NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2017-KA-0013**
VERSUS	*	
		COURT OF APPEAL
SADE HICKMAN	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 515-676, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *

Judge Paula A. Brown
* * * * * *

(Court composed of Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

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AFFIRMED
11/09/2017

In this criminal case, Sade Hickman ("Defendant") appeals her sentence of twenty years at hard labor for her conviction of attempted manslaughter under La. R.S. 14:27 and La. R.S. 14:31. Defendant alleges that the district court imposed an excessive sentence and abused its discretion in denying her motion to reconsider sentence. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On February 16, 2013, Defendant, along with a group of her female friends, was engaged in a verbal confrontation with ("Victim"),[1] and a group of Victim's female friends. At some point, the two groups of females—one larger than the other—were in McDonald's restaurant located on Canal Street in New Orleans, simultaneously. Victim's group—the larger group—was asked to leave because Defendant's smaller group had arrived first. Afterwards, each group decided to go to the Iberville Housing Development to fight. Upon reaching the corner of Crozet and St. Louis Street in New Orleans, a man, Hakeem Smith ("Smith"),[2] ran to his

[1] This Court declines to use the victim's real name to protect and maintain her privacy, and will refer to her as "Victim" throughout this opinion.

[2] Smith, a co-defendant in this case, was charged and pled guilty to accessory to attempted second degree murder.

vehicle, retrieved a gun, and fired it in the air over the crowd. Smith then gave the gun to Defendant and walked back to his vehicle. After Defendant got into Smith's vehicle, the vehicle began to proceed slowly down the street. Defendant's friends, also riding in the vehicle, began shouting at Defendant to "[g]et that bitch, get that bitch, shoot that ho, shoot the ho." Defendant, leaning out of the window, said, "I got you now, bitch." Defendant then shot Victim three times.

Defendant was charged by a grand jury indictment on April 18, 2013 with the attempted second degree murder of Victim—who was seventeen years old at the time—in violation of La. R.S. 14:27 and 14:30.1.[3] Defendant appeared for

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[3] La. R.S. 14:27 provides in part:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.
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> * * *
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> C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.
>
> * * *
>
> D. Whoever attempts to commit any crime shall be punished as follows:
>
> (1)(a) If the offense so attempted is punishable by death or life imprisonment, he shall be imprisoned at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence.

La. R.S. 14:30.1 provides in part:

> A. Second degree murder is the killing of a human being:
>
> (1) When the offender has a specific intent to kill or to inflict great bodily harm; or
>
> (2) When the offender is engaged in the perpetration or attempted perpetration of aggravated or first degree rape, forcible or second degree rape, aggravated arson, aggravated burglary, aggravated kidnapping, second degree kidnapping, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or

arraignment on April 24, 2013 and entered a plea of not guilty. A trial by jury commenced on November 12, 2014. On November 14, 2014, Defendant was convicted of the responsive verdict of attempted manslaughter under La. R.S. 14:27 and 14:31.[4]

Prior to Defendant's sentencing, the district court judge ordered a Pre-Sentence Investigation ("PSI"), which was received by the court on January 28, 2015. The PSI revealed that Defendant was a first time offender—she had no juvenile or adult criminal history prior to this incident. According to her mother, Defendant did not have any discipline problems growing up and she did not know of any issues her daughter had with Victim prior to the incident. Defendant's mother said that she believed her daughter "did not do anything and believes she should be set free." The PSI also contained a statement from Defendant, wherein she professed her innocence by stating that "[she] was accused of shooting someone [she] did not know" and that "[she] did not shoot anyone." The PSI provided information that Smith, the co-defendant in this case, pleaded guilty to

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> terrorism, even though he has no intent to kill or to inflict great bodily harm.
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> B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

[4] La. R.S. 14:31 provides in part:

> A. Manslaughter is:
>
> (1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; or

accessory to attempted second degree manslaughter and was sentenced to five years at hard labor.

