

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0327

STATE OF LOUISIANA

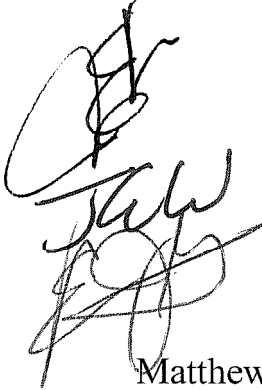
VERSUS

ALVIN CHARLES CARTER, JR.

DATE OF JUDGMENT: September 15, 2006

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 452,414), PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE GEORGE LARKE, JR., JUDGE



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Alvin Charles Carter, Jr.

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Alvin Charles Carter, Jr., was charged by bill of information with distribution of cocaine in violation of La. R.S. 40:967(A)(1). He initially pled not guilty. On June 27, 2005, pursuant to plea negotiations, the state amended the bill of information to the charge of attempted distribution of cocaine. Upon being arraigned on the amended bill of information, defendant entered a plea of guilty. The trial court conducted a *Boykin* examination during which defendant indicated that he was not guilty. Following further examination, the trial court refused to accept defendant's guilty plea and ordered the plea be withdrawn. The state amended the bill of information to reinstate the original distribution of cocaine charge. On the morning of trial, defendant informed the court that he wished to plead guilty. The court advised defendant that the state had withdrawn the plea offer. After defendant repeatedly disrupted the proceedings by stating that he wished to accept the plea deal previously offered, counsel for defendant asked the court to appoint a sanity commission to determine defendant's competency to proceed. Upon finding that defendant's outbursts and counsel's requests for a sanity commission were merely designed to delay the trial, the trial court proceeded with defendant's trial. Following the trial by jury, defendant was convicted as charged. He was sentenced to imprisonment for seven years at hard labor, the first two years to be served without benefit of probation, parole, or suspension of sentence. Defendant filed a motion to reconsider the sentence, which the trial court denied. Defendant appeals.

FACTS

On December 2, 2004, the Terrebonne Parish Narcotics Task Force commenced an undercover narcotics investigation focusing on areas of the parish where numerous complaints of narcotics activities were received. The investigation was a "camera car" operation in which an undercover officer drove through a suspected drug area and attempted to conduct street-level narcotics transactions. Prior to the commencement of the operation, video recording equipment was installed into the undercover vehicle to record the events during the narcotics transactions.

In the undercover vehicle, Joey Landry of the Vermillion Parish Sheriff's Office drove onto Livas Lane, an area in the northern end of Terrebonne Parish, and approached a black male subsequently identified as defendant. Landry told defendant that he was looking for a "thirty" (street slang for a \$30.00 piece of crack cocaine). Defendant gave Landry a piece of suspected crack cocaine in exchange for thirty dollars in cash. Landry drove away. He immediately traveled to a predetermined location where he and other agents viewed the video recording of the transaction. A field test of the suspected crack cocaine indicated a "positive presumptive." The substance was later tested by the Louisiana State Police Crime Laboratory and was determined to contain cocaine.

Approximately two weeks later, Landry positively identified defendant from a photographic lineup as the individual who sold him the cocaine in the transaction in question. A warrant was issued and defendant was subsequently arrested. The photographic array and the videotape of the transaction were introduced into evidence and presented to the jury at trial.

ASSIGNMENT OF ERROR 1 MENTAL CAPACITY TO PROCEED

In his first assignment of error, defendant contends the trial court failed to rule on his motions for appointment of a sanity commission to determine his competency to proceed to trial. Defendant argues that under the provision of La. C.Cr.P. art. 642, once his capacity to proceed was raised, no further proceedings could be maintained and that, under La. C.Cr.P. art. 647, the trial court was required to first determine his mental capacity to proceed in a contradictory hearing. Defendant contends his due process rights were violated when the trial court proceeded to trial without ever considering his oral sanity motions. In response, the state contends, because the defense failed to present any evidence of defendant's incapacity, the trial court acted within its sound discretion in denying the motions for the appointment of a sanity commission.

Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense. La. C.Cr.P. art. 641. The appointment of a sanity commission is not a perfunctory matter or a ministerial duty of the trial court, nor is it guaranteed to every accused in every case. The fact that defendant's capacity to proceed is called into question does not, for that reason alone, require the trial court to order a mental examination; rather, it must have reasonable grounds to doubt defendant's capacity. La. C.Cr.P. art. 643. The ordering of a sanity commission to inquire into a defendant's present capacity to proceed rests in the sound discretion of the trial court. *State v. Robinson*, 92-1057, pp. 2-3 (La. App. 1st Cir. 5/5/95), 655 So.2d 517, 519.

Questions regarding a defendant's capacity must be deemed by the court to be bona fide and in good faith before a court will consider if there are "reasonable grounds" to doubt capacity. Where there is a bona fide question raised regarding a defendant's capacity, the failure to observe procedures to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. At this point, the failure to resolve the issue of a defendant's capacity to proceed may result in nullification of the conviction and sentence. *State ex rel. Seals v. State*, 2000-2738, p. 6 (La. 10/25/02), 831 So.2d 828, 833.

