NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2014-KA-1314**
VERSUS	*	
		COURT OF APPEAL
CHARLES E. WILLIAMS	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 518-229, SECTION "K"
Honorable Arthur Hunter, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome, Judge Joy Cossich Lobrano)

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AFFIRMED

JUNE 3, 2015

On November 15, 2013, defendant Charles E. Williams was charged with one count of aggravated burglary. On April 16, 2014, the State amended the bill of information to charge defendant with home invasion with a dangerous weapon. Following a bench trial, defendant was found guilty of unauthorized entry of an inhabited dwelling and pled guilty to a multiple bill. Thereafter, defendant was sentenced as a second offender to ten years at hard labor, with recommendations for work release and the D.O.C. Re-entry Program. For the following reasons, we affirm defendant's sentence and conviction.

FACTS

Ms. Kiana Lunkins, a 911 operator with the New Orleans Police Department ("NOPD"), testified to the audio recording and written memorialization (incident recall) of the 911 call associated with this case.[1] In the recording, the victim, Ms. Lanicka Rogers ("Ms. Rogers"), is heard reporting that the defendant, whom she knew, was harassing her and her children by constantly ringing her doorbell and demanding to be allowed to spend the night at her residence. She reported that because the defendant's parents put him out of their house, he needed a place to

[1] The 911 call was assigned a unique number, No. J-08680.

stay. She goes on to describe the defendant's clothing and his vehicle. Ms. Rogers recalls that the defendant pushed his way into her house and stabbed her in the arm with a knife when she refused his request to enter her house. She also tells the 911 operator that the defendant told her: "We're all going to die tonight."

Ms. Rogers testified that she knew the defendant as a family friend, and the two shared a brief romantic relationship during which time they lived together, but they were no longer romantically involved at the time of this incident. She testified that in the early morning hours of October 7, 2013, the defendant knocked on her door and rang the doorbell for hours before she finally answered the door. The defendant told her he had nowhere to spend the night and asked if he could stay at her house. When she refused his request, an argument ensued, and he forced his way into her house. The defendant placed Ms. Rogers in a bear hug and cut her left arm. The defendant fled the house after Ms. Rogers bit him and threatened to call the police. After the attack, Ms. Rogers asked her friend, Deja George ("Ms. George"), to call the police.[2] On cross-examination, Ms. Rogers denied that the defendant cut her arm with a knife and stated that she did not see the defendant's hands at the time she was injured.

The State called Ms. George, who testified that she was at the victim's home at the time of the incident. She testified that she was awakened by the defendant's repeatedly ringing the doorbell and that she heard Ms. Rogers screaming and calling to her to call the police. Ms. George was unaware Ms. Rogers had been

[2] At the sentencing hearing on July 21, 2014, Ms. Rogers testified that she did not wish to see the defendant incarcerated. She described the incident as an "honest mistake, lack of communication . . . [that] just spiraled out of control. . .."

injured until she noticed the blood on Ms. Rogers' left arm. Ms. George said she did not see the defendant or the victim with a knife.

Detective John Waterman was dispatched to 2823 South Robertson Street on a call of aggravated battery by cutting. By the time Detective Waterman arrived on the scene, the defendant had left. After interviewing Ms. Rogers and Ms. George, as well as noticing two bleeding lacerations to Ms. Rogers' upper left arm, Detective Waterman sought a warrant for the defendant's arrest. In the warrant application, Detective Waterman noted that Ms. Rogers reported that the defendant placed her in a choke hold and stabbed her with a pocket knife. Detective Waterman testified that he called for EMS technicians, who transported Ms. Rogers to the hospital for treatment.

A review for errors patent on the face of the record reveals none.

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant asserts that the verdict in this case is contrary to the law and the evidence. The defendant argues that the trial court rendered a non-responsive verdict because guilty of unauthorized entry of an inhabited dwelling is not a responsive verdict to the charged offense of home invasion with a dangerous weapon. Defendant's argument has no merit.

La. C.Cr.P. art. 815 provides that in all cases not provided for in La. C.Cr.P. art. 814, the responsive verdicts are guilty; guilty of a lesser and included grade of the offense even though the offense charged is a felony, and the lesser offense a misdemeanor; or not guilty. *State v. Thomas,* 2011-1673, p.5 fn.6 (La. App. 4 Cir. 10/17/12), 102 So.3d 244, 247.

