STATE OF LOUISIANA	*	**NO. 2017-KA-0442**
VERSUS	*	
		COURT OF APPEAL
MONOTOR M. PETE	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 521-111, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *
Judge Rosemary Ledet
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(Court composed of Judge Terri F. Love, Judge Daniel L. Dysart, Judge Rosemary Ledet)

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AFFIRMED

DECEMBER 13, 2017

In this criminal appeal, the defendant, Monotor Pete, seeks review of his conviction and sentence for failure to register as a convicted sex offender. For the reasons that follow, we affirm.

STATEMENT OF THE CASE AND THE FACTS

Louisiana law requires convicted sex offenders to register with local law enforcement authorities and to notify the communities in which they reside of their presence. *See* La. R.S. 15:540, *et seq.* (the "Sex Offender Statutes"). Mr. Pete's obligation to register and to notify arises out of his November 7, 2002 conviction for felony carnal knowledge of a juvenile.[1] *State v. Pete*, 03-0694, p. 1 (La. App. 4 Cir. 9/24/03), 857 So.2d 1107, 1108.

After serving five years of a six-year sentence, Mr. Pete was released on December 25, 2007, and returned to Orleans Parish. As of March 5, 2008, Mr. Pete was substantially compliant with the registration and notification requirements[2] of the Sex Offender Statutes.

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[1] Pursuant to that conviction, Mr. Pete was required to register as a sex offender for a period of fifteen years after his release. *See* La. R.S. 15:544(A).

[2] *See* La. R.S. 15:542 (registration requirements); La. R.S. 15:542.1(A)(1)-(2) (notification requirements).

Five years from the date of his previous notification, Mr. Pete was required under the Sex Offender Statutes to re-notify.[3] On March 4, 2013, Mr. Pete appeared at the sex-offender-registration office. He was advised in writing of the five-year re-notification requirement (for which he signed, not with his name, but with the phrase "under duress") and given until March 27, 2013, to comply. Mr. Pete failed to comply; an arrest warrant issued, and he was arrested on June 20, 2014. The following day, Mr. Pete posted bond and was released from custody.

Subsequently, Mr. Pete was charged under La. R.S. 15:542.1.4(A)(1) with one count of failure to register and to notify. At arraignment, Mr. Pete pled not guilty. On April 22, 2015, Mr. Pete's bail was increased; and he was remanded to custody.[4] After a two-day trial, the jury found him guilty as charged. On January 10, 2017, the district court sentenced Mr. Pete to ten years at hard labor without benefit of parole, probation, or suspension of sentence. This appeal followed.

DISCUSSION

Errors Patent

Having reviewed the record for errors patent, we find none.

Assignment of Error

In his sole assignment of error, Mr. Pete claims that the sentence the district court imposed is excessive in violation of Art. I, § 20 of the Louisiana Constitution

[3] *See* La. R.S. 15:542.1(A)(2)(b) ("Those persons required to provide community notification pursuant to the provisions of this Section shall provide such community notification every five years from the date of the previous notification.").

[4] While the record does not reflect the reason for this increase, we note that, on June 1, 2015, Mr. Pete was charged in a new case with sexual battery and indecent behavior—both crimes allegedly committed against a six-year-old child on March 1-14, 2015, during a period when Mr. Pete was non-compliant with the Sex Offender Statutes and while Mr. Pete was out of custody on bond in this case.

of 1974.[5] The State points out, citing La. C.Cr.P. art. 881.1(E), that Mr. Pete failed to preserve for appellate review his excessiveness claim because he neither objected to the sentence at imposition nor filed a motion to reconsider. Mr. Pete replies that this failure was the result of ineffective assistance of counsel and thus should be excused.

"Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review." La. C.Cr.P. art. 881.1(E). Strictly construing La. C.Cr.P. art. 881.1(E), this court consistently has held that the failure to object to a sentence at imposition or to file a motion to reconsider sentence will preclude a defendant from raising on appeal even a claim of constitutional excessiveness.[6] *See State v. Robinson*, 98-1606, p. 9 (La. App. 4 Cir. 8/11/99), 744 So.2d 119, 125 (noting that "this court has held . . . that the failure to object to the sentence as excessive at the time of sentencing or to file a written motion to reconsider sentence precludes appellate review of the claim of excessiveness").

