

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 2161

STATE OF LOUISIANA

VERSUS

ANTHONY JAMES GRAY

—
**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 09-06-0746, Section 2
Honorable Richard D. Anderson, Judge Presiding**
—

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Anthony James Gray**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered May 6, 2011

RHB
Ⓟ
JMG

PARRO, J.

The defendant, Anthony James Gray, was charged by bill of information with aggravated incest, a violation of LSA-R.S. 14:78.1. He pled not guilty and, following a jury trial, was found guilty as charged. At sentencing, the trial court sentenced the defendant to fifteen years of imprisonment at hard labor.¹ The defendant made an oral motion to reconsider the sentence for being excessive. The trial court denied the motion. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

FACTS

In 2001, the defendant married Kimberly Gray, who had three children from a previous relationship, including her daughter V.P. V.P. testified at trial that from 2002 to 2004, she, her siblings, her mother, and the defendant (her stepfather) lived in Baton Rouge in two apartments and later in a house on Willow Oak Avenue. In both of the apartments, when V.P. was twelve years old, the defendant began touching V.P.'s breasts, buttocks, and vagina. The defendant also made V.P. show him her breasts and vagina while he masturbated. In the house, when V.P. was twelve and thirteen years old, the defendant made V.P. lay on his bed and expose her vagina while he masturbated. Sometimes, the defendant placed his penis on top of her vagina. The defendant also made V.P. stroke his penis until he ejaculated. The defendant threatened to hurt V.P.'s mother if V.P. told her.

The defendant testified at trial. He denied all allegations of sexual abuse.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that his fifteen-year sentence is unconstitutionally excessive.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367

¹ The court sentenced the defendant in accordance with the applicable penalty provision of LSA-R.S. 14:78.1, prior to amendment by 2006 La. Acts, No. 325, § 2.

So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks one's sense of justice. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). On appellate review of a sentence, the relevant question is "whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate." **State v. Thomas**, 98-1144 (La. 10/9/98), 719 So.2d 49, 50 (per curiam) (quoting **State v. Humphrey**, 445 So.2d 1155, 1165 (La. 1984)).

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect that the trial court adequately considered the criteria. **State v. Brown**, 02-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569. The articulation of the factual basis for a sentence is the goal of LSA-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 LSA-C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

It is clear in its reasons for the sentence that the trial court adequately considered LSA-C.Cr.P. art. 894.1. In a thorough review of the presentence

investigation report (PSI), the trial court provided a detailed accounting of the defendant's personal history, including a conviction in Texas for aggravated assault with a deadly weapon. According to the PSI, the defendant was placed on probation. However, in 1997, his probation was revoked, and he was sentenced to three years in the Texas Department of Corrections. The trial court allowed the prosecutor to read a letter from V.P., the victim, addressed to the court and describing how the defendant's actions impacted her life. She stated that the defendant took her childhood away and that sometimes she did not want to live because of the things he had done to her. She also stated that the pain has never gone away and that she wanted the defendant to get enough time in prison to think about how he ruined her life for his gain. The trial court noted that, based on V.P.'s statement, the fact that the defendant knew or should have known that V.P. was particularly vulnerable because of her youth, and the fact that the defendant used his position or status to facilitate the commission of the instant offense, the Office of Probation and Parole recommended in its PSI that the defendant be sentenced to the maximum sentence of twenty years at hard labor. Finding the defendant in need of correctional treatment in a custodial environment, the trial court sentenced him to fifteen years at hard labor.

Considering the trial court's careful review of the circumstances, the defendant's criminal history, and the nature of the crime, we find no manifest abuse of discretion by the trial court. The trial court provided ample justification in imposing a fifteen-year sentence on the defendant for the aggravated incest of his stepdaughter, a person he was supposed to protect from such evils, but instead he abused his position of trust. See State v. Kirsch, 02-0993 (La. App. 1st Cir. 12/20/02), 836 So.2d 390, 395-96, writ denied, 03-0238 (La. 9/5/03), 852 So.2d 1024. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

The assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.