The PSI also included a statement from the Victim, in which she detailed her injuries caused as a result of the shooting. Victim stated that she is paralyzed from the mid-section down and still has a bullet lodged in her spine. Because of the shooting, she will be confined to a wheelchair for the rest of her life. Additionally, the PSI noted that Victim's medical expenses related to the shooting were partially covered by Medicaid. She is responsible to pay the remaining balance of medical expenses not covered by Medicaid. Victim was unable to give an exact dollar amount of her out-of-pocket expenses at the time of sentencing; however, she stated that she will need ongoing treatment for the rest of her life.

On April 24, 2015, Defendant appeared for sentencing hearing. The district court heard from Defendant's grandmother, reviewed letters from individuals at Defendant's school, and considered an impact statement provided by Victim. Defendant was sentenced to twenty years at hard labor, without restrictions. An oral motion to reconsider sentence was denied by the district court at the April 24, 2015 sentencing hearing. A renewed written motion to reconsider sentence based on the sentence being excessive was filed and denied on April 28, 2015. On that same day, Defendant filed a notice of appeal and designation of record. The notice of appeal was granted on April 28, 2015 with a return date of July 2, 2015. On May 21, 2015, Defendant filed another motion to reconsider sentence, which was not heard by the district court before the appeal was lodged with this Court.

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(2) A homicide committed, without any intent to cause death or great bodily harm.

On May 16, 2016, this Court, in *State v. Hickman*, 2015-0817 (La. App. 4 Cir. 5/16/16), 194 So.3d 1162, affirmed the trial court's conviction for attempted manslaughter, finding that the evidence was sufficient to prove Defendant's guilt and the non-unanimous jury verdict did not violate Defendant's constitutional right to trial by jury. Finding a patent error, this Court remanded the case to the district court, ordering the district court to rule on Defendant's motion to reconsider sentence filed on May 21, 2015. On July 18, 2016, the district court, once again, denied Defendant's motion. Defendant filed the instant appeal seeking review of her twenty year sentence, at hard labor, for her attempted manslaughter conviction.

DISCUSSION

Defendant raises two assignments of error in the instant appeal. In her first assignment of error, she alleges the trial court erred by imposing an excessive sentence for her conviction of attempted manslaughter. In her second assignment of error, Defendant alleges that the district court abused its discretion in denying her motion to reconsider sentence. Although these alleged errors overlap, we will address each separately.

Excessive Sentence

Defendant argues that her sentencing was excessive in light of the facts showing that she had no prior criminal history and was only sixteen (16) years old at the time of the crime. Defendant further argues that the trial court failed to give sufficient weight to the sentencing guidelines outlined in La. C.Cr.P. art. 894.1.[5]

[5] La. C.Cr.P. art. 894.1 provides in pertinent part:

> A. When a defendant has been convicted of a felony or misdemeanor, the court should impose a sentence of imprisonment if any of the following occurs:
>
> (1) There is an undue risk that during the period of a suspended sentence or probation the defendant will commit another crime.

La. Const. art. I, § 20 explicitly prohibits excessive sentences. A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or it is nothing more than the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime. *State v. George,* 2015-1189, pp. 17-18 (La. App. 4 Cir.11/9/16), 204 So.3d 704, 715, *writ denied*, 2016-2242 (La. 3/24/17), 216 So.3d 814 (citing *State v. Ambeau*, 2008-1191, p. 9 (La. App. 4 Cir. 2/11/09), 6 So.3d 215, 221)). A sentence is grossly out of proportion to the seriousness of the crime if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *George,* 2015-1189, p. 18, 204 So.3d at 715 (citing *State v. Vargas-Alcerreca,* 2012-1070, p. 25 (La. App. 4 Cir. 10/2/13), 126 So.3d 569)). Although the penalties provided by the legislature reflect the degree to which the criminal conduct is an affront to society, a sentence—even within the statutory limits—may

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(2) The defendant is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution.

(3) A lesser sentence will deprecate the seriousness of the defendant's crime.

