The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

NO. 2017-KO-0670

VS.

STANLEY GRIGSBY

- - - - - -

IN RE: Stanely Grigsby; - Defendant; Applying For Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. H, No. 03-13-0824; to the Court of Appeal, First Circuit, No. 2016 KA 1213;

- - - - - -

May 18, 2018

Denied.

BJJ

JLW

GGG

MRC

JDH

SJC

JTG

Supreme Court of Louisiana
May 18, 2018

Deputy Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 KA 1213

STATE OF LOUISIANA

VERSUS

STANLEY GRIGSBY

Judgment Rendered: FEB 17 2017

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On appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 03-13-0824 Section "II"
Honorable Anthony J. Marabella, Jr., Judge Presiding

* * * * * *

Hillar C. Moore III District Attorney Stacy L. Wright Assistant District Attorney Baton Rouge, LA	Counsel for Appellee State of Louisiana
Frederick H. Kroenke, Jr. Louisiana Appellate Project Baton Rouge, LA	Counsel for Defendant/Appellant Stanley Grigsby
Stanley Grigsby Angola, LA	Defendant/Appellant In Proper Person

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BEFORE: WHIPPLE, C.J., GUIDRY, AND MCCLENDON, JJ.

GUIDRY, J.

Defendant, Stanley Grigsby, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1 (count one), and possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1 (count two). He pled not guilty. Following a jury trial, defendant was found guilty as charged on both counts. He filed a motion for new trial, which the trial court denied. The state subsequently filed a habitual offender bill of information, alleging defendant to be a second-felony habitual offender.[1] Following a hearing, the trial court adjudicated defendant a second-felony habitual offender on count one only. On count one, the trial court sentenced defendant as a second-felony habitual offender to seventy years at hard labor, without benefit of probation or suspension of sentence. On count two, the trial court sentenced defendant to twenty years at hard labor, to run concurrently with the sentence on count one. In an earlier appeal, this court affirmed defendant's convictions and the habitual offender adjudication on count one, but remanded the case for resentencing because both of the imposed sentences were illegally lenient. See State v. Grigsby, 15-0960 (La. App. 1st Cir. 12/23/15), 2015 WL 9466951 (unpublished opinion).

On remand, the trial court resentenced defendant. As a second-felony habitual offender on count one, defendant was sentenced to seventy years at hard labor, without the benefit of parole, probation, or suspension of sentence. On count two, defendant was sentenced to twenty years at hard labor, without the benefit of parole, probation, or suspension of sentence, to run concurrently with the sentence imposed on count one.[2] Defendant filed a motion to reconsider sentence, which the trial court

[1] The predicate convictions set forth in this habitual offender bill of information were October 22, 2009 convictions for aggravated assault with a firearm and illegal use of weapons or dangerous instrumentalities under East Baton Rouge Parish (19th JDC) docket number 06-08-0132.

[2] For the conviction on count two, the trial court also imposed a fine of $1,000.00, which it ultimately suspended.

denied. Defendant now appeals, raising one counseled assignment of error asserting that his habitual offender sentence on count one is excessive. He has also filed a single pro se assignment of error relating to his conviction on count one. For the following reasons, we affirm defendant's sentences.

FACTS

Around 9:00 a.m. on January 1, 2012, Todd Nicholas (the victim) went to his brother's apartment on Mohican-Prescott Crossover in Baton Rouge to spend the day with family. At some point during the day, Nicholas went outside and saw some other males hanging out in the area. Among this group of men, Nicholas recognized defendant, who he knew as "Boonie." Nicholas described at trial that defendant gave him a funny look, but that they had never had previous issues.

Nicholas left his brother's apartment close to midnight. When he got into his vehicle and prepared to back out, he saw a male begin to stagger across the street in his direction. As the male approached, Nicholas met eyes with him and watched as he drew a "chrome automatic" and began to fire at his car. Nicholas recognized defendant – "Boonie" – as the shooter. Nicholas drove away from the scene before ultimately crashing his vehicle on Scenic Highway, where he was able to find bystanders to call 911. As a result of the shooting, Nicholas was struck eight times. Surgeons removed Nicholas's left kidney and placed a plate in his left arm because of the damage from the projectiles. Two bullets are still lodged in Nicholas's body, both near an artery.

