

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 KA 1333**

**STATE OF LOUISIANA**

**VERSUS**

**CHARLES LEE**

**Judgment Rendered: February 14, 2007**

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On Appeal from the Nineteenth Judicial District Court  
In and For the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 6-02-672

Honorable Richard Anderson, Judge Presiding

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Hon. Doug Moreau  
District Attorney  
Baton Rouge, LA

Counsel for Plaintiff  
State of Louisiana

By: Dana Cummings  
Assistant District Attorney

Bertha M. Hilliman  
Thibodaux, LA

Counsel for Defendant/Appellant  
Charles Lee

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**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

## **McCLENDON, J.**

Defendant, Charles Lee, was charged by bill of information with one count of possession of a firearm by a convicted felon, a violation of LSA-R.S. 14:95.1. After entering a plea of not guilty, defendant was tried before a jury and found guilty as charged. In a prior opinion of this court, **State v. Lee**, 2003-0854 (La. App. 1 Cir. 12/31/03), (unpublished), 864 So.2d 907 (table), writ denied, 2004-2154 (La. 5/20/05), 902 So.2d 1044, defendant's conviction was affirmed, but his sentence was vacated due to the existence of patent error.<sup>1</sup>

Following remand, the trial court resentenced defendant to twelve years at hard labor and imposed a fine of \$1,000.00. Defendant now appeals his sentence as excessive.

### **DISCUSSION**

Article I, § 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence may be both within the statutory limits and constitutionally excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La.1979). A sentence is excessive when it is grossly out of proportion to the severity of the offense or nothing more than the needless and purposeless imposition of pain and suffering. To determine whether a penalty is grossly disproportionate to the crime, the court considers the punishment and the crime in light of the harm to society and whether the penalty is so disproportionate as to shock our sense of justice. A trial court is given wide discretion in the imposition of sentences within the statutory limits, and the sentence imposed by it should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. McKnight**, 98-1790, p. 24 (La.App. 1

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<sup>1</sup> The facts pertaining to defendant's conviction can be found in the prior opinion by this court.

Cir. 6/25/99), 739 So.2d 343, 359-60, writ denied, 99-2226 (La. 2/25/00), 755 So.2d 247.

The penalty for being convicted as a felon in possession of a firearm is imprisonment at hard labor, for not less than ten nor more than fifteen years, without the benefit of probation, parole, or suspension of sentence, and a fine not less than one thousand dollars nor more than five thousand dollars. LSA-R.S. 14:95.1(B). In the present case, the trial court sentenced defendant to twelve years at hard labor and a fine of one thousand dollars.

Specifically, defendant argues that his sentence was excessive because none of the aggravating factors listed in LSA-C.Cr.P. art. 894.1 were present. We disagree.

A propensity for felonious behavior is a factor, which can be considered in imposing sentence because it creates an undue risk that defendant will commit another crime. **State v. Turner**, 447 So.2d 58, 59-60 (La.App. 1 Cir. 1984). In addition, when the court originally sentenced defendant, it noted not only the defendant's age, but also the defendant's extensive criminal history involving drugs and distribution of drugs.

As stated in our prior opinion, the facts surrounding defendant's instant offense, when viewed in the light most favorable to the state, indicate that defendant was well aware that he could not possess a gun because of his status as a parolee. When the police arrived at defendant's residence, defendant immediately secluded himself in the residence and attempted to avoid contact with the police. Moreover, defendant clearly attempted to evade the consequences of his possession of the weapon by claiming the weapon belonged to his wife, despite his wife's initial statement that she had no knowledge of a weapon in the residence.

Under the circumstances of this case, we cannot say the trial court abused its discretion by sentencing defendant to the fine and a term of twelve years at hard labor for this offense. Thus, this assignment is without merit.

**SENTENCE AFFIRMED.**