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State v. Bryant

Court of Appeal of Louisiana, Second Circuit

June 26, 2019, Judgment Rendered

No. 52,743-KA

Reporter

277 So. 3d 874 *; 2019 La. App. LEXIS 1163 **; 52,743-KA (La.App. 2 Cir. 06/26/19);; 2019 WL 2608468

STATE OF LOUISIANA, Appellee versus JOSEPH M. BRYANT, Appellant

Subsequent History: Writ denied by *State v. Bryant*, 280 So. 3d 171, 2019 La. LEXIS 2476 (La., Oct. 8, 2019)

Decision reached on appeal by [*State v. Bryant, 2020 La. App. LEXIS 361 \(La.App. 2 Cir., Mar. 4, 2020\)*](#)

Prior History: [**1] Appealed from the First Judicial District Court for the Parish of Caddo, Louisiana. Trial Court No. 327055. Honorable Brady D. O'Callaghan, Judge.

Disposition: CONVICTIONS AFFIRMED;
ADJUDICATION AND SENTENCE VACATED;
REMANDED FOR FURTHER PROCEEDINGS.

Case Summary

Overview

HOLDINGS: [1]-The trial court did not abuse its discretion in finding that defendant was competent to proceed to trial because the trial court went through painstaking efforts to ensure defendant was afforded his constitutional rights in regard to his competency to stand trial for the offenses. In fact, the concern and level of understanding by the trial judge stood out in the record; [2]-Defendant was erroneously adjudicated a third-felony offender because, while the two predicate offenses occurred on different dates, the convictions for both offenses were obtained on the same date prior to October 19, 2004, and La. Rev. Stat. Ann. § 15:529.1(B) and the Louisiana Supreme Court clarified that because the convictions were obtained prior to October 19, 2004, the convictions were considered one conviction for purposes of the habitual offender adjudication.

Core Terms

trial court, sentence, convictions, offender, proceedings, competency, offenses, habitual offender, proceed to trial, felonies, rape, adjudicated, third-felony, robbery, sanity, robe, same day, imprisonment, malingering, restoration, disorder, suicidal, armed, door

Outcome

Convictions for attempted aggravated rape and armed robbery affirmed. Habitual offender adjudication and sentence vacated. Matter remanded for resentencing.

LexisNexis® Headnotes

Rights > Procedural Due Process > Scope of Protection

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Competency to Stand Trial

HN1 Procedural Due Process, Scope of Protection

The Fourteenth Amendment's Due Process Clause protects an individual's right not to proceed to trial while legally incompetent.

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Competency to Stand Trial

HN2 Pretrial Motions & Procedures, Competency to Stand Trial

La. Code Crim. Proc. Ann. art. 641 provides: Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense. La. Code Crim. Proc. Ann. art. 643 provides: The court shall order a mental examination of the defendant when it has reasonable grounds to doubt the defendant's mental capacity to proceed. Reasonable ground in this context refers to information which, objectively considered, should reasonably raise a doubt about the defendant's competency and alert the court to the possibility that the defendant can neither understand the proceedings, appreciate the proceedings' significance, nor rationally aid his attorney in his defense.

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Burdens of Proof > Preponderance of Evidence

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Competency to Stand Trial

HN3 Standards of Review, Abuse of Discretion

Louisiana law presumes a defendant's sanity. La. Rev.

Stat. Ann. § 15:432. Therefore, an accused bears the burden of proving by a preponderance of the evidence that he lacks the capacity to stand trial. Although a trial court may receive expert medical testimony on the issue of a defendant's competency to proceed to trial, the ultimate decision of capacity rests alone with the trial court. La. Code Crim. Proc. Ann. art. 647. A reviewing court owes the trial court's determinations as to the defendant's competency great weight, and the trial court's ruling thereon will not be disturbed on appeal absent an abuse of discretion.

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Competency to Stand Trial

HN4 Pretrial Motions & Procedures, Competency to Stand Trial

The Louisiana Supreme Court has provided the proper considerations to determine whether a defendant is fully aware of the nature of the proceedings against him, which include whether he: (1) understands the nature of the charge and can appreciate its seriousness; (2) understands what defenses are available; (3) can distinguish a guilty plea from a not guilty plea and understand the consequences of each; (4) has an awareness of his legal rights; and, (5) understands the range of possible verdicts and the consequences of conviction. The court has also provided the following factors to consider when determining an accused's ability to assist in his defense, including whether a defendant: (1) is able to recall and relate facts pertaining to his actions and whereabouts at certain times; (2) is able to assist counsel in locating and examining relevant witnesses; (3) is able to maintain a consistent defense; (4) is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; (5) has the ability to make simple decisions in response to well explained alternatives; (6) is capable of testifying in his own defense if necessary to defense strategy; and (7) is apt to deteriorate in his mental capacity under the stress of trial.

Criminal Law & Procedure > ... > Adjustments & Enhancements > Criminal History > Three Strikes

HN5 Criminal History, Three Strikes

The Louisiana Supreme Court has explained that there

is no statutory bar to applying the habitual offender law in sentencing for more than one conviction obtained on the same date, whether the convictions result from separate felonies committed at separate times or arise out of a single criminal act or episode. However, the legislature enacted [2005 La. Acts 218](#), amending [La. Rev. Stat. Ann. § 15:529.1\(B\)](#) to provide that multiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section. This amended the jurisprudential repudiation of the one day, one conviction rule in the computation of predicate offenses for purposes of determining habitual offender status, according the decision only prospective effect and reflecting legislative endorsement of the court's interpretation of the habitual offender law and its return to the plain language of the statute.

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Holli Ann Herrle-Castillo, Counsel for Appellant.

JAMES E. STEWART, SR., District Attorney, MONIQUE YVETTE METOYER, RICHARD S. FEINBERG,
Assistant District Attorneys, Counsel for Appellee.

Judges: Before MOORE, COX, and STEPHENS, JJ.

Opinion by: STEPHENS

Opinion

[*875] [Pg 1] **STEPHENS, J.**

This criminal appeal arises from the First Judicial District Court, Parish of Caddo, State of Louisiana. The defendant, Joseph M. Bryant, was charged by bill of information with attempted aggravated rape (violations of [La. R.S. 14:27](#) and [14:42](#)) and armed robbery (a violation of [La. R.S. 14:64](#)). Following a jury trial, Bryant was convicted as charged. He was adjudicated a third-felony offender and sentenced to serve life

imprisonment without benefit of probation, parole, or suspension of sentence. Bryant now appeals. For [*876] the following reasons, we affirm the convictions for attempted aggravated rape and armed robbery; however, we vacate the habitual offender adjudication and sentence and remand the matter [*877] for resentencing.

FACTS

At the trial held on November 8, 2017, the following evidence was adduced. On the morning of August 22, 2014, the victim, SS, was home alone watching television when her doorbell rang.¹ SS looked through the peephole, and observed a tall, dark-skinned black male, wearing a baseball cap, holding a business card. The man, later identified as the defendant, Joseph M. Bryant, indicated that he worked for a tree service and inquired if SS desired service at her home. SS declined, but cracked the door open just enough to take the business card from Bryant. As she opened the door, Bryant put his foot in the threshold of the door. SS noted the perpetrator was much larger than she. Bryant asked SS if her husband was home. When she said no, Bryant forced his way into SS's home.

