NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 KA 2260

STATE OF LOUISIANA

VERSUS

CHRISTOPHER DUPLESSIS

Judgment rendered February 9, 2007.

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Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 15,678
Honorable Ralph Tureau, Judge

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CHRISTOPHER DUPLESSIS

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

The defendant, Christopher Duplessis, was charged by grand jury indictment with aggravated rape, a violation of La. R.S. 14:42. The defendant pled not guilty. After a trial by jury, the defendant was found guilty of the responsive offense of attempted aggravated rape, in violation of La. R.S. 14:27 and La. R.S. 14:42. The defendant was sentenced to fifty years imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, alleging that the trial court abused its discretion in sentencing the defendant to the maximum term of imprisonment allowed by law and in denying the defendant's motion to reconsider sentence. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

On or about December 1, 2002, the defendant and his father visited K.F.'s home.[1] While the defendant's father watched a football game in the living room of the home, the defendant and others played electronic video games in K.F.'s children's bedroom.[2] After consuming an alcoholic beverage, the defendant went into the bathroom of the home. While sitting in her living room (located down the hall from the bathroom), K.F. heard a loud noise. K.F. approached the bathroom door to question the defendant about the noise. The defendant assured her that everything was okay and she walked away at the defendant's request.

The bathroom was adjacent to K.F.'s bedroom. According to the victim (who was nine years of age at the time of the offense and eleven years of age at the time of the trial), the defendant opened K.F.'s bedroom door while the victim was sleeping in K.F.'s bed. After the defendant began quietly calling the victim's name, she opened her eyes and sat on the edge of the bed. The defendant picked her up and placed her on top of

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[1] Herein, we do not reference the victim by name. Moreover, we reference the victim's immediate family members by initials. See La. R.S. 46:1844 W.

[2] According to trial testimony, K.F.'s son and daughter (the victim) shared a bedroom.

the sink cabinet in the bathroom. The defendant pulled the victim's clothes down, placed her legs over his shoulders and her head against a mirror, and *tried* to penetrate her anally with his penis.[3] The defendant held his hand over the victim's mouth as she tried to scream. The defendant pinned the victim down on the cabinet as she attempted to resist. The defendant ultimately told the victim to get back in her mother's bed.

As the defendant and his father left, K.F. went into her bathroom. She noticed that a piece of furniture that normally blocked the entrance to the bathroom from the bedroom had been repositioned. She further noticed that the bathroom mirror was smeared. She looked on the floor and noted the presence of a thick white substance (suspected semen). K.F. went into her bedroom to question her daughter. The victim was lying in the bed shivering with the cover pulled over her body. Her mother asked her if she had been in the bathroom, and the victim began to cry as she informed her mother of the incident. K.F. removed the victim's lower clothing and observed blood and bruising. K.F. contacted her husband, picked him up from his place of employment, and they transported the victim to the hospital.

According to the medical examination, the victim had bruising and redness on her back. The victim also had a superficial laceration near her anus, and bleeding was noted. Lieutenant JoAnn Gautreau of the Ascension Parish Sheriff's Office interviewed the victim and others present at the scene at the time of the offense, observed the completion of a sexual assault kit, and photographed the victim and the scene. The lieutenant collected and submitted evidence to the Louisiana State Police Crime Laboratory for testing, including evidence from the sexual assault kit and a sample of the thick white substance located on the bathroom floor. After advising the defendant of his rights, she conducted an interview of the defendant and submitted a DNA sample taken from the defendant to the Louisiana State Police Crime Laboratory for testing.

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[3] The victim specifically stated, "I remember him trying to put his penis in me."

According to the results of the Louisiana State Police Crime Laboratory analysis, seminal fluid and blood were found on the rectal swab of the victim. The DNA profile of the sperm factions from swabs (collected from the determined seminal fluid located at the scene on the bathroom floor) matched the defendant's DNA profile. (The probability that the DNA came from someone other than the defendant was one in seven point four two quadrillion.)

ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

The defendant presents a combined argument for the assignments of error. In his first assignment of error, the defendant argues that the trial court abused its discretion in imposing the maximum sentence. The defendant contends that the trial court failed to comply with La. Code Crim. P. art. 894.1 in that it did not consider several mitigating factors. The defendant specifies that the trial court failed to consider his youthful age at the time of the offense, his status as a first felony offender, the fact that defendant only completed the ninth grade, and the fact that he had a significant work history. Finally the defendant notes that he consumed a large amount of alcohol just prior to the offense and argues that this should have been considered a mitigating factor (citing **State v. Everett**, 432 So.2d 250 (La. 1983)). The defendant also cites several cases in arguing that the sentence in this case was more severe than sentences imposed in circumstances where the offense was more egregious. The defendant also argues that the trial court did not state any aggravating factors that could have been considered in imposing the maximum sentence. The defendant contends that the trial court simply "rubber stamped" the recommendation given in the presentence investigation (PSI) report. The defendant notes that the PSI report did not state any justification for recommending the maximum sentence. Finally, the defendant concludes that the trial court should have granted his motion to reconsider the sentence (assignment of error number two).