In this case, on two separate occasions, counsel for defendant moved for the appointment of a sanity commission after defendant repeatedly 1) requested that the state reinstate the pretrial plea agreement, 2) expressed dissatisfaction with his trial counsel, and 3) indicated that he was not ready to proceed to trial. Contrary to defendant's assertions, our review of the record reveals that the trial court did in fact rule on defendant's motions requesting the appointment of a sanity commission. The trial court specifically found that defendant's outbursts were merely dilatory tactics designed to delay the trial. The court stated:

Mr. Carter – Mr. Carter, you're going to have to be quiet. You're not helping yourself. When the jury is brought in, you'd best, you'd do best to put your best face in front of them. Mr. Byrne is here and is ready to proceed. This Court feels that you're only attempting to delay this matter.

Thus, it is clear the court found that the existence of a "bona fide" question regarding defendant's capacity was lacking. Absent a bona fide question regarding defendant's mental capacity, the trial court was not required to delay the trial to

afford defendant further consideration of the issue. Furthermore, we note that, other than defendant's repeated outbursts, counsel for defendant did not offer any evidence that defendant lacked the capacity to "understand the proceedings against him or to assist in his defense" as required by La. C.Cr.P. art. 641. We find that defendant's actions of repeatedly requesting that the prosecutor reinstate the obviously favorable plea agreement do not provide reasonable grounds to doubt his capacity. Indeed, defendant's repeated attempts to negotiate with the prosecutor to avoid a lengthy sentence provide evidence of his competence and willingness to actively assist in his case. Moreover, review of the trial transcript in its entirety reflects that once the prosecutor stood firm in his refusal to reinstate the plea deal and the trial court refused to honor defendant's request for a continuance/recess, there were no further outbursts by defendant during the trial. Thus, we find no error or abuse of discretion in the trial court's refusal to delay the proceedings by ordering the appointment of a sanity commission in this case. This assignment of error lacks merit.

**ASSIGNMENTS OF ERROR 2 & 3
EXCESSIVE SENTENCE**

In his second assignment of error, defendant claims that the trial court erred in imposing an excessive sentence. Specifically, he asserts the trial court failed to give adequate consideration to the factors designated in La. C.Cr.P. art. 894.1 in tailoring the sentence. Defendant argues the trial court should have considered his employment background, educational background, and family history. In light of these mitigating factors, defendant contends the sentence of seven years at hard

labor is unconstitutionally excessive. In his third assignment of error, defendant avers that the trial court erred in denying his motion to reconsider sentence.

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 Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. C.Cr.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. Our review of the record discloses that the trial court's reasons for sentence adequately demonstrate

compliance with La. C.Cr.P. art. 894.1. Moreover, the record sufficiently provides a factual basis for the sentence imposed.

Under La. R.S. 40:967(B)(4)(b), defendant faced penalty exposure of imprisonment at hard labor for not less than two years or more than thirty years, with the first two years of the sentence to be served without benefit of parole, probation, or suspension of sentence and a possible fine of not more than \$50,000. Thus, defendant's sentence of seven years at hard labor, the first two years without benefit of probation, parole, or suspension of sentence, is well within the statutory limits.

Our review of the record in this case reveals that, prior to sentencing, the court indicated that it considered the sentencing guidelines set forth in La. C.Cr.P. art. 894.1. In its reasons for the sentence, the court noted that although defendant was only twenty-two years old, he already had two prior criminal convictions for simple robbery and false representation. The court further noted that despite having previously served time in jail, defendant obviously had not "learned [his] lesson." Further demonstrating compliance with the guidelines of Article 894.1, the trial court rejected the possibility of a suspended sentence and/or probation for this offense, reasoning that there was an undue risk that defendant would commit another crime. The court concluded that defendant was in need of correctional treatment in a custodial environment, and indicated that a lesser sentence would deprecate the seriousness of the distribution of cocaine offense. The court considered, in mitigation, the small amount of cocaine sold and noted that the twenty-two year old defendant was obviously not a "big-time drug dealer." The

trial court also recommended, over the state's objection, that defendant be allowed to participate in the Blue Walters Program.

Given the trial court's wide discretion in the imposition of sentences and the fact that defendant's sentence was within the statutory limits, we cannot say that the trial court manifestly abused its discretion in sentencing defendant to seven years at hard labor. Contrary to defendant's assertions, we find that the trial court's reasons for sentence adequately demonstrate compliance with La. C.Cr.P. art. 894.1. Although the trial court may not have listed every aggravating and/or mitigating factor, the record sufficiently provides a factual basis for the sentence imposed. Furthermore, the sentence imposed was neither grossly disproportionate to the severity of the offense nor so disproportionate as to shock our sense of justice and, therefore, was not unconstitutionally excessive. Thus, the trial court did not err in denying defendant's motion to reconsider sentence.

These assignments of error lack merit.

DECREE

For these reasons, we affirm defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.