B. The following grounds, while not controlling the discretion of the court, shall be accorded weight in its determination of suspension of sentence or probation. The pertinent factors are listed below:

(1) The offender's conduct during the commission of the offense manifested deliberate cruelty to the victim.

* * *

(5) The offender knowingly created a risk of death or great bodily harm to more than one person.

(6) The offender used threats of or actual violence in the commission of the offense.

* * *

(9) The offense resulted in a significant permanent injury or significant economic loss to the victim or his family.

(10) The offender used a dangerous weapon in the commission of the offense.

still violate a defendant's constitutional right against excessive punishment. *See State v. Baxley,* 1994-2982, p. 10 (La. 5/22/95), 656 So.2d 973, 979 (citing *State v. Ryans,* 513 So.2d 386, 387 (La. App. 4th Cir. 1987)); *see also State v. Brady,* 1997-1095, p. 17 (La. App. 4 Cir. 2/3/99), 727 So.2d 1264, 1272, *rehearing granted on other grounds,* (La. App. 4 Cir. 3/16/99).

In the instant case, Defendant was charged with attempted second degree murder and was convicted of the responsive verdict of attempted manslaughter. Pursuant to La. R.S. 14:31(B), "[w]hoever commits manslaughter shall be imprisoned at hard labor for not more than forty years." The penalty for attempted manslaughter is established under La. R.S. 14:27(D)(3), which provides in part that:

> [i]n all other cases he shall be fined or imprisoned or both, in the same manner as for the offense attempted; such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment prescribed for the offense so attempted or both.

Before the imposition of Defendant's sentence, the district court judge stated the following reasons on the record:

> This case went to trial in November of 2014, a very emotional trial, the charge originally being that of attempted second degree murder, a second class felony, which would have carried a penalty had the jury come back with a guilty as charged finding of 10 to 50 years in the Department of Corrections without benefit of probation, parole or suspension of sentence.
>
> I agree with the State in that the jury did show what I thought was probably due to the defendant's youth some consideration of that in their responsive verdict of attempted manslaughter, which certainly lowered the floor considerably, zero to twenty years. That sentence is with benefits.
>
> However, this Court is guided by what it heard through testimony, specifically the testimony of the witness in this case, the eyewitness in this case, to a certain extent, [L.B.], who, from her balcony view, both heard the commotion down on the street, testified

before the jury as to what she saw, and that was [Victim], her position on a sidewalk, no testimony the victim ever touched Defendant, assaulted her or even if one of her friends assaulted Defendant. But in this Court's estimation was Mr. Smith, the co-perpetrator, co-defendant, first having the gun in a car, stalking [Victim], and then when Mr. Smith did not fire into the crowd, from the Court's remembrance of the testimony, Defendant took the gun from Mr. Smith, aimed it at [Victim] who was in a defensive posture behind the car, and her words to [Victim], I believe, were "Bitch, I've got you now," and that she shot at [Victim], who was unarmed, unprotected and defenseless.

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And this Court is going to also place on the record because sometimes transcripts don't convey everything that happens here in the trial courts, this Court's observance of the victim in this case, who, obviously is paralyzed, was wheel-chaired into court, her legs so paralyzed that she sat in what the Court, for lack of anything easier to say, she sat in literally a "V" with her knees propped up against her chest the entire time she testified and the entire time she was here in court with a blanket over her body so that the jury could not see what I think Ms. Kilian[6] is referencing as the bedsores that were probably open wounds at that time.

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With the victim's pain being so real even during the trial that the long days of trial, she could not sit in the wheelchair, she would have to lie down because sitting in the wheelchair for that long was so severely painful for her.

This Court feels that, Defendant, your actions have absolutely altered [Victim's] quality of life, and in this Court's belief, have shortened her life.

The Court is going to take into consideration the sentencing guidelines of Louisiana Code of Criminal Procedure article 894.1, those mitigating and aggravating circumstances. Certainly, again, a mitigating circumstance is your lack of criminal history and your youth but the Court feels that the jury in this instance gave you the biggest 894.1 factor by coming back with a responsive verdict of attempted manslaughter.

