

STATE OF LOUISIANA

*

NO. 2018-KA-0681

VERSUS

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COURT OF APPEAL

RYAN O HICKMAN

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 522-295, SECTION "A"
Honorable Laurie A. White, Judge

Judge Roland L. Belsome

(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge
Tiffany G. Chase)

Leon Cannizzaro
District Attorney
Donna Andrieu
Irena Zajickova
Assistant District Attorney
Orleans Parish
619 South White Street
New Orleans, LA 70112

COUNSEL FOR APPELLEE/STATE OF LOUISIANA

Mary Constance Hanes
Louisiana Appellate Project
P. O. Box 4015
New Orleans, LA 70178-4015

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

January 30, 2019

The defendant, Ryan Hickman, is appealing the twenty years sentence imposed by the trial court after finding him a fourth felony offender. For the following reasons the sentence is affirmed.

Statement of Facts

On April 30, 2013, New Orleans Police Officer Walter Edmond and his partner, Officer Devon Ashmore, were on active patrol on Jackson Avenue in New Orleans. At that time, their attention was drawn to a vehicle traveling at a high rate of speed on Simon Bolivar Avenue approaching Jackson Avenue. Officer Edmond noticed that the vehicle ran the red light. Thereafter, the officers observed the vehicle make a U-turn at Josephine Street and Simon Bolivar Avenue and drive back toward Jackson Avenue. The officers turned on their lights and siren attempting to make a traffic stop. The vehicle picked up speed, drove down Jackson Avenue, and turned onto Freret Street. After a car chase, during which the

vehicle exceeded sixty miles per hour, the officers chose to disengage their pursuit in the interest of public safety and lost sight of the vehicle.

Later, the officers learned that the vehicle had crashed into two parked cars and had come to rest on a sidewalk at the intersection of Freret and Toledano Streets. At the scene, the officers found Mr. Hickman slumped over and helped him out of his wrecked vehicle. EMS transported him to the hospital for observation. Officer Edmonds then searched Mr. Hickman's vehicle and discovered, a plastic bag of marijuana on the floorboard by the driver's seat and two Xanax pills on the passenger seat.

Mr. Hickman was charged with six traffic violations in addition to charges of possession of marijuana second offense, possession of alprazolam and aggravated resisting arrest.¹

Procedural History

Mr. Hickman was convicted by a jury of flight from an officer² and possession of marijuana second offense.³ The State then filed a multiple bill of information, alleging that Mr. Hickman was a fourth felony offender, predicating the multiple offender bill on three prior convictions: (1) aggravated assault of a peace officer and attempted possession of a firearm by a felon, to which Mr. Hickman pled guilty; (2) attempted possession of a firearm by a felon, to which Mr. Hickman pled guilty; and (3) a second attempted possession of a firearm charge to which Mr. Hickman pled guilty.

At the multiple bill hearing, the trial court found Mr. Hickman to be a second felony offender, rather than a fourth felony offender as argued by the State.

¹ The jury was unable to reach a verdict on the Possession of Alprazolam (La. R.S. 40:969(C)).

² La. R.S. 14:108.1(B).

³ La. R.S. 40:966(E)(2).

Then, the State noticed its intent to seek supervisory writs of the trial court's finding that the appellant was a second felony offender.⁴ On December 21, 2016, this Court reversed the trial court's ruling on the multiple bill, and found the appellant to be a fourth felony offender and remanded the case for further proceedings, noting that its decision did not preclude the appellant from seeking a downward departure from the statutory minimum sentence.⁵ Mr. Hickman filed a writ with the Louisiana Supreme Court, which was denied. However, Justice Crichton wrote separately to acknowledge that the violation of possession of marijuana second offense had been reduced from a felony offense to a misdemeanor and that under the right facts a downward departure is appropriate for certain non-violent offenses.⁶

On remand, the State filed a sentencing memorandum requesting that Mr. Hickman be sentenced to serve forty years with the Department of Corrections as a quadruple felony offender, noting that the appellant had six prior felony convictions and was awaiting disposition of charges of second degree murder and obstruction of justice. Attached to the State's memorandum was a copy of Mr. Hickman's rap sheet, a copy of the arrest warrant for second degree murder and a note of evidence given by a co-defendant to that murder charge in open court.⁷

In response, Mr. Hickman filed a motion for downward departure in sentencing from the twenty year minimum prescribed by law. He argued that after his arrest, the Louisiana legislature reduced the offense of second possession of

⁴ The state's writ application was consolidated with the appellant's appeal of his conviction and sentence in which the appellant raised issues of ineffective assistance of counsel at sentencing and excessive sentence.

