

**STATE OF LOUISIANA**

\*

**NO. 2002-KA-2447**

**VERSUS**

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**COURT OF APPEAL**

**ROBERT ALLEN**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 369-480, SECTION "B"  
Honorable Patrick G. Quinlan, Judge

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**Judge Charles R. Jones**

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(Court composed of Judge Charles R. Jones, Judge Michael E. Kirby, Judge Terri F. Love)

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**COUNSEL FOR DEFENDANT/APPELLANT**

**AFFIRMED**

Robert Allen appeals his resentencing only. We affirm.

Allen was found guilty of armed robbery and attempted manslaughter after a jury trial on September 20, 1994. He was sentenced on November 8, 1994, to serve one hundred ninety-eight years at hard labor without benefit of parole, probation, or suspension of sentence as a fourth felony offender under La. R.S. 15:529.1 on the armed robbery conviction, and to serve ten years and six months on the attempted manslaughter conviction. Through counsel, he filed an error patent appeal, and in an unpublished opinion, this Court affirmed his convictions, vacated his one hundred ninety-eight year sentence, and remanded the case for resentencing on that conviction. *State v. Allen*, 95-0154 (La. App. 4 Cir. 9/28/95).

At resentencing on November 11, 1995, the district court, following this Court's order, imposed a sentence of life imprisonment without benefits as a fourth felony offender. On April 8, 1999, defense counsel filed a motion to correct an illegal sentence. He successfully argued that the State could not use Allen's possession of a firearm by a convicted felon conviction, as well as the burglary on which the firearm conviction was based in the multiple bill. At a hearing on April 29, 1999, the State amended the multiple bill, charging Allen as a third felony offender. After setting aside the fourth felony offender sentence, the district court again imposed a

sentence of one hundred ninety-eight years imprisonment without benefits as a third offender under La. R.S. 15:529.1. Allen now appeals that sentence.

The facts are presented in the earlier appeal. *See State v. Allen*, 95-0154, pp. 1-2 (La. App. 4 Cir. 9/28/95).

At the hearing on April 29, 1999, the district court reviewed the history of this case and, having determined that the prior felony offender adjudication proved Allen to be a third felony offender, the district court looked at La. R.S. 15:529.1(A)(2)(a) and (b). The district court noted that the sentence imposed under section (A)(2)(a) was not “a ‘three strikes/you’re out’ life sentence, it was just a straight up triple bill, so he is a triple [sic] and his legal sentence in this case would be between sixty-six and one hundred and ninety eight years.”

In 1994, La. R.S. 15:529.1(A)(2) provided:

If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:

- (a) The person shall be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction; or
- (b) If the third felony and each of the two prior felonies involved . . . any crime punishable by imprisonment for more than twelve years, the person shall be imprisoned for the remainder of his natural life, without

benefit of parole, probation, or suspension of sentence.

Allen, through counsel, argues that his sentence is excessive in that it is contrary to the spirit of the law. He points out that the 198-year term was illegal for a fourth felony offender, yet is appropriate for a third felony offender. Allen notes the incongruity in the Habitual Offender Law in that a second or third felony offender whose last offense was armed robbery faces a maximum sentence of 198 years while a fourth felony offender can only be sentenced to a life term. While the defendant's argument has merit, we do not have the jurisdiction to address the constitutionality of the contradiction in the statute. Therefore, we must follow the dictates of the statute until otherwise allowed by law.

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 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); *State v. Quebedeaux*, 424 So.2d 1009 (La. 1982).

If adequate compliance with La. C.Cr.P. art 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. Quebedeaux*, 424 So.2d 1009 (La. 1982); *State v. Guajardo*, 428 So.2d 468 (La. 1983).

I) If the judge records the factors affecting his sentencing decision, the sentence should not be set aside as excessive unless it is grossly disproportionate to the offense or represents nothing more than the needless infliction of pain and suffering. *State v. Pike*, 426 So.2d 1329, 1335 (La.1983).

At sentencing the district court stated:

The Court . . . [previously] did go into detailed reasons why the Court felt that Mr. Allen, based upon his armed robbery conviction and attempted manslaughter conviction, coupled with his history of prior violent crimes shown by the attempted armed robbery plea, the gun charge, convicted felon in possession of a firearm, the Court would note while legally the bill status is only as a third offender, the Court in determining the proper sentence, can consider his entire prior record, including the gun charge which is not part of the Multiple Bill at this point but is part of his criminal history.

Here, the district court focused on Allen's criminal history. In

1994, the thirty-year-old Allen committed armed robbery and attempted manslaughter; in 1991, he was found to be in possession of a firearm as a convicted felon; in 1985, he was convicted of attempted armed robbery; and in 1982, he was convicted of burglary. In the twelve years between his eighteenth and thirtieth year, Allen committed five crimes, and his crimes became more violent.

Allen offered neither mitigating facts nor circumstances, which would abrogate or ameliorate his criminal history.

Thus, we find no abuse of the district court's much discretion in sentencing.

**DECREE**

Accordingly, Robert Allen's sentence is affirmed.

**AFFIRMED**