

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 KA 2436

STATE OF LOUISIANA

VERSUS

DANA FRANCIS

Judgment Rendered: September 15, 2006.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 01-04-0497

Honorable Todd Hernandez, Judge Presiding

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Holli Herrle-Castillo
Marrero, LA

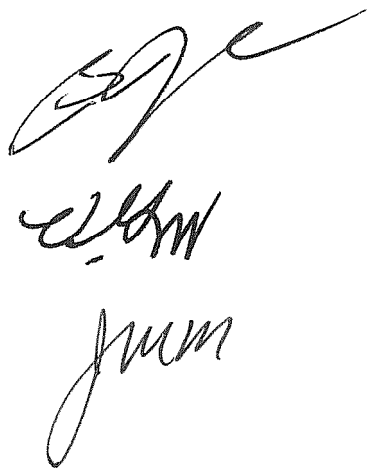
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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.



CARTER, C.J.

A jury convicted the defendant, Dana Francis, of attempted second-degree murder. The trial court sentenced her to thirty years at hard labor without benefit of probation, parole, or suspension of sentence, and denied her motion for reconsideration of sentence. The defendant now appeals, claiming the sentence imposed is excessive.

FACTS

The defendant worked as a housekeeper at Microtel Inn and Suites (Microtel) in Baton Rouge. On November 18, 2003, the victim, Cynthia Caraway, was the general manager of Microtel. As a result of a customer complaint and problems with the defendant's work, the victim asked the defendant's supervisor to write up the defendant's paperwork. Later on November 18, 2003, the defendant telephoned the victim and told her she (the defendant) had to keep her job because she was on probation. The victim told the defendant to come in and talk to her, and the defendant said she would do that.

On November 19, 2003, before 9:00 a.m., the defendant entered Microtel and asked assistant manager Michelle Saxon about the whereabouts of the victim. Saxon told the defendant that the victim was in a meeting, but would talk to her. The defendant went into the laundry area and told Microtel employee Betty Spencer that she (the defendant) had been fired. At 8:45 a.m., the victim entered the laundry area to get some ice and water. She saw the defendant and told her she (the victim) would be with her in a minute, and the defendant said, "Okay." The defendant then pulled out a handgun from her purse, put it to the victim's head, and asked, "Why did [you] take [my] job." The victim told the defendant, "Dana, please listen; wait, let's talk about it" and tried to run away. The defendant shot the victim in the back

and fled the scene. She went to the home of one of her relatives and placed the gun used in the shooting under the cover of a baby's car seat. The gun had five live rounds and one spent round.

As a result of the gunshot wound, the victim suffered broken ribs, a collapsed lung, and nerve damage due to metal fragments in her right breast.

DISCUSSION

In her sole assignment of error, the defendant argues the thirty-year sentence is disproportionate to the crime she committed. She argues she has the capacity to be rehabilitated and there is no likelihood of her repeating the crime.

Whoever commits the crime of second-degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. LSA-R.S. 14:30.1B. Whoever attempts to commit a crime punishable by death or life imprisonment shall be imprisoned at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence. See LSA-R.S. 14:27D(1)(a). The defendant was sentenced to thirty years at hard labor without benefit of probation, parole, or suspension of sentence.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. LSA-C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. 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. Hurst**, 99-2868 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So.2d 962.

Article I, Section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. 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. **Hurst**, 797 So.2d at 83.

At the sentencing hearing, the trial court heard testimony from the victim's family members, the defendant's parents, and the defendant herself. The trial court stated that it had also reviewed correspondence written on behalf of the victim and the defendant, as well as a presentence investigation report. The trial court then noted that: the defendant was a second felony offender; she was on probation for a felony offense of forgery when she committed the instant offense; the court believed the act committed by the defendant was cold, calculated, well-thought out, and was committed with total disregard of the consequences. The court found that any sentence less than the sentence imposed would only serve to diminish the severity of the defendant's crime.

In ruling on the motion to reconsider sentence, the court stated that it spent many hours determining a just sentence for the defendant. The court explained that it had reviewed all sides of the story, the facts and circumstances concerning the offense, the defendant's age, and her expected date of release. Upon reviewing

the law and the evidence, the sentencing guidelines, the presentence investigation report, the information filed, the correspondence received prior to the initial sentencing, and the testimony from the sentencing hearing, the trial court denied the motion.

The trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence. See LSA-C.Cr.P. arts. 894.1A(3) and B(21). Further, the sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. Accordingly, this assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.