While Nicholas was in the hospital, he told his dad that Boonie shot him, but he did not immediately relay this information to the police. Detective Steven Woodring, of the Baton Rouge Police Department's homicide division, later received an anonymous tip informing him that defendant was a possible suspect in the shooting. Detective Woodring prepared a six-person photographic lineup and met with Nicholas, who immediately identified defendant as the person who shot

him. At trial, defendant was identified as having previously been convicted for aggravated assault with a firearm and illegal use of weapons.

EXCESSIVE SENTENCE

In the instant appeal, defense counsel asserts as the sole assignment of error a claim that "[t]he [s]entence imposed herein is unconstitutionally excessive." In setting forth this assignment of error, defense counsel simply adopts the argument as to excessive sentence that was asserted in defendant's earlier appeal, arguing that the additional restriction as to parole makes the "sentences" even more excessive. In his initial appeal, defendant argued only that his habitual offender sentence on count one was excessive, contending that the trial court failed to take into account his alleged level of intoxication when he committed the offense.

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. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979). A sentence is constitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. See State v. Hurst, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 00-3053 (La. 10/5/01), 798 So. 2d 962. A sentence is 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. Hogan, 480 So. 2d 288, 291 (La. 1985). A trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed by it will not be set aside as excessive absent an abuse of discretion. State v. Lobato, 603 So. 2d 739, 751 (La. 1992).

The goal of La. C. Cr. P. art. 894.1 is to have the sentencing court articulate a factual basis for the sentence, not rigid or mechanical compliance with the article's

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. See State v. Lanclos, 419 So. 2d 475, 478 (La. 1982). The trial court 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). 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, p. 2 (La. 10/9/98), 719 So. 2d 49, 50 (per curiam).

Article 881.1(E) of the Louisiana Code of Criminal Procedure requires that a motion to reconsider sentence state the specific ground on which the motion is based. A party is precluded from urging on appeal any ground that was not raised in the motion to reconsider. La. C. Cr. P. art. 881.1(E); see State v. Mims, 619 So. 2d 1059, 1059-60 (La. 1993) (per curiam); State v. Arbuthnot, 625 So. 2d 1377, 1385 (La. App. 1st Cir. 1993).

In Mims, the Louisiana Supreme Court held that a defendant who urges excessiveness of sentence as a ground in a motion to reconsider sentence need not allege any specific ground other than excessiveness of sentence in order to preserve appellate consideration of a bare claim of constitutional excessiveness. Likewise, under the clear wording of La. C. Cr. P. art. 881.1(E), even if a defendant has successfully preserved a bare claim of constitutional excessiveness by raising excessiveness as the only ground for the motion, the defendant is precluded from asserting any other "ground not raised in the motion on appeal or review." See State v. Scott, 634 So. 2d 881, 882 (La. App. 1st Cir. 1993).

In the instant case, defendant's two motions to reconsider sentence raised no specific grounds for relief other than excessiveness. Therefore, to the extent the instant appeal adopts the prior appeal's argument that the trial court failed to account for defendant's alleged level of intoxication at the time of the offenses, consideration of this argument is precluded by La. C. Cr. P. art. 881.1(E). Accordingly, we consider only a bare claim of constitutional excessiveness. Despite defense counsel's adoption of the previous appeal's argument, which applied only to the habitual offender sentence on count one, the instant motion to reconsider sentence asserts excessiveness claims as to both counts. As a result, we will evaluate the sentences on both counts for excessiveness.

For his conviction and second-felony habitual offender adjudication on count one (attempted second degree murder), defendant was sentenced to seventy years at hard labor, without the benefit of parole, probation, or suspension of sentence. For his conviction on count two (possession of a firearm by a convicted felon), defendant was sentenced to twenty years at hard labor, without the benefit of parole, probation, or suspension of sentence, and given a suspended fine of $1,000.00. The trial court ordered that these sentences be served concurrently.

