NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2004-KA-0243**
VERSUS	*	**COURT OF APPEAL**
MICHAEL LEBLANC	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 437-138, SECTION "I"
Honorable Raymond C. Bigelow, Judge
* * * * * *
Judge Roland L. Belsome
* * * * * *

(Court composed of Judge Charles R. Jones, Judge James F. McKay III, Judge Roland L. Belsome)

Eddie J. Jordan, Jr.
District Attorney
Claire Adriana White
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

November 23, 2004

William R. Campbell, Jr.
LOUISIANA APPELLATE PROJECT

700 Camp Street
New Orleans, LA 70130
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

On March 11, 2003, the State filed a bill of information charging Michael LeBlanc with aggravated battery, a violation of La. R.S. 14:34. He was arraigned on March 14th and pleaded not guilty. After a hearing on April 15th, the trial court found probable cause and denied the motion to suppress the identification. Mr. LeBlanc was found guilty of the lesser offense of second degree battery after a jury trial on August 11th. The State filed a multiple bill charging the defendant as a second offender. At a hearing on September 11th, the State proved the charge, and Mr. LeBlanc was sentenced to serve ten years at hard labor. His motion for reconsideration of sentence was denied, and his motion for an appeal was granted.

At trial the victim, Mr. James Shanklin, testified that on January 27th he obtained a rock of crack cocaine from the defendant in an attempt to sell it. His customer had found another source, however, so Mr. Shanklin tried to return the drug to the defendant, and the two argued. As Mr. Shanklin began to walk away, he heard Mr. LeBlanc say, “We’re going to talk about it.” A few minutes later, he saw Michael LeBlanc jump out of a white Grand Prix holding a semi-automatic rifle. Mr. Shanklin began to run as the gun was fired. A bullet hit him in the back of the knee, and he fell. Mr. LeBlanc

stood over him, said a few words, then jumped back into the Grand Prix and left. Mr. Shanklin was in surgery for twenty-five hours as doctors worked to save his leg; however, his leg was finally amputated.

Counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So.2d 528 (La. App. 4th Cir. 1990). Counsel filed a brief complying with *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241. Counsel's detailed review of the procedural history of the case and the facts of the case indicate a thorough review of the record. Counsel moved to withdraw because he believes, after a conscientious review of the record, that there is no non-frivolous issue for appeal. Counsel reviewed available transcripts and found no trial court ruling which arguably supports the appeal. A copy of the brief was forwarded to defendant, and this Court informed him that he had the right to file a brief in his own behalf. Defendant has filed a brief making three assignments of error.

In his pro se brief, the defendant attacks his sentence, contending: (1) the ten-year sentence is excessive, (2) he was entitled to have a jury decide whether such a sentence was justified, and (3) his status as a multiple offender is invalid on several grounds.

ASSIGNMENT OF ERROR #1

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. 4th 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).

La. R.S. 14:34.1, the second degree battery statute, provides for a fine of not more than two thousand dollars and a sentence with or without hard labor of not more than five years. As a second offender under La. R.S. 15:529.1, the defendant faced a term of two and one-half to ten years. The trial court sentenced him to ten years at hard labor.

At sentencing, the trial judge reviewed the sentencing guidelines under La. C.Cr.P. 894.1 and found that there was a risk the defendant would commit another crime if placed on probation, that he was in need of correctional treatment and a custodial environment, and that a lesser term would deprecate the serious nature of the offense. The judge noted that there were several aggravating factors. During the commission of the crime the defendant manifested deliberate cruelty and violence toward the victim which resulted in permanent injury. The defendant also used a weapon in committing the offense. The judge asked the defendant if he would like to address the court, and the defendant said:

I would like to ask the Court to have mercy

> on me. It was nothing like me threatening like [sic] toward the victim. I felt like I was just emotional and ask the court to have mercy on me.

The judge asked the defendant if he "cold-bloodedly just shot this man with an AK-47?" The defendant answered that he could not say that he shot the victim, but "[t]hat's just what I was found guilty on." The judge asked if he was denying his guilt, and he again answered, "I ain't going to say that I shot him." The judge then asked if any family member wished to speak, and when none did, he sentenced the defendant.

The trial judge, initially appalled at the offense, seemed shocked and dismayed at the defendant's denial of responsibility and lack of contrition. Under the circumstances of this case, we do not find any mitigating circumstances. The sentence is not excessive or grossly disproportionate to the seriousness of the crime.

This assignment of error is without merit.

ASSIGNMENT OF ERROR #2

In his next assignment, the defendant argues that the trial court erred in imposing a sentence beyond the statutory maximum without permitting a jury to determine that the sentence was justified. In fact, the defendant was not sentenced beyond the statutory maximum under La. R.S. 14:34.1 and La.

R.S. 15:529.1. Defendant claims, however, that under Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000), any factual finding that would increase the maximum sentence must be tried to a jury and proven beyond a reasonable doubt.

Apprendi does not stand for that proposition. The court in Apprendi stated: "*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." [Emphasis added]. 530 U.S. at 490, 120 S.Ct. at 2362-63. In the case at bar, the defendant received an enhanced sentence as second-felony habitual offender based on a prior conviction. The fact that he had committed a prior felony did not need to be submitted to a jury simply because it might subject him to an enhanced sentence.

There is no merit in this assignment.

ASSIGNMENT OF ERROR #3

In his final assignment, the defendant contests his status as a multiple offender on several grounds. However, at the multiple offender hearing there was no objection made on any of the grounds. An error cannot be raised after a verdict if it was not objected to when it occurred. La. C.Cr.P. art. 841.

PATENT ERROR

As per State v. Benjamin, this Court performed an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record. Defendant was properly charged by bill of information with a violation of La. R.S. 14:34, and the bill was signed by an assistant district attorney. Defendant was present and represented by counsel at arraignment, motion hearings, jury selection, trial, and sentencing. A review of the trial transcript reveals that the State proved the offense of second degree battery beyond a reasonable doubt. The sentence is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal.

CONCLUSION

Defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

AFFIRMED