NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0286

STATE OF LOUISIANA

VERSUS

CARL J. PELLEGRIN

Judgment rendered: SEP 10 2010

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On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, State of Louisiana
Number: 464,660
The Honorable Randall L. Bethancourt, Judge Presiding

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BEFORE: KUHN, PETTIGREW, JJ., KLINE, J., *pro tempore*[1]

[1] Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

KLINE, J.

The defendant, Carl J. Pellegrin, was charged by bill of information with theft over $500, a violation of La. R.S. 14:67(B)(1). The defendant pled not guilty. Following a jury trial, he was found guilty as charged. The defendant was sentenced to four years at hard labor. The State filed a habitual offender bill of information. Following a hearing on the matter, the defendant was adjudicated a third-felony habitual offender. The defendant's previous four-year sentence was vacated, and he was sentenced to ten years at hard labor without benefit of probation or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating one assignment of error. We affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On February 9, 2006, Melanie Gros was at Terrebonne General Medical Center (hereinafter, "hospital"). She was in the labor and delivery waiting room with relatives awaiting the birth of her niece's baby. When the baby was born, Melanie and family left the waiting room to see the baby. Melanie inadvertently left her purse in the waiting room. The purse was left unattended for about fifteen minutes.

The defendant was at the hospital with his girlfriend, Crystal Bergeron, because they had been in a car accident. The defendant left the room that he and Crystal were in, went into the labor and delivery room, and took Melanie's purse. He removed $980 from the purse and discarded the purse in a garbage can in the restroom of the emergency room lobby waiting area. The defendant and Crystal then left the hospital.

Melanie reported her purse stolen to hospital security. Lieutenant Percy Mosely, with the Terrebonne Parish Sheriff's Office and Director of Security and

Safety at the hospital, reviewed the video surveillance from the camera that was in the area where the purse was stolen. Lieutenant Mosely, who had known the defendant for years, immediately recognized the defendant on the tape as the person coming out of the waiting room with a purse in his hand. Lieutenant Mosely called the defendant and told him to come back to the hospital. The defendant returned to the hospital and was brought to the squad room. He was **Mirandized** and, after some questioning, admitted that he took the purse and put it in the restroom garbage can. The defendant had Melanie's money at his parents' house.

Melanie's money was retrieved and given back to her. Also returned to her were a bracelet and a ring.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that his ten-year sentence for theft is excessive. Specifically, the defendant contends that the trial court failed to consider mitigating factors, such as mental health issues, drug abuse and addiction, and being molested as a youth.

The Eighth Amendment to the United States Constitution and Article I, section 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 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 to society, it shocks the sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (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, pp. 1-2 (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 Article 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231, p. 4 (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 Article 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 Article 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. **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

It is clear in its reasons for the sentence that the trial court thoroughly considered La. Code Crim. P. art. 894.1 in arriving at an appropriate sentence for the defendant, as follows:

> His criminal record includes a plethora of felony convictions over a 13 year period, despite his having been incarcerated for much of this time. He received no pardons, and no conviction has been set aside by any post-conviction proceeding. Mr. Pellegrin learned very little f[ro]m his prior sojourns through our criminal justice system. He continues to disregard the laws of the State of Louisiana. He was so disruptive at his arraignment on the habitual offender charge that he was held in direct contempt of court. He is a career criminal who lacks remorse for the present crime. Indeed, the only shred of

> humanity the defendant exhibited was concern for himself rather than for the victim of his criminal conduct. This Court is convinced that as to this defendant under these circumstances, only a penitentiary sentence in excess of the statutory minimum will satisfy the goals of the habitual offender statute, to deter and punish recidivism. Any lesser sentence under the circumstances would be inappropriate.

Prior to sentencing, the trial court allowed defense counsel to present the alleged mitigating factors of mental health issues, drug problems, and being molested as a youth. Thus, the trial court considered these factors before sentencing the defendant. The trial court's consideration notwithstanding, these factors asserted by defense counsel were bare assertions with no evidence of them presented at trial or at sentencing. Furthermore, contrary to the assertion in his brief, the defendant is not being sentenced to ten years for his theft conviction alone. Rather, under the Habitual Offender Law, the defendant, a recidivist with multiple felony convictions, including felony theft, second degree battery, and simple arson, is being punished for the instant crime in light of his continuing disregard for the laws of our State. See **State v. Johnson**, 97-1906, p. 8 (La. 3/4/98), 709 So.2d 672, 676-77.

The defendant faced a maximum sentence of twenty years at hard labor. See La. R.S. 15:529.1(A)(1)(b)(i) & 14:67(B)(1). Considering the trial court's careful analysis of the circumstances, the defendant's criminal history, his status as a third-felony habitual offender, and the fact that the defendant was sentenced to only ten years imprisonment, or half of the possible maximum sentence, 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.

REVIEW FOR ERRORS

The defendant asks this court to examine the record for error under La. Code Crim. P. art. 920(2). This court routinely reviews the record for such errors,

whether or not such a request is made by a defendant. Under Article 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See **State v. Price**, 2005-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

DECREE

For the above reasons we affirm the conviction, habitual offender adjudication and sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED