NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-1557**
VERSUS	*	**COURT OF APPEAL**
BRYAN JOHNSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 413-204, SECTION "C"
Honorable Sharon K. Hunter, Judge
* * * * * *
Judge Terri F. Love
* * * * * *

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer, Judge Terri F. Love)

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AFFIRMED

In a bench trial, defendant Bryan Johnson was found guilty of possession of cocaine and attempted possession of a firearm by a convicted felon. He was sentenced to five years at hard labor for each conviction to be served concurrently. The only issue raised on appeal by the defendant is whether the sentences were excessive. We find the sentences were not excessive.

FACTS AND PROCEDURAL HISTORY

Bryan Johnson ("Johnson") was charged by bill of information on March 6, 2000, with possession of cocaine in violation of La. R.S. 40:967 (C), and with possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1. On March 13, 2000, he pleaded not guilty at his arraignment. After a hearing on April 14, 2000, the trial court found probable cause and denied the motions to suppress the evidence and the statement. After being advised of his right to a trial by jury, the defendant elected to have a bench trial that occurred on May 2, 2000. Johnson was found guilty as charged of possession of cocaine and guilty of attempted possession of a firearm by a

convicted felon. He was sentenced to five years on each conviction, to run concurrently. The state filed a multiple bill charging him as a second offender on the possession of cocaine conviction. After being advised of his rights and pleading guilty to the bill, his sentence on the cocaine conviction was vacated. He was then sentenced to serve five years at hard labor under La. R.S. 15:529.1 and La. R.S. 40:967(C).

Officer Shawn Dent ("Officer Dent") was patrolling on Dwyer Street when he noticed a vehicle run a stop sign at the corner of Mayo Street. He stopped the vehicle and ordered the driver, later identified as Johnson, to get out. He reviewed Johnson's driver's license, car registration, and documentation of insurance. Johnson was cited for not wearing a seatbelt and for running a stop sign. However, when Johnson's name was checked in the NCIC system, the officer found that he was wanted on a Criminal Court capias. The officer also found that Hunt Correctional Center had a fugitive attachment on Johnson. He was handcuffed and placed in the back of the police car. When Officer Dent checked the car, he saw a black semi-automatic Glock pistol on the floorboard of the driver's side of the car. The gun held thirteen live rounds, and one round was in the chamber which was cocked and ready to fire. When asked about the weapon, Johnson denied any knowledge of it.

Agent Kim Ross ("Ross") testified that she has been Johnson's probation officer since May of 1998 when he was convicted of possession of cocaine. He reported to her only in the beginning of his probationary period. Two warrants were issued for Johnson's arrest after he failed to comply with the conditions of his probation.

Deputy Glenn J. Harris ("Harris") of the Orleans Parish Sheriff's Department testified that on January 29, 2002, when Johnson came into Parish Prison, Harris was assigned to search him. His left pant leg was rolled up, and when Harris unrolled it, a bag containing two rocks fell out.

Criminalist John Frederick Palm, Jr., an expert in testing and analysis of controlled and dangerous substances, testified that he analyzed the contents of the bag taken from Johnson, and the rocks proved to be crack cocaine.

LAW AND DISCUSSION

Patent Errors

Before addressing the assignment of error, we note two patent errors concerning the sentence. The trial court did not impose the mandatory fine or restrict the benefits of parole, probation, or suspension of sentence. By failing to impose a fine, the trial court imposed an illegally lenient sentence.

Recently in *State v. Major*, 2002-0133, 2002 WL 31256433 (La. App.

