

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	NO. 2001-KA-1073
VERSUS	*	COURT OF APPEAL
DONALD VALDERY	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
	*	
	*	

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 366-407, SECTION "E"
Honorable Calvin Johnson, Judge

Judge Dennis R. Bagneris, Sr.

(Court composed of Chief Judge William H. Byrnes, III,
Judge Dennis R. Bagneris, Sr., and Judge Terri F. Love)

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CONVICTION AND SENTENCE AFFIRMED

Donald Valdery, charged with second degree murder, was convicted of manslaughter after a jury trial on May 10, 11, 12, and 13, 1994. He was sentenced to serve forty years at hard labor on May 18, 1994. In an unpublished errors patent opinion, this court affirmed his conviction and sentence. State v. Donald Valdery, 94-2298 (La. App. 4 Cir. 12/17/97). The defendant applied for post-conviction relief, arguing that he received ineffective assistance of counsel. After the trial court's denial of his application, he sought review in this court which held that under State v. Jyles, 96-2669 (La. 12/12/97), 704 So. 2d 241, Valdery was entitled to a new appeal. The defendant argues that his forty-year sentence is excessive.

The facts of the case, as presented in the original appeal, are as follows:

FACTS

At trial Diana Singleton, mother of the victim, said Gary Wardell Singleton and William Thomas, his cousin, left her house in the afternoon on April 1, 1993, to go to the barber shop. Mrs. Singleton acknowledged that William had a Mack 11 machine gun with him that day; Gary Singleton owned a similar gun, she said, but he did not carry his that day.

William Thomas, a merchant seaman, testified that Gary Singleton picked him up about 2 p.m. on April 1, 1993, in a 1987 blue Oldsmobile Cutlass. They were returning to the Desire Housing Project when William Thomas saw his twin sisters at the bus stop. Gary Singleton stopped his car in the middle of the street so that they could talk with the girls. Alton Jones and Donald Valdery drove up behind Singleton's car and began to honk; then Jones, who was driving, passed Singleton. Thomas described the two men as "cussing, hanging out the window calling us names." Singleton picked up the two girls to take them to a bus stop in Gentilly; on the way there, he passed Donald Valdery on Louisa Street. They had words for two or three minutes, although no one pointed a weapon at that time. Thomas said his machine gun was on the floor of the car at his feet. After dropping the girls off, Thomas and Singleton drove back down Desire Street. At that time they again passed Alton Jones and Donald Valdery, but this time "gunfire just started coming into the car." Thomas immediately fell to the floor of the car. When the shooting stopped, he jumped from the car with his gun and began firing at the departing car. Thomas saw the defendant in the front passenger seat leaning from the window holding an AK 47. Alton Jones, the driver, also had an AK 47, and Thomas saw gunfire coming from the backseat of the car where two men were seated. Thomas went to the driver's side of Singleton's car to check on Singleton, but two men walked toward him shooting. When he tried to return fire, his gun jammed. He then moved Singleton, who was slumped over the steering wheel, and drove to Charity Hospital. Singleton was taken in for emergency treatment. Thomas had a superficial wound in his neck, but he did not require any medical care. Later he met with a detective and selected the defendant's photograph from a photographic lineup as the man shooting

from the passenger side of the car; he also selected Alton Jones' photo and identified Jones as the driver of the car.

Dr. Paul McGarry, an expert in forensic pathology, testified that he performed the autopsy on Gary Singleton on April 2, 1993. Dr. McGarry found that Singleton suffered eight gunshot wounds. Two of the wounds were fatal; both entered his body from the left side and penetrated his heart and lungs. Gary Singleton's blood and urine were tested for alcohol and drugs; all the tests were negative.

Officer Edgar Dunn, an expert criminalist, testified that he found gunpowder residue on Singleton's shirt but none on his pants. The residue on the shirt indicated that the gun was close to the victim when it was fired.

Detective Wayne Rumore, who investigated the homicide, learned that Donald Valdery and Alton Jones were suspects. Detective Rumore prepared a photographic lineup, and when William Thomas was shown the lineup, Thomas selected the pictures of Donald Valdery and Alton Jones. The detective interviewed Allen Butler who said he witnessed the exchange of gunfire. When Butler was arrested on an unrelated charge, he volunteered that he observed several moments of gunfire.