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979), held that a sentence that is within the statutory limits may

still be excessive. 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. **State v. Hurst**, 99-2868, p. 10 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962. 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. 1 Cir. 11/7/97), 703 So.2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459. 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.

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 judge is not required to list every aggravating or mitigating factor as long as the record shows adequate considerations of the guidelines. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1 Cir.), writ denied, 565 So.2d 942 (La. 1990). The articulation of the factual basis for a sentence is the goal of Article 894.1, not to force a rigid or mechanical recitation of the factors. 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. Mickey**, 604 So.2d 675, 678 (La. App. 1 Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Thus, even without full compliance with Article 894.1, remand is unnecessary when the record clearly reflects an adequate basis for the sentence. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982); **State v. Milstead**, 95-1983, p. 8 (La. App. 1 Cir. 9/27/96), 681 So.2d 1274, 1279, writ denied, 96-2601 (La. 3/27/97), 692 So.2d 392; **State v. Greer**, 572 So.2d 1166, 1171 (La. App. 1 Cir. 1990).

The sentencing range statutorily prescribed for the offense of attempted aggravated rape is imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence for not less than ten, nor more than fifty years. La. R.S. 14:42D(1) and R.S. 14:27D(1). In this case, the trial court sentenced the defendant to fifty years imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. Thus, the trial court imposed the maximum sentence within statutory limits.

In sentencing the defendant, the trial court reviewed a PSI report. The PSI report notes the defendant's age, education, and work history, and that the defendant is a first felony offender with a prior misdemeanor conviction for possession of marijuana. The PSI contains the facts of the offense and statements from the victim and her family members detailing their emotional suffering as a result of the offense. The PSI also includes statements from the defendant in which he denied that the offense occurred. Attached to the PSI are letters from the victim and her parents and the defendant and his family members. The PSI recommends the imposition of the maximum sentence.

In imposing the sentence, the trial court considered the PSI report and the facts of the offense. Prior to the imposition of sentence, the victim's father gave an impact statement. He indicated that the victim and her family suffer emotional distress due to the offense. He noted the victim's tendency to wake up crying and screaming at night. Before imposing the sentence, the trial court specifically acknowledged the defendant's age and status as a first felony offender. We find that the record fully supports the imposition of a maximum sentence herein.

We note that the sentencing comparisons made by the defendant are of little value. It is well settled that sentences must be individualized to the particular offender and to the particular offense committed. **State v. Albarado**, 2003-2504, p. 6 (La. App. 1 Cir. 6/25/04), 878 So.2d 849, 852, writ denied, 2004-2231 (La. 1/28/05), 893 So.2d 70; **State v. Banks**, 612 So.2d 822, 828 (La. App. 1 Cir. 1992), writ denied, 614 So.2d 1254 (La. 1993). Also, **State v. Everett** (the case cited in the defendant's appeal brief wherein the court noted alcohol consumption before the offense as a mitigating factor

which bears on the likelihood of recurrence) is distinguishable from the instant case.[4] In **Everett**, the court set aside the imposed sentence, holding in part that the trial judge mistakenly believed that the penalty for attempted aggravated rape was mandatory and, hence, failed to exercise the full range of his sentencing discretion. The court further held, in part, that in pronouncing sentence before undertaking any review of the sentencing guidelines (because he mistakenly believed that the sentence was mandatory), the trial court failed to comply with Article 894.1. **Everett**, 432 So.2d at 251. However, in the instant case the trial court noted the sentencing range prior to imposing sentence and clearly exercised full discretion in imposing sentence. At any rate, notwithstanding the consideration of the defendant's alcohol consumption as an indicator of a low likelihood of recurrence, we cannot say that the trial court abused its discretion in imposing the maximum sentence herein.

In the instant case, photographs of the victim's injuries reveal significant bruising and damage to her anal area. The defendant violently held down the nine-year-old victim, who futilely attempted resistance, as he inflicted the injuries. During the victim's trial testimony the following colloquy took place (on direct examination):

> Q. What could you feel?
>
> A. Something hurting me, in my butt.
>
> Q. What do you remember happening next?
>
> A. I remember him, me trying to fight him off and he kept on pushing me down and penning [sic] me down on the cabinet.
>
> Q. Was it hurting you anywhere?
>
> A. Yes, ma'am.
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> Q. Where were you hurting?
>
> A. On my back and my butt.

Although the sentence imposed in this case is severe, considering the nature of the particular offense and the effect on the victim and her family, we do not find that the

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[4] During his interview with Lieutenant Gautreau, the defendant stated that he consumed one-half of a pint of gin just prior to the offense.

sentence shocks the sense of justice or fails to make a meaningful contribution to acceptable penal goals. Thus, the sentence imposed is not unconstitutionally excessive. These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.