

Judgment rendered September 23, 2009
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 44,700-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

LEWIS WRIGHT

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 246,415

Honorable Ramona L. Emanuel, Judge

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Before BROWN, CARAWAY and MOORE, JJ.

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

CARAWAY, J.

After a jury trial, defendant was found guilty of simple burglary. He was sentenced under the habitual offender bill to 18 years at hard labor, without benefit of probation or suspension of sentence. Defendant now complains that because of his poor health and age the sentence was excessive. For the following reasons, we affirm Wright's sentence.

Facts

In the early morning hours of October 11, 2005, patrol officers and the K-9 unit of the Shreveport Police Department responded to a silent alarm at Fred's Discount Store ("Fred's"). Upon arrival at the scene, officers heard "tumbling" noises from within the building and observed a large hole in the rear warehouse door of an adjacent store, Hair Plus Beauty Supply ("Hair Plus"). Officers then secured the perimeter and waited for backup. Shortly thereafter, the K-9 unit appeared on the scene and the suspect was given numerous warnings that failure to come out of the building would result in the release of the police dog. After the suspect failed to surrender, a K-9 was sent into the building and police were able to extract the suspect, later identified as Lewis Wright, from the premises. No one else was found in the building. Lewis was arrested and taken into custody.

Thereafter, officers inspected the building. It appeared that Wright initially gained entrance to a common hallway, shared by Fred's and Hair Plus, through the hole previously described. Once in the hallway, he continued to cut another large hole into the Sheetrock. This hole was used

to gain access to Fred's. A hacksaw, along with other tools, were found lying on the floor next to the hole.

The store itself was found in shambles. The floor was littered with inventory and officers found plastic bags filled with cartons of cigarettes, other tobacco products and small electronics. Video surveillance from the night recorded Lewis's actions.

Wright was charged with two counts of simple burglary, under La. R.S. 14:62, of Fred's and Hair Plus. After a sanity commission found Wright competent to stand trial, a jury trial commenced on July 10, 2007. Wright was found guilty on count one, simple burglary of Fred's, but was acquitted on count two, simple burglary of Hair Plus.

Defense motions for new trial and for a post verdict judgment of acquittal were denied based on evidence adduced at trial. A presentence investigation ("PSI") was ordered and after its review, the trial court sentenced Wright to 12 years at hard labor. The state, thereafter, filed an amended habitual offender bill and Wright was adjudicated a second felony offender. The previously imposed 12-year sentence was vacated and Wright was sentenced as a second felony offender to 18 years at hard labor, without benefit of probation or suspension of sentence. After a motion to reconsider sentence was denied, this appeal ensued.

Discussion

Wright's sole assignment of error is that the trial court erred by imposing an excessive sentence. Specifically, Wright complains that the 18-year sentence is severe given his age and health. At the time of

sentencing, Wright was 56 years old. He cites to various health problems, including hepatitis B and C, and that he is in need of a liver transplant. Wright asserts that he is paralyzed on one side of his body, must use a walker and can only stand for short periods at a time. Wright additionally claims that “due to the medicine, street drugs, and alcohol,” he does not remember the burglary of Fred’s.

Whether a sentence imposed is too severe turns on the circumstances of the case and the background of the defendant. A sentence violates La. Const. art. I, §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*, 01-2574 (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*, 01-0467 (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 trial judge is given a wide discretion in the imposition of sentences within the statutory limits, and the sentence imposed by him should not be set aside as excessive in the absence of a manifest abuse of his discretion. *State v. Williams*, 03-3514 (La. 12/13/04), 893 So. 2d 7; *State v. Thompson*, 02-0333 (La. 4/9/03), 842 So. 2d 330; *State v. Hardy*, 39,233 (La. App. 2d Cir. 1/26/05), 892 So. 2d 710.

Here, the trial judge clearly did not abuse her discretion. The trial judge sentenced Wright after a careful review of the presentence investigation report, which revealed Wright to be an eight-time felony offender. The judge took note of Wright's extensive criminal history, including a "litany of felony convictions" dating back to 1967. Additionally, the trial judge took Wright's health condition into direct consideration, as she stated the maximum sentence would not be given to Wright under the habitual offender law "primarily because of his health issues." Wright faced a maximum of 24 years under La. R.S. 14:62 and La. R.S. 15:529.1 and was sentenced only to 18. The court further took into consideration Wright's history of substance abuse by recommending any program that may be available to him during his incarceration, for the treatment of substance abuse.

Given Wright's obvious propensity toward criminal activity, the 18-year sentence is not constitutionally excessive. The sentence is therefore affirmed.

AFFIRMED.