NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0971

STATE OF LOUISIANA

VERSUS

ANTHONY ODOM LUCQUE

Judgment rendered: November 3, 2006

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On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
Number 352585; Division "D"
The Honorable Peter J. Garcia, Judge Presiding

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Anthony Odom Lucque

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

DOWNING, J.

Defendant, Anthony Odom Lucque, was charged by bill of information with one count of molestation of a juvenile (count 1), a violation of La. R.S. 14:81.2; one count of indecent behavior with a juvenile (count 2), a violation of La. R.S. 14:81; and nineteen counts of possession of child pornography (counts 3-21), violations of La. R.S. 14:81.1. Defendant entered a plea of guilty to all charges. In a previous opinion of this Court, **State v. Lucque**, 03-1962 (La. App. 1 Cir. 5/14/04), 874 So.2d 435 (unpublished), the defendant's convictions were affirmed, but his sentences on all counts were vacated because of patent errors.

The matter was remanded, and the trial court resentenced defendant. The trial court imposed a sentence of fifteen years imprisonment at hard labor for the defendant's conviction of molestation of a juvenile (count 1) and five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentences for each of the defendant's nineteen counts of possession of child pornography (counts 3-21), with all sentences to run concurrently to each other. In **State v. Lucque**, 04-2605 (La. App. 1 Cir. 11/9/05), 913 So.2d 898 (unpublished), this Court affirmed defendant's sentences on counts 1 and 3-21, but remanded the matter again due to the trial court's failure to resentence defendant on count 2.

On January 23, 2006, the trial court resentenced defendant to seven years at hard labor for his conviction for indecent behavior with a juvenile (count 2). Defendant now appeals that sentence as excessive. We affirm defendant's sentence.

FACTS

The facts surrounding the instant offenses are referenced in the prior opinions of this court, **State v. Lucque**, 03-1962 at pp. 2-3, and **State v. Lucque**, 04-2605 at pp. 3-4.

Jason Blanchard advised detectives of the St. Tammany Parish Sheriff's Office that his seven-year-old daughter, K.B., and her twelve-year-old friend, S.B., spent the weekend of March 29-30, 2002, at the residence of Blanchard's mother and stepfather, the defendant. Upon their return, the children told Blanchard that defendant had inappropriately touched them, took photographs of them, and allowed them to view images on a computer of another child undressing and nude.

S.B. further disclosed that defendant took pictures of the girls and had them change into swimsuits as he continued to take pictures. At one point, defendant asked S.B. to open her legs, but she refused. Defendant had S.B. sit on his lap as he showed her pictures on his computer of a young boy and girl, close to her age, undressing and dancing.

K.B. gave a statement to detectives consistent with S.B.'s statement. K.B. advised that defendant has been inappropriately touching her since she first started to visit his residence (since January 1, 2000). According to K.B., defendant had been touching her groin and breast area.

Following defendant's arrest, a search warrant was obtained for his residence. During the search, his computer and media storage devices were seized. Detectives located nineteen images of suspected child pornography. Defendant was arrested and charged by bill of information with one count of molestation of a juvenile, one count of indecent behavior with a juvenile, and nineteen counts of possession of child pornography. Defendant initially pled not guilty, but later changed his plea to guilty on all counts. When

defendant entered his plea, there was no limitation on his sentences. The trial court agreed to order a presentence investigation to determine appropriate sentences following its review of the PSI.

EXCESSIVE SENTENCE

Defendant argues that his sentence of seven years at hard labor for his conviction of indecent behavior with a juvenile is excessive. In support of his excessive sentence argument, defendant reiterates the reasons that he previously cited; specifically, that the PSI contained flaws and incorrect statements and was only furnished to defendant on the date of sentencing, defendant had no prior criminal history, and the trial court based its sentencing on a statement in a letter contained in the PSI wherein defendant admitted to being confused about sex.

Specifically, defense counsel contended that the PSI did not articulate that defendant's touching of the minor victim was outside of the victim's clothing. The trial court stated it would consider that the touching involved in the molestation conviction was not skin-to-skin contact. When pressed for further inaccuracies in the PSI, defense counsel failed to articulate any further errors.

The trial court also considered a letter written by defendant after entering his pleas in which defendant indicated he had been sexually active since the age of eight. Defendant stated that as a result of this activity, his perception about sex did not coincide with that of society and created confusion for him. Defendant also stated that he felt more confused than before about sex and, although he had not "purposely" molested a child, "the thought of sex with a child crossed his mind."

Article I, § 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence may be both within the statutory limits

and constitutionally excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is excessive when it is grossly out of proportion to the severity of the offense or nothing more than the needless and purposeless imposition of pain and suffering. To determine whether a penalty is grossly disproportionate to the crime, the court considers the punishment and the crime in light of the harm to society and whether the penalty is so disproportionate as to shock our sense of justice. A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. McKnight**, 98-1790, p. 24 (La. App. 1 Cir. 6/25/99), 739 So.2d 343, 359.

The penalty provision for indecent behavior with a juvenile provides for a fine of not more than five thousand dollars, or imprisonment with or without hard labor for not more than seven years, or both. La. R.S. 14:81(C).

This court has stated that maximum sentences permitted under statute may be imposed only for the most serious offenses and the worst offenders. **State v. Easley**, 432 So.2d 910, 914 (La. App. 1 Cir. 1983). A trial court's reasons for imposing sentence, as required by La. Code Crim. P. art. 894.1, are an important aid when reviewing a sentence alleged to be excessive. **State v. McKnight**, 98-1790 at p. 25, 739 So.2d at 359.

It is evident in imposing the maximum prison term for defendant's conviction for indecent behavior with a juvenile that the trial court considered that defendant had been inappropriately touching his seven-year-old step-granddaughter during her visits for over a year. In response to defendant's argument that the PSI failed to indicate the touching was not skin-to-skin contact, the trial court specifically indicated that it would bear in mind that the touching was only through clothing when considering the

sentence. Despite this factor, the record indicates the defendant used a familial position of trust as an opportunity to commit the offense. In no way did K.B. facilitate defendant's actions, and she was further told by defendant not to tell anyone.

Moreover, we note defendant's admissions that his actions stemmed from his "confusion" about sex based on his past, in conjunction with his statement that he was now more confused than ever about sex, provided a further basis for the trial court to conclude that defendant was evading responsibility for his actions toward his seven-year old victim. Such admissions characterized defendant as one of the worst offenders.

Although defendant now claims he made such statements without the advice of counsel, there is no requirement that defendant be represented by counsel when writing a personal letter to the trial court following his guilty plea. Under the circumstances of this case, we cannot say that the trial court abused its discretion in sentencing defendant to a concurrent maximum term of imprisonment of seven years at hard labor for his conviction for indecent behavior with a juvenile.

DECREE

For the foregoing reasons, we affirm defendant's sentence for his conviction of indecent behavior with a juvenile.

SENTENCE AFFIRMED FOR CONVICTION OF INDECENT BEHAVIOR WITH A JUVENILE