

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2002-KA-1215
VERSUS * COURT OF APPEAL
ERNEST DEMOND * FOURTH CIRCUIT
* STATE OF LOUISIANA
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 385-229, SECTION "G"
Honorable Julian A. Parker, Judge
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Judge Miriam G. Waltzer
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(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer,
Judge Patricia Rivet Murray)

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AFFIRMED.

This appeal concerns the resentencing only of Ernest Demond, who was convicted of three counts of armed robbery in violation of LSA - R.S. 14:64, after a jury trial on 14 February 1997. He was sentenced on 2 May 1997, as a second offender under LSA - R.S. 15:529.1 to serve sixty-five concurrent years on each conviction without benefit of parole, probation, or suspension of sentence. He appealed, and, in an unpublished opinion, this court affirmed his convictions, vacated his sentences and remanded the case for resentencing.

He was resentenced on 25 June 1999, to serve sixty-five years at hard labor without benefit of parole, probation, or suspension of sentence on count three as a second felony offender under LSA - R.S. 15:529.1; he was also sentenced to serve forty-nine years on each of the other two armed robbery convictions. All the sentences are to be served without benefits and concurrently. He was granted an out-of-time appeal on 1 April 2002, and now appeals his resentencing.

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

At trial Officer David Adams testified that on August 21, 1996, he received a call that an armed robbery was in progress at 1214 Esplanade Avenue. When he arrived there, he found three victims, a witness, and two police officers. Officer Adams learned that two young men had robbed the victims and fled. One of the robbers was wearing a yellow raincoat. The officer learned that on leaving the Esplanade address the two had entered an apartment building at 1121 North Villere Street, and at that

address he saw someone looking out from behind a curtain in an upstairs apartment. He knocked on the door, but no one answered. Officer Adams left several officers on the scene while he procured a search warrant. He returned with the warrant, and because he knew the robbers were armed, he was considering calling the SWAT team when the defendant walked out of the apartment. Officer Adams asked if anyone else was upstairs, and the defendant answered that Ronnie Taylor was there. James Watkins, who witnessed the robbery and who was in the officer's car, told Adams that the defendant was one of the robbers. Taylor and a woman came downstairs from the apartment, and the officer arrested all three people. When the apartment was searched, the officer found a rifle, three handguns, \$1,077.00, a bucket of bullets, a beeper, a diamond ring, the yellow raincoat, a black guitar bag, and a black gym bag. The officers also found marijuana and drug paraphernalia. At the police station, all three victims identified the defendant and Taylor as the men who robbed them at gunpoint.

Mr. Gerald W. Cole, a forty-five year old victim, testified that he lives at 1214 Esplanade Avenue and works for the Cybernetics Company in Kenner, Louisiana. About 3:30 p.m. on August 21, 1996, Mr. Cole was at home when James Watkins and two young men arrived. Mr. Cole described James Watkins as a homeless man he helps to "feed and take care of"; Cole did not know and was not introduced to the other two people. While the three men were present, Melanie Smith and Roy Polk, members of Cole's band, arrived. Cole's dog entered the house at the same time, and the two men with Watkins threatened to shoot the dog if it were not put outside. The dog was taken out, and Mr. Cole was preparing to give Watkins ten dollars when the two men with Watkins pulled out guns and demanded everyone's money. Mr. Cole handed over \$550 in cash, a gold ring, a .38 Charter Arms Mossberg shotgun, and a .22 Ruger. The robbers told Mr. Cole that they knew he had more and began "ripping up the furniture" and threatening to shoot him. They made all three victims strip to their underwear and stretch out on the floor. The defendant kicked Mr. Cole in the head four times because Cole would not tell him where anything else was. The robbers told Watkins to go outside and hold the dog so that they could get away, and Watkins left to call the police. The robbers took a guitar case to transport a shotgun. On cross-examination, Mr. Cole was asked if the three men came to his door to sell drugs, and he answered,

"I don't know anything about that." Mr. Cole explained having so much cash in his pocket by saying that he collects rents weekly from the other apartments in his building, and the tenants pay in cash.

Mr. Roy Polk, a forty-two year old musician, was visiting his friend Gerald Cole on August 21, 1996, when the robbery occurred. Mr. Polk said that he was in the apartment looking at some musical equipment when the defendant pointed a gun at him and said, "if you don't have anything, I'm going to pop you." Mr. Polk had only his musical equipment. He was forced to strip during the robbery. He identified the robber in the yellow raincoat as the defendant.

