

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0101

STATE OF LOUISIANA

VERSUS

UNDRE H. MARTIN

DATE OF JUDGMENT: SEP 10 2010

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 703173, DIV. G, PARISH OF TANGIPAHOA
STATE OF LOUISIANA

HONORABLE ERNEST G. DRAKE, JR., JUDGE

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BEFORE: KUHN, PETTIGREW, AND KLINE, JJ.¹

Disposition: CONVICTION AND SENTENCE AFFIRMED.

¹ The Honorable William F. Kline, Jr. is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

KUHN, J.

Defendant, Undre H. Martin, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. He pled not guilty. Following a trial by jury, defendant was convicted as charged. Defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. He filed a motion for reconsideration of the sentence that the trial court denied. Defendant appeals, urging in a single assignment of error that the sentence is unconstitutionally excessive. We affirm the conviction and sentence.

FACTS

On August 18, 2007, Gerald Burton and his son Marcus Warford were riding home when Warford observed what he believed to be a body on the side of the road near Joyton Road in Fluker, Louisiana. After arriving at their residence, Warford decided that he would walk back to determine if what he saw was actually a body. Warford found the lifeless body of sixteen-year old, Raneisha Hodges, lying in the ditch, with a bloodstain on her back. Shortly thereafter, Christopher Ard walked by. According to Warford, Ard became hysterical and began to cry once he realized the body was that of Raneisha Hodges. Burton, who had also arrived on the scene, instructed Warford not to touch anything and to contact the police. Warford complied. Tangipahoa Parish Sheriff's Deputy Stephen Jenkins was dispatched to investigate the homicide. Examination of the body revealed that the victim suffered multiple gunshot wounds to her body. A homicide investigation was launched. The investigation, which initially focused on Ard (the victim's boyfriend) as the shooter, eventually revealed that defendant

was responsible for shooting Hodges. Defendant subsequently was questioned by the police. In an audiotaped statement, he denied any involvement in the shooting. But in a second recorded statement, defendant admitted that he shot Hodges during an argument with Ard. Defendant claimed he confronted Hodges, who was accompanied by Ard, on the morning in question about some money she allegedly stole from him earlier that day. Hodges became irate and cursed him out. Ard aggressively grabbed on the door of defendant's vehicle and threatened to "mess him up." Defendant claimed he panicked, grabbed his gun, and shot out of the window of the vehicle. He claimed he did not intend to shoot the victim.

At the trial, Ard denied being with the victim when she was shot. He claimed he learned of the victim's death when he stopped to see what Warford and Burton were looking at on the roadside. Warford and Burton both testified that Ard became very emotional once he realized that the body lying dead on the side of the road was that of the victim.

An autopsy later revealed the victim had been shot in her back on the left side, her left arm, the left side of her chest, and the right side of her back.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant asserts the sentence of life imprisonment at hard labor is unconstitutionally excessive. Thus, he contends the trial court erred in denying his motion to reconsider the sentence.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may fall within statutory limits, it may nevertheless violate a defendant's constitutional right against excessive punishment and is subject to appellate review. *State v. Sepulvado*, 367 So.2d 762,

767 (La. 1979). 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. *State v. Reed*, 409 So.2d 266, 267 (La. 1982). 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. *State v. Lanclos*, 419 So.2d 475, 478 (La. 1982). See also *State v. Savario*, 97-2614, p. 8 (La. App. 1st Cir. 11/6/98), 721 So.2d 1084, 1089, writ denied, 98-3032 (La. 4/1/99), 741 So.2d 1280.

Under La. R.S. 14:30.1(B), a person convicted of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Courts are charged with applying a statutorily mandated punishment unless it is unconstitutional. *State v. Dorthey*, 623 So.2d 1276, 1278 (La. 1993). Indeed, it is incumbent on the defendant to rebut the presumption that a mandatory sentence is constitutional by "clearly and convincingly" showing that:

[he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

State v. Johnson, 97-1906, p. 8 (La. 3/4/98), 709 So.2d 672, 676.

In this case, in support of his argument that the sentence is excessive, defendant contends only that at the time of sentencing, the victim's mother

indicated that she “forgave” him and was not asking for imposition a maximum sentence.

The Code of Criminal Procedure sets forth, in Article 894.1, items that must be considered by the trial court before imposing sentence. Generally, the trial court need not recite the entire checklist of factors, but the record must reflect that it adequately considered the guidelines. *State v. Herrin*, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990).

At the sentencing hearing, the victim’s mother testified that defendant’s father and her mother are first cousins. She then stated that she had forgiven defendant for killing her daughter. She also stated, “[W]hatever time that y’all decide to give him, I’m not trying to push for more.” In response, the trial court advised Ms. Hodges that the offense of second degree murder carries a mandatory sentence of life imprisonment. The court also noted that, in an effort to determine “how things [got] to where they [were]” with defendant, a presentence investigation was ordered. Prior to imposing the sentence, the court reviewed the report (which included information about defendant’s criminal history) and noted that defendant had been in trouble with the law before. He had prior convictions for possession of cocaine, first degree robbery, aggravated burglary, simple burglary of an inhabited dwelling, and DWI. He also had an arrest for simple robbery.

As previously noted defendant’s sentence of life imprisonment at hard labor is mandatory under the statute and, thus, is presumed constitutional. It is therefore incumbent upon defendant to rebut this presumption. Based upon our review of the record in this case, we find that defendant has not clearly and convincingly

shown that because of unusual circumstances he was a victim of the legislature's failure to assign a sentence that was meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Forgiveness by the victim's family alone is insufficient to warrant a downward departure from the mandatory sentence. As such, there was no reason for the trial judge to deviate from the mandatory sentence provided for the instant offense by La. R.S. 14:30.1. See State v. Henderson, 99-1945, p. 20 (La. App. 1st Cir. 6/23/00), 762 So.2d 747, 761, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235. See also State v. Crotwell, 2000-2551, p. 16 (La. App. 1st Cir. 11/9/01), 818 So.2d 34, 46.

Furthermore, we find that the record in this case adequately supports the life sentence. Despite his claim that he fired the weapon out of fear, the record reflects that defendant deliberately and repeatedly shot the sixteen-year old female victim at least twice in the back. Considering the callous disregard for life shown by this defendant, and in light of his prior criminal history, there was absolutely no reason for the trial court to deviate from the mandatory sentence of life imprisonment. The imposition of the mandatory life imprisonment sentence herein is not a purposeless and needless infliction of pain and suffering and it certainly does not shock our sense of justice.

This assignment of error lacks merit.

DECREE

For the foregoing reasons, the conviction and sentence of defendant, Undre H. Martin, are affirmed.

CONVICTION AND SENTENCE AFFIRMED.