

STATE OF LOUISIANA

\*

NO. 2017-KA-0520

VERSUS

\*

COURT OF APPEAL

ANTOINE GREEN

\*

FOURTH CIRCUIT

\*

STATE OF LOUISIANA

\*

\*

\* \* \* \* \*

**LOBRANO, J., DISSENTS AND ASSIGNS REASONS.**

I respectfully dissent from the majority opinion. Because a review of the sentencing transcript as a whole reveals that the district court made findings inconsistent with its determination that the sentence imposed on Antoine Green (“Defendant”) is not excessive and improperly found that it did not have the authority to sentence Defendant below the statutory minimum on a crime of violence,<sup>1</sup> I would vacate Defendant’s sentence and remand for a proper sentencing hearing.

Louisiana Constitution of 1974, art. I, § 20 provides that “[n]o law shall subject any person to ... excessive ... punishment.” A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or is nothing more than a purposeless imposition of pain and suffering that is grossly out of proportion to the severity of the crime. *State v. Zeitoun*, 2017-0366, p. 9 (La. App. 4 Cir. 11/8/17), ---So.3d--- (citing *State v. Ambeau*, 2008-1191, p. 9 (La. App. 4 Cir. 2/11/09), 6 So.3d 215, 221). Mandatory minimum sentences are presumed to be constitutional. *State v. Hernandez*, 2002-892, p. 3 (La. App. 5 Cir. 1/28/03), 839 So.2d 281, 284 (analyzing whether a first offender

---

<sup>1</sup> See La. R.S. 14:2 (B) (34) (defining an attempted armed robbery with a firearm as a “crime of violence”).

who pled guilty to an armed robbery had presented sufficient evidence to justify a downward departure from the mandatory minimum sentence). However, should a defendant prove by clear and convincing evidence that he is exceptional such that the mandatory minimum sentence applied to him would be excessive, a court may downward depart from that mandatory minimum sentence. *Id.* at 2002-892, pp. 3-4, 839 So.2d at 284 (citing *State v. Johnson*, 97-1906, p. 8 (La.3/4/98), 709 So.2d 672, 676).

The majority opinion removes one statement, “I don’t think that it’s constitutionally excessive,” from the context surrounding it in order to reach the conclusion that the district court properly exercised its sentencing discretion. Despite stating that it did not find the sentence excessive, the district court called Defendant’s sentence “inappropriate” and declared that the sentence did not make “reasonable contributions” to acceptable goals of punishment for this individual—reasoning in direct conflict with Louisiana’s definition of an excessive sentence. This Court should not overlook this contradiction in the district court’s reasoning and lurch forward into an analysis of whether Defendant’s sentence is in fact unconstitutionally excessive.

Moreover, referencing *State v. Dorothy*,<sup>2</sup> the district court declared that it did not have the authority to sentence Defendant below the mandatory minimum on a crime of violence. This is inaccurate. In *Dorothy*, the court found that the Louisiana Constitution’s prohibition against excessive sentences applies to mandatory minimum sentences under the Louisiana Habitual Offender Law. *See* 623 So.2d 1276 (La. 1993); *see also* La. R.S. 15:529.1 *et seq.* However, it is the Louisiana Constitution’s prohibition on excessive sentences, not the holding of *Dorothy*, which requires courts to downward depart where mandatory minimum

---

<sup>2</sup> 623 So.2d 1276 (La. 1993).

sentences would be excessive as applied to particular defendants. The *Dorothy* court simply recognized this existing constitutional limit. Because the Louisiana Constitution prohibits excessive sentences without qualification, district courts may downward depart from mandatory minimum sentences regardless of how they arise—including on crimes of violence. *See State v. Fobbs*, 99-1024 (La.9/24/99), 744 So.2d 1274 (finding that the principles espoused in *Dorothy* apply to substantive criminal statutes as well as sentences under the Habitual Offender Law); *Hernandez*, 2002-892 at pp. 3-4, 839 So.2d 284 (analyzing whether a downward departure was warranted where the defendant plead guilty to a crime of violence). This broad discretion is appropriately limited by the assumption of constitutionality our jurisprudence requires district courts to apply to sentencing statutes, *see id.*, and by the fact that the La. C.Cr.P. art. 894.1 sentencing factors expressly require consideration of the multiple ways violence can be used during the commission of a crime.<sup>3</sup>

The majority's decision to omit this portion of the analysis in favor of reaching its own conclusion as to the sentence's alleged excessiveness undermines the constitutionality of Defendant's sentence. Given that the district court not only made findings inconsistent with its determination that Defendant's sentence was unconstitutionally excessive, but also misunderstood its authority to correct an excessive sentence, I would vacate Defendant's sentence and remand the case for a proper sentencing hearing.

---

<sup>3</sup> *See* La. C.Cr.P. art. 894.1 (B) (requiring consideration of the defendant's cruelty to the victim, the risk of death or great bodily harm to more than one person created by a defendant's actions, the use of threats or actual violence during the commission of the offense, the use of violence to influence the criminal proceedings arising from the offense, the existence of a significant permanent injury to the victim, the defendant's use of a dangerous weapon, and the use or threatened use of physical force when committing an offense with a firearm when sentencing a defendant). *See also Zeitoun*, 2017-0366 at p. 9 ---So.3d--- (analyzing whether the district court adequately applied the La. C.Cr.P. art. 894.1 sentencing factors when determining whether the defendant's sentence was excessive).