Ms. Melanie Smith, the thirty-two year old neighbor of Mr. Cole, testified that she and Roy Polk arrived at Cole's to find three men in the living room. She recognized Watkins, but she did not know the other two men. After those men pulled guns, Ms Smith was forced to strip; she said she was "humiliated" and felt "violated." The robbers took a beeper and between \$330 and \$400 from her.

Ernest Demond, who was seventeen years old at the time of trial, admitted that he is a drug dealer. He testified that on August 21, 1996, he went to 1214 Esplanade Avenue with a man named "Studder" who wanted cocaine for his boss. Defendant learned later that Studder is James Watkins and that when Studder referred to his "boss" he was talking about Gerald Cole. Studder told Demond that his boss wanted seven and one-half grams of cocaine powder, and Demond accompanied Studder to 1214 Esplanade Avenue to show Cole the powder. According to Demond, Cole snorted some of it and then said he did not want the rest. Demond insisted that he pay for the powder, and Cole gave Demond money just as the two other people walked in. Cole said, "here take your money and don't ever come back." Demond left then taking only a .22 Luger that Cole sold him. He denied taking anything else. Demond said that when he was arrested he had only \$72 even though he claimed that Cole paid him \$200 for the cocaine. He denied any knowledge of how the items found in the 1121 North Villere Street apartment got there; he said that he did not live there and had no idea what was in the house. Demond admitted having a prior conviction for simple robbery from January 25, 1996.

State v. Demond, 97-2261 (La. App. 4 Cir. 9/02/98), pp. 1-4.

In a single assignment of error, the defendant maintains that the trial court erred in imposing an excessive sentence under the multiple offender bill. He received a sentence of sixty-five years as a second felony offender, and two forty-nine year terms on the other two counts. All the sentences are to run concurrently and are imposed without benefits of parole, probation, or suspension of sentence. Armed robbery is a crime of violence under LSA - R.S. 14:2(13).

Article 1, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person . . . to cruel, excessive or unusual punishment." A sentence within the statutory limit is constitutionally 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. Caston, 477 So.2d 868, 871 (La. App. 4 Cir. 1985). Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in LSA -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); 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 his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. Quebedeaux, supra; State v. Guajardo, 428 So.2d 468 (La. 1983).

At the resentencing hearing, the court did not give reasons for the sentences, but in the earlier multiple bill hearing, the court adopted the reasons given at the original sentencing on 13 March 1997. The district court there noted that Demond's prior

conviction was for simple robbery; however, the court noted that the defendant entered a plea bargain so that the charge of armed robbery was reduced to simple robbery. The court recited the facts of this case, noting that the defendant kicked one of the victims in the face and head. The court found the crime to be an “unusually cruel and reprehensible action.” The court next considered sentencing guidelines under LSA - C.Cr.P. art. 894.1 and concluded that there was an undue risk that the defendant would commit another violent crime if he were not incarcerated and that he was in need of correctional treatment, which could best be provided by a custodial environment. Furthermore the court found that a lesser sentence in this case would deprecate the serious nature of the crime.

For a second offender convicted under LSA - R.S. 15:529.1, the sentencing range for armed robbery is forty-nine and one-half years to one hundred ninety-eight years without benefit of parole, probation, or suspension of sentence. The defendant received a term close to the minimum. We find the district court justified imposition of the sixty-five year sentence, and the sentence is not unconstitutionally excessive in light of Demond’s criminal history. Sentences of sixty-five years have been upheld on armed robbery convictions. See State v. Banks, 612 So. 2d 822 (La. App. 1 Cir.1992); State v. Palmer, 00-0216 (La. App. 1 Cir. 12/22/00), 775 So. 2d 1231, writ denied 2001-0211 (La. 1/11/02), 807 So. 2d 224, and writ denied, 2001-1043 (La. 1/11/02), 807 So. 2d 229. Considering the facts of the case, Demond’s criminal history, and the absence of mitigating factors, the district court did not abuse its sentencing discretion in imposing the sixty-five year sentence in this case. There is no merit to this assignment.

Accordingly, the defendant’s sentences are affirmed.

AFFIRMED.