

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 KA 1206**

**STATE OF LOUISIANA**

**VERSUS**

**BRITISH LAMONT JAMES**

**Judgment Rendered: February 11, 2011**

**Appealed from the  
Thirty-Second Judicial District Court  
in and for the Parish of Terrebonne, State of Louisiana  
Trial Court Number 503,399**

**Honorable John R. Walker, Judge Presiding**

**\* \* \* \* \***

**Joseph Waitz  
Carlos Lazarus  
Ellen Daigle Doskey  
Houma, LA**

**Counsel for Appellee,  
State of Louisiana**

**Bertha M. Hillman  
Thibodaux, LA**

**Counsel for Defendant/Appellant,  
British Lamont James**

**\* \* \* \* \***

**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

*Handwritten signatures and initials:*  
- Top left: A cursive signature, possibly "J. Walker".  
- Middle left: A cursive signature, possibly "J. Walker".  
- Bottom left: A cursive signature, possibly "J. Walker".

## WHIPPLE, J.

The defendant, British Lamont James, was charged by grand jury indictment with second degree murder, a violation of LSA-R.S. 14:30.1. The defendant pled not guilty. At the conclusion of a jury trial, the defendant was convicted of the responsive offense of manslaughter, a violation of LSA-R.S. 14:31. The trial court sentenced the defendant to imprisonment at hard labor for twenty-five years. The court noted that the defendant's conviction is for a crime of violence and restricted diminution of the sentence for good behavior under LSA-R.S. 15:571.3.<sup>1</sup> The defendant moved for reconsideration of the sentence. The trial court denied the motion. The defendant now appeals, asserting in a single assignment of error that his sentence is excessive. Finding no merit to the assigned error, we affirm the defendant's conviction and sentence.

### FACTS

On December 9, 2007, the defendant and several other individuals, including Jarrett Scott (the victim), were involved in a physical altercation in front of the victim's home. The testimony presented at the trial established that the men were all friends. They had a history of fighting and making up. At some point, the altercation ended and the defendant left the area. He later returned to the area armed with a gun. When the victim saw the defendant approaching, the victim ran

---

<sup>1</sup>The provisions of LSA-R.S. 15:571.3 are directed to the Department of Corrections exclusively, and the sentencing judge has no role in the matter of good time credit under these provisions. See State ex rel. Simmons v. Stalder, 93-1852 (La. 1/26/96), 666 So. 2d 661 (quoting Jackson v. Phelps, 506 So. 2d 515, 517-18 (La. App. 1st Cir.), writ denied, 508 So. 2d 829 (La. 1987)). Thus, the trial court erred in restricting the defendant's good time eligibility under LSA-R.S. 15:571.3. However, there does exist an exception under LSA-C.Cr.P. art. 890.1 whereby the trial court may deny diminution of sentence for good behavior if the crime for which the sentence is imposed is a crime of violence. See LSA-C.Cr.P. art. 890.1(B). When denying the defendant's right to credit against his sentence for good behavior under this provision, the trial judge "shall designate whether the crime involved is a crime of violence or an attempted crime of violence as defined or enumerated in LSA-R.S. 14:2(B)." LSA-C.Cr.P. art. 890.1(A). In connection with the denial of eligibility for diminution of the sentences for good behavior, the trial court in this case specifically noted that the offense is a crime of violence. See LSA-R.S. 14:2(B)(4). Accordingly, the trial court's imposition of a restriction on the diminution of the defendant's sentence for good behavior was proper under Article 890.1(B).

towards him, to continue the fight. The defendant fired several shots at the unarmed victim. The victim was fatally injured by a bullet wound to the neck.

Shortly after the shooting, the defendant contacted the Terrebonne Parish Sheriff's Office and advised that he had shot the victim. The defendant was arrested. During an audiotaped statement, the defendant claimed he did not intend to shoot the victim. He claimed he shot in the air in an effort to scare the victim. At the trial, the defendant presented a theory of self-defense.

