

STATE OF LOUISIANA

*

NO. 2004-KA-0072

VERSUS

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COURT OF APPEAL

ANTHONY J. GIBSON

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 436-414, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Michael E. Kirby)

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On February 3, 2003, the State filed a bill of information charging Anthony J. Gibson with attempted second degree murder in violation of La. R.S. 14:27(30.1). At his arraignment on February 6, 2003, he entered a plea of not guilty. After a hearing on March 13, 2003, the trial court found probable cause to bind the defendant over for trial and denied the motion to suppress the identification. A twelve-member jury found him to be guilty of the responsive verdict of aggravated battery, a violation of La. R.S. 14:34, at a trial on August 14, 2003. He was sentenced to serve ten years at hard labor without benefit of probation or suspension of sentence on August 26, 2003. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial, Richard Williams testified that on the evening of June 22, 2001, he went out to shoot pool at a neighborhood bar. He drank two beers before he left home. When Mr. Williams arrived at the bar, he circled the pool table, noticing that a woman was shooting and a man was sitting on a stool waiting his turn. Mr. Williams said to him, "Hey man, looks like she's kicking your ass." As Mr. Williams turned to leave the area, he was hit in the back of the head, and he turned around in time to see the defendant raising the pool stick to hit him again. That is the last thing Mr. Williams

remembers. He woke up in the hospital where he spent about two weeks.

Mr. Williams denied ever touching the defendant that evening.

Ms Cynthia Williams, the victim's wife, told the court that she had been married for twenty-three years to Richard Williams and they have three children. She said that on the night in question her husband left to get gas and play one game of pool; he assured her as he was leaving that he would come right back. The next time she saw him he was outside the bar and bleeding profusely. He had a wishbone-shaped gash in his forehead where his skull was crushed. She said one of his eyes "was practically out." She took him to the hospital in her car. He went to emergency surgery for his skull fractures. He spent the next six days breathing on a ventilator. One of the doctors asked if the police had seen Mr. Williams, and when she said that they had not, the doctor suggested she summon an officer. Ms Williams did so. When asked about the fact that the hospital report showed Mr. Williams was heavily intoxicated, Ms Williams insisted he had had only a few beers. Ms Williams said that the beating changed her husband's personality. He became forgetful, angry, and combative.

Detective Shawn Kevany testified that he investigated the incident at issue. He met with Mr. Williams at Charity Hospital about a week after his admission. The detective described the victim as "messed up, bandaged,

head was much larger than normal . . . a lot of swelling. He looked pretty bad to me.” The detective’s efforts to interview witnesses at the bar were frustrated, and only the bar owner, who was very evasive, spoke to him. The bar owner simply acknowledged that a fight had occurred.

Detective Girard Robinette testified that on July 11, 2001, he began investigating the severe beating that occurred at Al’s First Stop Bar at 1843 Pauger Street. Detective Robinette also interviewed the bar owner and found him uncooperative. He told the detective that possible evidence had been thrown away. Detective Robinette prepared a photographic lineup, which he showed to Mr. Williams, and Mr. Williams selected the defendant’s picture and named him as the man who beat him over the head and in the face with a pool stick.

Alexander Williams, the brother of the victim, testified that about 10 p.m. on June 22, 2001, he drove down Pauger Street and noticed his brother’s truck parked there. He stopped to see Richard and found him walking out of the bar. Alexander Williams described his brother as being covered in blood, with “his face all smashed in on one side, cut up on one side.” Alexander called his sister-in-law who arrived and took Richard to the hospital. Then Alexander Williams walked into the bar and saw blood all over a wall, in the chairs, and on the floor near the pool table.

Defense witnesses included several people who were in the bar that night. Ms Shamekia Marshall said she knew the defendant because he was a friend of her uncle. She said that her sister was playing pool with Mr. Gibson when Mr. Williams came in. She noticed that he was obviously drunk because of the way he staggered. She said he repeatedly bumped Mr. Gibson as he was shooting pool, and after the third bump, Mr. Gibson turned and hit Mr. Williams one time with the pool stick. Ms Marshall described Mr. Williams cursing Mr. Gibson as well.

Ms Amy Smith testified that she was playing pool with the defendant when Mr. Williams arrived, and Ms Gail Wright, an aunt of Amy Smith and Ms Marshall, was watching the game. Both Ms Wright's and Ms Smith's testimony tracked that of Ms Marshall.