Nevertheless, when, as in this case, a defendant claims that the failure to preserve an excessiveness claim for appellate review was the result of ineffective

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[5] Mr. Pete does not argue that his sentence is excessive in violation of the Eighth Amendment to the United States Constitution. We note, however, that "Article I, § 20 affords no less, and in some respects more, protection than that available to individuals under the Cruel and Unusual Punishments Clause of the Eighth Amendment at the time of the adoption of our state constitution." *State v. Perry*, 610 So.2d 746, 762 (La. 1992).

[6] Indeed, this court has held that, even when a motion to reconsider sentence has been filed, a defendant is precluded from raising an excessiveness claim on appeal when the motion was not timely filed. *See State v. Wilson*, 06-0802, p. 3 (La. App. 4 Cir. 12/13/06) (*unpub.*) (citing *State v. Mosley*, 03-1947 (La. App. 4 Cir. 4/14/04), 872 So.2d 1220).

assistance of counsel, this court has reached the merits of the excessiveness claim, albeit indirectly, in addressing the ineffective assistance claim.[7] *See State v. Batiste*, 06-0875, p. 18 (La. App. 4 Cir. 12/20/06), 947 So.2d 810, 819 (reasoning that "in order to determine if the ineffective assistance of counsel claim has merit, we must look to see if the appellant's [unpreserved] excessive sentence claim has merit").[8] Accordingly, we do so here.

A criminal defendant has the right to the effective assistance of counsel at every "critical stage" of the proceedings. *See Montejo v. Louisiana*, 556 U.S. 778, 786, 129 S.Ct. 2079, 2085, 173 L.Ed.2d 955 (2009). Sentencing is a critical stage. *See Lafler v. Cooper*, 566 U.S. 156, 165, 132 S.Ct. 1376, 1385-86, 182 L.Ed.2d 398 (2012) (observing that "[t]he precedents also establish that there exists a right

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[7] The rationale underlying this approach was articulated by this court in *State v. Paulson*, 15-0454 at pp. 9-10 (La. App. 4 Cir. 9/30/15), 177 So.3d 360, 367:

> Generally, ineffective-assistance-of-counsel claims are more properly raised in an application for post-conviction relief where the district court can conduct a full evidentiary hearing on the matter, if one is warranted. *See State v. Leger*, 05-0011, p. 44 (La.7/10/06), 936 So.2d 108, 142; *see also State v. Small*, 13-1334, p. 13 (La. App. 4 Cir. 8/27/14), 147 So.3d 1274, 1283 . . . . A claim of ineffective assistance of counsel at sentencing, however, is not cognizable on collateral review, when, as here, the sentence imposed by the trial judge is within the authorized range of the sentencing statutes. *See State v. Thomas*, 08-2912 (La. 10/16/09), 19 So.3d 466 ("relator's claims that the court imposed an excessive sentence and that he received ineffective assistance of counsel at sentencing are not cognizable on collateral review") (emphasis added). The Louisiana Supreme Court has held that La. C.Cr.P. art. 930.3, which sets forth the grounds upon which post-conviction relief may be granted, "provides no basis for review of claims of excessiveness or other sentencing error post-conviction." *State ex rel. Melinie v. State*, 93-1380 (La. 1/12/96), 665 So.2d 1172; *see also State v. Cotton*, 09-2397, p. 2 (La. 10/15/10), 45 So.3d 1030, 1031 (*per curiam*) (claim that counsel rendered ineffective assistance at habitual offender adjudication is not cognizable on collateral review so long as sentence imposed falls within range of sentencing statute).