[Pg 2] Once inside the home, SS observed Bryant holding a pocketknife. Bryant ordered SS not to scream and told her, "I am going to rape you and kill you," a threat he repeatedly made during the assault. SS and Bryant walked from the entryway of her home, through the dining room, into the kitchen, and eventually ended up in the den. While in the den, Bryant threw SS onto the sofa and again informed [*878] her that he was going to rape her. While still armed with the pocketknife, Bryant then straddled SS, throwing both of his legs on the outside of both of SS's legs and untied her robe. SS was wearing only a robe, nightshirt, and underwear. After untying SS's robe, Bryant lifted up SS's nightshirt and touched her vagina on top of her underwear. Throughout the incident, SS continually pleaded for her life and Bryant repeatedly told SS that he planned to rape and kill her. While pleading for her life, SS offered Bryant her vehicle, money, and jewelry. Bryant became interested in the money and got off SS, at which point she wrapped her robe around herself. Bryant followed her to the master bedroom to retrieve her purse. The

¹ Herein, we use the initials of the victim's name in order to keep her identity confidential in accordance with [La. R.S. 46:1844\(W\)](#).

two went back into the den, where Bryant took \$120 cash from SS. Somehow, with his knife still drawn, the two ended back up in the bedroom. For a second time, Bryant threw SS onto the bed and told her he would rape her. Bryant, again, untied SS's robe and straddled her—she could not move. SS made every effort to protect herself as she was being attacked.

Suddenly, Bryant stopped, sat up on the bed, and instructed SS to fix her robe. He then began to tell SS that she was [*4] a nice person and told her that his daughter had recently been killed. Bryant became emotional and began to weep. At that point, Bryant got off the bed and the two went into the sunroom, through the den, into the entryway, and arrived at SS's front [Pg 3] door. Bryant asked for a hug, SS relented, and Bryant exited the home. Having learned SS's first name at some point during the incident, Bryant called out to her from the other side of the door using her name. Bryant asked to reenter the home, and SS refused. Bryant then asked if SS intended to call the police and requested reentry a second time. Again, SS refused and eventually Bryant left. Afraid to call the police, SS called her husband, who then called police.

[*877] Later, Bryant was apprehended in connection with other incidents and arrested. When SS was shown a six-person photographic lineup, she identified Bryant as the man who entered her home on the morning of August 22, 2014. SS additionally made an in-court identification of Bryant at his trial.

Prior to trial, on June 3, 2015, Bryant's trial counsel made an oral motion for the appointment of a sanity commission. On September 14, 2015, after receiving reports from Dr. Marc Colon [*5] and Dr. George Seiden, the trial court found that Bryant lacked the ability to meet the legal criteria to assist in his own defense as required by *State v. Bennett*, 345 So. 2d 1129 (La. 1977). Bryant was ordered to receive treatment at the Eastern Louisiana Mental Health System, Forensic Division in Jackson, Louisiana ("ELMHS"). The criminal proceedings were stayed pending Bryant's restoration to competency.

On April 27, 2016, the staff psychiatrist at the ELMHS opined that Bryant had been restored to capacity. However, due to further concerns regarding his mental capacity, the trial court held the matter open pending a report from Bryant's medical providers. As a result, on May 31, 2016, a subsequent hearing was conducted, and Dr. Colon testified. After that [Pg 4] testimony, the trial court determined that Bryant's competency was not

regained, and the stay in his proceedings continued.

On January 10, 2017, a final sanity hearing was held. The sanity commission was composed of Dr. Laura Brown and Dr. John Roberts, and both doctors opined that Bryant was malingering, or reporting severe symptoms that were likely not accurate. Dr. Roberts confirmed that Bryant's behavior when being evaluated differed from that of his behavior on [*6] the unit. Dr. Roberts further testified that it is difficult to know a patient's motivations and whether or not his motivation skews functioning. However, in this case, that consideration did not affect Bryant's restoration of competency.

Accordingly, the trial court deemed Bryant competent to proceed to trial, which commenced on November 8, 2017. Based on the evidence presented at trial, the jury returned verdicts of guilty as charged of attempted aggravated rape and armed robbery. Notably, Bryant does not challenge the sufficiency of the evidence.

A habitual offender hearing was held on January 4, 2018. Prior to the hearing, motions for post-verdict judgment of acquittal and new trial were denied by the trial court. John McCain, of the Caddo Parish Sheriff's Office, testified to two prior felonies committed by Bryant which occurred in Texas, where he was tried. Bryant was previously convicted of robbery on October 31, 1994, and of sexual assault on the same date but for a completely unrelated incident. Based on those prior convictions, the trial court adjudicated Bryant a third-felony offender and sentencing was held on the same day. The trial court sentenced Bryant to life imprisonment [*7] without the benefit of probation, parole, or suspension of sentence. Bryant [Pg 5] subsequently filed a motion to reconsider sentence, which was denied, and this appeal ensued.

DISCUSSION

Mental Capacity

In his first assignment of error, Bryant contends the trial court erred in finding him competent to proceed to trial. Specifically, Bryant argues he was deprived of a fair trial when he was forced to proceed to trial while he was still incompetent and unable to assist his trial counsel in his defense. In response, the state submits that several qualified physicians found Bryant competent to stand

trial, and [*878] they noted he was malingering to avoid having the case proceed to trial. Further, his actions during the crime indicated a calculated plan, that of a competent individual. We agree.

Legal Principles

HN1 [↑] The [Fourteenth Amendment's Due Process Clause](#) protects an individual's right not to proceed to trial while legally incompetent. [State v. Odenbaugh, 2010-0268 \(La. 12/6/11\), 82 So. 3d 215, cert. denied, 568 U.S. 829, 133 S. Ct. 410, 184 L. Ed. 2d 51 \(2012\); State v. Taylor, 49,467 \(La. App. 2 Cir. 1/14/15\), 161 So. 3d 963.](#)

HN2 [↑] [Louisiana C. Cr. P. art. 641](#) provides: "Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense." [Louisiana C. Cr. P. art. 643](#) provides: "The court shall order a mental examination of the defendant when [**8] it has reasonable grounds to doubt the defendant's mental capacity to proceed." Reasonable ground in this context refers to information which, objectively considered, should reasonably raise a doubt about the defendant's competency and alert the [Pg 6] court to the possibility that the defendant can neither understand the proceedings, appreciate the proceedings' significance, nor rationally aid his attorney in his defense. [State v. Campbell, 2006-0286 \(La. 5/21/08\), 983 So. 2d 810, cert. denied, 555 U.S. 1040, 129 S. Ct. 607, 172 L. Ed. 2d 471 \(2008\); State v. Crossley, 48,149 \(La. App. 2 Cir. 6/26/13\), 117 So. 3d 585, writ denied, 2013-1798 \(La. 2/14/14\), 132 So. 3d 410.](#)

