

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1372

STATE OF LOUISIANA

VERSUS

ROBERT DARNELL QUEEN, SR.

**Judgment Rendered: December 23, 2009**

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Appealed from the  
Thirty-Second Judicial District Court  
In and for the Parish of Terrebonne  
State of Louisiana  
Case Number 454,132

Honorable Randall L. Bethancourt, Judge

\* \* \* \* \*

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\* \* \* \* \*

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

**GUIDRY, J.**

The defendant, Robert Darnell Queen, Sr., was charged by bill of information with distribution of cocaine, a violation of La. R.S. 40:967(A), under docket number 454,132.<sup>1</sup> The defendant pled not guilty. Subsequently, he withdrew his not guilty plea and pled guilty. The State filed a habitual offender bill of information. Following a hearing on the matter, the trial court adjudicated the defendant a third-felony habitual offender and sentenced him to thirty years at hard labor without benefit of probation or suspension of sentence. The sentence was ordered to run consecutively to any other sentences. 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**

Because the defendant pled guilty, the facts were not developed. According to the bill of information, the defendant distributed cocaine in Terrebonne Parish on or about May 6, 2005.

**ASSIGNMENT OF ERROR**

In his sole assignment of error, the defendant argues his sentence was excessive. Specifically, the defendant contends the trial court did not give adequate consideration of the La. C. Cr. P. art. 894.1 sentencing guidelines and that what is, in effect, a life sentence constitutes cruel and unusual punishment.

**DISCUSSION**

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.

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<sup>1</sup> A second conviction of distribution of cocaine under docket number 454,133 is pending before this court in appellate docket number 2009-KA-1373. In this companion case (docket number 454,133), the defendant stood trial and was found guilty by a jury. The trial court adjudicated the defendant a third-felony habitual offender and sentenced him to thirty years at hard labor.

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 done 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 that the trial court adequately considered the criteria. State v. Brown, 02-2231, 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. See State v. Jones, 398 So. 2d 1049, 1051-52 (La. 1981).

The defendant argues the trial court did not give adequate consideration to the sentencing guidelines in particularizing his sentence. Also, the defendant notes he was thirty years old at the time of his conviction and argues that two thirty-year consecutive sentences are "tantamount to life imprisonment." According to the defendant, a "life sentence under the facts of this case is cruel and unusual punishment." The defendant further indicates that "[l]ife sentences are imposed in cases involving the most serious violations of the described offense for the worst kind of offender."

We note initially the defendant did not receive a life sentence. In the instant matter, the defendant received a thirty-year sentence ordered to run consecutively to the thirty-year sentence he received in the companion case under the trial court docket number 454,133 and appellate court number 2009-KA-1373. To the extent the defendant is suggesting the sentences should have been imposed concurrently, we note that each of the offenses for distribution of cocaine occurred over two weeks apart. Accordingly, the trial court properly imposed consecutive sentences for these two completely unrelated offenses. See La. C. Cr. P. art. 883.

It is clear from its reasons for sentence that the trial court adequately considered Article 894.1. In its written reasons for sentence filed into the record, the trial court stated in pertinent part:

The mandatory minimum sentence under the habitual offender law is presumed constitutional and is accorded great deference. . . .

Mr. Queen presented no viable argument warranting deviation below the statutory minimum sentence. . . . [H]e showed no unusual circumstance that would support such a rare downward departure from the mandatory minimum sentence under the Habitual Offender laws. His criminal history includes three convictions for violations of the [Uniform] Controlled Dangerous Substances Law and one felony conviction involving a 14[-]year-old minor female victim. All of the convictions were obtained within the last 8 years. As the Court earlier noted, Mr. Queen has been incredibly fortunate in avoiding serious jail time. He received no pardons and no conviction has been set aside by any post-conviction proceeding. He was given opportunity upon opportunity to trod the straight and narrow path and to become a productive citizen of this state and parish. He wasted each opportunity. He instead became a career criminal now of the drug pusher ilk. To say that he has learned anything from his prior

convictions would stretch the imagination. His continual disregard of the state's law threatens the health and safety of our citizens, young and old alike. As to this defendant under these circumstances, this Court is convinced that only a penitentiary sentence longer than the statutory minimum will satisfy the goals of the habitual offender statute, to deter and punish recidivism. [Footnote omitted.]

The defendant's sentence range as a third-felony habitual offender was twenty to sixty years imprisonment at hard labor. Considering the trial court's careful analysis of the circumstances, the defendant's chronic criminal behavior and what appears to be a complete disregard for the law, and the fact the defendant was sentenced to only thirty years imprisonment, or one-half 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 ERROR**

Under La. C. Cr. P. art. 920(2), which limits our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence, we have discovered a sentencing error. The trial court adjudicated the defendant a third-felony habitual offender and sentenced him to thirty years at hard labor, pursuant to La. R.S. 15:529.1(A)(1)(b)(i), which provides that if the third felony is punishable by less than life imprisonment, the sentencing range shall be imprisonment for not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

The sentencing range for the instant conviction for distribution of cocaine is two to thirty years at hard labor. La. R.S. 40:967(B)(4)(b). According to the trial court in its reasons for sentence, the defendant's two predicate felony convictions (guilty pleas) were indecent behavior with a juvenile, who was fourteen years old, and possession of over 28 grams of cocaine. The sentencing range for possession

of 28 grams or more but less than two hundred grams of cocaine is imprisonment at hard labor for not less than five years nor more than thirty years and a fine. La. R.S. 40:967(F)(1)(a).

Louisiana Revised Statutes 15:529.1(A)(1)(b)(ii) provides in pertinent part:

If the third felony and the two prior felonies are felonies defined as . . . a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, . . . or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

The crime of indecent behavior with juveniles, as set forth in La. R.S. 14:81, falls within the category of "sex offense" as defined in La. R.S. 15:540 et seq. See La. R.S. 15:541(24).<sup>2</sup> Further, the defendant's prior drug convictions were punishable by imprisonment for ten years or more. Therefore, all three of the defendant's convictions fall within the purview of La. R.S. 15:529.1(A)(1)(b)(ii). As such, the defendant's thirty-year sentence is illegally lenient since his sentence should have been imprisonment for the remainder of his natural life. However, since the thirty-year sentence is not inherently prejudicial to the defendant, and this issue has not been raised by either party, we decline to exercise our discretion to correct the error. See State v. Price, 05-2514, p. 22 (La. App. 1st Cir. 12/28/06), 952 So. 2d 112, 124-25 (en banc), writ denied, 07-0130 (La. 2/22/08), 976 So. 2d 1277.

Thus, for the foregoing reasons, we find no error in the proceedings of the trial court or in its determinations, and accordingly, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.**

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<sup>2</sup> At the time the defendant committed and was sentenced for the crime of indecent behavior with a juvenile, a violation of La. R.S. 14:81, the categorical definition of "Sex offense" was provided in La. R.S. 15:541(14.1).