NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 0135

STATE OF LOUISIANA

VERSUS

WILLIE ROBINSON, JR.

Judgment Rendered: September 20, 2006

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On appeal from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Suit Number W-04-9-324

Honorable William G. Carmichael, Presiding

* * * * * *

Samuel C. D'Aquilla
District Attorney

Jesse L. Means, Jr.
Assistant District Attorney
St. Francisville, La

Counsel for Appellee
State of Louisiana

Otha Curtis Nelson, Sr.
Baton Rouge, La.

Counsel for Defendant/Appellant
Willie Robinson, Jr.

* * * * * *

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

The defendant, Willie Robinson, Jr., was charged by amended bill of information with one count of possession with intent to distribute Hydrocodone (count I), a violation of La. R.S. 40:967(A)(1), and with one count of possession with intent to distribute Diazepam (count II), a violation of La. R.S. 40:969(A)(1), and pled not guilty on both counts. He moved to suppress the evidence to be used against him, but the motion was denied. Following a jury trial, on count I, he was found guilty of the responsive offense of possession of Hydrocodone, a violation of La. R.S. 40:967(C)(2), and on count II, he was found guilty of the responsive offense of possession of Diazepam, a violation of La. R.S. 40:969(C)(2). He moved for a new trial, but the motion was denied. On count I, he was sentenced to five years at hard labor. On count II, he was sentenced to five years at hard labor to run consecutively to the sentence imposed on count I. The trial court revoked the bond posted by the defendant and denied him bail after sentence. He moved for reconsideration of sentence, but the motion was denied. He also applied for supervisory writs in regard to the trial court's ruling denying him post-conviction bail, but the writ application was denied. State v. Robinson, 2005-2411 (La. App. 1st Cir. 12/12/05) (unpublished). He now appeals, designating six assignments of error. We affirm the convictions and sentences.

ASSIGNMENTS OF ERROR

1. The trial court erred in denying the motion to suppress the video of the traffic stop and the prescribed medication that was unconstitutionally seized by the arresting officer.

2. Ten members of the jury erred when they found the defendant guilty of possession of Hydrocodone and possession of Diazepam where two individuals to whom the drugs were legally prescribed testified that the defendant had their authority to possess the medication to prevent other individuals from taking the medication.

3. The trial court erred in denying the motion for new trial.

4. The trial court erred in sentencing the defendant to five years on the conviction of possession of Hydrocodone and five years on the conviction of

possession of Diazepam, which amounts to cruel and unusual punishment, particularly when both acts were from the same arrest.

5. The trial court erred in denying the motion to reconsider sentence without a hearing, particularly when he had led the defendant and his attorney to believe he was going to order a pre-sentence investigation.

6. The trial court erred in sentencing the defendant in an illegal manner, erred in depriving him of due process of law, and erred in denying him equal protection of law, by failing to grant post–conviction bail and by considering factors in sentencing that had not been properly introduced as evidence.

MOTION TO SUPPRESS

Prior to trial, the defendant moved to suppress the evidence to be used against him as seized or obtained absent a valid arrest or search and as the result of an unlawful search, without warrant and without probable cause. At the hearing on the motion, defense counsel indicated he was seeking the suppression of any incriminating statement made by the defendant on "the tape" and the seizure of the drugs. The trial court denied the motion, finding no grounds to suppress the videotape, the defendant's statements, or the drugs.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is admissible except as otherwise provided by positive law. Evidence which is not relevant is not admissible. La. C.E. art. 402. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403.

It is well settled that for a confession or inculpatory statement to be admissible into evidence, the State must affirmatively show that it was freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. R.S. 15:451. Additionally, the State must show that an accused who makes a statement or confession during custodial interrogation was first advised

of his *Miranda* rights. State v. Plain, 99-1112, p. 5 (La. App. 1st Cir. 2/18/00), 752 So.2d 337, 342.

The admissibility of a confession is, in the first instance, a question for the trial court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be overturned unless they are not supported by the evidence. Whether or not a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. The trial court must consider the totality of the circumstances in deciding whether or not a confession is admissible. Plain, 99-1112 at 6, 752 So.2d at 342.