HN3 [↑] Louisiana law presumes a defendant's sanity. [La. R.S. 15:432; State v. Holmes, 2006-2988 \(La. 12/2/08\), 5 So. 3d 42, cert. denied, 558 U.S. 932, 130 S. Ct. 70, 175 L. Ed. 2d 233 \(2009\); State v. Anderson, 51,603 \(La. App. 2 Cir. 9/27/17\), 244 So. 3d 640, writ denied, 2017-1913 \(La. 6/1/18\), 243 So. 3d 1062.](#) Therefore, an accused bears the burden of proving by a preponderance of the evidence that he lacks the capacity to stand trial. [State v. Holmes, supra; State v. Taylor, 49,467 \(La. App. 2 Cir. 1/14/15\), 161 So. 3d 963.](#) Although a trial court may receive expert medical testimony on the issue of a defendant's competency to proceed to trial, the ultimate decision of capacity rests alone with the trial court. [La. C. Cr. P. art. 647; State v. Holmes, supra; State v. Anderson, supra; State v. Taylor, supra.](#) A reviewing court owes the trial court's

determinations as to the defendant's competency great weight, and the trial court's ruling thereon will not be disturbed on appeal absent an abuse of discretion. [State v. Anderson, 2006-2987 \(La. 9/9/08\), 996 So. 2d 973, cert. denied, 556 U.S. 1165, 129 S. Ct. 1906, 173 L. Ed. 2d 1057 \(2009\).](#)

HN4 [↑] The Louisiana Supreme Court, in [State v. Bennett, supra](#), provided the proper considerations to determine whether a defendant is fully [**9] aware of the nature of the proceedings against him, which include whether he: (1) understands the nature of the charge and can appreciate its seriousness; (2) [Pg 7] understands what defenses are available; (3) can distinguish a guilty plea from a not guilty plea and understand the consequences of each; (4) has an awareness of his legal rights; and, (5) understands the range of possible verdicts and the consequences of conviction. *Id.* at 1138; [State v. Anderson, supra at 649-50.](#)

The *Bennett* court also provided the following factors to consider when determining an accused's ability to assist in his defense, including whether a defendant: (1) is able to recall and relate facts pertaining to his actions and whereabouts at certain times; (2) is able to assist counsel in locating and examining relevant witnesses; (3) [*879] is able to maintain a consistent defense; (4) is able to listen to the testimony of witnesses and inform his lawyer of any distortions or misstatements; (5) has the ability to make simple decisions in response to well explained alternatives; (6) is capable of testifying in his own defense if necessary to defense strategy; and (7) is apt to deteriorate in his mental capacity under the stress of trial. *Id.*; [State v. Anderson, supra at 650.](#)

Bryant's Competency [**10] Proceedings

In the case sub *judice*, the trial court exercised great caution when Bryant's capacity was raised. On June 3, 2015, upon oral motion of trial counsel, the trial court appointed a sanity commission. The commission was composed of Dr. Marc Colon and Dr. George Seiden. Dr. Seiden concluded that "Joseph Bryant currently does not have the ability to consult with his attorney with a reasonable degree of rational understanding and currently does not have a rational and factual understanding of the proceedings against him." Dr. Colon came to the same conclusion. Accordingly, at that time the trial court found that Bryant lacked the ability to meet the *Bennett* criteria to [Pg 8] assist in his own defense. Bryant was ordered to receive treatment at the

ELMHS. The proceedings were stayed pending Bryant's restoration to competency.

On April 27, 2016, a subsequent competency hearing was conducted. Dr. Dennis C. Kelly, Jr., a staff psychiatrist at the ELMHS, testified before the court. Dr. Kelly testified that Bryant had been diagnosed with schizoaffective disorder, bipolar type disorder, and post-traumatic stress disorder. Dr. Kelly further testified that Bryant was started on several [**11] medications and reported depression, hallucinations, and suicidal thoughts. Dr. Kelly noted that there was no indication that Bryant would act on those thoughts. Dr. Kelly ultimately concluded that Bryant had a reasonable understanding of the legal system and could assist his attorney in preparing a defense. However, upon the urging of trial counsel, Bryant's status of suicide watch at Caddo Correctional Facility, and Bryant's significant history with mental illness, the trial judge noted some concern that Bryant may have displayed some "regression" in his condition. Thus, the trial court suggested holding the hearing open, pending reports with the appointed psychiatric providers. All parties agreed.

Approximately one month later, on May 31, 2016, following testimony of Dr. Colon, the trial court found that Bryant's capacity had not been regained. Dr. Colon testified that since Bryant's return from the ELMHS, he had been on one-on-one observation. Dr. Colon further testified that Bryant made two overdose attempts, punched a wall, and complained of auditory hallucinations. Dr. Colon opined that Bryant was not malingering. Bryant was ordered to return to the ELMHS, and the stay of the [**12] criminal proceeding was maintained.

[Pg 9] On January 10, 2017, a subsequent sanity hearing was held, at which both Dr. Laura Brown and Dr. John Roberts opined that Bryant was malingering or reporting severe symptoms that were likely not accurate. In her first assessment of Bryant, Dr. Brown, a clinical psychologist, noted that Bryant had suicide orientation, depression, and hopelessness. When asked about her second assessment of Bryant, Dr. Brown said:

Q: Okay. Let's move to the second assessment you performed. Can you discuss that for us, please?

A: Sure. The second assessment was the assessment toward the end of his hospitalization, when we were assessing his—understanding of his case and legal [*880] knowledge and his

competency to proceed.

Q: And what did you learn?

A: In that one I gave a standardized competency measure, and he actually performed pretty well on it. He knew all of the information. He was able to demonstrate a rational understanding of all of the relevant things that happened in court. He knew about plea bargains, the legal system, possible consequences of his—his offenses if he . . . were found guilty.

So he understood all of that. He also knew how he could assist in his defense. [**13] He talked about what kind of things he should tell his lawyer or what his lawyer expected from him, but he also demonstrated some sort of self-defeating beliefs.

Q: What do you mean?

A: That he didn't really want to assist in his defense. He made that very clear that he didn't want to go forward with his case. He felt hopeless about the results of his case.

Further, Dr. Brown testified that Bryant disclosed to a security guard that he would go on a hunger strike and become suicidal so as not to go back to the parish jail. Additional query by the trial court of Dr. Brown included:

THE COURT: Dr. Brown, it appears from the reports that I've reviewed, which I think is all of them—that when Mr. Bryant is aware he is being assessed for a determination that bears on his competency, he presents one affect, but the report from all of those who deal with him on an informal, non-evaluative basis, [Pg 10] describe a very different affect, much more emotional, far less blunt. Is that a fair characterization of what you determine from your observations?

DR. BROWN: Yes.

