NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2007-KA-0792**
VERSUS	*	**COURT OF APPEAL**
CHRISTOPHER D. MARTIN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

*** * * * * * ***

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 460-394, SECTION "J"
Honorable Darryl A. Derbigny, Judge
* * * * * *
Charles R. Jones
Judge
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Edwin A. Lombard, and Judge Leon A. Cannizzaro, Jr.)

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AFFIRMED

Christopher Martin appeals his conviction and sentence for attempted simple burglary. We affirm.

The State charged Christopher Martin with one count of attempted simple burglary of an inhabited dwelling. He pled not guilty at his arraignment, and waived his right to a jury. At the conclusion of his trial, he was found guilty as charged. The district court ordered a presentence investigation, and the court sentenced him to serve six (6) years at hard labor, to run concurrently to any other sentence. The court denied his motion to reconsider sentence, but granted his motion for appeal. Martin's appeal was timely lodged in this Court.[1]

On the evening of April 20, 2005, Edie Steinhardt was in her home in the Carrollton area when she heard her dog barking. She testified that she looked out of her window and saw a man walking down her street. She testified that the man passed her house, walked back to her driveway, and then walked diagonally across the street. She testified that after she saw the man jump a small fence into the back yard of a residence, she called the police. She continued to look out the window

[1] At the time the instant appeal was lodged, Martin had another unrelated appeal pending in this court. In case number 2007-KA-0791, Martin appealed his conviction and six (6) year prison term for another attempted simple burglary of an inhabited dwelling charge. On October, 17, 2007, this court rendered an opinion affirming the conviction and sentence. *State v. Martin*, 07-0791 (La. App. 4 Cir. 10/17/07) ___ So.2d ___.

and soon saw the same man jump back over the fence, and he appeared to be taking something off of his hands. The man began walking down the street in one direction and then changed directions. She testified that the man was stopped by police officers as he reached the corner. Ms. Steinhardt identified photographs of the area and testified that she could not see into the back yard of the house where the man jumped the fence because of bushes in the yard. She testified that the officers drove the man they stopped to her house, but she did not go outside to view him because she saw the officers stop him at the corner.

New Orleans Police Officer Dowal Barrett testified that he responded to the possible burglary call at 34 Fontainebleau Drive on April 20, 2005, and he detained a suspect who matched the description of the suspect given by Ms. Steinhardt. He testified that after speaking with her, he arrested the man, whom he identified as the defendant, Christopher Martin, and put him in the back of the police car. Officer Barrett then investigated the yard that Ms. Steinhardt said the man had entered and found that the glass back door was broken. He testified that he returned to Martin, searched him, and found a knife and some socks in his pockets, as well as glass shards and a bullet casing in the cuffs of Martin's pants. Officer Barrett testified that he also spoke with a resident of the house who was present at the time. Officer Barrett testified that this resident indicated that he thought he heard something in the house, but because he did not investigate he saw no one in the house.

Officer Anthony Edenfield testified that he was present when Martin gave a statement in connection with an unrelated case on July 14, 2005. He testified that during this statement, taken after Martin had been advised of and had waived his rights, Martin admitted his involvement in other residential burglaries.

Jeanne Bruno testified that she lived at 34 Fontainebleau on April 20, 2005. She testified that she did not know Martin and had not given him permission to be inside the house.

Victor Bruno testified that he also lived at the above address and was home in the den on that evening, dozing in front of the television. He testified that, at some point, he heard what sounded like a crash, but he did not get up to investigate the noise because he thought it was caused by construction in the area. Mr. Bruno testified that soon thereafter a police officer knocked on his door and told him about his broken door. He testified that he went to the back of his house and found the broken glass door, which had not been broken the last time he saw it. He denied knowing Martin or giving him permission to enter the residence.

Tanya Jones, an investigator for the State, testified that she tried to retrieve the evidence seized in this case from the New Orleans Police Department's property room, but she was told the evidence was destroyed in Hurricane Katrina.

Christopher Martin denied trying to break into the house. He further testified that he was merely walking through the neighborhood on his way to a basketball court, drinking a beer, when he was stopped by the officers. He testified that the officers told him that he matched the description of someone seen jumping a fence in the area. Lastly, Martin testified that the officers put him in the police car, drove him down the street, drove him back, then drove him back down the street again where they were met by a detective. He denied that anyone identified him on the scene.

On rebuttal, Officer Barrett testified that he did not remember if Martin was carrying a beer when he stopped him. He testified that the description he had been

given was of an African-American man wearing dark jeans and a white T-shirt. He also testified that Martin was the only person in the area when he was stopped.

A review of the record reveals no patent errors.