This Court finds that any sentence less than the one it's about to impose would certainly deprecate the seriousness of this offense and that your incarceration is best suited in a custodial environment.

[6] Ms. Kilian is the Orleans Parish Assistant District Attorney who was present at the hearing.

> This Court imposes the maximum sentence of 20 (twenty) years in the Department of Corrections, credit for all time served from the date of arrest, concurrent with any other charge.
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> ***
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> [A] pre-sentence investigation report was received, it was shared with the defendant through defense counsel. The PSI does reflect any lack of criminal history from the defendant.
>
> It does have victim input in the PSI. The PSI states the victim stated, quote, "I am now paralyzed from the mid-section down and will be in a wheelchair the rest of my life. I still have bullet lodged in my spine. I do not know Sade Hickman and have never met her until we went to court. I would like to see Sade Hickman get as much time as possible[.]" …

It is well settled that a district court judge is given wide discretion in the imposition of sentences within the statutory limits, and the sentence imposed by her should not be set aside as excessive absent a manifest abuse of discretion. *Ambeau*, 2008–1191, p. 10, 6 So.3d at 222 (citing *State v. Howard,* 414 So.2d 1210, 1217 (La. 1982)). Thus, 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. *Ambeau*, 2008–1191, p. 9, 6 So.3d at 222 (citing *State v. Soco,* 441 So.2d 719 (La. 1983)). However, 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. *Ambeau*, 2008-1191, p. 9, 6 So.3d at 222. Moreover, the trial court is not required to list every aggravating factor or mitigating circumstance as long as the record reflects adequate compliance. *State v. Maze*, 2009-1298, p. 5 (La. App. 3 Cir. 5/5/10), 36 So.3d 1072, 1076 (citing *State v. Hutcherson*, 34,540, p. 13 (La. App. 2 Cir. 4/4/01), 785 So.2d 140, 149)).

As this Court opined in *State v. Ladd*:

> 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).

2015-0772, pp. 3-4 (La. App. 4 Cir. 4/13/16), 192 So.3d 235, 237-38, *writ denied*, 2016-0915 (La. 5/1/17), 220 So.3d 742.

In *State v. Bowens*, 2014-0416 (La. App. 4 Cir. 12/10/14), 156 So.3d 770, the defendant was charged with one count of second degree murder and one count of obstruction of justice for fatally wounding the victim when he shot the victim seventeen times following a dispute concerning a vehicle repair. The defendant pled not guilty to second degree murder, but was ultimately convicted of manslaughter. The defendant was sentenced to forty years at hard labor. At the sentencing hearing, the district court judge stated the following:

> Your actions, not only on the day of that crime, but in this Court as you testified, show a lack of remorse. Your absence of feeling in taking another person's life, and your failure to take responsibility. Even your comments today of you're "sorry it happened" is not taken by this Court as an acceptance of responsibility, more as a, you're sorry for what's a happening to you.
>
> The jury found that your crime was not justified by self-defense. They didn't find you guilty of the maximum charge. They did find you guilty of the lesser charge. And I think indeed you were shown mercy by the jury.

Affirming the defendant's sentence, this Court opined that the district court adequately complied with the 894.1 sentencing guidelines and the district court's reasoning and analysis supported the sentence imposed upon the defendant. *See also State v. Peters*, 2012-1641, p. 23 (La. App. 4 Cir. 8/21/13), 123 So.3d 307, 320 (no abuse of discretion when the court imposed the maximum sentence for

manslaughter and noted that the state had proven second degree murder, which carries a life sentence without benefit of parole); *see also State v. Boyd*, 1995-1248, p. 8 (La. App. 4 Cir. 8/28/96), 681 So.2d 396, 401 (where a sentence of twenty years for attempted manslaughter imposed on a first offender was deemed appropriate and not constitutionally excessive).