Dr. Roberts' opinion corroborated that of Dr. Brown. Dr. Roberts, a psychiatrist and Bryant's treating physician the entire time he was [**14] housed at the ELMHS, diagnosed Bryant with a depressive disorder, unspecified personality disorder, as well as numerous other medical conditions. Dr. Roberts testified that while speaking with therapists, Bryant would have constricted affect, claim suicidality, and slow speech. However, Dr. Roberts' observations of Bryant on the unit differed. Although Bryant claimed he could not concentrate, he came in second place in a unit video game championship and read books in his room. Dr. Roberts further testified that it is difficult to know a patient's motivations and whether or not functioning is skewed. In this case, that consideration did not seem to interfere with Bryant's restoration of competency. The trial court

asked Dr. Roberts:

THE COURT: Based on your treatment of Mr. Bryant, are you aware of any aspect of his psychiatric condition that if he were motivated would preclude his ability to cooperate with his lawyer?

DR. ROBERTS: No.

....

THE COURT: Based on his ability to communicate with you, [Dr. Roberts], the staff, is it your medical opinion that Mr. Bryant is capable and competent to stand trial, if he performs as he did during his most recent evaluations?

DR. ROBERTS: Yes, I [**15] do believe that he has a current rational, as well as a factual, understanding of the proceedings against him, as well as the present ability to consult with his lawyer to a reasonable degree of rational understanding.

[Pg 11] Analysis

In this case, over the course of the proceedings against Bryant, it is abundantly [*881] clear that the trial court went through painstaking efforts to ensure the defendant was afforded his constitutional rights in regard to his competency to stand trial for these offenses. In fact, the concern and level of understanding by the trial judge stands out in this record—the comments made and questions asked. Four separate hearings were held, with testimony from five different doctors. The trial court twice found that Bryant was not competent to proceed to trial. However, upon the medical opinions of Drs. Brown and Roberts that Bryant was malingering to avoid facing serious consequences, the trial court used its discretion to find Bryant competent to proceed to trial. The medical providers at the final proceeding went into great detail regarding Bryant's condition and behavior. They were questioned by both parties as well as the trial judge, who was well familiar with [**16] Bryant's medical reports. Based on the above evidence, the trial court did not abuse its discretion in finding that the defendant was competent to proceed to trial. Accordingly, this assignment of error is without merit.

Habitual Offender Adjudication

In his second assignment of error, Bryant argues the trial court erred in adjudicating him a third-felony offender. Bryant submits he was erroneously adjudicated a third-felony offender because he obtained two prior convictions on the same day and, accordingly,

the convictions are one prior conviction for purposes of enhancement as mandated in [La. R.S. 15:529.1\(B\)](#). We agree.

[Pg 12] Legal Principles

Our habitual offender law is promulgated in [La. R.S. 15:529.1](#). Bryant was adjudicated a third-felony offender under [subsection \(A\)\(3\)](#) of the statute, which provides:

If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then the following sentences apply:

(a) The person shall be sentenced to imprisonment for a determinate term not less than one-half of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

[**17] (b) If the third felony and the two prior felonies are felonies defined as a crime of violence under [R.S. 14:2\(B\)](#), or a sex offense as defined in [R.S. 15:541](#) when the victim is under the age of eighteen at the time of commission of the offense, 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.

Moreover, [La. R.S. 15:529.1\(B\)](#) provides in pertinent part:

B. It is hereby declared to be the intent of this Section that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged as and adjudged to be a third offender, or that an offender has been adjudged in a prior prosecution to be a third offender in order to be convicted as a fourth offender in a prosecution for a subsequent crime.

Multiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.

(Emphasis added.)

HN5 The Louisiana Supreme Court, in [State v. Shaw, 2006-2467 \(La. 11/27/07\), 969 So. 2d 1233, 1245](#), explained that "[t]here is no statutory bar to applying the habitual offender law in sentencing for more than one conviction obtained on the same date, whether the convictions result from separate [*882] felonies committed at separate [**18] times or arise out of a single [Pg 13] criminal act or episode." However, the *Shaw* court specifically noted that the legislature

enacted [2005 La. Acts 218](#), amending [La. R.S. 15:529.1\(B\)](#) to provide that "[m]ultiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section." This amended the jurisprudential repudiation of the "one day, one conviction" rule in the computation of predicate offenses for purposes of determining habitual offender status, according the decision only prospective effect and reflecting legislative endorsement of the court's interpretation of the habitual offender law and its return to the plain language of the statute. *See also, State v. Badeaux, 2018-0020 (La. App. 1 Cir. 6/4/18), 251 So. 3d 1134, writ denied, 2018-1066 (La. 3/18/19), 267 So. 3d 85; State v. Hagans, 2014-0050 (La. App. 4 Cir. 10/1/14), 151 So. 3d 719, writ denied, 2014-2149 (La. 5/15/15), 170 So. 3d 159.*

Analysis

In adjudicating Bryant a habitual offender, the trial court relied on two previous convictions in Texas. A review of the record shows that Bryant was convicted of robbery in Dallas County, Texas, on October 31, 1994, which offense occurred on June 19, 1992. For that conviction, Bryant received a sentence of 20 years. Additionally, Bryant was convicted of sexual assault in Dallas County, Texas, on the same day—October 31, 1994. That offense occurred [\[**19\]](#) on April 9, 1994, and Bryant received a sentence of 10 years. Both offenses are felony offenses in the state of Texas, and, therefore, would be considered felony offenses in Louisiana. *See, La. R.S. 15:529.1(A)*.² Thus, although for different crimes committed on different [Pg 14] dates, Bryant had "multiple convictions obtained on the same day prior to October 19, 2004," *i.e.*, two convictions on October 31, 1994. Moreover, we note that the record further shows Bryant was released from the supervision of the Texas Department of Criminal Justice Pardons and Parole Division on February 7, 2014. Thus, more than 10 years has not elapsed and the prior offenses can be used as predicate offenses for purposes of sentencing

²The statute requires Louisiana courts to determine the analogous state crime according to the nature of the act involved, not the penalty provided for the offense in the foreign jurisdiction. [State v. Carouthers, 618 So. 2d 880, 882 \(La. 1993\)](#). In this case, the trial court made a thorough and legally appropriate analysis of the predicate offenses in Texas. *See also, State v. Wheatley, 550 So. 2d 724 (La. App. 2 Cir. 1989), writ denied, 569 So. 2d 979 (La. 1990); State v. Godfrey, 2008-828 (La. App. 3 Cir. 3/3/10), 32 So. 3d 1020, writ denied, 2010-0758 (La. 10/29/10), 48 So. 3d 1097.*

enhancement.

However, the issue here is whether or not the predicate offenses count as two separate convictions for purposes of determining Bryant's habitual offender status. While the two predicate offenses occurred on different dates, the convictions for both offenses were obtained on the same date prior to October 19, 2004. [Louisiana R.S. 15:529.1\(B\)](#) and the Louisiana Supreme Court in [Shaw, supra](#), clarify that because the convictions were obtained prior to October 19, 2004, the convictions are considered [\[**20\]](#) one conviction for purposes of the habitual offender adjudication. Accordingly, Bryant was erroneously adjudicated a third-felony offender.³ Therefore, the habitual offender adjudication and sentence [\[*883\]](#) must be vacated and the matter remanded for resentencing.

