STATE OF LOUISIANA	*	**NO. 2003-KA-0804**
VERSUS	*	**COURT OF APPEAL**
KEVIN STEVENSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 429-751, SECTION "F"
Honorable Dennis J. Waldron, Judge
* * * * * *
Judge Max N. Tobias, Jr.
* * * * * *

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias, Jr., and Judge Leon A. Cannizzaro, Jr.)

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CONVICTION AND SENTENCE AFFIRMED.

Defendant, Kevin Stevenson ("Stevenson"), appeals his conviction and sentence for attempted simple burglary, a violation of La. R.S. 14:27 (62). We affirm.

On 23 April 2002, Stevenson was charged by bill of information with simple burglary in violation of La. R.S. 14:62. At his arraignment on 25 April 2002, he pleaded not guilty. After a hearing on 2 May 2002 the trial court found probable cause and denied the motions to suppress the statement and the evidence. On 21 May 2002, a jury found Stevenson guilty of the lesser included offense of attempted simple burglary.

The state filed a multiple bill on 28 May 2002 charging Stevenson as a third offender, and he pleaded not guilty to the bill. However, after a hearing on 3 July 2002, he was found to be a triple offender, and was sentenced on 17 October 2002 to serve four years at hard labor without benefit of probation or suspension of sentence. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial Charles Zwart, the victim, testified that on 14 March 2002, he was at his home when he received a telephone call from his neighbor

advising him that a man was lurking near his shed in his backyard. Mr. Zwart armed himself with a revolver and went to his back door. He then saw Stevenson walking out of his shed carrying a weed-eater and a box of power tools. Mr. Zwart noticed that he was wearing camouflage pants. Mr. Zwart ordered the man to stop and when he did not, Mr. Zwart fired. The man hopped over a four-foot fence separating Mr. Zwart's yard from his neighbor's and ran. Mr. Zwart, with the help of several neighbors, caught him about five blocks away. The weed-eater and black box were found in Mr. Zwart's neighbor's backyard.

Three police officers testified. Officer Mark Stitch told the court that he responded to a call about 9:00 a.m. that a white man with a gun was chasing a black man in the 3000 block of Vincennes Place. As the officer was crossing Nashville Avenue, a motorist stopped him to inform him that the pair of men had been seen running toward Octavia Street. The officer turned onto South Tonti Street and observed a white man in blue jeans carrying a gun but wearing no shirt or shoes chasing a black man. Officer Stitch ordered both men to stop. When they did so, Mr. Zwart reported that the other man had burglarized his shed; the officer handcuffed Stevenson. Stevenson was placed in the backseat of the police car and given his *Miranda* rights.

Detective Henry Burke also investigated the incident. When he interviewed Stevenson, the detective was told that Dwight Johnson had paid Stevenson $35.00 to go to Mr. Zwart's shed and get the weed-eater and a power saw for him. The detective never located Mr. Johnson. When Sergeant Charles Watkins interviewed the defendant, Stevenson stated that Mr. Johnson, who ran an air conditioning business, dropped Stevenson off at the corner of State Street Drive and South Claiborne Avenue and told him to get the items from the shed at 3310 State Street Drive.

We note no errors patent on the face of the record.

In a single assignment of error Stevenson argues that the court did not articulate adequate reasons for imposing a sentence that he asserts is excessive.

Stevenson was convicted of La. R.S. 14:27(62) as a third felony offender under La. R.S. 15:529.1. Those statutes provide for a sentence of four to twelve years without benefit of probation or suspension of sentence; he received the minimum sentence.

Article I, Section 20 of the Louisiana Constitution of 1974 provides that "[n]o law shall subject any person … to cruel, excessive or unusual punishment." A sentence within statutory limits 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 the 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 the case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. *State v. Caston*, 477 So.2d 868 (La. App. 4 Cir. 1985).

However, in *State v. Major*, 96-1214, p.10 (La. App. 4 Cir. 3/4/98), 708 So. 2d 813, 819, this court stated:

> The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. State v. Lanclos, 419 So.2d 475 (La.1982). The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La.C.Cr.P. art. 881.4(D).

At the multiple bill hearing on 3 July 2002, a fingerprint expert

testified after examining the fingerprints taken from Stevenson in court that day and comparing them to prints on arrest registers from convictions for injuring public records in January of 1994 and for attempted simple burglary in September of 1994, that Stevenson was one and the same person. The court found Stevenson was the same person who was convicted twice in 1994. Prior to sentencing Stevenson, the judge ordered a pre-sentencing investigatory report, which is part of the record. At the beginning of the sentencing hearing on 17 October 2002, the defense attorney stated, "We understand the Court's considering the minimum sentence and at this time we are ready for imposition." The court then noted that there had been a conference in chambers and asked if each side was ready for sentencing. When each indicated it was, the court stated that the sentence would be four years at hard labor without benefit of probation or suspension of sentence.

The judge did not discuss the aggravating and mitigating circumstances in this case except to say that the sentence Stevenson received was not in any way influenced by the fact that the judge's own garage had recently been burglarized.

Although the judge did not address the specifics of the offense or Stevenson's criminal record, he presided over the trial as well as Stevenson's 1994 conviction for the same crime. The judge was obviously

familiar with Stevenson and the facts of the case, and from the defense attorney's statement at the beginning of the sentencing hearing, it appears that the minimum sentence had been discussed and agreed to prior to the hearing. Furthermore, the pre-sentence investigatory report indicates that Stevenson had been arrested seventeen times between 1984 and 1994 when he was sentenced as a second offender to six years. The probation officer recommended that Stevenson be given the mandatory jail time.

We find that the trial court did not abuse its discretion in imposing a four-year sentence at hard labor without benefit of probation or suspension of sentence.

Accordingly, Stevenson's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.