NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 2494

STATE OF LOUISIANA

VERSUS

DONALD PEA

Judgment Rendered: May 2, 2008

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On Appeal from the Twenty-First Judicial District Court
In and For the Parish of Livingston
State of Louisiana
Docket No. 18478

Honorable Zorraine M. Waguespack, Judge Presiding

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Scott M. Perrilloux
District Attorney
Greg Murphy
Assistant District Attorney
Livingston, Louisiana
Patricia Parker
Assistant District Attorney
Amite, Louisiana

Counsel for Appellee
State of Louisiana

Bertha M. Hillman
Louisiana Appellate Project
Thibodaux, Louisiana

Counsel for Defendant/Appellant
Donald Pea

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BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

McCLENDON, J.

Defendant, Donald Pea, was charged by amended grand jury indictment with one count of armed robbery, a violation of LSA-R.S. 14:64, and pled not guilty. Following a jury trial, he was found guilty as charged by unanimous verdict. Defendant moved for a new trial and for a post-verdict judgment of acquittal, but the motions were denied. Thereafter, he was sentenced to seventy years at hard labor without benefit of probation, parole, or suspension of sentence to run consecutively to any other sentence he was serving. On appeal, this court affirmed the conviction, vacated the sentence, and remanded for resentencing. **State v. Pea**, 06-1540 (La.App. 1 Cir. 2/9/07), 949 So.2d 672 (unpublished). Upon resentencing, defendant was sentenced to seventy years at hard labor without benefit of probation, parole, or suspension of sentence. He now appeals from the resentencing, designating one assignment of error. We affirm the sentence.

FACTS

On June 20, 2003, between 4:30 p.m. and 5:00 p.m., defendant and two accomplices stormed the Albany branch of Hibernia Bank. Four bank employees, C.L.,[1] Luci Hanwinkle, Michelle Kreko, and Teresa Rogers, and one customer, Michael Threeton, were present during the ensuing robbery. C.L. and Rogers were both threatened with guns during the robbery. A robber wearing all black clothing and a ski mask forced C.L. at gunpoint to get on her hands and knees and then touched her in her genital area. When C.L. screamed, the robber stated, "Shut up, bitch." The robbers threatened to shoot Rogers when she was unable to immediately open the vault. Livingston Parish Sheriff's Deputy Linda Brown arrived at the bank to use the ATM machine outside the front of the bank as the robbers fled after the

[1] This victim is referenced herein only by her initials. See LSA- R.S. 46:1844(W).

robbery. As a result of the robbery, Rogers resigned from her position at the bank and no longer works in the banking industry. An audit following the robbery showeded that approximately $353,000 was missing from the bank after the robbery.

C.L. and Hanwinkle testified at the original sentencing hearing. C.L. stated that she no longer has the feeling of safety she had before the robbery. During the robbery, she thought she would be shot in the back and lose her life. She and her coworkers begged for their lives. As a result of the robbery, she "constantly live[s] in fear of what might come or what might be." She is afraid to be out late at night. C.L. also suffers from anxiety attacks that awaken her at night and prevent her from going back to sleep, obsessive-compulsive disorders, and paranoia. She asked the trial court to impose the longest sentence possible on defendant.

Hanwinkle had never known such fear as she experienced during the robbery. She and her coworkers were forced to beg for their lives "for what seemed like an eternity[.]" Hanwinkle also testified that the robbery has continued to affect her life, as well as the lives of her family and the lives of the other victims, in the form of nightmares, health issues, inability to concentrate at work, and anxiety. She also asked the trial court to impose the longest sentence possible on defendant.

A pre-sentence investigation report (PSI) was ordered by the trial court. The report indicated that on July 30, 2002, defendant pled no contest to illegal possession of stolen things and simple burglary of an inhabited dwelling, and was on probation in connection with those crimes when he committed the instant offense. Charges were also pending against him in connection with two aggravated rapes he allegedly committed while incarcerated at the Livingston Parish Jail. The PSI concluded, "[defendant]

poses an imminent threat to public safety and should be sentenced to the full 99 years without benefit of probation, parole, or suspension of sentence."

In his sole assignment of error, defendant argues that the trial court imposed a constitutionally excessive sentence upon him. He claims the trial court failed to give adequate consideration to the fact that he was twenty years old when he committed the instant offense and had no prior felony convictions. He also claims the trial court failed to give adequate consideration to the "total guidelines."

The Louisiana Code of Criminal Procedure sets forth items which must be considered by the trial court before imposing sentence. LSA-C.Cr.P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. In light of the criteria expressed by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. **State v. Hurst**, 99-2868, p. 10 (La.App. 1 Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So.2d 962.

Article I, section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition 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 is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the

sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **Hurst**, 99-2868 at pp. 10-11, 797 So.2d at 83.

Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years without benefit of parole, probation, or suspension of sentence. LSA-R.S. 14:64(B). Defendant was sentenced to seventy years at hard labor without benefit of probation, parole, or suspension of sentence.

In imposing sentence, the court noted it had heard all of the evidence during the trial, had considered the PSI, and had considered and given "due right" to all applicable grounds under LSA-C.Cr.P. art. 894.1(B). The court specifically found: that there was an undue risk that during the period of a suspended sentence or probation, defendant would commit another crime; that defendant was in need of correctional treatment or a custodial environment that could be provided most effectively by his commitment to an institution; that defendant knowingly created a risk of great bodily harm to more than one person; and that defendant used threats of, or actual violence, in the commission of the offense.

Nothing in the record indicates that the trial court failed to consider defendant's age at the time of the offense, and to the contrary, the trial court specifically referenced the PSI, which included defendant's age, at sentencing. Defendant's claim that he had no prior felony convictions is contradicted by his criminal history referenced in the record. Additionally, the record indicates that the trial court did indeed give adequate consideration to the "total guidelines." The trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing the sentence herein. See LSA-C.Cr.P. art. 894.1 (A)(1), (A)(2), (B)(5), (B)(6), (B)(21).

Further, the sentence imposed was not grossly disproportionate to the severity of the offense, and thus, was not unconstitutionally excessive.

This assignment of error is without merit.

SENTENCE AFFIRMED.