[Pg 15] CONCLUSION

For the foregoing reasons, the convictions against Joseph M. Bryant for attempted aggravated rape and armed robbery are affirmed. His habitual offender adjudication and sentence are vacated and the matter remanded for resentencing.

CONVICTIONS AFFIRMED; ADJUDICATION AND SENTENCE VACATED; REMANDED FOR FURTHER PROCEEDINGS.

End of Document

³It should be noted that based on the ruling in [Shaw, supra](#), Bryant's sentences for the current convictions of attempted aggravated rape and robbery, which occurred on the same date, can both be enhanced pursuant to the appropriate habitual offender adjudication.

State v. Bryant

Court of Appeal of Louisiana, Second Circuit

March 4, 2020, Judgment rendered

No. 53,321-KA

Reporter

293 So. 3d 701 *; 2020 La. App. LEXIS 361 **; 53,321 (La.App. 2 Cir. 03/04/20);; 2020 WL 1036292

STATE OF LOUISIANA, Appellee versus JOSEPH M. BRYANT, Appellant

Subsequent History: Writ denied by [State v. Bryant, 2020 La. LEXIS 2714 \(La., Nov. 10, 2020\)](#)

Prior History: [**1]Appealed from the First Judicial District Court for the Parish of Caddo, Louisiana. Trial Court No. 327055. Honorable Brady D. O'Callaghan, Judge.

excessive under [La. Const. art. I, § 20](#) for his conviction of armed robbery and attempted aggravated rape because the concurrent 65-year sentences were well within the applicable ranges, and the trial judge had previously considered all of the relevant factors under [La. Code Crim. Proc. Ann. art. 894.1](#). In particular, he considered defendant's criminal history and mental health issues, and the trial judge found that the similarity and nature of the instant offenses to the prior offenses indicated that a serious sentence was both appropriate and necessary. In consideration of the harm done to society, the sentences imposed on defendant were not disproportionate and did not shock the sense of justice, and the sentences were absolutely justified.

[State v. Bryant, 277 So. 3d 874, 2019 La. App. LEXIS 1163, 2019 WL 2608468 \(La.App. 2 Cir., June 26, 2019\)](#)

Outcome
Sentences affirmed.

Core Terms

sentence, trial judge, convictions, mental health issues, habitual offender, impose sentence, state hospital, offenses, rape, sexual assault, trial court, resentencing, aggravated, disorder, robe, mental illness, armed robbery, hallucinations, suspension, probation, suicide, parole, door

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Sex Crimes > Sexual Assault > Rape

[HN1](#)  Sexual Assault, Rape

Aggravated rape is now designated as first degree rape. [La. Rev. Stat. Ann. § 14:42](#)

Criminal Law & Procedure > Sentencing > Cruel &

Case Summary

Overview

HOLDINGS: [1]-The habitual offender sentences imposed on defendant were not unconstitutionally

Unusual Punishment

Criminal Law &
Procedure > Sentencing > Imposition of
Sentence > Factors

Criminal Law &
Procedure > Sentencing > Resentencing

Criminal Law &
Procedure > Sentencing > Imposition of
Sentence > Findings

Criminal Law &
Procedure > Sentencing > Sentencing Guidelines

[HN2](#) Sentencing, Cruel & Unusual Punishment

A reviewing court imposes a two-prong test to determine whether a sentence is excessive. First, the record must show that the trial court took cognizance of the criteria set forth in [La. Code Crim. Proc. Ann. art. 894.1](#). The trial court is not required to list every aggravating or mitigating circumstance so long as the record reflects adequate consideration of the guidelines of the article. The court shall state for the record the considerations taken into account and the factual basis therefor in imposing sentence. [La. Code Crim. Proc. Ann. art. 894.1\(C\)](#). The articulation of the factual basis for the sentence is the goal of [La. Code Crim. Proc. Ann. art. 894.1](#), not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence, resentencing is unnecessary even where there has not been full compliance with [La. Code Crim. Proc. Ann. art. 894.1](#).

Criminal Law &
Procedure > Sentencing > Imposition of
Sentence > Factors

[HN3](#) Imposition of Sentence, Factors

The defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of the offense, and the likelihood of rehabilitation are important elements to consider. There is no requirement that specific matters be given any particular weight at sentencing.

Constitutional Law > Bill of Rights > Fundamental

Rights > Cruel & Unusual Punishment

Criminal Law & Procedure > Sentencing > Cruel &
Unusual Punishment

Criminal Law &
Procedure > Sentencing > Proportionality

Criminal Law &
Procedure > Sentencing > Appeals > Proportionality
& Reasonableness Review

[HN4](#) Fundamental Rights, Cruel & Unusual Punishment

A sentence violates [La. Const. art. I, § 20](#), if it is grossly out of proportion to the seriousness of the offense or 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 viewed in light of the harm done to society, it shocks the sense of justice.

Criminal Law &
Procedure > ... > Appeals > Standards of
Review > Abuse of Discretion

Criminal Law & Procedure > Sentencing > Cruel &
Unusual Punishment

Criminal Law & Procedure > Sentencing > Ranges

[HN5](#) Standards of Review, Abuse of Discretion

A trial court has wide discretion to sentence within the statutory limits. Absent a showing of manifest abuse of that discretion, a sentence will not be set aside as excessive. On review, an appellate court does not determine whether another sentence may have been more appropriate, but whether the trial court abused its discretion.

Criminal Law & Procedure > ... > Sexual
Assault > Rape > Penalties

Criminal Law & Procedure > Sentencing > Ranges

Criminal Law & Procedure > ... > Inchoate
Crimes > Attempt > Penalties

[HN6](#) Rape, Penalties

For attempted aggravated rape, the sentencing range is 10 to 50 years at hard labor, without benefit of probation, parole, or suspension of sentence. [La. Rev. Stat. Ann. §§ 14:42](#); 14:27.

abuse his discretion when imposing the sentences, we affirm them.

FACTS

Criminal Law & Procedure > ... > Robbery > Armed Robbery > Penalties

Criminal Law & Procedure > Sentencing > Ranges

Armed Robbery, Penalties

For armed robbery, the sentencing range is 10 to 99 years at hard labor, without benefit of parole, probation, or suspension of sentence. [La. Rev. Stat. Ann. § 14:64](#).

The details of Bryant's current offenses were set forth in a prior appeal in this matter:

On the morning of August 22, 2014, the victim, SS, was home alone watching television when her doorbell rang. SS looked through the peephole, and observed a tall, dark-skinned black male, wearing a baseball cap, holding a business card. The man, later identified as the defendant, Joseph [**2] M. Bryant, indicated that he worked for a tree service and inquired if SS desired service at her home. SS declined, but cracked the door open just enough to take the business card from Bryant. As she opened the door, Bryant put his foot in the threshold of the door. SS noted the perpetrator was much larger than she. Bryant asked SS if her husband was home. When she said no, Bryant forced his way into SS's home.

