

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0326

STATE OF LOUISIANA

VS.

HOANG PHAM

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JUDGMENT RENDERED: SEP 15 2006

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 09-04-0518, SECTION I  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE ANTHONY MARABELLA, JUDGE

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HOANG PHAM

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

MCDONALD, J.

The defendant, Hoang Pham, was charged by bill of information with unauthorized use of a motor vehicle (Count 1), a violation of La. R.S. 14:68.4, and possession of a firearm by a convicted felon (Count 2), a violation of La. R.S. 14:95.1. He pled not guilty. Prior to trial, the state dismissed Count 2. Following a jury trial on Count 1, defendant was found guilty as charged. The defendant was sentenced to eight years at hard labor. The state filed a multiple offender bill of information seeking to have the defendant adjudicated and sentenced as a habitual felony offender under La. R.S. 15:529.1. Following a hearing, the trial court adjudicated the defendant a fourth felony habitual offender, vacated the previously imposed sentence, and resentenced the defendant to twenty years imprisonment at hard labor. (R. pp. 338, 344). The defendant moved for reconsideration of the sentence. The trial court denied the motion. The defendant now appeals, urging in a single assignment of error that his sentence is excessive. Finding no merit in the assigned error, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

### **FACTS**

On the morning of July 21, 2004, Latonia Croom contacted the East Baton Rouge Parish Sheriff's Office and reported that her 1998 black Honda Civic had been stolen from the parking lot of her apartment. Later that same day, the Sheriff's Office received a call from Brooke Civils, an acquaintance of the defendant, advising that Pham was at her Steele Boulevard residence. Civils had been contacted by police investigating a separate incident and had been asked to contact the authorities when the defendant was present at her residence. Lieutenant Brent Callender, Sergeant Ricky Klug, and Sergeant

Mike Favaro were dispatched to Civils's residence to apprehend the defendant.

Upon arriving on Steele Boulevard, Callender, Klug, and Favaro observed the defendant driving a black Honda Civic. Callender attempted to stop the defendant by engaging the emergency lights on his vehicle. The defendant refused to stop, and a vehicle chase ensued. The chase ended after the defendant turned down a dead-end street. The defendant was captured and arrested. A .32 R.G. revolver was recovered from an area beneath the driver's seat of the vehicle. Further police investigation revealed that the vehicle the defendant had been driving was the same vehicle that Latonia Croom reported stolen earlier that day. At trial, Croom testified that she did not give the defendant or anyone else permission to use her vehicle.

**ASSIGNMENT OF ERROR**  
**EXCESSIVE SENTENCE**

In his sole assignment of error, the defendant contends the trial court erred in imposing an excessive sentence. Citing the state's pretrial plea offer of twelve years and the eight-year original sentence imposed by the trial court prior to the habitual offender adjudication, the defendant argues the state and the trial court obviously "felt that somewhat less than twenty years was sufficient to punish this defendant." Thus, he contends a lesser sentence is warranted in this case. In support of this claim, the defendant notes only that "no one was injured, or even present when the vehicles [sic] in question were taken." In response, the state asserts that there is no reason for a downward departure from the mandatory minimum sentence required by the Habitual Offender Law.

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. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). Generally, a sentence is considered excessive if it 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. **State v. Reed**, 409 So.2d 266, 267 (La. 1982). 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. Lanclos**, 419 So.2d 475, 478 (La. 1982).

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. Code Crim. P. art. 894.1. The trial court need not cite the entire checklist of article 894.1, but the record must reflect that it adequately considered the criteria. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). 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. Remand is unnecessary when a sufficient factual basis for the sentence is shown. **Lanclos**, 419 So.2d at 478.

Because the sentence for unauthorized use of a motor vehicle is such that, upon a first conviction the defendant would be punished by imprisonment for any term less than his natural life, his enhanced sentence should be no less than twenty years. See La. R.S. 14:68.4(B) & La. R.S. 15:529.1(A)(1)(c)(i). Thus, the trial court imposed the mandatory minimum term of imprisonment for the defendant as a fourth felony habitual offender.

In **State v. Dorthey**, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the minimal mandated punishment makes no “measurable contribution to acceptable goals of punishment” or that the sentence amounts to nothing more than “the purposeful imposition of pain and suffering” and is “grossly out of proportion to the severity of the crime,” he is duty bound to reduce the sentence to one that would not be constitutionally excessive.

In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from mandatory minimum sentences. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to “clearly and convincingly” show that:

[he] is exceptional, which in this context means that because of unusual circumstances this defendant 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.

**Johnson**, 97-1906 at p. 8, 709 So.2d at 676.

When evaluating whether the defendant has met his burden, the trial court must be mindful of the goals of the Habitual Offender Law, which are to deter and punish recidivism. A defendant with multiple felony convictions is treated as a recidivist who is to be punished for the instant crime in light of his continuing disregard for the laws of the state. The Supreme Court has emphasized that a downward departure from the minimum sentence mandated by La. R.S. 15:529.1 should only occur in “rare situations.” **State v. Lindsey**, 99-3302, p. 5 (La. 10/17/00), 770 So.2d 339, 343, cert. denied, 532 U.S. 1010, 121 S.Ct. 1739, 149 L.Ed.2d 663 (2001).

Prior to imposing the original sentence, the trial judge stated that he reviewed the facts of the instant offense, the sentencing guidelines set forth in La. Code Crim. P. art. 894.1, and the defendant's criminal history. (R. pp. 335-336). The court rejected the possibility of probation or a suspended sentence reasoning that there would be an undue risk that defendant would commit another crime during any period of suspended sentence or probation. Therefore, the trial court concluded that the defendant needed correctional treatment in a custodial environment, and that any lesser sentence would deprecate the seriousness of the crime. Subsequently, at the habitual offender sentencing, the trial court noted that although he is classified as a fourth felony habitual offender, the defendant has an extremely lengthy criminal history which includes 18 arrests for offenses related to auto thefts since 1988. The court further noted that the defendant continuously failed to show any remorse or to accept responsibility for his actions.

As previously noted, the defendant's sentence of twenty years imprisonment is the minimum under the habitual offender statute and, thus, is presumed constitutional. It was therefore incumbent upon the defendant to rebut this presumption. Based upon our review of the record in this case, we do not find that the defendant, who has repeatedly demonstrated disregard for the laws of this state, has clearly and convincingly shown that he is exceptional. In his brief, the defendant has failed to cite any unusual and/or exceptional circumstances to show that he is a victim of the legislature's failure to assign a sentence meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. As such, there was no reason for the trial judge to deviate from the mandatory sentence provided for in this matter. Accordingly, this assignment of error lacks merit.

For the foregoing reasons, the defendant's conviction, habitual offender adjudication, and sentence are affirmed.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,  
AND SENTENCE AFFIRMED.**