NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 0511

STATE OF LOUISIANA

VERSUS

SAMIE LEE WILLIAMS, JR.

Judgment Rendered: November 3, 2006

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On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 3-05-729

Honorable Anthony Marabella, Presiding

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

The defendant, Samie Lee Williams, Jr., was charged by bill of information with simple kidnapping, in violation of La. R.S. 14:45. Defendant pled not guilty. Defendant later withdrew his plea of not guilty and entered a plea of guilty as charged. In exchange for his guilty plea, the following charges, stemming from a January 2, 2005 arrest, were dismissed: second degree kidnapping, two counts of domestic abuse battery, simple assault, simple kidnapping, stalking, and enter/remaining in places/on land after being forbidden. The following charges, stemming from a March 24, 2005 arrest, were also dismissed in exchange for the guilty plea: carjacking, felony stalking, domestic abuse battery, and simple kidnapping. Defendant was sentenced to five years imprisonment at hard labor. Defendant filed a motion for reconsideration of sentence. The trial court denied the defendant's motion to reconsider sentence. Thereafter, defendant filed a motion to proffer evidence regarding the motion to reconsider for purposes of an appeal. The defendant now appeals, alleging that the trial court failed to permit him to proffer evidence on his motion for reconsideration of sentence, and that the trial court abused its discretion and failed to consider mitigating factors in sentencing the defendant to the maximum term of imprisonment allowed by law. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

The State provided the following factual basis for the acceptance of the defendant's August 15, 2005 guilty plea:

> Your Honor, if this matter proceeded to trial the State's evidence would show that on October 10th of last year the defendant committed the crime of simple kidnapping of Tiffany Breaux. The defendant and Ms. Breaux had ended their romantic relationship some time prior to that. He persistently tried to talk to her even though she didn't want to have anything to do with him. He called her constantly at home and at her job, and also rode past her residence. She had become very afraid of him. She was – she had gone to the grocery store and she was on her phone with her mother. As she went back to

her residence, which was on George O'Neal and Kennesaw her mother heard her say, no, Sam, don't do this, and the phone went dead and her mother called the police. The police went to the residence, and found the victim's shoes outside the residence and also some things that she had bought at the grocery store. A short time later the defendant called the victim's mother and told her, your daughter is okay, and hung up on her. And then some time after that the victim herself called her mother and said that she was okay. In fact, Mr. Williams had taken the victim to his father's residence after forcibly dragging her and pushing her into his car. She was locked inside the car, because the door was – the door handle was broken. She couldn't get out. He forced her to go to his father's residence. He took her inside against her will, and kept her there and told her that they were going to talk about their problems and work them out, and she was – he was not going to let her leave until he was satisfied with the conversation and her excuses for breaking up with him. She did get to call her mother, and after a couple of hours the defendant did let her leave.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant notes that the trial court considered an arrest for an incident that occurred less than two months after his guilty plea to the instant offense as an aggravating factor as to the imposition of sentence.[1] The defendant attached an affidavit to his motion for reconsideration of sentence in which the alleged victim in the incident leading to the considered arrest attested that she did not want the prosecution to proceed. After the trial court denied the defendant's motion for reconsideration of sentence without a hearing, the defendant filed a "motion to proffer evidence on motion to reconsider motion for purposes of an appeal." The record does not reflect a ruling on said motion. The trial court granted the defendant's motion for appeal. The defendant avers that the trial court erred in not allowing him to proffer evidence for the purpose of this appeal. The defendant concludes that this Court should review the affidavit or order the trial court to conduct an evidentiary hearing for the purpose of proffering evidence in support of his motion for reconsideration of sentence.

[1] Herein, the defendant pled guilty to the instant offense on August 15, 2005. On October 19, 2005, the defendant was arrested and charged with simple battery, simple criminal damage to property, and unauthorized entry of an inhabited dwelling. The arrest and charges stem from an incident that occurred on October 2, 2005.