Once inside the home, SS observed Bryant holding a pocketknife. Bryant ordered SS not to scream and told her, "I am going to rape you and kill you," a threat he repeatedly made during the assault. SS and Bryant walked from the entryway of her home, through the dining room, into the kitchen, and eventually ended up in the den. While in the den, Bryant threw SS onto the sofa and again informed her that he was going to rape her. While still armed with the pocketknife, Bryant then straddled SS, throwing both of his legs on the outside of both of SS's legs and untied her robe. SS was wearing only a robe, nightshirt, and underwear. After untying SS's robe, Bryant lifted up SS's nightshirt and touched her vagina on top of her underwear. Throughout the incident, SS continually pleaded [**3] for her life and Bryant repeatedly told SS that he planned to rape and kill her. While pleading for her life, SS offered Bryant her vehicle, money, and jewelry. Bryant became interested in the money and got off SS, at which point she wrapped her robe around herself. Bryant followed her to the master bedroom to retrieve her purse. The two went back into the den, where Bryant took \$120 cash from SS. Somehow, with his knife still [Pg 2] drawn, the two ended back up in the bedroom. For a second time, Bryant threw SS onto the bed and told her he would rape her. Bryant,

Counsel: LOUISIANA APPELLATE PROJECT, By: Holli Ann Herrle-Castillo, Counsel for Appellant.

JOSEPH BRYANT, Pro se.

JAMES E. STEWART, SR., District Attorney, RICHARD S. FEINBERG, KODIE K. SMITH, Assistant District Attorneys, Counsel for Appellee.

Judges: Before WILLIAMS, STEPHENS, and McCALLUM, JJ.

Opinion by: McCALLUM

Opinion

[*703] [Pg 1] McCALLUM, J.

Adjudicated a second-felony habitual offender after being convicted of armed robbery and attempted aggravated rape, Joseph Bryant appeals his habitual offender sentences, contending that they are unconstitutionally excessive. Concluding that the sentences are justified and that the trial judge did not

again, untied SS's robe and straddled her - she could not move. SS made every effort to protect herself as she was being attacked.

Suddenly, Bryant stopped, sat up on the bed, and instructed SS to fix her robe. He then began to tell SS that she was a nice person and told her that his daughter had recently been killed. Bryant became emotional and began to weep. At that point, Bryant got off the bed and the two went into the sunroom, through the den, into the entryway, and arrived at SS's front door. Bryant asked for a hug, SS relented, and Bryant exited the home. Having learned SS's first name at some point during the incident, **[**4]** Bryant called out to her from the other side of the door using her name. Bryant asked to reenter the home, and SS refused. Bryant then asked if SS intended to call the police and requested reentry a second time. Again, SS refused and eventually **[*704]** Bryant left. Afraid to call the police, SS called her husband, who then called police.

Later, Bryant was apprehended in connection with other incidents and arrested. When SS was shown a six-person photographic lineup, she identified Bryant as the man who entered her home on the morning of August 22, 2014. SS additionally made an in-court identification of Bryant at his trial.

[State v. Bryant, 52,743, pp. 1-3 \(La. App. 2 Cir. 6/26/19\), 277 So. 3d 874, 876-7, writ denied, 19-01320 \(La. 10/08/19\), 280 So. 3d 171.](#)

Bryant was charged by bill of information with attempted aggravated rape ([La. R.S. 14:42](#) and [14:27](#))¹ and armed robbery ([La. R.S. 14:64](#)). Bryant's mental status became an issue leading up to trial. On September 14, 2015, the trial judge ordered Bryant's commitment upon finding that he lacked the mental capacity to understand the proceedings against him or to assist in his defense. The Eastern Louisiana Mental Health System Forensic Division ("state hospital") discharged Bryant in March of 2016 on the basis that he had the mental capacity to proceed. Following a hearing on May 31, [Pg 3] **[**5]** 2016, the trial judge determined that Bryant had not regained competency and ordered his return to the state hospital.

Another sanity hearing was held on January 10, 2017,

during which the trial judge heard testimony from treating providers that Bryant presented one affect when he was being evaluated and a different affect at other times. The providers also asserted that Bryant was competent to stand trial. The trial judge ruled that Bryant had been restored to competency.

On November 8, 2017, Bryant was convicted as charged of armed robbery and attempted aggravated rape. Bryant filed a motion for new trial as well as a motion for post-verdict judgment of acquittal. Both motions were denied.

On December 13, 2017, the State filed a habitual offender bill against Bryant charging him as a third felony habitual offender. Bryant had been convicted of the two predicate felonies, robbery and sexual assault, in Dallas County, Texas on October 31, 1994. He received a sentence of 10 years for the sexual assault, and a sentence of 20 years for the robbery. The predicate felonies had been committed on different dates. The robbery occurred on June 19, 1992, while the sexual assault occurred **[**6]** on April 9, 1994. According to testimony at that habitual offender proceeding, records from Texas indicated that Bryant's departure date from the Texas Department of Corrections was February 7, 2014.

On January 4, 2018, Bryant was adjudicated a third-felony offender and sentenced to life imprisonment without the benefit of parole, probation, or suspension of sentence. The trial judge concluded that the mandatory sentence of life without parole, probation, or suspension, as dictated by [La. R.S. 15:529.1\(A\)\(3\)\(b\)](#), was appropriate considering not only the violent nature [Pg 4] of the current offenses, but also the brief time between Bryant's release from incarceration and the commission of the current offenses.

A motion to reconsider sentence was filed on January 18, 2018. Bryant's counsel contended that Bryant was 18 years old when previously convicted and that he suffered from mental health issues.² The court denied the motion.

[*705] Bryant appealed his convictions and sentence. The first assignment of error asserted that the trial court erred in finding Bryant competent to proceed to trial. In the second assignment of error, Bryant's counsel

¹ [HN1](#)  Aggravated rape is now designated as first degree rape. [La. R.S. 14:42](#).

² A presentence investigation report prepared on December 27, 2017, reflected that Bryant's birthdate was February 24, 1975.

argued that the trial court erred in adjudicating Bryant a third-felony offender. [**7] This Court found no merit to the first assignment of error and affirmed Bryant's convictions. However, this Court vacated Bryant's habitual offender adjudication and remanded for resentencing. Pursuant to [La. R.S. 15:529.1\(B\)](#) and [State v. Shaw, 06-2467 \(La. 11/27/07\), 969 So. 2d 1233](#), the predicate convictions were to be counted as one conviction because they were obtained on the same date and prior to October 19, 2004. [State v. Bryant, supra](#).

Upon remand, Bryant was adjudicated a second-felony habitual offender on July 24, 2019, and sentenced on each count to 65 years at hard labor without benefit of probation, parole, or suspension of sentence. The sentences were to be served concurrently. Defense counsel objected to the sentences. The trial judge noted the objection and stated that the sentences were actually lower than the midrange sentences requested by the defense. [Pg 5] Bryant was advised by the trial judge that he had 30 days to appeal his sentences and 2 years to seek post-conviction relief.

Bryant filed a motion to reconsider sentence on July 26, 2019. He asked the court to reconsider the sentences imposed because of his young age at the time of the predicate offenses and because he suffered from mental health issues. The trial judge denied the motion, noting in a written [**8] ruling that he had carefully considered the aggravating and mitigating circumstances and concluded that the sentences were appropriate. The trial judge added that after reviewing the motion and the reasons stated in court, his opinion remained that the sentences were reasonable. Bryant has appealed his sentences.

