the police officers about confronting Jackson after the incident.

The defendant now makes two assignments of error: first, he argues that the trial court erred in not informing him of the post-conviction relief provisions, and second that his sentence is excessive.

In what he erroneously deems an error patent, the defendant complains that the trial court erred when it failed to advise him of post-conviction relief provisions under La. C.Cr.P. art. 930.8. However, this article contains merely precatory language and does not bestow an enforceable right upon an individual defendant. State ex rel. Glover v. State, 93-2330, p. 21 (La. 9/5/95), 660 So.2d 1189, 1201 (abrogated in part on other grounds by State ex rel. Olivieri v. State of Louisiana, 2001-0172 (La. 2/21/01), 779 So.2d 735).

Article I, Section 20 of the 1974 Louisiana Constitution prohibits the imposition of excessive punishment. A sentence may be reviewed for

excessiveness even though it is well within statutory guidelines. La. C.Cr.P. art. 881.2; State v. Cann, 471 So.2d 701 (La. 1985). The imposition of a sentence may be unconstitutionally 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. Lobato, 603 So.2d 739 (La. 1992). State v. Telsee, 425 So.2d 1251 (La. 1983); State v. Caston, 477 So.2d 868 (La. App. 4 1985). 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. Quebedeaux, 424 So.2d 1009 (La. 1982). If adequate compliance with 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 the case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense charged. State v. Guajardo, 428 So.2d 468 (La. 1983). 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).

Jackson was sentenced under La. R.S. 14:27(81). La. RS. 14:27, the attempt statute, provides that a sentence be not more than one-half of the largest fine or longest term of imprisonment prescribed for the offense so attempted; La. R.S. 14:81 provides for a sentence of imprisonment with or without hard labor of not more than seven years (84 months) and/or a fine of not more than five thousand dollars. Jackson received the maximum incarceration term of forty-two months at hard labor.

Jackson asserts that the imposition of a forty-two month sentence is excessive because he is not the worst sort of offender. We do not agree. The defendant also notes that the indecent behavior occurred only once and that he has no history as a sexual offender. While true, these facts do not exonerate him. He preyed on a seven year old child who tried to avoid the incident by denying him access to her house, but he gained entry nonetheless with the intent to commit the offense.

At the sentencing hearing, the trial court reviewed the pre-sentence investigation into the defendant's background. The court noted

> Mr. Jackson has at least two prior felony convictions. He has a conviction for the offense of second degree battery which was reduced from an aggravated battery in . . . 1981. He also has a conviction for a simple burglary in 1998 . . . .
>
> He has an extensive arrest record which dates back to 1972 as a juvenile. It includes such

> serious offenses as attempted first degree murder, aggravated battery, aggravated escape, another attempted first-degree murder arrest, burglary, criminal damage, battery, and then these charges.

The trial court set out for the record the defendant's lengthy criminal history, which consists of three juvenile arrests and eighteen prior adult arrests. The violent nature of these prior offenses support the severity of defendant's sentence.

In his brief the defendant argues that the case at bar is similar to State v. Lisotta, 97-406 (La. App. 5 Cir. 2/25/98), 712 So.2d 527, where the Fifth Circuit vacated a sentence and remanded the case for a defendant sentenced to the maximum term of seven years for indecent behavior with a juvenile. However, in that case the victim, who was sixteen and a half years old, and the defendant, thirty-two years old, were friends. Moreover, the incident occurred when she came to his apartment uninvited late at night. The case at bar is completely different, and it is one in which the facts and circumstances of the crime justify the imposition of a maximum sentence.

The record in this case supports the sentence of forty-two month at hard labor. Accordingly, the defendant's conviction and sentence are affirmed.

AFFIRMED.