Addressing the issue of lesser and included offenses, the Supreme Court in *State v. Simmons*, 2001-0293 (La. 5/14/02), 817 So.2d 16, stated:

> Lesser and included offenses are those in which all of the essential elements of the lesser offense are also essential elements of the greater offense charged. *State v. Porter*, 93-1106 (La.7/5/94), 639 So.2d 1137; *State v. Dufore*, 424 So.2d 256 (La.1982); *State ex rel. Elaire v. Blackburn*, 424 So.2d 246 (La.1982). Stated another way, "if any reasonable state of facts can be imagined wherein the greater offense is committed without perpetration of the lesser offense, a verdict for the lesser cannot be responsive." *State v. Simmons*, 422 So.2d 138, 142 (La.1982) (quoting *State v. Poe*, 214 La. 606, 38 So.2d 359, 363 (1948) (on rehearing)). Consequently, evidence which would support a conviction of the charged offense would necessarily support a conviction of the lesser and included offense. *Dufore* at 258; *Elaire*, at 248-49.

Id., 2001-0293, pp. 3-4, 817 So.2d at 19.

Home invasion, defined by La. R.S. 14:62.8A, in pertinent part, is "the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another . . . ." Similarly, unauthorized entry of an inhabited dwelling, La. R.S. 14:62.3, prohibits "the intentional entry by a person without authorization into any inhabited dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person." La. R.S. 14:62.3A. The facts of this case show that the defendant intentionally and without permission entered the victim's dwelling. The record shows that ". . . all of the essential elements of the lesser offense [unauthorized entry] are also essential elements of the greater offense [home invasion] charged." *Simmons,* 2001-0293, pp. 3-4, 817 So. 2d at 19. The defendant's claim concerning a non-responsive verdict is groundless.

The defendant also argues that the evidence is insufficient to support the conviction.

The standard of appellate review of a sufficiency of the evidence claim was set forth in the United States Supreme Court decision of *Jackson v. Virginia,* 443 U.S. 307, 318, 99 S.Ct. 2781, 2788-2789, 61 L.Ed.2d 560 (1979), which explained that "the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Louisiana courts have consistently applied the *Jackson* standard of review in assessing sufficiency of the evidence claims. This Court has repeatedly stated that, in discharging its duty to review the claims under the *Jackson* standard, an appellate court must not only look to whether "the record contains evidence that tends to support each fact necessary to constitute the crime," but must "consider the record as a whole." *State v. Hankton,* 2012-0466 (La. App. 4 Cir. 4/30/14), 140 So.3d 398.

"The reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence." *State v. Williams*, 2011-1547, p. 4 (La. App. 4 Cir. 9/26/12), 101 So.3d 104, 108, *writ denied*, 2012-2252 (La.4/1/13), 110 So.3d 575, citing State *v. Mussall*, 523 So.2d 1305 (La.1988). Accordingly, the appellate court may not disturb the trier of fact's determination of credibility on appeal absent an abuse of discretion. *Id*. See also, *Williams*, 2011-1547, p. 4, 101 So.3d at 108, citing *State v. Cashen*, 544 So.2d 1268 (La. App. 4 Cir.1989) ("[t]he trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion").

In the present case, Ms. Rogers' testimony proved the elements of unauthorized entry of an inhabited dwelling. She testified that she had known the defendant for about two and one-half years prior to the incident; that she dated him for a short period of time; but that he did not live with her at the time of this incident. In the early morning hours of October 7, 2013, the defendant rang her doorbell for more than an hour until she was forced to answer the door to prevent the defendant's waking her children. When she refused his request to spend the night at her home, the defendant pushed his way into the residence. In the 911 call played during the trial, the victim is heard complaining that the defendant stabbed her in the arm. The victim also indicated that she did not give the defendant permission to enter her home.

Viewing the evidence in the light most favorable to the State, Ms. Rogers' unrefuted testimony proves that the defendant intentionally entered her home, an inhabited dwelling, without permission. We find no merit in this assignment of error.

