

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 0733

STATE OF LOUISIANA

VERSUS

CHARLES DUNN

Judgment Rendered: November 3, 2006.

\* \* \* \* \*

On Appeal from the  
22nd Judicial District Court,  
in and for the Parish of St. Tammany  
State of Louisiana  
District Court No. 336621

The Honorable Donald M. Fendlason, Judge Presiding

\* \* \* \* \*

Walter P. Reed  
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Kathryn Landry  
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Baton Rouge, La.

Counsel for Appellee,  
State of Louisiana

Prentice L. White  
Baton Rouge, La.

Counsel for Defendant/Appellant,  
Charles Dunn

\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Handwritten signatures of Walter P. Reed and Kathryn Landry, written in black ink on the left side of the page.

**CARTER, C.J.**

The defendant, Charles Dunn, was charged by bill of information with attempted second degree murder (count one), in violation of LSA-R.S. 14:27 and LSA-R.S. 14:30.1, and with possession of a firearm or carrying a concealed weapon by a person convicted of certain felonies (count two), in violation of LSA-R.S. 14:95.1. He entered a plea of not guilty, and following a trial by jury, the defendant was found not guilty on count one and guilty as charged on count two. The defendant was sentenced to ten years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The defendant appealed. This court affirmed the defendant's conviction, but vacated the sentence due to patent sentencing error. The sentence was illegally lenient; the trial court failed to impose the mandatory fine. **State v. Dunn**, 03-2174 (La. App. 1 Cir. 5/14/04), 874 So.2d 433 (unpublished).

On remand, the trial court resentenced the defendant to imprisonment at hard labor for ten years without benefit of probation, parole, or suspension of sentence, and imposed the minimum fine of \$1000. The defendant's motion for reconsideration of his sentence was denied.

The defendant again appeals, urging in a single assignment of error that his sentence is excessive. Specifically, the defendant avers that the trial court erred in imposing a ten-year imprisonment at hard labor sentence upon a sixty-nine-year-old who was using a weapon to protect himself. The defendant contends that, in imposing the excessive sentence, the trial court failed to consider such mitigating factors as his age, educational background, health, and likelihood of rehabilitation.

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 a manifest abuse of discretion. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). In the instant case, the trial court imposed the minimum term of imprisonment and the minimum fine. See LSA-R.S. 14:95.1B.

A mandatory minimum sentence is presumed to be constitutional. The burden is on the defendant to rebut the presumption of constitutionality by showing that he is “exceptional.” To meet this burden, the defendant must show clearly and convincingly that 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. **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, 676.

Based upon our review of the record, and after consideration of the arguments raised in the briefs, we do not find that the defendant has clearly and convincingly shown that he is “exceptional.” As such, there was no reason for the trial judge to deviate from the mandatory minimum sentence. The defendant’s sentence is affirmed.<sup>1</sup>

**SENTENCE AFFIRMED.**

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<sup>1</sup> This memorandum opinion is issued in compliance with URCA Rule 2-16.1B.