

Judgment rendered May 13, 2009
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 44,179-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

WILLIE LEE GRIFFIN, JR.

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 260,590

Honorable Ramona L. Emanuel, Judge

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PAULA C. MARX
Louisiana Appellate Project

Counsel for
Appellant

CHARLES R. SCOTT
District Attorney

Counsel for
Appellee

BENJAMIN A. CORMIER
TOMMY J. JOHNSON
Assistant District Attorneys

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Before GASKINS, CARAWAY and DREW, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

The defendant was charged by bill of information with possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1. A jury found the defendant guilty as charged. The trial court imposed a sentence of 15 years of imprisonment at hard labor without benefits and ordered the defendant to pay court costs. The defendant now appeals, assigning as error that his sentence is excessive and the trial court's noncompliance with La. C. Cr. P. art. 894.1. We affirm.

On June 21, 2007, Shreveport police officers observed the defendant in the breezeway of an apartment complex located at 1034 Sprague Street in Shreveport, Caddo Parish. When the defendant noticed the officers, he immediately turned his back and hurried up some stairs. Officer Kevin Duck called out for the defendant to stop, but the defendant fled, kicked in an apartment door and threw a gun into the bathroom toilet. Officer Duck apprehended the defendant in the master bedroom. The defendant resisted after being taken into custody. He was subsequently arrested and the gun was recovered.

After conviction and sentence, the trial court denied timely motions to reconsider sentence filed by defense counsel and the defendant pro se. In those motions and now on appeal, the defense argues that the maximum sentence of 15 years of imprisonment at hard labor without benefits for possession of a firearm by a convicted felon is excessive in this case because the crime was not committed in connection with any other crime, and there was no discernable victim. It further complains that the trial court

failed to comply with the mandates of La. C. Cr. P. art. 894.1 in particularizing the sentence to this offender – a 54-year-old man with health problems, who is needed by his family.

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. First, the record must show that the trial court took cognizance of the criteria set forth in La. C. Cr. P. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Lathan*, 41,855 (La. App. 2d Cir. 2/28/07), 953 So. 2d 890, writ denied, 2007-0805 (La. 3/28/08), 978 So. 2d 297. The articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. Swayzer*, 43,350 (La. App. 2d Cir. 8/13/08), 989 So. 2d 267. The important elements which should be considered are the defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of offense and the likelihood of rehabilitation. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Ates*, 43,327 (La. App. 2d Cir. 8/13/08), 989 So. 2d 259. There is no requirement that specific matters be given any particular weight at sentencing. *State v. Shumaker*, 41,547 (La.

App. 2d Cir. 12/13/06), 945 So. 2d 277, *writ denied*, 2007-0144 (La. 9/28/07), 964 So. 2d 351.

Second, a sentence violates La. Const. art. 1, §20 if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. *State v. Smith*, 2001-2574 (La. 1/14/03), 839 So. 2d 1; *State v. Dorthey*, 623 So. 2d 1276 (La. 1993); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. *State v. Weaver*, 2001-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Lobato*, 603 So. 2d 739 (La. 1992); *State v. Robinson*, 40,983 (La. App. 2d Cir. 1/24/07), 948 So. 2d 379; *State v. Bradford*, 29,519 (La. App. 2d Cir. 4/2/97), 691 So. 2d 864.

The sentencing range for possession of a firearm by a convicted felon is imprisonment at hard labor for not less than 10 years nor more than 15 years without benefit of probation, parole or suspension of sentence, and a fine of not less than \$1,000 nor more than \$5,000. La. R.S. 14:95.1(B).

Prior to imposing sentence, the trial court noted that it had considered the sentencing guidelines set forth in La. C. Cr. P. art. 894.1, and reviewed the defendant's criminal history – "four felony convictions—maybe five," including a 1998 conviction for sexual battery, and "a host of misdemeanor convictions dating back to 1972." The trial court based the defendant's sentence on the sentencing guidelines, the defendant's prior criminal

history, “as well as the gravity and nature of the instant offense.” It imposed the maximum sentence of imprisonment.

The record shows compliance with La. C. Cr. P. art. 894.1, as well as an adequate factual basis for the sentence imposed. Furthermore, considering the totality of the record, this sentence is not constitutionally excessive. Because the sentence was tailored to fit the defendant and offense, the trial court did not err in denying the defendant’s motion to reconsider sentence. We do not find that the sentence imposed is grossly disproportionate to the severity of the offense nor is it shocking to the sense of justice. The defendant’s assignments of error are therefore without merit.

This court further observes that the trial court neglected to impose the mandatory fine in an amount between \$1,000 and \$5,000. However, we refrain from taking action regarding the omission of the fine in the defendant’s sentence. See *State v. Chatman*, 43,184 (La. App. 2d Cir. 4/30/08), 981 So. 2d 260.

For the foregoing reasons, the conviction and sentence are affirmed.

AFFIRMED.