DISCUSSION

Bryant's sole assignment of error on appeal is that his sentences are unjustified and unconstitutionally excessive. He maintains that the trial judge did not properly consider the long history or magnitude of his mental illness and the effect it had on his behavior. In support of this argument, Bryant's appellate counsel refers to a competency evaluation report as well as testimony given by physicians at the competency hearings.

A competency evaluation was conducted by Dr. George Seiden on July 17, 2015. During the evaluation, Bryant informed Dr. Seiden that he heard voices that told him to do bad things. Dr. Seiden also noted that Bryant

appeared to be responding to voices during the evaluation. Bryant reported having hallucinations, including some where he ate bloody bodies. Bryant also told Dr. Seiden that he had attempted suicide several times. Dr. Seiden's diagnosis [**9] was schizophrenia.

[Pg 6] Drs. Marc Colon and Ashleigh Fleming examined Bryant on August 25, 2015. Bryant told them about a history of psychiatric treatment dating back to when he first saw a psychiatrist at the age of 9 or 10 after he set his stepfather's bed afire. He also reported delusions of control and paranoia, as well as hallucinations.

Bryant was ordered committed on September 14, 2015. However, he was discharged from the state hospital and sent back to the Caddo Correctional Center ("CCC") in March of 2016.

Dr. Dennis Kelly, a staff psychiatrist at the state hospital, testified at an April 27, 2016, hearing that Bryant had been diagnosed with schizoaffective disorder of a bipolar type and post-traumatic stress disorder. [*706] Dr. Kelly also testified that Bryant had been subjected to an aggressive treatment regimen at the state hospital. Bryant continued to report hallucinations and suicidal thoughts. Dr. Kelly agreed that Bryant had a significant history of mental illness.

Dr. Colon, who treated Bryant at CCC, testified at a hearing conducted on May 31, 2016. Dr. Colon stated that Bryant had been withdrawn and psychotic since his return to CCC. Bryant also refused to accept medical [**10] and psychiatric treatment there. Bryant, who had attempted suicide by overdose twice, was placed on suicide watch. Bryant had also complained of hallucinations, and in one instance, had punched a wall. Dr. Colon did not think that Bryant was malingering in order to avoid going to trial, but thought that his condition was related to chronic mental illness. Dr. Colon recommended a specific medication and electroconvulsive therapy if Bryant returned to the state hospital.

[Pg 7] Drs. Laura Brown and John Roberts testified at a sanity hearing on January 10, 2017. Dr. Brown, accepted as an expert in the field of forensic psychiatry, had assessed Bryant at the state hospital. She thought Bryant probably suffered from a depressive type of mental illness, and possibly a personality disorder.

Dr. Roberts, who was accepted as an expert in the field of psychiatry, treated Bryant when he was at the state hospital in 2016. He testified that Bryant had been diagnosed with a depressive disorder and an

unspecified personality disorder, and he possibly had some psychosis as well. Bryant also reported hearing voices with command hallucinations. Dr. Roberts acknowledged that Bryant's records showed that [**11] he had a long psychiatric history. Bryant had been prescribed medicines for mood stabilization and for the treatment of psychosis.

While Dr. Roberts was testifying about one of Bryant's suicide attempts, Bryant disrupted the proceedings by shouting, "Liar, liar, liar, liar." Dr. Roberts thought the outburst could be indicative of mental illness or possibly frustration over his situation. At the conclusion of the hearing, the trial judge described Bryant's conduct in court for the record. Bryant, who was handcuffed to a wheelchair, had leapt forward and tried to leave the courtroom through the inmate entrance while dragging the wheelchair behind him.

Bryant's appellate counsel also refers to a mental health evaluation report in the Texas Department of Corrections records which showed that Bryant had been diagnosed with impulse control, kleptomania, pyromania, and intermittent explosive disorder. Finally, counsel asserts that Bryant's [Pg 8] actions during the current offenses were bizarre and indicative of someone with mental health issues.

The State argues in opposition that Bryant was found competent to stand trial following numerous competency hearings during which his mental health [**12] issues were thoroughly discussed and several doctors testified that Bryant was a malingeringer. The State notes that Bryant's convictions are of the same nature as his two prior felony convictions, and that the concurrent 65-year sentences are well within the applicable ranges and are not the maximum sentences available. The State points out that because the trial judge observed Bryant during his multiple competency hearings, at trial, and at sentencing, he was in the best position to consider Bryant's age and mental health issues and weigh those factors against the trauma that Bryant caused the victim and his prior convictions of the same nature. The State maintains that the trial judge did not abuse his discretion and that the sentences imposed are not constitutionally excessive.

[*707] [HN2](#) A reviewing court imposes a two-prong test to determine whether a sentence is excessive. First, the record must show that the trial court took cognizance of the criteria set forth in [La. C. Cr. P. art. 894.1](#). The trial court is not required to list every aggravating or mitigating circumstance so long as the

record reflects adequate consideration of the guidelines of the article. [State v. Smith, 433 So. 2d 688 \(La. 1983\)](#); [State v. Boehm, 51,229 \(La. App. 2 Cir. 4/5/17\), 217 So. 3d 596](#). The court shall state for the record the considerations [**13] taken into account and the factual basis therefor in imposing sentence. [La. C. Cr. P. art. 894.1\(C\)](#). The articulation of the factual basis for the sentence is the goal of [La. C. Cr. P. art. 894.1](#), not rigid or mechanical compliance with its provisions. Where the record clearly shows [Pg 9] an adequate factual basis for the sentence, resentencing is unnecessary even where there has not been full compliance with [La. C. Cr. P. art. 894.1](#). [State v. Fontenot, 49,835 \(La. App. 2 Cir. 5/27/15\), 166 So. 3d 1215](#).

[HN3](#) The defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of the offense, and the likelihood of rehabilitation are important elements to consider. [State v. Jones, 398 So. 2d 1049 \(La. 1981\)](#); [State v. Boehm, supra](#). There is no requirement that specific matters be given any particular weight at sentencing. [State v. Boehm, supra](#).

Second, [HN4](#) a sentence violates [La. Const. art. I, § 20](#), if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. [State v. Dorthey, 623 So. 2d 1276 \(La. 1993\)](#). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. [State v. Weaver, 01-0467 \(La. 1/15/02\), 805 So. 2d 166](#).

[HN5](#) A trial court has wide discretion to sentence within the statutory limits. Absent a showing of manifest abuse of that discretion, a sentence will not be set aside as excessive. [**14] On review, an appellate court does not determine whether another sentence may have been more appropriate, but whether the trial court abused its discretion. [State v. Boehm, supra](#).