### **DISCUSSION**

In his sole assignment of error, the defendant contends the trial court erred in imposing an unconstitutionally excessive sentence. Specifically, he notes that the trial court failed to give adequate consideration to the sentencing guidelines set forth in LSA-C.Cr.P. art. 894.1 and to various mitigating factors. The defendant cites his youthful age of 20 and notes that: (1) he does not have any prior criminal convictions; (2) he was a working and productive member of society; (3) he is respected in the community and does not have a reputation for being a "troublemaker"; and (4) he showed remorse for his actions. The defendant asserts that the twenty-five year sentence imposed by the trial court in this case is grossly out of proportion to the severity of the crime and amounts to nothing more than a purposeless and needless infliction of pain and suffering.

Article I, § 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. 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). 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. 1st Cir. 4/1/99), 734 So. 2d 89, 97, writ denied, 99-1259 (La. 10/8/99), 750 So. 2d 962. However, 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. Lobato, 603 So. 2d 739, 751 (La. 1992).

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 recite 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. State v. Watkins, 532 So. 2d 1182, 1186 (La. App. 1st 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).

The penalty provision of LSA-R.S. 14:31(B) provides that punishment for a manslaughter conviction shall be imprisonment at hard labor for not more than forty years. Thus, the defendant's sentence of twenty-five years at hard labor is within the statutory requirements. Further, at the time of sentencing, the court indicated that it considered the sentencing guidelines set forth in LSA-C.Cr.P. art. 894.1. Prior to imposing the sentence, the trial court specifically observed the mitigating factors of the defendant's age and lack of any significant criminal history. However, the court also observed that the victim and the defendant were friends and that the initial physical altercation between the young men had ended

long before the shooting. The defendant chose to leave the area, walk to his home, retrieve a gun, and return to further the altercation.

Considering the reasons for sentence provided by the trial court and the circumstances of the instant offense, we find no abuse of sentencing discretion in this case. Considering the facts and circumstances of this case, which involved a senseless killing, we cannot conclude that the trial judge abused his discretion in imposing the twenty-five year sentence, which is well below the maximum sentence that could have been imposed on the manslaughter conviction. Moreover, we note that the defendant was originally charged with second degree murder for this killing. The manslaughter verdict returned by the jury in this case apparently represents a compromise verdict because, as the trial court noted in its reasons for sentencing, the evidence presented at the defendant's trial was sufficient to support a conviction for the charged offense. If the defendant had been convicted as charged, the defendant faced the mandatory sentence of life imprisonment without the possibility of parole. See LSA-R.S. 14:30.1(B). Thus, the defendant received a considerable benefit from the jury's leniency. See State v. Jones, 593 So. 2d 1301, 1315 (La. App. 1st Cir. 1991), writ denied, 620 So. 2d 868 (La. 1993). In light of the harm to society and to the victim, the sentence does not constitute the needless imposition of pain and suffering; nor does it shock our sense of justice.

The defendant's contention that the trial court failed to give adequate weight to the mitigating circumstances also lacks merit. At the sentencing hearing, counsel for the defendant presented argument regarding several mitigating factors to the court. In his reasons for sentence, the trial court specifically noted that the defendant did not have a significant criminal history and that numerous letters for leniency, including one from the defendant himself, had been received and reviewed by the court. In his letter, the defendant explained that he was once a productive and contributing member of society and expressed remorse for his

actions in connection with the victim's death. Thus, the record clearly indicates that the court was aware of the relevant mitigating factors set forth by the defense in its brief before this Court. Although the trial judge, when imposing the sentence, may not have articulated every aggravating and mitigating factor, the trial judge's reasons for sentence adequately demonstrate compliance with Louisiana Code of Criminal Procedure article 894.1. Furthermore, there is no requirement that any specific mitigating factors be given any particular weight by the sentencing court. State v. Jones, 33,111 (La. App. 2d Cir. 3/1/00), 754 So. 2d 392, 394, writ denied, 2000-1467 (La. 2/2/01), 783 So. 2d 385. This assignment of error lacks merit.

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

**CONVICTION AND SENTENCE AFFIRMED.**