

STATE OF LOUISIANA

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NO. 2003-KA-0280

VERSUS

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COURT OF APPEAL

JAMES TAYLOR

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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. 431-577, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE

JAMES F. MCKAY III
JUDGE

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,
Judge Dennis R. Bagneris, Sr.)

EDDIE J. JORDAN, JR.
DISTRICT ATTORNEY OF ORLEANS PARISH
CLAIRE ADRIANA WHITE
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH
New Orleans, Louisiana 70119
Attorneys for Plaintiff/Appellee

BARRETT RISTROPH
COMMUNITY SERVICE PROGRAM, TULANE LAW SCHOOL
SHERRY WATTERS
LOUISIANA APPELLATE PROJECT

New Orleans, Louisiana 70158-8769
Attorneys for Defendant/Appellant

AFFIRMED

On July 12, 2002 the State filed a bill of information charging the defendant-appellant with one count of armed robbery, a violation of La. R.S. 14:64. The defendant entered a not guilty plea at his arraignment on July 25, 2002. A pretrial motion hearing was held on August 20, 2002 at which time the court denied the defendant's motion to suppress identification. The defendant proceeded to trial on November 7, 2002; the twelve-person jury returned a verdict of guilty as charged. On November 18, 2002 the defendant appeared for sentencing. Before he was sentenced, however, he filed motions for new trial and post-verdict judgment of acquittal. The court denied both motions. The defendant waived sentencing delays and was sentenced to serve twenty years at hard labor without the benefit of probation, parole, or suspension of sentence. The court denied the defendant's motion to reconsider sentence and granted his motion for an appeal.

The armed robbery, which the defendant was convicted of committing, occurred on August 20, 2001 at the Fashion Cents clothing store on Gentilly Boulevard. Annette Smallwood, the assistant manager, was at

the cash register when a man, whom she later identified as the defendant, entered and asked her if they sold “durags.” Ms. Smallwood and her sales associate, Shandreka Martin, both informed him that they did not. The defendant then came around the side of the counter where Ms. Smallwood was and put a gun to her side. He yelled at her to give him the money. Ms. Smallwood reached into the register, which was already open because she had been opening change envelopes, and handed him all of the currency.

After the defendant left the store, Ms. Martin locked the front door, and Ms. Smallwood called 911 to report the robbery. At trial she identified her voice from the tape of the call. She also recounted that she provided the police with a description of the robber as a black male, five seven or eight inches in height, wearing a rag around his head, dark-colored pants, and a light-colored shirt. Ms. Smallwood also identified a photographic line-up from which she had identified the defendant’s picture as that of her assailant; she repeated that identification in court.

Shandreka Martin testified at trial that she was working on the day of the robbery. As she was straightening up some jewelry, she saw the defendant enter and walk down the middle aisle. He looked around and asked if they sold durags; she and Ms. Smallwood said no and that he could probably find one at Rite-Aid. The defendant then walked to the register,

pulled a gun, and demanded money from Ms. Smallwood. Ms. Martin began to walk toward them, but the defendant instructed Ms. Smallwood to tell her employee to sit on the floor. Ms. Martin complied because she was afraid that the defendant would pull the trigger of the gun.

Ms. Martin testified at trial that she told the police that the robber was wearing a rag on his head. She further testified that she was shown two photographic line-ups. She was unable to make an identification from the first one. From the second she selected the defendant's picture. She pointed to the defendant in the courtroom and stated that she was confident he was the person who robbed the store.

Ms. Demetra Garret was a customer in the store at the time of the robbery. She testified that she was coming out of the fitting room with the intention of exchanging a size of pants when she observed a man standing next to the cashier. She saw him receiving money and assumed he was taking a "drop." However, the man, whom she also identified as the defendant in both a photographic line-up and at trial, ran past her, and the cashier said they'd been robbed. Ms. Garret stated she did not see a gun. She testified further that she was a regular customer and thought that the defendant was a new person scheduled to come pick up the deposits from the store; she also stated during cross-examination that she noted to herself that

the defendant was a cute young man.

Officer Leonard Davis of the Fifth District was the police officer who responded to the call of a robbery. He took the initial descriptions from the witnesses, but had no further involvement in the matter.