Louisiana Code of Criminal Procedure article 881.1(D) provides:

> The trial court may deny a motion to reconsider sentence without a hearing, but may not grant a motion to reconsider without a contradictory hearing. If the court denies the motion without a hearing, the party who made or filed the motion may proffer the evidence it would have offered in support of the motion.

Herein, the defendant filed a motion to reconsider sentence based, in pertinent part, on the following language: "[t]he court improperly used the defendant's new arrest and the facts and circumstances around the arrest which are contested as a[n] aggravating factor to and as a basis for incarceration and an increase in sentencing of the defendant to the maximum sentence allowed by law." Attached to the motion for reconsideration of sentence was an affidavit wherein the victim of the alleged offenses leading to the defendant's subsequent arrest requested that all charges be dismissed.

The failure to allow a formal proffer may constitute harmless error where the nature of the evidence not admitted is otherwise sufficiently indicated, since the purpose of a proffer is to inform the trial and appellate courts of the nature of that evidence. See State v. Adams, 550 So.2d 595, 599 (La. 1989) (Dennis, J., concurring). Herein, although the trial court did not allow a formal proffer by granting the defendant's motion to proffer, the affidavit that the defendant now asks this Court to review was attached to the defendant's motion for reconsideration of sentence and made a part of the instant record. Thus, the affidavit was available for consideration by the trial court and is now available for consideration on appeal. Any error as to the trial court's failure to grant the defendant's motion to proffer evidence was harmless. See La. C.Cr.P. art. 921. See also La. C.E. art. 103A(2) ("Error may not be predicated upon a ruling which ... excludes evidence unless a substantial right of the party is affected, and ... [w]hen the ruling is one excluding evidence, the substance of the evidence was made known to the court by counsel.") This assignment of error lacks merit.

ASSIGNMENTS OF ERROR NUMBERS TWO AND THREE

In his second assignment of error, the defendant cites State v. Ballard, 2002-2431 (La. App. 4th Cir. 5/28/03), 848 So.2d 722, and State v. Ellender, 583 So.2d 1191 (La. App. 1st Cir.), writ denied, 585 So.2d 576 (La. 1991), and avers that a review of the jurisprudence demonstrates that two years imprisonment is the maximum sentence that should be imposed on a first felony offender for a simple kidnapping conviction. In his third assignment of error, the defendant avers that the trial court failed to consider the following mitigating factors in imposing sentence: (1) the defendant is a youthful offender; (2) the defendant has no prior felonies; (3) the defendant's elderly disabled father runs the family business; (4) the defendant's mother is deceased; (5) defendant is a father who supports two minor children; (6) the defendant provided $700.00 compensation to the victim; and (7) the new arrest considered by the trial court was nol-prossed based upon the affidavit of the alleged victim. The defendant specifically notes that he was twenty-nine years of age at the time of the instant offense and further notes that he assisted with the family business, raising cattle. Thus, the defendant avers that the imposed sentence is unconstitutionally excessive and should be reversed and/or vacated by this Court.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in State v. Sepulvado, 367 So.2d 762, 767 (La. 1979), held that although a sentence may be within statutory limits, a sentence may still be excessive. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory

limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. State v. Hurst, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Louisiana Code of Criminal Procedure article 894.1 sets forth items which must be considered by the trial court before imposing sentence. The judge is not required to list every aggravating or mitigating factor as long as the record shows ample considerations of the guidelines. State v. Herrin, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). The articulation of the factual basis for a sentence is the goal of Article 894.1, not to force a rigid or mechanical recitation of the factors. State v. Lanclos, 419 So.2d 475, 478 (La. 1982). In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. State v. Mickey, 604 So.2d 675, 678 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Thus, even without full compliance with Article 894.1, remand is unnecessary when the record clearly reflects an adequate basis for the sentence. Lanclos, 419 So.2d at 478; State v. Milstead, 95-1983, p. 8 (La. App. 1st Cir. 9/27/96), 681 So.2d 1274, 1279, writ denied, 96-2601 (La. 3/27/97), 692 So.2d 392; State v. Greer, 572 So.2d 1166, 1171 (La. App. 1st Cir. 1990).