4 Cir. 10/2/02), ___So. 2d ___, this court considered a similar case where the trial court imposed an illegally lenient sentence and we declined to remand for correction of the patent sentencing error. We held:

> La. R.S. 15:301.1(B) provides that an amendment of a sentence to conform with an applicable statutory provision may be made on the trial court's own motion or if the district attorney seeks such an amendment; however, La. R.S. 15:301.1(D) provides that such action must be taken within one hundred and eighty days of the initial sentencing. Construing those provisions together, the appellate court in *State v. Esteen*, 2001-879 (La. App. 5 Cir. 5/15/02), 821 So.2d 60, declined to remand to correct an illegally lenient sentence resulting from failure to impose a mandatory fine given the state's failure to object before La. R.S. 15:301.1 (D)'s one-hundred eighty day period elapsed.

Id. at pp. 6-7. In that case because the one-hundred eighty day period had expired and the state failed to seek relief, we declined to remand.

We find here that more than one hundred and eighty days have elapsed since the defendant was sentenced, and the state has not objected to the trial court's failure to fine the defendant; therefore, we will not remand for correction of the sentence.

A second error patent in the sentence concerns the trial court's failure to prohibit parole, probation, and suspension of sentence as mandated by La. R.S. 14:95.1. However, paragraph A of La. R.S. 15:301.1 provides that in instances where the statutory restrictions are not recited at sentencing, they are contained in the sentence, whether or not imposed by the sentencing

court. *State v. Williams*, 2000-1725, p. 10 (La. 11/28/01), 800 So.2d 790, 799. Hence, this Court does not need to take action to correct the trial court's failure to specify that the defendant's sentence be served without benefit of parole, probation or suspension of sentence. The correction is statutorily effected. La. R.S. 15:301.1(A).

Assignment of Error

In a single assignment of error, Johnson argues that his sentence is excessive. Pursuant to La. R.S. 40:967(C) and La. R.S. 15:529.1(A)(1)(a), the sentencing range for a second felony offender is thirty months to ten years, and Johnson was sentenced to a mid-range term of five years. He faced a sentence of five to seven and one-half years for the attempted possession of a firearm conviction, and he received the minimum five-year term.

La. Const. Art. I, § 20 bars excessive punishment. A sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the purposeless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. *State v. Johnson*, 97-1906, p. 6-7 (La.3/4/98), 709 So.2d 672, 676; *State v. Dorthey*, 623 So. 2d 1276, 1280-81 (La. 1993).

The Louisiana Supreme Court has instructed that in reviewing the

excessiveness of a sentence, the only relevant question is whether the trial court abused its broad discretion and not whether another sentence would have been more appropriate. As to sentences within the legislatively provided sentencing range, a trial court abuses its discretion only when it contravenes the constitutional prohibition against excessive punishment. *State v. Sepulvado*, 367 So.2d 762, 767 (La. 1979).

In reviewing an excessive sentence claim, an appellate court generally must determine whether the trial judge has adequately complied with the statutory guidelines in La. C.Cr.P. art. 894.1, and whether the sentence is warranted under the facts established by the record. *State v. Trepagnier*, 97-2427, p. 9 (La. App. 4 Cir. 9/15/99), 744 So.2d 181, 189. Once adequate compliance with Article 894.1 is found, then a reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the particular circumstances, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. *State v. Bonicard*, 98-0665, p. 3 (La. App. 4 Cir. 8/4/99), 752 So.2d 184, 185, *writ denied*, 99-2632 (La. 3/17/00), 756 So. 2d 324.

Johnson argues that while there is no evidence that he is a danger to anyone other than himself, he received excessive sentences for the

possession offenses. We do not agree. Johnson did not benefit from receiving a suspended sentence and probation on his first offense, and he was unable to fulfill to the conditions of his probation. While in violation of probation on that drug offense, he was found to be in possession of drugs again as well as carrying a gun—loaded, cocked, and ready to shoot—on the streets of New Orleans. This defendant has demonstrated that he has little respect for the law, and he poses a threat to the citizens of this city. Furthermore, he received the minimum sentence for attempted possession of a firearm by a convicted felon and a mid-range term for possession of cocaine. We find that the record supports the sentences imposed.

CONCLUSION

Accordingly, both convictions and sentences are affirmed.

AFFIRMED