Detective Kenneth Quetent testified at trial that he was assigned to the robbery unit of the Fifth District and handled the follow-up investigation. At some point he received information that the defendant was the perpetrator. As a result he compiled a photographic line-up, which he showed to the three women, all of whom identified the defendant as the person who committed the robbery. He also testified that, before receiving the defendant's name as a suspect, he had another possible suspect and conducted a photographic line-up with that person's picture with one of the witnesses. No identification was made. Detective Quetent further testified that no physical evidence was ever recovered in connection with the robbery.

The defendant and his girlfriend Jill Morgan testified that they were watching basketball games from approximately 5:00 p.m. to 9:00 p.m. on the evening of the robbery, which occurred at approximately 7:30 p.m. The games were at a community center across from the St. Bernard Housing Project. They remembered the date because the niece of Ms. Morgan was

having a birthday the next day.

In his sole assignment of error the appellant argues that the trial court imposed an unconstitutionally excessive sentence. He also argues that the trial court failed to consider the sentencing factors under La. C.Cr.P. art. 894.1. The defendant, a first offender, received a sentence of twenty years at hard labor without the benefit of probation, parole, or suspension of sentence; the sentencing range to which he was exposed was ten to ninety-nine years without the benefit of probation, parole, or suspension of sentence under La. R.S. 14:64.

The Louisiana Supreme Court recently considered whether a forty-year sentence imposed on a defendant convicted of armed robbery and sentenced as a first offender was excessive. State v. Smith, 2001-2574 (La. 1/14/03), 839 So. 2d 1. The court stated:

Louisiana Constitution of 1974, art. I, § 20 provides, in pertinent part, that "[n]o law shall subject any person to ... *excessive ... punishment.*" (Emphasis added.) Although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. *State v. Sepulvado*, 367 So.2d 762, 767 (La.1979). A sentence is unconstitutionally excessive when it imposes punishment grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and suffering. *State v. Bonanno*, 384 So.2d 355, 357 (La.1980). A trial judge has broad discretion when imposing a sentence and a reviewing court may not set a sentence aside absent a manifest abuse of discretion. *State v. Cann*, 471 So.2d 701, 703 (La.1985). On appellate review of a sentence, the relevant question is not whether another sentence might have been more appropriate but whether the trial court

abused its broad sentencing discretion. *State v. Walker*, 00-3200, p. 2 (La.10/12/01), 799 So.2d 461, 462; *cf. State v. Phillips*, 02-0737, p. 1 (La.11/15/02), 831 So.2d 905, 906. The court of appeal failed to apply this principle and fell into error. This sentence is within the thirty-five to fifty-year range this Court has found acceptable for first offenders convicted of armed robbery. *State v. Thomas*, 98-1144, p. 2 (La.10/9/98), 719 So.2d 49, 50; *State v. Augustine*, 555 So.2d 1331, 1332 (La.1990) and the cases cited therein. The trial court judge did not abuse his broad sentencing discretion.

State v. Smith, pp. 6-7, 839 So.2d at 4.

In Smith, there was no issue that the trial court had adequately complied with La. C.Cr.P. art. 894.1 as the court had a presentence investigation report prepared and there had been a sentencing hearing at which the defendant had presented witnesses. In contrast, the appellant argues here that the trial court failed to adequately consider the sentencing factors set forth in Art. 894.1. However, the sentencing transcript reflects that the court stated it had considered the provisions of Arts. 894 and 893 (the firearm use statute). The court noted that the defendant was twenty-five years old and a first offender. The court further noted that there was no occupation listed on the defendant's arrest register. The court noted that none of the victims was hurt, that no shots were fired, and that it did not appear to the court that the defendant had an intention of harming the victims although he threatened them. The court stated that it was considering all of these factors in the sentence.

Contrary to the appellant's argument, the trial court did clearly consider a variety of mitigating circumstances in determining that a sentence of twenty years, which is at the low end of the statutory sentencing range, was appropriate. Furthermore, although he contends that he testified at trial that he had an employment history with Manpower, the defendant actually testified at trial that he worked with Manpower for only three months. He also testified that he worked on the river but quit that job. Both of these jobs, according to the defendant's trial testimony, were in 1999. The robbery occurred in 2001, and the defendant testified that he was not employed at that time. Thus, the trial court's conclusion that the defendant had no employment at the time of his arrest is corroborated by the record.

The defendant's sentence is actually below the range of constitutionally acceptable sentences for a first offender convicted of armed robbery which was noted in Smith. The trial court did not abuse its wide sentencing discretion.

The defendant's conviction and sentence are affirmed.

AFFIRMED