By his sole assignment of error, Martin contends that district court imposed an excessive sentence. The court sentenced him to serve six (6) years at hard labor for his conviction for attempted simple burglary of an inhabited dwelling, the maximum sentence he could have received. See La. R.S. 14:27; 14:62.2.

In *State v. Smith*, 01-2574, p. 7 (La. 1/14/03), 839 So.2d 1, 4, the Louisiana Supreme 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. 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.

See also *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So.2d 672; *State v. Baxley*, 94-2982 (La. 5/22/95), 656 So.2d 973; *State v. Batiste*, 06-0875 (La. App. 4 Cir. 12/20/06), 947 So.2d 810; *State v. Landry*, 03-1671 (La. App. 4 Cir. 3/31/04), 871 So.2d 1235.

In *Batiste*, at p. 18, 947 So.2d at 820, this court further explained:

> An appellate court reviewing a claim of 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:
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> > 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).
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> If the reviewing court finds adequate compliance with art. 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*, 2003-1671 at 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.

Here, although the district court did not give specific reasons for imposing the maximum sentence, it referenced the presentence investigation report. On the same date, the court also sentenced Martin for an unrelated attempted simple burglary of an inhabited dwelling conviction.[2] When counsel noted that Martin was only a first offender, the court testified the investigation report detailed Martin's extensive juvenile record and the report "form[ed] a large part for the

[2] See *infra*. p. 1 and footnote 1.

basis for the Court's sentence." The report itself indicated that Martin denied committing the present crime.

In 1994, Martin was arrested as a juvenile for misdemeanor theft of goods. Moreover, in 1995, he was arrested for possession of stolen goods and had multiple arrests for simple burglary of an inhabited dwelling and criminal trespass that did not result in dispositions. He was also adjudicated a delinquent in 1995 for simple burglary of an inhabited dwelling and committed for three (3) years. The following year, he was adjudicated a delinquent for a separate burglary of an inhabited dwelling, for which the court committed him to detention for juvenile life. He was released when he was twenty (20) years old. As an adult, in 2001, Martin was arrested on a domestic violence charge for which there was no disposition. He had a pending possession of marijuana charge[3] as well as the unrelated attempted simple burglary of an inhabited dwelling conviction at the time the instant investigation report was compiled. Given the district court's statements and its reference to the presentence investigation report, the court adequately complied with art. 894.1.

In comparison to other cases, it appears that the maximum sentence the court imposed in this case was not excessive.[4] For instance, in several cases, Louisiana appellate courts have upheld maximum sentences for the completed crime of simple burglary of an inhabited dwelling. In *State v. Tran*, 97-640 (La. App. 5 Cir. 3/11/98), 709 So.2d 311, the court upheld the maximum sentence for a conviction for La. R.S. 14:62.2 where the defendant had an extensive prior record. In *State v. Smith*, 28,280 (La. App. 2 Cir. 6/26/96), 677 So.2d 589, the court upheld the

[3] The State entered a nolle prosequi to this charge in 2007.

maximum twelve-year sentence on a defendant who had an extensive arrest record which included a prior simple burglary. In *State v. Conners,* 577 So.2d 273 (La. App. 3 Cir. 1991), the court also upheld the maximum sentence where the defendant's prior record included other instances of simple burglary. Likewise, appellate courts upheld maximum twenty-four-year sentences for second offenders in *State v. Milton*, 469 So.2d 309 (La. App. 2 Cir. 1985), where the defendant had prior burglary convictions and more charges that were pending at the time of sentencing, and in *State v. Givens*, 445 So.2d 9 (La. App. 4 Cir. 1983), where the trial court imposed the maximum sentence to prevent the defendant from committing more crimes.

Here, Martin had prior arrests as a juvenile for simple burglary and, at the time of sentencing, he had another conviction for attempted simple burglary of an inhabited dwelling for which he also received a six-year sentence. A sentencing court is entitled to consider a defendant's entire criminal history, including arrests that relate to unadjudicated crimes, when imposing sentence. See *State v. Washington*, 414 So.2d 313 (La. 1982). Martin asserts that a six-year sentence is excessive for merely breaking a glass door. However, given his prior record, it does not appear that the trial court abused its discretion by imposing the six-year sentence. This assignment of error has no merit.

DECREE

For the foregoing reasons, the conviction and sentence imposed upon Christopher D. Martin are affirmed.

AFFIRMED

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[4] In an unpublished opinion in *State v. Abney*, unpub. 97-1517 (La. App. 4 Cir. 12/23/98), this court upheld the defendant's six-year sentence for attempted simple burglary where the defendant had several other simple burglary convictions and was on probation at the time of the present offense.