Officer Len Davis answered a call to the 2800 block of Desire Street on April 1, 1993. When he arrived, he found shattered glass in the street, but no vehicles or victims were there. Officer Davis learned almost immediately that a shooting victim had been taken to Charity Hospital. When he arrived there, he saw on the emergency ramp an Oldsmobile with multiple bullet holes on the driver's side of the car, and he learned Gary Singleton had already died. The officer saw William Thomas, who had a gunshot wound to the neck, and Matthew Jones, who gave him some information. When Officer Davis

looked inside the Oldsmobile, he found casings from a semi-automatic weapon, blood and other fragments. On April 9, 1993, the officer noticed a maroon four-door Cadillac in the 3300 block of Abundance Street. When he stopped the car, he found that it was driven by Donald Valdery, whom he arrested.

Matthew Jones testified that he was with the victim when he was killed. He said that Gary Singleton and William Thomas picked him up the afternoon of April 1, 1993. They were riding on Desire Street when Singleton slowed down to allow a car to pass. As the car pulled along side the Oldsmobile, someone fired into the Oldsmobile. William Thomas and Matthew Jones got out of the car to try to move Singleton from the driver's position. Several people approached them on foot and fired at Thomas and Jones. Thomas tried to return fire, but his gun jammed after he fired once or twice.

Allen Butler, who was facing two counts of attempted first degree murder and an armed robbery charge in juvenile court at the time of trial, testified that he made a statement to a detective about seeing the murder of Gary Singleton. Butler said that he observed "Willie, Donald, Ronald, and Alton" drive up in a Cadillac and start shooting. Butler was on the corner of Desire and Abundance Streets, and when the shooting began, he ran into the project.

Chiquita Stacey Washington, who was at the bus stop with the twin sisters of William Thomas on April 1, 1993, testified that when Gary Singleton drove up and stopped, she and the twins got into his car. Ms. Washington said that the defendant and others were in a car behind Singleton's vehicle. She said the defendant drove up parallel to Singleton's car and "told them something about standing side [sic] the street, so they passed words." The defendant's car then passed Singleton's car, and Singleton drove behind

it. At some time during the ride, Singleton held Thomas's gun with his left hand outside his window. As they got to Abundance and Louisa Streets, Singleton passed the gun back to William Thomas, and Thomas shot the gun in the air.

Donald Valdery, who was twenty-three years old at the time of trial, testified that he had no prior felony convictions. He said that on April 1, 1993, he was riding as a passenger in the front seat in a car on Desire Street approaching Pleasure Street. The car had to stop behind a car driven by Singleton because Singleton had come to a complete stop in the middle of the street to pick up passengers. Valdery told the driver to honk and pass the car. As he went by, Valdery asked Singleton, "Man, why you holding up the traffic?" Singleton began cursing at the defendant. Valdery said that a man named Frederick Moore was driving the Cadillac and that Darryl Coleman and Kenneth Freeman were passengers. Valdery told Moore to turn several times and every time the Oldsmobile behind them driven by Singleton turned to follow them. Then the Oldsmobile pulled up to the side of the Cadillac, and Singleton waved a gun out the window. Valdery said he smiled at Singleton and stated, "It ain't about all that, Bro." Singleton then fired the gun. According to Valdery, William Thomas grabbed the gun from Singleton, and Singleton's car turned off on a side street. Less than thirty minutes later, Valdery realized that Singleton's Oldsmobile was behind him again. The car approached so that Singleton, who was driving, was parallel to Valdery, the passenger in the front seat of the Cadillac. Singleton's window was down and as Valdery looked over at him, Singleton fired. Valdery returned the fire. Valdery said he kept an AK 47 under the car seat, but after the shooting, he hid it beneath a house on Desire and Abundance Streets. Valdery said he saw William Thomas firing a Mack 11, the same type of weapon that

Singleton fired.

ERROR PATENT REVIEW

The trial court sentenced the defendant within twenty-four hours of denying his motion for a post-verdict judgment of acquittal. La. C.Cr.P. art. 873 requires a twenty-four-hour delay between the denial of a motion for new trial, or in arrest of judgment and sentencing, unless the defendant waives such delay. A defendant may implicitly waive the waiting period for imposing sentence by announcing his readiness for the sentencing hearing. In the instant case, the defense counsel responded affirmatively when the trial court inquired whether it could proceed with sentencing. See State v. Jefferson, 97-2949, p. 4 (La. App. 4 Cir. 4/21/99), 735 So.2d 769, 772. Therefore, we find no error patent.