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. Measured by this standard, La. C.Cr.P. art. 215.1, as well as federal and state jurisprudence, recognizes the right of a law enforcement officer to temporarily detain and interrogate a person whom he reasonably suspects is committing, has committed, or is about to commit a crime. Reasonable suspicion for an investigatory detention is something less than probable cause and must be determined under the specific facts of each case by whether the officer had sufficient knowledge of facts and circumstances to justify an infringement on the individual's right to be free from governmental interference. State v. Robertson, 97-2960, pp. 2-3 (La. 10/20/98), 721 So.2d 1268, 1269.

As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. The standard is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. Although they may serve, and may often appear intended to serve, as the prelude to the investigation of much more serious offenses, even relatively minor traffic violations provide an objective basis

for lawfully detaining the vehicle and its occupants. State v. Waters, 2000-0356, p. 4 (La. 3/12/01), 780 So.2d 1053, 1056 (per curiam).

Lieutenant Christopher M. Green of the West Feliciana Parish Sheriff's Office, testified at the suppression hearing and before the trial court.[1] On August 4, 2004, he conducted a traffic stop of the vehicle in which defendant and his daughter were riding on U.S. Highway 61, north of La. Highway 421, in West Feliciana Parish. The driver of the vehicle, Heather Renee Albert, was driving above the posted speed limit, was improperly using the lane, and was not wearing a seat belt. See La. R.S. 32:61; 32:79(1); 32:295.1(A)(1). Albert was also unable to produce a driver's license and indicated her driver's license had been suspended. A police computer search verified Albert's driver's license was suspended and further indicated there was a felony arrest warrant outstanding against her for a probation violation.

Immediately after Albert pulled the vehicle over to the side of the road, the defendant exited the vehicle. Lieutenant Green instructed the defendant to remain in the vehicle at that point, and the defendant complied with the order.

Thereafter, the defendant attempted to explain why Albert was driving the vehicle. His speech was slurred. He indicated he was not driving because he could not stay awake and did not want to be involved in a car accident. He was nervous, and his hands were shaking. On the basis of his twelve years of law enforcement experience and the defendant's nervous behavior and demeanor, Lieutenant Green felt more criminal activity was afoot than just traffic violations.

Subsequently, Lieutenant Green approached the defendant and asked him who owned the vehicle. The defendant indicated the vehicle belonged to him. Lieutenant Green advised the defendant that Albert would be arrested for a probation violation,

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[1] In determining whether the ruling on the defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may also consider all pertinent evidence given at the trial of the case. State v. Chopin, 372 So.2d 1222, 1223 n. 2 (La. 1979).

and he had the right to wait to make sure the warrant was confirmed. The defendant indicated he would like to wait. Lieutenant Green informed the defendant that in Louisiana there was a problem with people transporting illegal things in their vehicles such as illegal money, weapons, drugs, bomb-making materials, open containers of alcohol, and stolen things. Thereafter, in response to Lieutenant Green's request, the defendant consented to a search of the vehicle.

While searching the vehicle Lieutenant Green recovered three pill bottles in a brown paper bag from under the driver's seat. The bottles contained numerous Hydrocodone and Diazepam pills inconsistent with the labels on the bottles. Two of the prescriptions were filled in Zachary for Troxie Scott on the date the stop was conducted. One of the bottles, labeled as one hundred and eighty 10 milligram Hydrocodone pills, actually contained eighty-eight Hydrocodone pills. The other bottle, labeled as sixty Diazepam pills, actually contained fifty-eight Diazepam pills. The third bottle was filled in New Orleans for Charles Slain on July 27, 2004. The bottle, labeled as ninety 10 milligram Hydrocodone pills, actually contained eight pink 7.5 milligram Hydrocodone pills, twenty-five white 10 milligram Hydrocodone pills, and thirty-five green Hydrocodone pills.[2] Lieutenant Green indicated the "street value" of the Hydrocodone and Diazepam recovered from the defendant's vehicle was $1,100. Lieutenant Green advised the defendant of his *Miranda*[3] rights, and the defendant indicated he understood those rights. The defendant claimed he had just picked up Scott's medication and Slain was "another guy lives in Baton Rouge."[4]

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2 The record does not indicate the weight of the green Hydrocodone pills.