⁵ *State v. Hickman*, 2016-0579 (La. App. 4 Cir. 12/21/16), 207 So.3d 500, 507.

⁶ *State v. Hickman*, 2017-0142 (La. 9/29/17), 227 So. 3d 246 (Crichton, J. concurring).

⁷ During the hearing, the trial court noted that it would not consider the pending murder charge in determining Mr. Hickman's sentence.

marijuana to a misdemeanor offense.⁸ After a hearing on the motion for downward departure, the trial court sentenced Mr. Hickman to serve twenty years in the custody of the Louisiana Department of Corrections as a fourth felony offender concurrent with any other sentences and with credit for time served.

Assignments of Error

On appeal, Mr. Hickman maintains that the trial court's sentence of twenty years for possession of marijuana, second offense, as a fourth-felony offender, is excessive under the circumstances; and the district court abused its discretion in failing to grant his motion for a downward departure from the statutory minimum sentence.

Standard of Review

Appellant courts review sentences imposed by the trial court under an abuse of discretion standard.⁹ A sentence imposed by a trial court should not be set aside absent a manifest abuse of that discretion.¹⁰

Discussion

This Court recently discussed this issue in *State v. Green* stating:

The Louisiana Constitution guarantees that “[n]o law shall subject any person to ... cruel, excessive or unusual punishment.” That protection allows the judicial branch to determine whether the range of sentences authorized by a criminal statute is excessive for a particular defendant. The court must start with the presumption that a mandatory minimum sentence is constitutional. In order to rebut that presumption, a defendant must clearly and convincingly prove that he is exceptional. This Court has articulated that exceptional “means that because of unusual circumstances he is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.”

⁸ See 2015 La. Acts 295 (eff. June 29, 2015).

⁹ *State v. Dove*, 2015-0783, p. 32 (La. App. 4 Cir. 5/4/16), 194 So.3d 92, 114.

¹⁰ *Id.*

If the mandatory minimum sentence is constitutionally excessive then a downward departure is required under *Dorthey*. “A punishment is constitutionally excessive if it makes no measurable contribution to acceptable goals of punishment and is nothing more than the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime.” A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice.¹¹

Thus, to be entitled to a downward departure, Mr. Hickman must clearly and convincingly show that he is “exceptional.”

In this case, Mr. Hickman was arrested for second offense possession of marijuana as alleged in the bill of information, that offense carried a penalty of zero to five years in the custody of the Louisiana Department of Corrections.¹² When charged as a quadruple felony offender under La. R.S. 15:529.1,¹³ he faced a sentencing range of twenty years to life in the custody of the Department of Corrections. The trial court, over the State’s objections, sentenced the appellant to the minimum term authorized by law.

At the hearing for the motion for downward departure, Mr. Hickman argued that given the fact that possession of marijuana, second offense is currently a misdemeanor and a crime of non-violence a downward departure was warranted.

¹¹ *State v. Green*, 2017-0520, p. 3 (La. App. 4 Cir. 11/15/17), 231 So.3d 756, 758 (citations omitted).

¹² See La. R.S. 40:966(E)(2)(a), effective dates August 15, 2010 through May 29, 2014.

¹³ La. R.S. 15:529.1 provides, in pertinent part:

- (4) If the fourth or subsequent 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 following sentences apply:
 - (a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life.
 - (b) If the fourth felony and no prior felony is defined as a crime of violence under R.S. 14:2(B) or as a sex offense under R.S. 15:541, the person shall be imprisoned for not less than twenty years nor more than twice the longest possible sentence prescribed for a first conviction. If twice the possible sentence prescribed for a first conviction is less than twenty years, the person shall be imprisoned for twenty years.

The trial court did not find that circumstance alone to be enough to establish that Mr. Hickman was exceptional. Although his current conviction was for a non-violent offense that is now recognized as a misdemeanor, the trial court looked beyond the current conviction and considered Mr. Hickman's prior criminal history, which included a conviction for a crime of violence and three separate convictions for gun possession. In its discretion, the trial court denied Mr. Hickman's request for a downward departure and sentenced him to the minimum statutory requirement of twenty years.

We find no abuse of discretion on the part of the trial court. Therefore, Mr. Hickman's sentence is affirmed.

AFFIRMED

