Judgment rendered April 8, 2009
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 44,101-KA
No. 44,102-KA
(Consolidated cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA — Appellee

versus

ANTHONY G. BROWN — Appellant

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Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court Nos. 75372 and 75373

Honorable Jeffrey Stephen Cox, Judge

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Before STEWART, CARAWAY and PEATROSS, JJ.

CARAWAY, J.

Anthony G. Brown pled guilty to monetary instrument abuse in violation of La. R.S. 14:72.2 and possession of methamphetamine in violation of La. R.S. 40:967(C). The trial court subsequently imposed concurrent sentences of nine years at hard labor for the monetary instrument abuse conviction and five years at hard labor for the possession of methamphetamine conviction. Brown appeals the imposed sentences. We affirm.

Facts

On December 22, 2006, officers of the Springhill Police Department arrested Anthony Brown for monetary instrument abuse after employees of the local Wal-Mart reported receiving counterfeit money orders. Brown admitted to cashing two counterfeit money orders, totaling $1,640, for someone from the United Kingdom whom he met on the Internet. The individual claimed she needed someone from the United States to receive the money for her. Brown stated that he did not initially believe his actions were wrong. Two $820.00 money orders payable to Brown were mailed to him.

During a search incident to arrest, the officers found a straw in Brown's pocket and a foil packet in his possession; each contained white residue later confirmed to be methamphetamine. Additionally, Brown had four cigars made of green leafy substance, later determined to be marijuana, in his possession. He also had a pipe containing marijuana. Brown told the officers that he was a recovering drug user and the items on him were

forgotten from weeks before. The sum of $344.16 was found on Brown at the time of arrest.

Brown was charged by separate bills of information with monetary instrument abuse, possession of methamphetamine, possession of marijuana (second offense) and possession of drug paraphernalia.

Brown pled guilty to monetary instrument abuse and possession of methamphetamine. As part of the plea agreement, the other pending charges were nol prossed and the state agreed to forgo habitual offender proceedings. Brown received concurrent sentences of nine years at hard labor for the monetary instrument abuse conviction, and five years at hard labor for the possession of methamphetamine conviction, with credit for time served. He filed a motion to reconsider sentence which was denied by the trial court. This appeal ensued.

Discussion

Brown argues that the imposed sentences are excessive. He contends that the maximum sentence imposed for the drug offense is excessive considering the relatively small amount of methamphetamine found on his person. Brown also alleges the sentence is unwarranted for a confessed drug user who has accepted responsibility for his errors and is in need of treatment rather than imprisonment. Likewise, Brown argues that the near maximum sentence imposed for the money order crime is excessive when considered in light of the facts of the case and the small sum of money involved. He also complains that the trial court failed to find any mitigating factors present in this case.

For the crime of monetary instrument abuse, Brown faced maximum sentencing exposure of ten years, with or without hard labor. La. R.S. 14:72.2. Brown also faced maximum sentencing exposure of five years, with or without hard labor, for the possession of methamphetamine conviction. La. R.S. 40:967(C).

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. First, the record must show that the trial court took cognizance of the criteria set forth in La. C. Cr. P. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. *State v. Smith,* 433 So. 2d 688 (La. 1983); *State v. Lathan*, 41,855 (La. App. 2d Cir. 2/28/07), 953 So. 2d 890, *writ denied*, 07-0805 (La. 3/28/08), 978 So. 2d 297. The articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Lanclos,* 419 So. 2d 475 (La. 1982); *State v. Swayzer*, 43,350 (La. App. 2d Cir. 8/13/08), 989 So. 2d 267. The important elements which should be considered are the defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of offense and the likelihood of rehabilitation. *State v. Jones,* 398 So. 2d 1049 (La. 1981); *State v. Ates,* 43,327 (La. App. 2d Cir. 8/13/08), 989 So. 2d 259.

_____There is no requirement that specific matters be given any particular weight at sentencing. *State v. Swayzer, supra*; *State v. Shumaker*, 41,547 (La. App. 2d Cir. 12/13/06), 945 So. 2d 277, *writ denied*, 07-0144 (La. 9/28/07), 964 So. 2d 351.

_____Second, a sentence violates La. Const. art. 1, §20 if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. *State v. Smith*, 01-2574 (La. 1/14/03), 839 So. 2d 1; *State v. Dorthey*, 623 So. 2d 1276 (La. 1993). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. *State v. Weaver,* 01-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Robinson,* 40,983 (La. App. 2d Cir. 1/24/07), 948 So. 2d 379.

A trial court has broad discretion to sentence within the statutory limits. Where a defendant has pled guilty to an offense which does not adequately describe his conduct or has received a significant reduction in potential exposure to confinement through a plea bargain, the trial court has great discretion in imposing even the maximum sentence possible for the pled offense. *State v. Germany*, 43,239 (La. App. 2d Cir. 4/30/08), 981 So. 2d 792; *State v. Black*, 28,100 (La. App. 2d Cir. 2/28/96), 669 So. 2d 667, *writ denied*, 96-0836 (La. 9/20/96), 679 So. 2d 430. Absent a showing of manifest abuse of that discretion we may not set aside a sentence as excessive. *State v. Guzman,* 99-1528, 99-1753 (La. 5/16/00), 769 So. 2d 1158; *State v. June*, 38,440 (La. App. 2d Cir. 5/12/04), 873 So. 2d 939.

Prior to sentencing, the trial judge read from a presentence investigation report, noting the facts of the case as well as Brown's social background. The trial court also reviewed Brown's criminal history which included two theft and one burglary convictions and noted that the instant offenses were Brown's fifth felony convictions. The trial court specifically indicated its cognizance of the factors enumerated in La. C. Cr. P. art. 894.1. In determining the appropriate sentence, the trial court considered that the charges arose out of the same incident and noted no mitigating factors in this situation. The court also considered Brown's "long history of theft and burglary." This record clearly establishes adequate La. C. Cr. P. art. 894.1 compliance and shows that the trial judge gave due consideration to the appropriate factors in determining the defendant's sentences. The trial judge was not required to give any particular weight to the factors pointed out by Brown such as his history of substance abuse and that Brown's previous offenses were nonviolent. Nor did the trial court err in finding no mitigatory factors.

Moreover, in reviewing the sentences for constitutional excessiveness, we find no abuse of discretion in the trial court's choice of sentences. Brown, a fifth felony offender, received substantial benefit from the plea agreement by the reduction of his sentencing exposure through the dismissal of two pending charges and the absence of multiple offender proceedings. Brown has obviously failed to benefit from prior leniency in sentencing and persists in a pattern of theft and an admitted drug habit. Considering Brown's history, his continued criminal propensity and the

benefit he received through the plea agreement, we find the concurrent maximum and near-maximum sentences to be appropriately tailored to this defendant. Thus, the imposed sentences do not shock the sense of justice. For these reasons, Brown's conviction and sentence are affirmed.

CONVICTION AND SENTENCES AFFIRMED.