[8] *See also, e.g.*, *State v. Spencer*, 14-0003, pp. 14-15 (La. App. 4 Cir. 10/8/14), 151 So.3d 816, 825; *State v. Alverez*, 13-1652, pp. 18-19 (La. App. 4 Cir. 12/23/14), 158 So.3d 142, 154-55; *State v. Laneheart*, 12-1580, pp. 9-10 (La. App. 4 Cir. 2/26/14), 135 So.3d 1221, 1228-29; *State v. Bertrand*, 04-1496, pp. 4-5 (La. App. 4 Cir. 12/15/04), 891 So.2d 752, 755-56; *State v. Bunley*, 00-0405, pp. 20-21 (La. App. 4 Cir. 12/12/01), 805 So.2d 292, 306-07; *State v. Robichaux*, 00-1234, pp. 7-8 (La. App. 4 Cir. 3/14/01), 788 So.2d 458, 465; *State v. Robinson*, 98-1606, pp.10-11 (La. App. 4 Cir. 8/11/99), 744 So.2d 119, 125-26.

to counsel during sentencing in both noncapital . . . and capital cases.") (internal citations omitted). The filing and litigating of a post-trial motion necessary to preserve an issue for appellate review is also a critical stage. *See Johnston v. Mizell*, 912 F.2d 172, 176 (7th Cir. 1990) (observing that filing and litigating of "a post-trial motion . . . is a critical stage in criminal proceedings" when such motion "is necessary to preserve an issue for appellate review").

"In order to prevail [on an ineffective assistance claim], the defendant must show both that: (1) counsel's performance was deficient; and (2) he was prejudiced by the deficiency." *State v. Brown*, 16-0965, p. 18 (La. App. 4 Cir. 5/3/17), 219 So.3d 518, 531 (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). Mr. Pete argues that he received ineffective assistance of counsel because, but for counsel's failure to object to his sentence at imposition or to file a motion to reconsider sentence, this court would have jurisdiction to review his excessiveness claim. For this argument to have merit, Mr. Pete must first establish that his sentence is constitutionally excessive.

A trial court has broad discretion in imposing an appropriate sentence. *State v. Trahan*, 425 So.2d 1222, 1227 (La. 1983). In reviewing a given sentence, the question for an appellate court is not "whether another sentence might have been more appropriate but whether the trial court abused [that] broad sentencing discretion." *State v. Walker*, 00-3200, p. 2 (La. 10/12/01), 799 So.2d 461, 462 (citing *State v. Cook*, 95-2784, p. 3. (La. 5/31/96), 674 So.2d 957, 959). Thus, the Louisiana Supreme Court "has repeatedly emphasized that sentence review under the Louisiana constitution does not provide an appellate court with a vehicle for substituting its judgment for that of a trial judge as to what punishment is more appropriate in a given case." *State v. Savoy*, 11-1174, p. 5 (La. 7/2/12), 93 So.3d

1279, 1283 (citing *State v. Walker*, 00-3200, p. 2 (La.10/12/01), 799 So.2d 461, 462; *State v. Cook*, 95-2784, p. 3 (La. 5/31/96), 674 So.2d 957, 959; *State v. Humphrey*, 445 So.2d 1155, 1165 (La. 1984)). When, as in this case, the sentence imposed is within the statutory limits and the district court has considered the factors set forth in La. C.Cr.P. art. 894.1, the sentence "should not be set aside absent a manifest abuse of that discretion." *State v. Trahan*, 425 So.2d 1222, 1227 (La. 1983).

"[I]ntertwined with [a] review of a sentence for excessiveness is [a] review of the record to ensure that the trial court complied adequately with La. C.Cr.P. art. 894.1 and accorded proper weight to all relevant sentencing factors." *State v. Smith*, 433 So.2d 688, 698 (La. 1983). Indeed, this court has described the factors set forth in La. C.Cr.P. art. 894.1 as an "integral part of the constitutionally excessive sentence analysis." *State v. Robinson*, 98-1606, p. 12 (La. App. 4 Cir. 8/11/99), 744 So.2d 119, 126.

Here, the district court complied with La. C.Cr.P. art. 894.1. In sentencing Mr. Pete, the district court expressly considered the following statutory factors:

- that Mr. Pete is in need of a custodial environment that can be provided most effectively by his commitment to the Department of Corrections, La. C.Cr.P. art. 894.1(A)(2);

- that a lesser sentence would deprecate the seriousness of Mr. Pete's crime, La. C.Cr.P. art. 894.1(A)(3); and

- that Mr. Pete has a considerable criminal history, La. C.Cr.P. art. 894.1(B)(28).