Anthony Gibson, the forty-two year old defendant, testified that he graduated from high school in New Orleans. On the night in question he had gone to the bar to shoot pool as he frequently does. He was not drinking that night, and he played pool with several people. He was shooting with a woman when another bar patron shoved him twice. Mr. Gibson did not know the man and tried not to pay attention to him because he was obviously drunk. As Mr. Gibson tried to make a shot, the man hit him in the head with a beer bottle. Mr. Gibson described what happened next: "I just

turned around and hit him back with the pool stick and I just ran out of the place.” The stick broke as a result of the impact. Mr. Gibson acknowledged that he was convicted for burglary, served five years in prison and was released in 1992. He was also arrested for theft but the charges were dismissed.

Before addressing the assignment of error, we note an error patent. The defendant’s sentence was imposed without benefit of probation or suspension of sentence. La. R.S. 14:34 does not prohibit those benefits, and thus, the sentence is illegal. La. C.Cr.P. art. 882(A) provides that an appellate court on review may correct an illegal sentence at any time. Accordingly, we amend the defendant’s sentence by deleting the restriction that defendant serve his sentence without benefit of probation or suspension of sentence.

In a single assignment of error, the defendant argues that his sentence is excessive. The aggravated battery statute, La. R.S. 14:34, provides for a fine of not more than five thousand dollars and/or a sentence with or without hard labor of not more than ten years. The trial court sentenced the defendant to ten years at hard labor and stated that he imposed the sentence because of the deliberate cruelty the defendant inflicted on the victim. The defendant argues that he does not deserve the maximum sentence for

aggravated battery.

In *State v. Gorby*, 2003-1666 (La. App. 4 Cir. 2/11/04), 868 So. 2d 193, this Court considered a similar case and stated:

Article I, § 20 of the Louisiana Constitution of 1974 provides that "[n]o law shall subject any person ... to cruel, excessive or unusual punishment." A sentence, although within the 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 and needless imposition of pain and suffering." *State v. Caston*, 477 So.2d 868, 871 (La. App. 4 Cir. 1985). However, the penalties provided by the legislature reflect the degree to which the criminal conduct is an affront to society. *State v. Brady*, 97-1095 (La. App. 4 Cir. 2/3/99), 727 So.2d 1264.

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. Black*, 98-0457, p. 8 (La. App. 4 Cir. 3/22/00), 757 So.2d 887, 892. If adequate compliance with 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 his case. *State v. Caston*, 477 So.2d at 871. The reviewing court must also keep 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, 1014 (La. 1982).

The trial court has great discretion in sentencing within the statutory limits. *State v. Trahan*, 425 So.2d 1222 (La. 1983). 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).

State v. Gorby, pp. 3-4, 868 So. 2d at 195-96.

We find the trial court did not abuse its discretion in this case. The challenged sentence is not excessive or grossly disproportionate to the seriousness of the crime under the circumstances. The trial court described the victim's injuries:

His disfigurements are noticeable to this day. He has had protracted injuries, loss of mental faculties, loss of memory, was placed on a ventilator to support his life and was unconscious for a period of five to six days.

Furthermore, in several cases similar sentences were imposed. In *State v. Brown*, 2003-0732 (La. App. 4 Cir. 7/23/03), 853 So. 2d 665, the defendant, sentenced to ten years after being convicted of aggravated battery, argued that his sentence was excessive, and this Court affirmed the sentence noting that the defendant inflicted life-threatening injuries on the victim. Likewise in *State v. Hawkins*, 95-0028 (La. App. 4 Cir. 3/29/95), 653 So. 2d 715, this Court affirmed a ten-year sentence for a first offender convicted of aggravated battery. In *State v. Gorby*, 2003-1666 (La. App. 4 Cir. 2/11/04), 868 So. 2d 193, the defendant received the maximum ten year sentence because of the severity of the injuries he inflicted on the victim. The judge in the instant case, like the judge in *Gorby*, was shocked at the

violence of the attack on the vulnerable victim.

This sole assignment of error is without merit.

Accordingly, the defendant's conviction is affirmed. His sentence is amended so as to delete the prohibition against probation and suspension of sentence, and, as amended, the sentence is affirmed.

CONVICTION AFFIRMED; SENTENCE AMENDED, AND AS AMENDED, AFFIRMED