

Judgment rendered May 9, 2007
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 42,091-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

DUANE ALLEN SHAW

Appellant

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 140,889

Honorable John M. Robinson, Judge

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Appellant

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Before WILLIAMS, CARAWAY and LOLLEY, JJ.

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

CARAWAY, J.

Duane Allen Shaw seeks review of his sentence for felony theft in excess of \$500.¹ La. R.S. 14:67. The trial court sentenced Shaw to 10 years at hard labor and denied his motion for reconsideration of sentence. We affirm.

Facts

Shaw alleges that the maximum sentence of 10 years is excessive for this offense because it was a non-violent offense and due to mitigating factors such as his need for substance abuse treatment. The state argues that the trial court did not abuse its discretion in sentencing defendant to the maximum term allowed due to the circumstances of the crime and the defendant's criminal history. The state also contends that the trial court properly considered the sentencing guidelines of La. C. Cr. P. art. 894.1.

In reviewing claims of excessive sentence, an appellate court uses a two-step process. 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 articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not a rigid or mechanical compliance with its provisions. The trial court is not required to list every aggravating or mitigating circumstance so

¹The record indicates that Shaw filed his motion for appeal one day late. The appropriate method of seeking an out-of-time appeal is an application for post-conviction relief. *State v. Counterman*, 475 So. 2d 336, 338-339 (La. 1985). Thus, this court will treat Shaw's motion for an out-of-time appeal as an application for post-conviction relief. *State v. Adams*, 39,792 (La. App. 2d Cir. 06/29/05), 907 So. 2d 844, 847, *writ denied*, 20-0259 (La. 08/18/06), 935 So. 2d 136. In the interest of judicial economy, this court will entertain the appeal because the defendant would have been entitled to the reinstatement of appellate rights under *State v. Counterman, supra*. *State v. Graham*, 35,184 (La. App. 2d Cir. 10/31/01), 799 So. 2d 645, 649, fn. 1, *writ denied*, 02-0059 (La. 11/08/02), 828 So. 2d 1114.

long as the record reflects that it adequately considered the guidelines of the article. *State v. Smith*, 433 So. 2d 688, 698 (La. 1983); *State v. Dunn*, 30,767 (La. App. 2d Cir. 06/24/98), 715 So. 2d 641, 643. 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, 478 (La. 1982). 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, 1051-52 (La. 1981); *State v. Haley*, 38,258 (La. App. 2d Cir. 04/22/04), 873 So. 2d 747, 753, *writ denied*, 04-2606 (La. 06/24/05), 904 So. 2d 728.

Second, whether the sentence imposed is too severe depends on the circumstances of the case and the background of the defendant. 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. Dorthey*, 623 So. 2d 1276, 1280 (La. 1993); *State v. Bonanno*, 384 So. 2d 355, 358 (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. Hogan*, 480 So. 2d 288, 291 (La. 1985).

There is no requirement that specific matters be given any particular weight at sentencing. *State v. Jones*, 33,111 (La. App. 2d Cir. 03/01/00), 754 So. 2d 392, 394, *writ denied*, 00-1467 (La. 02/02/01), 783 So. 2d 385.

The trial court shall exercise its sentencing discretion to impose sentences according to the individualized circumstances of the offense and the offender. *State v. Rogers*, 405 So. 2d 829, 831 (La. 1981). As a general rule, maximum sentences are appropriate in cases involving the most serious violation of the offense and the worst type of offender. *State v. Grissom*, 29,718 (La. App. 2d Cir. 8/20/97), 700 So. 2d 541; *State v. Walker*, 573 So. 2d 631 (La. App. 2d Cir. 1991). The trial court has broad discretion to sentence within the statutory limits, and the appellate court will not set aside a sentence as excessive absent a showing of manifest abuse of discretion. *State v. Hardy*, 39,233 (La. App. 2d Cir. 01/26/05), 892 So. 2d 710, 712-713.

Shaw stole a trailer loaded with scrap metal from his employer, Walter Pipes of Pipes Equipment Company, that was valued at \$950. He posted a “for sale” sign on the trailer, listing his own cell phone number so that those interested in purchasing the stolen goods could contact him. The defendant pleaded guilty to one count of felony theft in excess of \$500 in exchange for the state not filing a habitual felony offender bill against him. After a pre-sentence investigation, the trial court sentenced Shaw to 10 years at hard labor, the maximum sentence allowed under La. R.S. 14:67(B)(1).

At the sentencing hearing, the trial court noted the fact that the Shaw’s criminal history was quite extensive and found that it was sufficient to justify imposing the maximum sentence. The trial court noted the following as part of defendant’s criminal history: arrest for burglary in

California in 1979; arrest for carnal knowledge of a juvenile, theft, and contributing to the delinquency of a minor in Caddo Parish in 1982; conviction for simple burglary in 1983 in Caddo Parish; other arrests for felonies and driving while intoxicated between 1983 and 1986; conviction for unauthorized use of a movable in 1986 in Bossier Parish; conviction for felony possession of marijuana for sale in California in 1989; numerous arrests for misdemeanors and driving while intoxicated between 1991 and 1994; conviction for simple burglary in 1994 in Bossier Parish; numerous arrests for alcohol-related offenses, possession of marijuana, and driving while intoxicated between 1998 and 2004; and, conviction for possession of Schedule I CDS in 2005 in Bossier Parish. Therefore, the present conviction was defendant's fifth felony conviction. A review of the record indicates that the trial court was cognizant of the sentencing considerations of La. C. Cr. P. art. 894.1.

The sentence of 10 years for felony theft in excess of \$500 is not grossly disproportionate to the seriousness of the offense, nor does it constitute needless infliction of pain and suffering. Given defendant's extensive criminal history and the fact that he would have faced a minimum sentence of 20 years if sentenced as a habitual offender under La. R.S. 15:529.1(A)(1)(c)(i), a 10-year sentence does not shock the sense of justice. In light of these circumstances, the trial court did not abuse its discretion, and the sentence is not constitutionally excessive. The sentence is affirmed.

AFFIRMED.