

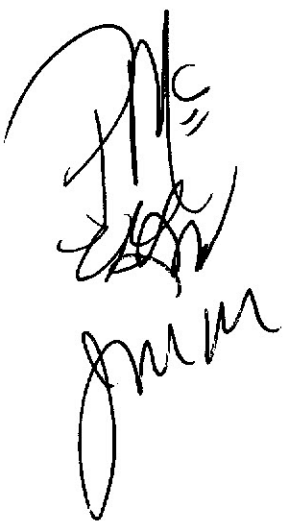
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0694



STATE OF LOUISIANA

VERSUS

CHRISTOPHER HOWARD GUERIN

Judgment Rendered: OCT 29 2010

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On Appeal from the Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Docket No. 504,642

Honorable Timothy C. Ellender, Judge Presiding

*** * * * ***

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Christopher Howard Guerin

*** * * * ***

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

The defendant, Christopher Howard Guerin, was charged by bill of information with two counts of armed robbery by use of a firearm, in violation of LSA-R.S. 14:64 and 14:64.3. He initially entered a plea of not guilty; however, he changed the plea to guilty on both counts. The court sentenced the defendant to 20 years at hard labor on each count of armed robbery, to run concurrently, with an additional five-year sentence on each count in accordance with LSA-R.S. 14:64.3A, to run consecutively with each other. The defendant's sentences were ordered served without benefit of probation, parole or suspension of sentence.

The defendant appeals, asserting in one assignment of error that the court abused its discretion by imposing upon him excessive sentences.

FACTS

On February 5, 2008, the defendant and an accomplice, Willie O'Neal Cousin, robbed two victims with a Colt .38 caliber revolver. The first armed robbery occurred in a Wal-Mart parking lot where the defendant and Cousin approached a woman with her minor child, brandished a weapon, and demanded her purse. A few minutes later, they approached a man at a car wash down the street, pointed the gun at him, and robbed him.

EXCESSIVE SENTENCE

In his sole assignment of error, the defendant alleges that his sentences are excessive in light of his character and the circumstances surrounding his commission of the crimes.

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); **State v. Lanieu**, 98-1260, p. 12 (La. App. 1 Cir. 4/1/99), 734 So.2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So.2d 962. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the

offense or is nothing more than a purposeless imposition of pain and suffering. See **State v. Dorthey**, 623 So.2d 1276, 1280 (La. 1993). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Hogan**, 480 So.2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within 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. Guzman**, 99-1528, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. LSA-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 guidelines. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1 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. **State v. Watkins**, 532 So.2d 1182, 1186 (La. App. 1 Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982).

Although the defendant faced the potential of 99 years imprisonment on each count, the sentences received are actually at the lower end of the spectrum. The minimum sentence was 15 years imprisonment (a minimum of ten years for armed robbery plus an additional, consecutive five years for use of a firearm), and the defendant was sentenced to a total of 30 years imprisonment. LSA-R.S. 14:64B & 14:64.3B. Absent a showing of manifest abuse of discretion, we will not set aside a sentence as excessive. **Guzman**, 99-1528, 99-1753 at p. 15, 769 So.2d at 1167.

The defendant presented several witnesses who described him as a "good man" who had never been in trouble before. The defendant explained his behavior in committing the two armed robberies as a result of his extreme

intoxication. The court, in sentencing the defendant, stated, "this is tough for me to give this to two young men like this, but you leave me no choice, man."

At the hearing on the motion to reconsider sentence, the court said:

I don't understand – I don't understand what got into y'all. I don't understand it. Even if it was just one, but you did one here and boom, you did another one. You have got to be drugged or what?

* * *

Well, gentlemen, you have shamed your families, shame, shame, shame. Your mamas and daddy are good solid citizens and I feel terribly, terribly sorry for them, but under the circumstances with the sentencing ranging from 10 to 99 years and we have just given you 20 concurrent on the armed robberies and 5 and 5 on the offenses, the Court reluctantly and sadly denies your request for reconsideration.

It is clear from the record that the court carefully considered the facts of the case and the defendant's history in imposing sentence. The court tailored the sentences to fit the defendant's crimes. The sentences imposed are not excessive. Thus, this assignment of error lacks merit.

REVIEW FOR ERROR

The defendant asks that this court examine the record for error under LSA-C.Cr.P. art. 920(2). This court routinely reviews the record for such errors. Under Article 920(2) we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514, pp. 18-22 (La. App. 1 Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

CONCLUSION

Having found no merit in the defendant's assignment of error, the convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.