NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2003-KA-0253**
VERSUS	*	**COURT OF APPEAL**
ISAAC CARR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 370-675, SECTION "G"
HORABLE JULIAN A. PARKER, JUDGE

* * * * * *

Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, and Judge Terri F. Love)

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AFFIRMED

Isaac Carr's appeal requests a review of the trial court's imposition of his twenty-year sentence on resentencing.

Mr. Carr was found guilty as charged of possession of cocaine on April 17, 1996. After a multiple bill hearing on May 23, 1996, he was adjudicated a fourth felony offender and was sentenced to serve life imprisonment at hard labor. This court affirmed the conviction and multiple bill adjudication but vacated the sentence and remanded the case for resentencing. The basis for the remand was the district court's erroneous statement that the life term was statutorily mandated when the court actually had the discretion to sentence appellant to a term of between twenty years and life. *State v. Carr*, 96-2388 (La. App. 4 Cir. 9/10/97), 699 So.2d 1105, *writ denied*, 97-2633 (La. 2/6/98), 709 So.2d 732. On September 25, 1998, Carr was resentenced to serve life imprisonment without benefits. Carr was granted an out-of-time appeal of his resentencing on August 10, 1999. Again, this court vacated the sentence on appeal and remanded the case to the district court for resentencing. *State v. Isaac Carr*, unpub., 2000-1523

(La. App. 4 Cir. 2/7/01). On March 20, 2002, the district court resentenced Mr. Carr as a fourth felony offender to serve twenty years at hard labor. His motion for appeal was granted on May 10, 2002. His timely filed pro se motion to reconsider the sentence was denied on October 1, 2002.

The facts underlying Mr. Carr's conviction are not at issue.

Mr. Carr complains that the trial court did not conduct a sentencing hearing prior to resentencing and that his sentence is excessive.

Initially, Mr. Carr asserts that he was not given a sentencing hearing. However, as the State points out, the minute entry of October 15, 2001, indicates that a hearing was held, and Mr. Carr as well as four other witnesses testified. Furthermore, Mr. Carr submitted documentation showing that he completed his GED and participated in several courses while he had been incarcerated. The defendant was not deprived of a fair evidentiary hearing before he was resentenced.

Mr. Carr also contends that his twenty-year sentence is excessive.

At the time of the offense in this case, La. R.S. 15: 529.1 A(2)(c), the Habitual Offender Law, provided in pertinent part:

> (c) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:
>
> (i) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life;

Thus, Mr. Carr received the minimum term mandated by law.

Under La. Const. Art. I, §20, a sentence is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment or is the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime. *State v. Johnson*, 97-1906, pp. 6-7 (La. 3/4/98), 709 So. 2d 672, 676. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. *State v. Sepulvado*, 367 So. 2d 762 (La. 1979).

The minimum sentences imposed on multiple offenders by the Habitual Offender Law are presumed to be constitutional. *State v. Johnson*, 97-1906 at p.7, 709 So.2d at 676. The defendant bears the burden of rebutting the presumption that the mandatory minimum sentence is constitutional. *State v. Short*, 96-2780, p.8 (La. App. 4 Cir. 11/18/98), 725 So.2d 23, 27, *writ denied* 99-0198 (La. 5/14/99), 745 So.2d 11. A court may only depart from the minimum sentence if it finds that there is clear and convincing evidence in the particular case before it that would rebut the presumption of constitutionality. *State v. Johnson*, 97-1906 at p. 7, 709 So.2d at 676.

After reviewing the law and jurisprudence concerning the "rare

circumstances" under which a court may depart from the mandatory minimum sentence, in *State v. Lindsey*, 99-3302, p. 5 (La. 10/17/00), 770 So.2d 339, 343, the Louisiana Supreme Court stated:

> . . . To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that:
>
> > [he] is exceptional, which in this context means that because of ***unusual*** circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. [Citations omitted. Emphasis added.]

Moreover, 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.' " *State v. Cook*, 95-2784, p. 3 (La. 5/31/96), 674 So.2d 957, 959 (quoting *State v. Humphrey*, 445 So.2d 1155, 1165 (La.1984)), *cert. denied*, 519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996). 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." *State v. Sepulvado*, 367 So.2d 762, 767 (La.1979). 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,

> *State v. Franks*, 373 So.2d 1307, 1308 (La.1979), 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." *State v. Wimberly*, 414 So.2d 666, 672 (La.1982).

Mr. Carr concedes that he received the minimum sentence but complains that the trial court gave no consideration to any mitigating factors and did not consider sentencing him under *State v. Dorthey*, 623 So.2d 1276 (La. 1993). However, even though Mr. Carr offered evidence of his good behavior during his incarceration, a conduct report of his behavior during that time was also introduced into evidence. It indicates that Mr. Carr had been reported in eight incidents requiring discipline. Furthermore, this forty-one year old defendant's record consists of four convictions of first degree robbery and two convictions for possession of stolen property in 1989, a conviction for possession with intent to distribute marijuana and possession of phencyclidine in 1985, and a conviction for unauthorized use of an access card in 1985, in addition to the present offense. Moreover, Mr. Carr was still on parole for the first-degree robberies and possession of stolen property convictions when he was arrested for the present crime. Considering these circumstances, we do not find the twenty-year minimum mandated sentence to be excessive under *State v. Soraparu*, 97-1027 (La. 10/13/97), 703 So.2d 608.

Accordingly, the defendant's sentence is affirmed.

AFFIRMED