3 Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

4 The defense introduced affidavits from Scott and Slain into evidence at trial. In those affidavits, Scott and Slain stated the Hydrocodone and Diazepam recovered from the defendant's truck had been prescribed to Scott and Slain, and the defendant was keeping those drugs for Scott and Slain with their permission at the time of the traffic stop. Additionally, Scott and Slain both testified at trial consistently with their affidavits.

Lieutenant Green indicated his vehicle was equipped with a video camera and it recorded the traffic stop of the vehicle. He identified State Exhibit # 3 as a videotape of the traffic stop.

The trial court correctly denied the motion to suppress in regard to the videotape. Whether or not the defendant possessed the drugs at issue was a fact of consequence at trial, and the videotape of the traffic stop had some tendency to make the existence of that fact more probable or less probable than it would have been without the evidence. The probative value of the videotape was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time.

The court also correctly denied the motion to suppress in regard to the incriminating statements made by the defendant wherein he indicated the drugs in the truck were in his possession. The statements were freely and voluntarily given without influence of fear, duress, intimidation, menaces, threats, inducements, or promises, and after the defendant had been advised of his *Miranda* rights.

The court also correctly denied the motion to suppress in regard to the drugs found in the defendant's vehicle. Lieutenant Green initiated the traffic stop of the defendant's vehicle after observing Albert commit numerous traffic violations. Thereafter, the defendant consented to the search of his vehicle, which uncovered the drugs. A search conducted pursuant to consent is an exception to the requirements of both a warrant and probable cause. State v. Johnson, 98-0264, p. 5 (La. App. 1st Cir. 12/28/98), 728 So.2d 885, 887.

This assignment of error is without merit.

SUFFICIENCY OF THE EVIDENCE

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the

crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove, in order to convict," every reasonable hypothesis of innocence is excluded. State v. Wright, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, and 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. Wright, 98-0601 at 3, 730 So.2d at 487.

Louisiana Revised Statutes 40:967(C), in pertinent part, provides:

> C. **Possession.** It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance as classified in Schedule II unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, as provided in R.S. 40:978 while acting in the course of his professional practice, or except as otherwise authorized by this Part.

Hydrocodone is a controlled dangerous substance classified in Schedule II. La. R.S. 40:964, Schedule II (A)(1)(k).

Prior to amendment by 2005 La. Acts, No. 14, § 1, La. R.S. 40:969(C), in pertinent part, provided:

> C. **Possession.** It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule IV unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner, or as provided in R.S. 40:978, while acting in the course of his professional practice or except as otherwise authorized by this Part.

Diazepam is a controlled dangerous substance classified in Schedule IV. La. R.S. 40:964, Schedule IV (17).

To be guilty of the crime of possession of a controlled dangerous substance, one need not physically possess the substance; constructive possession is sufficient. In order to establish constructive possession of the substance, the state must prove that the defendant had dominion and control over the contraband. A variety of factors are considered in determining whether or not a defendant exercised "dominion and control" over a drug, including: a defendant's knowledge that illegal drugs are in the area; the defendant's relationship with any person found to be in actual possession of the substance; the defendant's access to the area where the drugs were found; evidence of recent drug use by the defendant; the defendant's physical proximity to the drugs; and any evidence that the particular area was frequented by drug users. State v. Harris, 94-0696, pp. 3-4 (La. App. 1st Cir. 6/23/95), 657 So.2d 1072, 1075, writ denied, 95-2046 (La. 11/13/95), 662 So.2d 477.

The mere presence in the area where narcotics are discovered or mere association with the person who does control the drug or area where it is located is insufficient to support a finding of possession. Additionally, being a resident of the premises where drugs are found is not in and of itself sufficient to prove constructive possession. Nevertheless, a person found in the area of the contraband can be considered in constructive possession if it is subject to his dominion and control. The defendant can have constructive possession if he jointly possesses drugs with a companion and if he willfully and knowingly shares with his companion the right to control the drugs. Harris, 94-0696 at 4, 657 So.2d at 1075.

