Judgment rendered November 2, 2011
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 46,672-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA Appellee

versus

DEQORIEN BURRIS Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 82,184

Honorable Michael Craig, Judge

* * * * *

DOUGLAS LEE HARVILLE
Louisiana Appellate project
Counsel for
Appellant

J. SCHUYLER MARVIN
District Attorney
Counsel for
Appellee

JOHN M. LAWRENCE
MARCUS RAY PATILLO
Assistant District Attorneys

* * * * *

Before WILLIAMS, STEWART and CARAWAY, JJ.

CARAWAY, J.

Deqorien Burris appeals as excessive his sentence of three years' imprisonment at hard labor following his plea of guilty to attempted simple burglary. For the following reasons, the sentence is affirmed.

Facts

On or about May 28, 2010, Burris illegally entered a house located in Minden, Louisiana and owned by Daniel Frazier. Earlier that night, Frazier had given Burris a ride from Shreveport to Minden. He had to repeatedly ask Burris to leave his house before he complied. After Frazier left for work, Burris broke in and took several items including an Xbox 360, a pair of Nike sneakers, a pit bull puppy and $200 in cash. The burglary was reported around 7:30 a.m. when Frazier returned home from work. Frazier named Burris as a suspect after someone told him that Burris had been seen walking a pit bull puppy that looked like Frazier's. Minden Police Detective Heath Balkom questioned Burris, who confessed to the burglary. At the time of his arrest, however, Burris had sold all of the stolen items except for the Nike shoes.

Deqorien Burris was indicted by bill of information with simple burglary of a structure in violation of La. R.S. 14:62 on July 21, 2010. On October 18, 2010, Burris entered a guilty plea for the amended charge of attempted simple burglary. The court accepted his guilty plea and ordered a presentence investigation report ("PSI").

The sentencing hearing was held on January 21, 2010. At this hearing, Burris admitted that he knew what he did was wrong and

apologized. Referring to the PSI, the trial court focused on Burris's recurring criminal history that began in September 2008. Beginning at that time, the trial court noted that Burris had been arrested six times and was on probation when he committed this offense. With this criminal history, the trial court sentenced him to three years' hard labor. The sentence is to run consecutive with any other sentence he is currently serving or required to serve. The court felt that any lesser sentence would deprecate the seriousness of the offense.

After the sentence was handed down, the defendant made an oral motion to reconsider the sentence. In particular, the defendant argued that the consecutive nature of the sentence was excessive and urged the court to reconsider the sentencing factors in light of the defendant's repentant and remorseful nature. The trial court reiterated that this charge carries a maximum of six years' hard time. In addition, the crime was committed while the defendant was on probation for a prior offense, and the defendant had committed several misdemeanors within that same period of time. Thus, the trial court denied the motion to reconsider the sentence. From this ruling, Burris appeals the excessiveness of his sentence.

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. A trial court must consider the guidelines, but has complete discretion to reject them and impose any sentence within the statutory range which is not constitutionally excessive. *State v. Smith*, 93-0402 (La. 7/5/94), 639 So.2d 237; *State v. Tuttle*, 26,307 (La. App. 2d Cir. 9/21/94), 643 So.2d 304. The court need only state for the

record the considerations taken into account and the factual basis for the imposition of that sentence. La. C.Cr.P. art. 894.1. 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 the 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, *writ denied*, 08-2341 (La. 5/15/09), 8 So.3d 581. There is no requirement that specific matters be given any particular weight at sentencing. *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.

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. 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. Lobato* 603 So.2d 739 (La. 1992); *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.

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. Scott* 44-509 (La. App. 2d Cir. 8/19/09), 17 So.3d 1058; *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. A substantial advantage obtained by means of a plea bargain is a legitimate consideration in sentencing. *State v. Strange*, 28,466 (La. App. 2d Cir. 6/26/96), 677 So.2d 587; *State v. Chriceol,* 26,449 (La. App. 2d Cir. 10/28/94), 645 So.2d 286. On appellate review of a sentence, the relevant question is not whether another sentence might have been more appropriate but whether the trial court abused its broad sentencing discretion. *State v. Smith, supra*; *State v. Phillips*, 02-0737 (La. 11/15/02), 831 So.2d 905; *State v. Walker*, 00-3200, (La. 10/12/01), 799 So.2d 461. 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. Washington*, 29,478 (La. App. 2d Cir. 4/2/97), 691 So.2d 345.

A review of the record reveals that the trial court adequately considered the sentencing factors. At the sentencing hearing, the trial court stated any lesser sentence than three years would deprecate the seriousness of the defendant's crime. The trial court's other considerations were the defendant's prior misdemeanors committed during the last two years and the fact that the defendant was on probation when the current crime was committed. As a result, the trial court adequately considered the guidelines and gave sufficient reasons for Burris's sentence.

Additionally, the trial court did not abuse its vast discretion when it sentenced Burris. Originally Burris was charged with simple burglary–a crime that carries a maximum sentence of 12 years' imprisonment. As a result of a plea bargain, Burris received a reduction in his maximum sentence exposure. Considering the original charge, the sentence of one-fourth of the time of the original crime is not excessive. Even with a reduced charge, Burris faced a maximum sentence of six years' imprisonment.

Furthermore, the defendant argues that the consecutive nature of the sentence is excessive. However, this argument is without merit when Burris's prior criminal history is examined. In the past two years, Burris has been arrested at least six times. The defendant has been charged with crimes for disturbing the peace/fighting, simple battery, simple robbery, aggravated assault, and telephone harassment. In addition, Burris has previously received probation for some of his offenses; yet, he has continued to engage in criminal behavior. Furthermore, the defendant is a second felony offender who is only 19 years old. His criminal history illustrates that the defendant has not been deterred by probation or diversion programs. The trial court felt that some significant jail time might deter the defendant, and we can not say that was an abuse of the trial court's vast sentencing discretion. As a result, we affirm the trial court's sentence of three years' hard labor. Burris's conviction and sentence are affirmed.

AFFIRMED.