ASSIGNMENT OF ERROR NUMBER 2

In a second assignment, the defendant complains that the trial court imposed an excessive sentence.

This court in *State v. Boudreaux,* 2011-1345, pp.5-6 (La. App. 4 Cir. 7/25/12), 98 So.3d 881, 884-885, noted the principles that govern appellate review of a defendant's excessive sentence claim:

> Article I, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person ... to cruel, excessive, or unusual punishment."
>
> On appellate review of an excessive sentence claim, 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,* 2000–3200, p. 2 (La.10/12/01), 799 So.2d 461, 462.

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. Robinson,* 2011–0066, p. 17 (La. App. 4 Cir. 12/7/11), 81 So.3d 90, 99; *State v. Major,* 96–1214 (La. App. 4 Cir. 3/4/98), 708 So.2d 813, 819.

An appellate court reviewing an excessive sentence claim must determine whether the trial court adequately complied with the statutory sentencing guidelines set forth in La. C.Cr.P. art. 894.1, as well as whether the particular circumstances of the case warrant the sentence imposed. *State v. Trepagnier,* 97–2427 (La. App. 4 Cir. 9/15/99), 744 So.2d 181, 189; *State v. Black,* 98–0457, p. 8 (La. App. 4 Cir. 3/22/00), 757 So.2d 887, 891.

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, 478 (La.1982); *State v. Davis,* 448 So.2d 645, 653 (La.1984) (the trial court need not recite the entire checklist of article 894.1, but the record must reflect that it adequately considered the guidelines).

If the appellate court finds the trial court adequately complied with Article 894.1, it then must determine whether the sentence imposed is too severe in light of the particular defendant and the particular 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, p. 8 (La. App. 4 Cir. 3/31/04), 871 So.2d 1235, 1239.

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).

Although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. *State v.*

> *Sepulvado,* 367 So.2d 762, 767 (La.1979). For legal sentences imposed within the range provided by the legislature, a trial court abuses its discretion only when it contravenes the prohibition of excessive punishment in La. Const. art. I, § 20, i.e., when it imposes "punishment disproportionate to the offense." *State v. Soraparu,* 97–1027 (La.10/13/97), 703 So.2d 608.
>
> 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).

The defendant in this case was convicted of unauthorized entry of an inhabited dwelling, which carries a maximum sentence of six years, with or without hard labor, and the possibility of a one thousand dollar fine. See La. R.S. 14:62.3. However, the defendant was sentenced pursuant to La. R.S. 15:529.1 as a second felony offender based on his 1999 plea of guilty to attempted first degree murder of a police officer (Case No. 399-605, Orleans Parish Criminal District Court)[3] and this offense.

Under La. R.S. 15:529.1A(1), if a defendant has previously been convicted of a felony and is subsequently convicted of a second felony, he shall be punished as follows:

> If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

Therefore, as a second felony offender, defendant faced a sentence of imprisonment of three to twelve years. The trial judge sentenced the defendant to

[3] The defendant also pled guilty to armed robbery in the same case.

ten years, clearly within the sentencing range and, in fact, two years less than the maximum sentence possible.

Although the trial judge in this case did not articulate the factual basis for the sentence, considering the facts of this case, the imposition of the ten year sentence was not excessive. Ms. Rogers testified that after she refused the defendant's request to spend the night, he forced his way into her house. The defendant subdued Ms. Rogers in a bear hug and cut her arm. The wound required medical attention. In the recording of Ms. Rogers' 911 call, she tells the operator that the defendant cut her with a knife. The facts also show that at the time of the incident, Ms. Rogers' two young children were in the house, as well as an adult guest. There was a possibility that more than one person may have been injured that night. Further support for the sentence is the defendant's criminal history. He had two prior felony convictions in 1999 – one for attempted first degree murder and the other for armed robbery. His prior felony convictions were before the court by virtue of the multiple bill and, no doubt, taken into consideration by the trial court for the sentence imposed. Based on these considerations, the sentence imposed is supported by the record and is not constitutionally excessive.