As previously stated, prior to Defendant's sentencing, a PSI was conducted. The PSI detailed Defendant's social history, as well as her lack of a criminal or behavioral history before this incident. It included Defendant's statement, where she, once again, denied involvement in the shooting which left Victim paralyzed. Noteworthy, the PSI contained information that the co-defendant pleaded guilty to accessory to attempted second degree murder. The PSI included the Victim's impact statement, in which she detailed her injuries of being a paraplegic and the life she now leads since being shot by Defendant. Victim likewise advocated for Defendant to receive the maximum penalty for her crime. The district court judge decisively weighed the evidence, including the testimony of the witnesses, and the impact statement from the Victim. The court noted Victim's pain during the trial—how she either sat in her wheelchair with her knees to her chest, or laid down when she could not sit any longer. The district court, considering the mitigating and aggravating circumstances, recognized Defendant had no prior criminal record, but reasoned "the jury gave [Defendant] the biggest 894.1 factor by coming back with a responsive verdict of attempted manslaughter."

While Defendant lacked a criminal history prior to this incident, the record clearly demonstrates that on the day of the shooting: (1) Defendant's conduct during the commission of the offense manifested deliberate cruelty to Victim; (2) Defendant used threats that created a risk of death or great bodily harm to more

than one person by discharging a weapon into a crowd of people; (3) the shooting resulted in significant permanent injury and significant economic loss to Victim and her family; and (4) Defendant used a dangerous weapon in the commission of the crime. Considering these factors and the level of violence inflicted on Victim, we find that Defendant's sentence is not a needless imposition of pain and suffering, but rather proportionate to the severity of the crime.

The record establishes that a factual basis exists for Defendant's sentence. Having found a factual basis for the imposition of Defendant's sentence, we also find that the district court judge adequately complied with the 894.1 sentencing guidelines. The trial court did not abuse its wide discretion in sentencing Defendant.

This assignment of error is without merit.

Motion to Reconsider Sentence

In Defendant's second assignment of error, she argues that her lack of a prior criminal history demonstrates that she is not the "worst possible offender"[7] and should not have been sentenced to the maximum penalty of twenty years.

It is well settled jurisprudence that "it is within the purview of the trial court to particularize the sentence because the trial judge remains in the best position to assess the aggravating and mitigating circumstances presented to each case." *State v. Smith*, 2003-0719, p. 4 (La. App. 3 Cir. 2/12/03), 846 So.2d 786, 789. "[Because] [t]he trial court has wide discretion in imposing a sentence within minimum and maximum limits allowed by the statute, [ ] a sentence will not be set aside as excessive unless the defendant shows the trial court abused its discretion."

State v. Mizell, 50,222, p. 3 (La. App. 2 Cir. 11/18/15), 182 So.3d 1082, 1085 (citing *State v. Young,* 46,575 (La. App. 2d Cir. 09/21/11), 73 So.3d 473, *writ denied,* 2011-2304 (La. 03/09/12), 84 So.3d 550)).

As previously discussed, the district court considered the 894.1 factors when sentencing Defendant. The district court noted that Defendant was charged with attempted second degree murder,[8] but was convicted of the responsive verdict of attempted manslaughter, which carried a twenty year maximum sentence. Further, the record establishes that Defendant's offense resulted in permanent injuries to Victim.

Considering the facts of this case, the district court did not abuse its discretion when sentencing Defendant to the maximum penalty of twenty years. The record further shows that Defendant's sentence did not include restrictions of parole, probation or suspension of sentence. This Court will not disturb the finding of the district court.

This assignment of error lacks merit.

DECREE

For the foregoing reasons, we affirm Defendant's sentence and the district court's denial of the motion to reconsider sentence.

AFFIRMED

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[7] Maximum sentences are reserved for cases involving the most serious violations of the charged offense and for the worst kind of offender. *State v. Quebedeaux*, 424 So.2d 1009, 1014 (La. 1982).

[8] The maximum sentence for attempted second degree murder is fifty years. *See* La. R.S. 14:27(D)(1)(a).