NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2007-KA-0446**
VERSUS	*	**COURT OF APPEAL**
WILLIE MATTHEWS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 460-632, SECTION "J"
Honorable Darryl A. Derbigny, Judge
* * * * * *

JUDGE MAX N. TOBIAS, JR.

* * * * * *

(COURT COMPOSED OF JUDGE DENNIS R. BAGNERIS SR., JUDGE MAX N. TOBIAS, JR., AND JUDGE LEON A. CANNIZZARO, JR.)

EDDIE J. JORDAN, JR.
DISTRICT ATTORNEY
ALYSON GRAUGNARD
ASSISTANT DISTRICT ATTORNEY
1340 POYDRAS STREET
SUITE 700
NEW ORLEANS, LA 70112-1221

COUNSEL FOR PLAINTIFF/APPELLEE

LAURA PAVY
LOUISIANA APPELLATE PROJECT
P. O. BOX 750602
NEW ORLEANS, LA 70175-0602

COUNSEL FOR DEFENDANT/APPELLANT

CONVICTION AND SENTENCE AFFIRMED.

SEPTEMBER 19, 2007

On 24 June 2005 the state filed a bill of information charging the defendant-appellant, Willie Matthews ("Matthews") with one count of simple possession of cocaine, a violation of La. R.S. 40:967(C). The defendant entered a not guilty plea at his arraignment on 8 July 2005. A motion hearing scheduled for 1 September 2005 could not be held due to Hurricane Katrina and was apparently never rescheduled. On 10 October 2006 Matthews was tried by a six-person jury and found guilty as charged. On 8 November 2006 the trial court sentenced the defendant to serve two years at hard labor. The court denied Matthews' motion to reconsider the sentence, but the court granted the motion for an appeal. The state orally advised the court and the defendant that it intended to file a multiple bill of information. The court set a multiple bill hearing for 6 December 2006. As of the time the record on appeal was lodged, no written multiple bill of information had been filed, and the hearing on the bill had been reset three times.

On 24 May 2005 at approximately 7:30 p.m. Officer Stephen Gaudet and his partner were on proactive patrol in the Second District of New Orleans. As they were driving on Bloomingdale Court they saw the defendant walking down the street in the same direction as they were traveling. The defendant turned around,

saw the officers' marked police vehicle, and immediately appeared startled and nervous. He turned back around, placed his hand in his pocket, and then placed his hand in his mouth. Officer Gaudet recognized that these actions were consistent with a subject attempting to conceal contraband. Therefore, he and his partner conducted an investigatory stop of the defendant. The defendant was very nervous and shaking. The officers asked him to open his mouth, and when he did so, they could see a blue plastic bag containing green vegetable matter and a clear plastic bag containing an off-white rock-like substance consistent with crack cocaine. After showing the officers the contents of his mouth, the defendant fled on foot, but was apprehended quickly and placed under arrest.

At trial, the defense stipulated that Corey Hall was an expert in the testing of cocaine and marijuana and, if called to testify, he would state that the substance in the state's exhibit 1-A tested positive for cocaine and the substance in exhibit 1-B was positive for marijuana.

Matthews testified in his own defense. He said that he had just been released from jail the day before the incident and was walking down the street to see a friend when ten or twelve police cars pulled up. He claimed that the officers threw him on the car, beat and punched him, and demanded to know if he knew a certain subject, but he did not. He admitted possessing marijuana, but denied possessing cocaine. He admitted that he had several prior convictions for shoplifting, a conviction for simple escape, and a 1994 conviction for possession of cocaine.

ERRORS PATENT

A review of the record for errors patent reveals that none exist.

DISCUSSION

In his sole assignment of error, Matthews contends that the sentence the trial court imposed is excessive. The court sentenced him to serve two years at hard labor. The maximum sentence he could have received without having been adjudicated a multiple offender was five years. See La. R.S. 40:967C(2).

In *State v. Smith*, 01-2574, p. 7 (La. 1/14/03), 839 So. 2d 1, 4, the Court set forth the standard for evaluating a claim of excessive sentence:

> 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. Sepulveda,* 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.

See also *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So. 2d 672; *State v. Baxley*, 94-2982 (La. 5/22/96), 656 So. 2d 973; *State v. Landry*, 03-1671 (La. App. 4 Cir. 3/31/04), 871 So. 2d 1235.

An appellate court reviewing a claim of an excessive sentence must determine whether the trial court adequately complied with the statutory guidelines in La. C.Cr.P. art. 894.1, as well as whether the facts of the case warrant the sentence imposed. *State v. Landry, supra; State v. Trepagnier*, 97-2427 (La. App. 4 Cir. 9/15/99), 744 So. 2d 181. However, as noted in *State v. Major*, 96-1214, p. 10 (La. App. 4 Cir. 3/4/98), 708 So. 2d 813:

> 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).

If the reviewing court finds adequate compliance with article 894.1, it must then determine whether the sentence the trial court imposed is too severe in light of the particular defendant as well as 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. Landry*, 03-1671, p. 8, 871 So. 2d at 1239. See also *State v. Bonicard*, 98-0665 (La. App. 4 Cir. 8/4/99), 752 So. 2d 184.

Matthews bases his argument that his sentence is excessive aserting that his offense, possession of cocaine, is non-violent and that the quantity of cocaine he possessed was "a very small amount". He fails to discuss or mention the fact that, at the time he was sentenced in this case, he was also sentenced for misdemeanor possession of marijuana. He also offered to enter a guilty plea to a pending theft charge if the state would agree to reduce the value of the stolen property to under one hundred dollars. Moreover, contrary to his assertion that only a very small amount of cocaine was involved, at trial Officer Gaudet described the seized evidence as being "numerous pieces of off-white rock-like substances." The quantity was apparently consistent with sales and not mere personal use; the police officers arrested Matthews for possession of cocaine with the intent to distribute and not for simple possession.

Additionally, Matthews fails to address the fact that the court asked for his criminal history and was informed that he had a "great deal" of theft convictions in

addition to a prior possession of cocaine conviction. Matthews admitted to this criminal history during his trial testimony; he also admitted to a simple escape conviction. Finally, the state indicated its intention to pursue a multiple bill against the defendant. If the state were successful in adjudicating him as a second offender, the minimum sentence the court could have imposed would be two and one-half years and the maximum would be ten years. Thus, the sentence imposed on the defendant as a first offender was not even the minimum he would receive under La. R.S. 15:529.1.

The record contains adequate justification for the two-year sentence imposed. The sentence is not excessive. This assignment of error lacks merit.

CONCLUSION

The defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.