NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 1092

STATE OF LOUISIANA

VERSUS

THADDEUS A. WILLIAMSON

Judgment rendered: November 2, 2007

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On Appeal from the 22nd Judicial District Court
Parish of St. Tammany, State of Louisiana
Number 404770 "E"
The Honorable William J. Burris, Judge Presiding

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BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

The defendant, Thadeus A. Williamson, was charged by bill of information with possession of cocaine (a Schedule II controlled dangerous substance[1]) with intent to distribute, a violation of La. R.S. 40:967A(1). The defendant entered a plea of not guilty and waived trial by jury. After a bench trial, the defendant was found guilty of the responsive offense of possession of cocaine, a violation of La. R.S. 40:967C. The State filed a habitual offender bill of information. The defendant was adjudicated a fourth-felony habitual offender and was sentenced to thirty-eight years imprisonment at hard labor without the benefit of probation or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that the sentence imposed is excessive. For the forthcoming reasons, we affirm the conviction, habitual offender adjudication, and sentence.

FACTS

On August 5, 2005, after conducting controlled narcotic purchases at a residence located in or near Slidell, Louisiana, officers of the St. Tammany Parish Sheriff's Office obtained a search warrant for the residence. When the officers arrived at the residence to execute the search warrant, the defendant was present. Detective Emile Lubrano observed the defendant toss a white substance on the ground. Detective Lubrano apprehended the defendant and located the discarded substance. Detective Darren Blackmon retrieved and placed the substance in an evidence envelope. The substance consisted of five rock-like pieces of suspected cocaine and was determined to weigh .8 gram.

ASSIGNMENT OF ERROR

[1] La. R.S. 40:964 Schedule II A(4).

In his sole assignment of error, the defendant argues that the trial court erred in denying his motion to reconsider sentence. The defendant contends that the trial court failed to consider his cocaine addiction a mitigating factor. The defendant notes that there is no record of substance abuse counseling and that incarceration has not alleviated his cocaine dependency. The defendant also notes that he received five times the maximum statutory sentence for possession of cocaine. The defendant concludes that a lesser sentence would have sufficiently punished him for the possession of .8 gram of cocaine and his obvious pattern of cocaine addiction and abuse.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the trial court before imposing sentence. La. Code Crim. 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. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1 Cir. 1990). 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. Brown**, 02-2231, p. 4 (La. App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence will be determined to be excessive if it is grossly disproportionate to the crime, or is nothing more than the needless imposition of pain and suffering. **State v. Hurst**, 99-2868, p. 10 (La. App. 1 Cir. 10/3/00), 797 So.2d 75, 83. The determination turns upon the punishment and the crime in light of the harm to society and whether or not the penalty is so disproportionate that it shocks our sense of justice. A sentence may be excessive either by reason of its length or

because the circumstances warrant a less onerous sentencing alternative. **State v. Waguespack**, 589 So.2d 1079, 1086 (La. App. 1 Cir. 1991). A trial court has broad discretion to sentence within the statutory limits. Absent a showing of manifest abuse of that discretion, a reviewing court may not set aside a sentence. **State v. Guzman**, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167.

In **State v. Dorthey**, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial court determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," it is duty bound to reduce the sentence to one that would not be constitutionally excessive.

However, the holding in **Dorthey** was made only after, and in light of, express recognition by the court that the determination and definition of acts that are punishable as crimes is purely a legislative function. It is the Legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. **Dorthey**, 623 So.2d at 1278.

Herein, the defendant was adjudicated a fourth-felony habitual offender based on the following predicate offenses: the instant possession of cocaine conviction, armed robbery (St. Charles Parish docket number 910441), possession of cocaine, distribution of cocaine, and possession of cocaine (St. Tammany Parish docket numbers 362725, 373172, and

386504).[2] In imposing sentence, the trial court reviewed the pre-sentence investigation report and Article 894.1. The trial court noted that there was an undue risk of the commission of another crime during any term of probation, and that the defendant is in need of correctional treatment in a custodial environment that can be provided most effectively by his commitment to an institution. The trial court further noted that the defendant's criminal history consisted of some offenses similar to the instant offense, and that some of the defendant's prior convictions were not considered in his habitual offender adjudication. The trial court did not find any mitigating factors. The trial court noted the sentencing range in imposing a sentence of thirty-eight years imprisonment at hard labor without benefit of probation or suspension of sentence.

As a fourth-felony habitual offender, the defendant was subject, under La. R.S. 15:529.1A(1)(c)(i), to a minimum term of imprisonment of twenty years and a maximum term of life imprisonment. See also La. R.S. 40:967C(2). Here, the defendant received a thirty-eight year imprisonment term. As the defendant has been adjudicated a fourth-felony offender, we do not find persuasive the defendant's comparison of his sentence to the statutory maximum sentence for the underlying offense.

We conclude that the trial court complied with the guidelines of La. Code Crim. P. art. 894.1 and did not abuse its discretion in imposing the enhanced sentence. The trial court adequately considered the facts of the case and the defendant's criminal history. The record supports the sentence imposed herein. The sentence is not shocking or grossly disproportionate to the defendant's criminal behavior. The sole assignment of error lacks merit.

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[2] The convictions in docket numbers 362725 and 373172 (possession of cocaine and distribution of cocaine) were obtained on the same date and apparently considered as one offense for habitual offender purposes.

DECREE

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

CONVICTION, HABITUAL OFFENDER ADJUDICATION AND SENTENCE AFFIRMED