Maximum sentences may be imposed for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. State v. Miller, 96-2040, p. 4 (La. App. 1st Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459. Additionally, in imposing a maximum sentence, a court may consider the fact that the defendant's penalty exposure was significantly reduced due to plea-bargaining. See Lanclos, 419 So.2d at 478; State v. Albarado, 2003-2504, p. 6 (La.

App. 1st Cir. 6/25/04), 878 So.2d 849, 853, writ denied, 2004-2231 (La. 1/28/05), 893 So.2d 70.

The sentencing provision for simple kidnapping, La. R.S. 14:45(B), states: "Whoever commits the crime of simple kidnapping shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than five years, or both." As previously stated herein, the defendant was sentenced to five years imprisonment at hard labor. Thus, the trial court imposed the maximum term of imprisonment.

In sentencing the defendant, the trial court reviewed a pre-sentence investigation report (PSI) detailing the following conviction and arrests: an August 12, 2004 guilty plea to prostitution; an August 29, 2004 arrest for simple battery, misdemeanor theft and criminal trespass (these charges were nol-prossed); a January 2, 2005 arrest for second degree kidnapping, two counts of domestic abuse battery, simple assault, simple kidnapping, stalking, and enter/remaining in places/on land after being forbidden (these charges were dismissed in exchange for the instant guilty plea); a March 24, 2005 arrest for carjacking, felony stalking, domestic abuse battery, and simple kidnapping (these charges were also dismissed in exchange for the instant guilty plea); and an October 19, 2005 arrest for simple battery, simple criminal damage to property, and unauthorized entry of an inhabited dwelling (these charges were pending at the time of the PSI, and instant sentencing). In sentencing the defendant, the trial court, in part, stated:

> Mr. Williams, I am looking at a file of a man who's going to kill somebody; and it's not going to happen on my watch. You have been a very lucky man to this point that no one is dead. There is a victim in the case that I have you [sic] sentence before – to be sentenced for today that is scared to death of you. Now, you are a man who pled guilty on August the 15th of 2005 to very, very serious charges and you go out and get arrested again two months later doing the same kind of thing to some other lady. I'm not putting up with that.
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> * * *

> Your history alone suggests probation is not appropriate for you; but this arrest, after having pled guilty in this court, disturbs me, disturbs me seriously. The court is convinced, after reviewing the presentence investigation, after reviewing your history, reviewing your actions after you pled guilty in this court, that there is an undue risk that during a period of probation or suspension of sentence you will commit more crimes, that you are in need of correctional treatment or a custodial environment that can be provided only by your commitment to an institution and that a lesser sentence would deprecate the seriousness of your crime.

In exchange for the defendant's guilty plea, the State dismissed several charges stemming from two separate incidents involving the victim herein (as previously noted). The most recent arrest considered by the trial court occurred after the instant guilty plea and involved a different female. As noted in the defendant's motion for reconsideration of sentence and on appeal (and as aforementioned in assignment of error number one), that alleged victim executed an affidavit in which she requested that the charges be dismissed. Nonetheless, we find that the record fully supports the imposition of a maximum sentence herein.

We note that the sentencing comparisons made by the defendant are of little value. It is well settled that sentences must be individualized to the particular offender and to the particular offense committed. Albarado, 2003-2504 at p. 6, 878 So.2d at 852; State v. Banks, 612 So.2d 822, 828 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1254 (La. 1993). Herein, the defendant violently forced the victim to enter a vehicle by dragging and pushing her body. The victim was forced to travel from her home to another location and forced to remain at that location for an estimated two hours. Although the sentence imposed in this case is severe, we cannot say that the trial court abused its wide discretion, considering the defendant's reduced penalty exposure due to the plea bargain, his arrest record, the gravity of the instant offense, and the risk to public safety posed by the defendant. The sentence imposed is not unconstitutionally excessive. These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.