ASSIGNMENT OF ERROR

In a single assignment of error, the defendant claims that the statutory maximum sentence of forty years in his case does not “make [any] measurable contribution of acceptable goals of punishment . . . and is grossly out of proportion to the severity of the crime” and, thus, is excessive.

A sentence may be reviewed for constitutional excessiveness even though it is within statutory guidelines. State v. Cann, 471 So.2d 701, 703

(La. 1985). In reviewing a sentence for excessiveness, the Court must first determine whether the trial court complied with La. C.Cr.P. art. 894.1 in imposing the sentence and then determine whether the sentence is too severe given the circumstances of the case and the defendant's background. State v. Lobato, 603 So.2d 739, 751 (La. 1992). If the sentence needlessly imposes pain and suffering and is grossly out of proportion to the seriousness of the offense so as to shock our sense of justice, then it may be determined to be unconstitutionally excessive as violative of La. Const. art. 1, § 20 (1974). Id. However, a sentence imposed will not be set aside absent a showing of abuse of the trial court's wide discretion to sentence within statutory limits. Id. Once adequate compliance with La. C.Cr.P. art. 894.1 is found, the court may consider whether the sentence is excessive in light of sentences imposed by other courts in similar circumstances.

The defendant was charged with second-degree murder and convicted of manslaughter. The sentencing range for manslaughter under La. R.S. 14:31 is zero to forty years. At the sentencing hearing on May 18, 1994, the prosecutor cited the applicable aggravating circumstances listed in C.Cr.P. art. 894.1 and the defense attorney countered with mitigating factors. The trial court then stated that it agreed with the prosecutor's position. Addressing the defendant, the trial court noted, "Mr. Valdery, I'll tell you

now that I intend to impose a sentence that is . . . in keeping with the actual offense that was committed.” The trial court discussed the danger of taking “an AK-47 out on the street and . . . [spraying the] street with bullets from it” which the court described as “about as gross a thing [as is] imaginable.” Good people living in the neighborhood who “work hard” and “go to church on Sunday” are endangered by “people like . . . [the defendant] who live there, [and] who obviously don’t believe in anything.” The trial court concluded by finding the defendant a “ridiculous” individual who’s riding around Desire Housing Project with an AK-47 between his legs, [and] who is so offended by someone who refused to move an automobile out of . . . [his] way that . . . [he] would at least consider shooting them. . . .

Here the sentencing guidelines under La. C.Cr.P. 894.1 were considered and discussed. The court’s primary reason for imposing the maximum sentence was a sense of outrage at the reckless behavior of the defendant in endangering many people and making the city streets into battlegrounds.

On appeal, the defendant argues that as a youthful first offender he should not receive the maximum sentence and cites cases in which similar defendants were sentenced to twenty-one years. However, those defendants

were sentenced prior to 1992 when the maximum sentence was increased from twenty-one to forty years.

Furthermore, youthful first offenders with sentences of more than twenty years for manslaughter convictions have been affirmed. See State v. Bowman, 95-0667 (La. App. 4 Cir. 7/10/96), 677 So.2d 1094, (a thirty-three year manslaughter sentence for a sixteen-year-old first offender who drove the car but did not pull the trigger in a drive-by shooting); and State v. Black, 28,100 (La. App. 2 Cir. 2/28/96), 669 So.2d 667, (a forty-year sentence for a twenty-year-old defendant who pleaded guilty to a reduced charge of manslaughter).

The trial court has great discretion in sentencing within statutory limits. State v. Trahan, 425 So.2d 1222 (La. 1983). A sentence should not be set aside as excessive in the absence of a manifest abuse of discretion. State v. Washington, 414 So.2d 313 (La. 1982). 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.' " [Citations omitted]. 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." [Citations omitted]. 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, [citation

omitted], 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." [Citation omitted].

Id.

In this case, the evidence shows that the defendant killed a man while recklessly shooting a machine gun on the streets of New Orleans. The trial court did not abuse its discretion in sentencing this defendant to forty years at hard labor. We find no merit in defendant's argument that his sentence is excessive.

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

CONVICTION AND SENTENCE AFFIRMED