In addition to these statutory factors, the district court considered several other factors that the jurisprudence has recognized as appropriate sentencing considerations.[9]

The district court stated that "overriding the Court's consideration in this case is the fact that this is a sexual offense involving a relatively young minor while the defendant was at an age that is certainly adult age."[10] The seriousness of a predicate offense is an appropriate sentencing consideration.[11] The district court also stated that it was "influenced by the jury's verdict . . . [b]ut, more importantly, by what it heard during the trial," and that "[w]hether Mr. Pete agrees with the law or disagrees with the law, it is the law and it must be upheld and maintained and abided by and Mr. Pete failed to do that." Taken together, the district court's statements indicate that it found that Mr. Pete had willfully violated the Sex Offender Statutes and shown no remorse for having done so. A defendant's intent and lack of remorse are appropriate sentencing considerations.[12]

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[9] The list of factors in La. C.Cr.P. art 894.1 is not exhaustive. *See State v. Sims*, 11-1447, p. 10 (La. App. 4 Cir. 12/12/12), 106 So.3d 709, 714 (citing GAIL DALTON SCHLOSSER, LA.CRIM. TRIAL PRAC. § 26:3 (4th ed. 2005)).

[10] A detailed recitation of the facts supporting Mr. Pete's predicate conviction is set forth in *State v. Pete*, 03-0694, pp. 1-3 (La. App. 4 Cir. 9/24/03), 857 So.2d 1107, 1108-09.

[11] *See State v. Mueller*, 10-0710, p. 13 (La. App. 4 Cir. 12/8/10), 53 So.3d 677, 686 (quoting the sentencing court's observation that "[b]oth of th[e] convictions [for which the defendant was required to register as a sex offender] involve children"; that "[o]ne incident was with a known victim, his niece [*sic*], and her friend"; and that "the other incident occurred when he exposed himself to two children in different department stores"); *see also State v. Muth*, 13-1003, p. 7 (La. App. 5 Cir. 6/24/14), 145 So.3d 495, 500 (considering that "defendant's underlying criminal offense involved a felony conviction for the molestation of a juvenile," the factual basis for which was that "defendant, as a 29-year-old, engaged in sexual conduct with a 14-year-old").

[12] *See State v. Bergeron*, 12-71, p. 10 (La. App. 3 Cir. 10/3/12), 99 So.3d 90, 96 (quoting the trial court as observing that the defendant was "blatantly in violation of his obligation to register" because the defendant "knowingly violated [the Sex Offender Statutes]"); *State v. Ruiz*, 94-0541, p. 3 (La. App. 4 Cir. 12/15/94), 647 So.2d 1317, 1320 (finding lack of remorse to be an appropriate sentencing factor).

In addition to the sentencing considerations articulated by the district court, we note an additional consideration that is apparent from the record: Mr. Pete's willful violation of the Sex Offender Statutes presents "an undue risk that during the period of [registration he] will commit another crime." La. C.Cr.P. art. 894.1(A)(1). That risk, in this case, is not theoretical; the record reflects that, at the time the district court imposed Mr. Pete's sentence, Mr. Pete was also being prosecuted—before the same district court judge—for sexual battery of and indecent behavior with a six-year-old child. These offenses are alleged to have been committed during a period of non-compliance with the Sex Offender Statutes and while Mr. Pete was out of custody on bond in this case.

Because the record reflects both that the district court complied with La. C.Cr.P. art. 894.1 and that the sentence imposed is amply supported by the record, we inquire only whether Mr. Pete's sentence is a manifest abuse of the district court's sentencing discretion—*i.e.*, constitutionally excessive.[13] A sentence is constitutionally excessive only if it "(1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime." *State v. Goode*, 380 So.2d 1361, 1364 (La. 1980) (citing *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)).

We cannot say that Mr. Pete's sentence makes no measurable contribution to an acceptable goal of punishment. Mr. Pete's willful violation of the Sex Offender Statutes demonstrates his belief that he is not bound to comply with the Sex

[13] *See State v. Burnette*, 419 So.2d 835, 837 (La. 1982) (observing that a sentencing court's discretion "is subject only to the constitutional limitations on excessive sentences and should not be disturbed absent manifest abuse").