After a thorough review of the record, we are convinced the evidence presented herein, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of possession of Hydrocodone and Diazepam and

the defendant's identity as the perpetrator of those offenses. The verdicts returned by the jury indicate the jury accepted the testimony of Lieutenant Green and rejected the testimony of the defense witnesses. As the trier of fact, the jury was free to accept or reject, in whole or in part, the testimony of any witness. State v. Johnson, 99-0385, p. 9 (La. App. 1st Cir. 11/5/99), 745 So.2d 217, 223, writ denied, State ex rel. Johnson v. State, 2000-0829 (La. 11/13/00), 774 So.2d 971. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. State v. Glynn, 94-0332, p. 32 (La. App. 1st Cir. 4/7/95), 653 So.2d 1288, 1310, writ denied, 95-1153 (La. 10/6/95), 661 So.2d 464.

This assignment of error is without merit.

MOTION FOR NEW TRIAL

In assignment of error number 3, the defendant argues, "if his attorney of record would have known that the West Feliciana Sheriff's Office had prior knowledge that the 'ILLUSIONS' was a 'strip club' he could have developed evidence on the motion to suppress evidence to show that Officer Christopher M. Green did not have probable cause when he requested that [the defendant] allow him to conduct a search of his pick-up (sic) truck."

Louisiana Code of Criminal Procedure article 851, in pertinent part, provides:

> The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.
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> The court, on motion of the defendant, shall grant a new trial whenever:
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> . . .
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> (3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty[.]

In order to obtain a new trial based on newly discovered evidence, the defendant has the burden of showing (1) the new evidence was discovered after trial, (2) the failure to discover the evidence at the time of trial was not caused by lack of diligence, (3) the evidence is material to the issues at trial, and (4) the evidence is of such a nature that it would probably have produced a different verdict. State v. Smith, 96-0961, p. 7 (La. App. 1st Cir. 6/20/97), 697 So.2d 39, 43.

In evaluating whether or not the newly discovered evidence warrants a new trial, the test to be employed is not simply whether another jury might bring in a different verdict, but whether the new evidence is so material that it ought to produce a verdict different from that rendered at trial. The trial court's denial of a motion for new trial will not be disturbed absent a clear abuse of discretion. State v. Maize, 94-0736, pp. 27-28 (La. App. 1st Cir. 5/5/95), 655 So.2d 500, 517, writ denied, 95-1894 (La. 12/15/95), 664 So.2d 451.

There was no clear abuse of discretion in the denial of the motion for new trial. Notwithstanding any other reasons to deny the motion for new trial, whether or not Lieutenant Green had probable cause (presumably for a search warrant) when he asked the defendant for consent to search the vehicle was not material to the issues at trial. Lieutenant Green did not need probable cause for a search warrant in order to ask the defendant for consent to search the vehicle and, as noted above, a search conducted pursuant to consent is an exception to the requirements of both a warrant and probable cause. Johnson, 98-0264 at 5, 728 So.2d at 887.

This assignment of error is without merit.

EXCESSIVE SENTENCE; RULING ON MOTION TO RECONSIDER SENTENCE WITHOUT HEARING

The Louisiana Code of Criminal Procedure sets forth items, which must be considered by the trial court before imposing sentence. La. 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, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (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, 99-2868 at 10-11, 797 So.2d at 83.

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. La. C.Cr.P. art. 883. Thus, La. C.Cr.P. art. 883 specifically excludes from its scope sentences which the court expressly directs to be served consecutively. Furthermore, although the imposition of consecutive sentences requires particular justification when the crimes arise from a single course of conduct, consecutive sentences are not necessarily excessive. State v. Palmer, 97-0174, pp. 5-6 (La. App. 1st Cir. 12/29/97), 706 So.2d 156, 160.

Any person who violates La. R.S. 40:967(C) as to any controlled dangerous substance as classified in Schedule II, other than pentazocine, shall be imprisoned

with or without hard labor for not more than five years and, in addition, may be sentenced to pay a fine of not more than five thousand dollars. La. R.S. 40:967(C)(2).

Any person who violates La. R.S. 40:969(C) as to any controlled dangerous substance as classified in Schedule IV, other than flunitrazepam, shall be imprisoned with or without hard labor for not more than five years and, in addition, may be required to pay a fine of not more than five thousand dollars. La. R.S. 40:969(C)(2).