Whoever is convicted of attempted second degree murder shall be imprisoned at hard labor for not less than ten nor more than fifty years without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:27(D)(1)(a) & 14:30.1(B). For a second-felony habitual offender convicted of attempted second degree murder, the appropriate sentencing range is twenty-five to one hundred years at hard labor, without benefit of parole, probation, or suspension of sentence. See La. R.S. 14:27(D)(1)(a), 14:30.1(B), & 15:529.1(A)(1); see also State v. Bruins, 407 So. 2d 685, 687 (La. 1981) ("conditions imposed on the [habitual offender] sentence are those called for in the reference statute.").

Whoever is convicted of possession of a firearm by a convicted felon shall be imprisoned at hard labor for not less than ten nor more than twenty years, without benefit of parole, probation, or suspension of sentence, and be fined not less than one thousand dollars nor more than five thousand dollars. See La. R.S. 14:95.1(B).

Prior to its initial sentencing of defendant, the trial court set forth its reasoning in the record. The trial court reviewed for the record the presentence investigation report ("PSI") it had ordered, noting numerous juvenile charges, including a juvenile adjudication for manslaughter, for which defendant was committed to the custody of the Department of Public Safety and Corrections until age twenty-one. The trial court also noted various adult charges, including attempted second degree murder (2005), attempted first degree murder (2008), and "another murder charge that occurred prior to the allegation in this case." After ultimately imposing the initial sentences, the trial court stated that it had considered defendant's extensive history of violence as both a juvenile and an adult, the egregious facts of the instant case, and defendant's lack of remorse.

At defendant's resentencing hearing, the trial court did not make any further statements in justification of the sentences imposed. The trial court did, however, file written reasons for judgment in support of the denial of defendant's instant motion to reconsider sentence. In those written reasons, the trial court again noted defendant's extensive history of violence both as a juvenile and an adult, and the egregious facts of this case. The trial court further noted defendant's lack of remorse, as it was expressed in the PSI, and in a recorded statement reproduced by the trial court as: "Them people better not let me see them MF streets again . . . I swear I'm going to make the whole world cry."

Considering the record as a whole, the trial court's stated reasons for sentencing, and the contents of the PSI, we conclude that the trial court did not err or abuse its discretion in imposing the sentences in this case. We recognize that the

sentence on count two is a maximum sentence, which may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to public safety due to his past conduct of repeated criminality. See State v. Miller, 96-2040, p. 4 (La. App. 1st Cir. 11/7/97), 703 So. 2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So. 2d 459. A trial court is entitled to consider a defendant's entire criminal history in determining the appropriate sentence to be imposed. See State v. Ballett, 98-2568, p. 25 (La. App. 4th Cir. 3/15/00), 756 So. 2d 587, 602, writ denied, 00-1490 (La. 2/9/01), 785 So. 2d 31. Defendant's history of repeated criminality is sufficient to demonstrate that he is among the worst type of offenders, making him eligible for a maximum sentence on count two. See Miller, 96-2040 at p. 4, 703 So. 2d at 701. Further, in imposing the habitual offender sentence on count one, the trial court adequately considered all of the relevant factors related to defendant, his history, and the offense.

This assignment of error is without merit.

PRO SE BRIEF

In a single pro se assignment of error, defendant asserts that the trial court did not have "subject-matter jurisdiction" over the offense alleged in count one - attempted second degree murder. Defendant appears to argue that the statute under which he was convicted, described by him as "R.S. 14:27/14:30.1," is an unconstitutional responsive verdict, or is itself unconstitutional.

First, we note that defendant's convictions have already been affirmed by this court, and defendant may no longer raise in this posture any issues regarding the convictions or habitual offender adjudication. Second, the provision apparently relied upon by defendant - La. R.S. 14:29, particularly a 1942 version – simply sets forth the different grades of homicide offenses. It does not dictate responsive offenses nor does it preclude the attempt provision from being combined with a homicide provision. Lastly, a conviction for attempted second degree murder is

unquestionably a responsive offense to a charge for the same. See La. C. Cr. P. art. 814(A)(4).

This assignment of error lacks merit and is otherwise not in the proper procedural posture.

CONCLUSION

For the foregoing reasons, we find no merit in the alleged errors raised by the defendant in this appeal. Hence, finding no error in the rulings of the trial court, we affirm the defendant's sentences for attempted second degree murder and possession of a firearm by a convicted felon.

SENTENCES AFFIRMED.

Additional material from this filing is available in the Clerk's Office.