Offender Statutes. His belief makes it considerably more likely that, if not in custody, he will continue to violate the Sex Offender Statutes, frustrating the important purposes for which those laws were enacted.[14] That being so, Mr. Pete's sentence makes a measureable contribution to at least two acceptable goals of punishment—incapacitation and deterrence.[15]

Nor can we say that Mr. Pete's sentence is grossly out of proportion to the severity of his crime. During a period of non-compliance with the Sex Offender Statutes—and while on bond in this case—Mr. Pete is alleged to have committed a sexual battery of and indecent behavior with a six-year-old child. These recidivist crimes are the very harm against which the Sex Offender Statutes are meant to protect.[16] While we are mindful that "maximum sentences are ordinarily reserved for the most blameworthy offenders committing the most serious violations of the charged offense," *State v. Savoy*, 11-1174, p. 4 (La. 7/2/12), 93 So.3d 1279, 1282, we cannot say that the sentence imposed in this case "shocks the sense of justice," *State v. Lobato*, 603 So.2d 739, 751 (La. 1992).[17] On the contrary, the sentence

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[14] *See State v. I.C.S.*, 13-1023, p. 9 (La. 7/1/14), 145 So.3d 350, 355 (observing that "[t]he purpose of the [Sex Offender Statutes] is unequivocally set forth in La.Rev.Stat. 15:540, stressing the paramount governmental interest in protecting the community, aiding police in their investigation of sex offenders, enabling quick apprehension of sex offenders, and, ultimately, reducing the risk to public safety posed by sex offenders even after release").

[15] *See State v. Strother*, 09-2357 (La. 10/22/10), 49 So.3d 372, 382 (citing *Ewing v. California*, 538 U.S. 11, 25, 123 S. Ct. 1179, 1187, 155 L. Ed. 2d 108 (2003), for the proposition that "[a] sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation").

[16] *See State ex rel. Olivieri v. State*, 00-0172, p. 19-20 (La. 2/21/01), 779 So.2d 735, 747 (observing that the Sex Offender Statutes were "founded on the findings of the Legislature that this legislation was of paramount governmental interest because: (1) sex offenders pose a high risk of engaging in sex offenses, (2) sex offenders have a high incidence of recidivism, and (3) unless there was registration and community notification, sex offenders could remain hidden and thereby increase the risk to public safety").

[17] As of November 1, 2017, Mr. Pete is eligible to earn "good time" credit "at the rate of thirteen days for every seven days in custody served on the imposed sentence . . ." La. R.S. 15:571.3(B)(1)(a). Assuming his good behavior, Mr. Pete will serve only thirty-five percent—

imposed in this case appropriately addresses both Mr. Pete's failure to comply with the Sex Offender Statutes and the manifest risk to public safety that such failure presents.

Accordingly, we find that Mr. Pete's sentence is not excessive, that he therefore was not prejudiced by his counsel's failure to object to his sentence at imposition or to file a motion to reconsider sentence, and that he therefore did not receive ineffective assistance of counsel. The assignment of error is without merit.

DECREE

For the forgoing reasons, Mr. Pete's conviction and sentence are affirmed.

AFFIRMED

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forty-two months—of his sentence in custody. Those forty-two months will be further diminished by the period of time Mr. Pete spent in custody before the imposition of sentence. *Ibid.* (citing La. C.Cr.P. art. 880). Although Mr. Pete was initially released on bond, Mr. Pete was remanded to custody (after his bail obligation was increased to $150,000.00) on April 22, 2015; and Mr. Pete remained in custody through sentencing—a period of approximately twenty months. Thus, although Mr. Pete was sentenced to ten years on January 10, 2017, it is possible that he could be released from custody, as to this conviction, as early as 2018. *See State v. Shaikh*, 16-0750, p. 3 (La. 10/18/17), ___ So.3d___, ___, 2017 WL 4681359,**5 (considering the portion of the sentence the defendant will serve in custody as relevant to whether a sentence is constitutionally excessive).