In *State v. Gandy,* 45,947 (La. App. 2 Cir. 2/2/11), 57 So.3d 1163, the Second Circuit determined that an eleven year sentence at hard labor without the possibility of probation or suspension of sentence for unauthorized entry of an inhabited dwelling, imposed as a second felony offender, was not an unconstitutionally excessive sentence. Additionally, in *State v. Segue*, 92-2426 (La. App. 4 Cir. 5/17/94), 637 So.2d 1173, this Court upheld a twelve year sentence for a second felony offender convicted of unauthorized entry of an inhabited dwelling.

"Although a comparison of sentences imposed for similar crimes may provide guidance, '[i]t is well settled that sentences must be individualized to the particular offender and to the particular offense committed.'" *State v. Boudreaux,* 2011-1345, p. 15 (La. App. 4 Cir. 7/25/12), 98 So.3d 881, 891. However, here, the record substantiates that the sentence was meaningfully tailored to the offender and the offense. Considering the facts of this case, we do not find that the sentence was excessive.

ASSIGNMENT OF ERROR NUMBER 3

In a final assignment, the defendant argues that he received ineffective assistance of counsel. "A claim of ineffective assistance of counsel is generally relegated to post conviction proceedings, unless the record permits definitive resolution on appeal." *State v. Mercadel,* 2012-0865 (La. App. 4 Cir. 7/24/12), 120 So.3d 872, *writ. den*. 2013-1995 (La. 2/21/14), 133 So.3d 681, citing *State v. Miller*, 99-0192, p. 24 (La.9/6/00), 776 So.2d 396, 411. Ineffective assistance of counsel claims are reviewed under the two-part test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *State v. Rubens*, 2010-1114, pp. 58-59 (La. App. 4 Cir. 11/30/11), 83 So.3d 30, 66- 67.

In *Rubens*, this Court discussed the *Strickland* two-part test relating to an ineffective assistance of counsel claim stating that the defendant must show that counsel's performance was deficient and that the deficiency prejudiced the defendant. Counsel's performance is ineffective when it can be shown that he made errors so serious that counsel was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064. Counsel's deficient performance will have prejudiced the defendant if he shows that the errors were so serious as to deprive him of a fair

trial. To carry his burden, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. The defendant must make both showings to prove that counsel was so ineffective as to require reversal. *State v. Miller*, 2000-0218, p. 7 (La. App. 4 Cir. 7/25/01), 792 So.2d 104, 111.

The record in this case is sufficient to address the merits of defendant's claim and, therefore, may be addressed in the interest of judicial economy. In addition, claims of ineffective assistance of counsel relating to sentencing cannot be raised in an application for post-conviction relief. *State v. Cotton*, 2009-2397 (La. 10/15/10), 45 So.3d 1030.

The defendant herein claims he was prejudiced by counsel's advice to plead guilty to the bill of information. He argues that counsel told him that if he pled guilty, he would receive a sentence of only five years.

The record disproves the defendant's assertion. The defendant signed and initialed a "Waiver of Rights-Plea of Guilty Multiple Offender-- La. R.S. 15:529.1" form on July 21, 2014. He indicated in open court that he fully understood the consequences of admitting to the prior conviction. Specifically, the defendant advised the court that he understood his right to have a hearing and to force the district attorney to prove that he was the same individual with the prior felony record; that he had the right to remain silent at the hearing and not have his silence held against him; that he understood the sentencing range was three to twelve years but that his sentence "[was] up to the judge after a sentencing hearing"; that he had not been forced to enter the plea of guilty or been promised

anything of value in return for the guilty plea; that he was pleading guilty because he was in fact guilty; and that he was satisfied with both his attorney's and the trial court's explanations of the consequences of the guilty plea.

Although the defendant testified at the hearing on his motion to reconsider sentence that his counsel advised him that he would be sentenced to five years if he pled guilty to the multiple bill, he failed to call his counsel at the hearing to corroborate this claim. Thus, the defendant in this case has failed to show that the plea agreement constituted deficient representation. Nor has the defendant shown that he was prejudiced by counsel's representation. The defendant did not deny that he was a second offender or that he had prior convictions for attempted first degree murder and armed robbery. Accordingly, we find no merit to the defendant's claim of ineffective assistance of counsel.

For these reasons, we hereby affirm the defendant's conviction and sentence.

AFFIRMED