In the instant case, on count I, the defendant was sentenced to five years at hard labor. On count II, he was sentenced to five years at hard labor to run consecutively to the sentence imposed on count I.

In sentencing the defendant, the trial court noted: it had considered all relevant factors contained in La. C.Cr.P. art. 894.1; the evidence indicated the defendant had possessed a substantial quantity of the prescription medications Hydrocodone and Diazepam; although there had been testimony by Scott and Slain that the defendant was holding their medications with their permission, the jury had rejected that testimony, as did the court; the court believed the defendant preyed on Scott and Slain, who were critically ill; the court believed Scott and Slain had become dependent upon the defendant for everything, and he had taken advantage of them; the defendant probably did not contemplate that his conduct would cause serious harm; imprisonment would entail excessive hardship upon the defendant, especially if, as defense counsel had advised the court, the defendant was ill; the defendant had a history of prior delinquency or criminal activity; [5] his conduct threatened serious harm; the possession of controlled dangerous substances always poses a threat of serious harm; the court believed the defendant's conduct was likely to recur; his criminal record indicated that the instant offenses were not the defendant's first contact with controlled dangerous

[5] Although the trial court did not give details of the defendant's criminal record, at sentencing, the State set forth that the defendant had been arrested numerous times and had six convictions.

substances, and it was probable that he would continue to have contact with those substances; there was no provocation for the offenses; there was no evidence tending to excuse or justify the defendant's conduct; the defendant's crimes involved controlled dangerous substances, which posed one of the community's most challenging problems; the fact that the defendant had obtained the substances from the helpless people that testified on his behalf only magnified his crimes; the defendant's record indicated it was likely he would commit another crime during any period of probation; the court believed the defendant was in need of correctional treatment that could be provided most effectively by his commitment to an institution; and a lesser sentence would deprecate the seriousness of the defendant's crimes.

The trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentences on counts I and II. See La. C.Cr.P. art. 894.1 (A)(1), (A)(2), (A)(3), (B)(2), (B)(21), (B)(23), and (B)(31).

Further, the sentences imposed were not grossly disproportionate to the severity of the offenses and, thus, were not unconstitutionally excessive.

Additionally, consecutive maximum sentences were warranted in this matter. Consecutive sentences are justified when the offender poses an unusual risk to public safety. Palmer, 97-0174 at 6, 706 So.2d at 160. 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. The defendant poses an unusual risk to the public safety because he preyed on helpless, critically ill victims and the court found his conduct was likely to recur.

The trial court may deny a motion to reconsider sentence without a hearing. La. C.Cr.P. art. 881.1(D).

These assignments of error are without merit.

POST-CONVICTION BAIL

In assignment of error number 6, the defendant argues the trial court erred in denying him post–conviction bail.[6]

After sentencing and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may grant bail if the sentence actually imposed exceeds imprisonment for five years. La. Const. art. I, § 18(A).

Louisiana Code of Criminal Procedure article 332, in pertinent part, provides:

> C. After sentence and until final judgment, bail shall be allowed if a sentence of five years or less is actually imposed. Bail may be allowed after sentence and until final judgment if the sentence actually imposed exceeds imprisonment for five years, except when the court has reason to believe, based on competent evidence, that the release of the person convicted will pose a danger to any other person or the community, or there is a substantial risk that the person convicted might flee.

The right to bail after sentencing and until final judgment is based on the total sentence actually imposed in the case, rather than the sentence imposed on each count for which the defendant was convicted. State v. Glass, 389 So.2d 387, 388-389 (La. 1980).

In the instant case, on count I, the defendant was sentenced to five years at hard labor. On count II, he was sentenced to five years at hard labor to run consecutively to the sentence imposed on count I. Thus, the total sentence actually imposed exceeded imprisonment for five years, and he had no mandatory right to bail.

Further, we are unable to say the trial court abused its discretion in denying bail. At sentencing, the trial court stated the defendant would not be allowed bail after sentencing because, based on the evidence at trial and his record, the trial court

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[6] The defendant also alleges the trial court improperly considered factors not in evidence in determining the sentences. The defendant, however, fails to state which factors were improperly considered.

was convinced the release of the defendant would cause harm to others and he might prey on others as he had previously done.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.