At resentencing, the trial judge reviewed the applicable sentencing ranges for both convictions under the habitual offender law as written at the time the instant offenses were committed on August 22, 2014. [HN6](#) For attempted aggravated rape, the sentencing range was 10 to 50 years at hard labor, without benefit of probation, parole, or suspension of sentence. La. [Pg 10] [R.S. 14:42, 14:27](#). As a second-felony habitual offender under [La. R.S. 15:529.1\(A\)\(2\)\(a\)](#), Bryant faced a potential sentence of two-thirds to three times the longest sentence, or 33 to 150 years, because he had a

prior conviction for sexual assault.

HN7 For armed robbery, the sentencing range was 10 to 99 years at hard labor, without benefit of parole, probation, or suspension of sentence. [La. R.S. 14:64](#). Under [La. R.S. 15:529.1\(A\)\(1\)](#), Bryant faced a potential sentence of one-half the longest sentence to two times the longest sentence, or 49.5 to 198 years.

At resentencing, the trial judge stated that he had previously considered all of the relevant factors under [La. C. Cr. P. art. 894.1](#). In particular, he considered Bryant's criminal history and mental health issues, [**15](#) which the trial judge was familiar with from having considered Bryant's competency to stand trial. The trial judge noted that Bryant had a prior [\[*708\]](#) conviction for sexual assault of a minor and now had a conviction for sexual assault of an adult, and that his prior conviction for robbery had elevated to a new conviction for armed robbery. The trial judge found that the similarity and nature of the instant offenses as compared to the prior offenses indicated that a serious sentence was both appropriate and necessary. The trial judge also remarked that while Bryant's mental health problems were a mitigating factor, that factor was grossly outweighed by the trauma to the victim and Bryant's criminal history.

The sentences imposed were particularized to Bryant. Despite having already served considerable time for two similar crimes, Bryant engaged in serious criminal activity not long after being released in Texas. The fact and severity of Bryant's ongoing mental health issues were thoroughly addressed [Pg 11] in the competency hearings. Moreover, those mental health issues were clearly considered by the trial judge when fashioning a punishment that was well below half the maximum allowed for each offense [**16](#) under the habitual offender statute.

The State argued at resentencing that sentences at the higher end of the ranges were warranted. Defense counsel countered that in light of Bryant's mental health issues, mid-range sentences were more appropriate. The 65-year sentences imposed fall within the statutory range, are far from the maximum available sentences of 150 and 198 years, and were ordered to be served concurrently. Notably, the sentences imposed are actually less than the mid-range sentences sought by Bryant's counsel at resentencing.

Under the facts and circumstances of this case, and in consideration of the harm done to society, the sentences imposed on Bryant are not disproportionate

and do not shock the sense of justice. The sentences were absolutely justified. There is no showing that the trial judge abused his discretion in the sentences imposed. These sentences are not unconstitutionally excessive.

CONCLUSION

Bryant's habitual offender sentences are AFFIRMED.

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Neutral
As of: January 20, 2021 1:51 AM Z

State v. Bryant

Supreme Court of Louisiana

November 10, 2020, Decided

No.2020-KO-00611

Reporter

2020 La. LEXIS 2714 *; 2020-00611 (La. 11/10/20);

STATE OF LOUISIANA VS. JOSEPH M. BRYANT

Notice: THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE FOURTEEN DAY REHEARING PERIOD.

DECISION WITHOUT PUBLISHED OPINION

Prior History: IN RE: Joseph Bryant - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Caddo, 1st Judicial District Court Number(s) 327055, Court of Appeal, Second Circuit [*1], Number(s) 53,321-KA.

State v. Bryant, 293 So. 3d 701, 2020 La. App. LEXIS 361, 2020 WL 1036292 (La.App. 2 Cir., Mar. 4, 2020)

Judges: Bernette J. Johnson, John L. Weimer, Jefferson D. Hughes, III, Scott J. Crichton, James T. Genovese, William J. Crain, James H. Boddie.

Opinion

Writ application denied.

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MIKE SPENCE
CLERK OF COURT

DIANNE DOUGHTY
CRIMINAL ADMINISTRATOR

501 Texas, Room 103
Shreveport, LA 71101-5405

327055

11/08/2017

STATE OF LOUISIANA VS BRYANT, JOSEPH M

1) ATTEMPTED AGGRAVATED RAPE

2) ARMED ROBBERY

THIS CASE BEING ON TRIAL, THE ACCUSED BEING PRESENT WITH COUNSEL, MARY HARRIED AND CARLOS PRUDHOMME. ASSISTANT DISTRICT ATTORNEYS MEKISHA SMITH CREAL AND MONIQUE METOYER PRESENT, THE JURY BEING IN THE JURY BOX AND THE JUDGE PRESIDING, TRIAL RESUMED. THE COURT ORDERED THE JURY SWORN. THE BILL OF INFORMATION AND THE DEFENDANT'S PLEA ON ARRAIGNMENT WERE READ ALOUD BY THE CLERK. THE ASSISTANT DISTRICT ATTORNEY MADE HER OPENING STATEMENT. EVIDENCE BY THE STATE WAS ADDUCED, CLOSED.

DEFENDANT'S EVIDENCE ADDUCED AND CLOSED AND ALL EVIDENCE WAS CONCLUDED. CASE WAS ARGUED BY THE ASSISTANT DISTRICT ATTORNEY AND DEFENSE COUNSEL, THE DEFENDANT BEING PRESENT. WHEREUPON, THE JURY WAS CHARGED BY THE COURT. THE COURT FILED THE WRITTEN CHARGE TO THE JURY. THE JURY RETIRED TO THE JURY ROOM AT 4:42 O'CLOCK P.M. IN CHARGE OF THE SHERIFF TO CONSIDER THEIR VERDICT. THE JURY RETURNED INTO OPEN COURT AT 6:50 PM O'CLOCK P.M. AND WAS ASKED BY THE COURT IF THEY HAD REACHED A VERDICT. THE FOREMAN OF THE JURY ANSWERED IN THE AFFIRMATIVE. THE JURY THROUGH THEIR FOREMAN, UPON THEIR OATH, DOES SAY, AS TO COUNT #1: "WE THE JURY FIND THE DEFENDANT, JOSEPH BRYANT, GUILTY AS CHARGED OF ATTEMPTED AGGRAVATED RAPE.(DATED) NOVEMBER 8, 2017 (SIGNED) CATHY McMULLEN, FOREMAN"; AND AS TO COUNT 2: "WE THE JURY FIND THE DEFENDANT, JOSEPH M. BRYANT, GUILTY AS CHARGED OF ARMED ROBBERY (SIGNED) CATHY McMULLEN (DATED) NOVEMBER 8, 2017." THE DEFENDANT WAS PRESENT WITH COUNSEL WHEN THE JURY RETURNED AND WHEN THE VERDICT WAS READ ALOUD BY THE CLERK. UPON, REQUEST OF DEFENSE COUNSEL, THE COURT ORDERED JURY POLLED AS TO BOTH COUNTS BOTH AND TEN OUT OF TWELVE (12) JURORS ANSWERED IN THE AFFIRMATIVE, THAT THIS WAS THEIR VERDICT AS TO EACH COUNT. THE COURT ORDERED THE VERDICT RECORDED AND THE JURY DISCHARGED. THE COURT ORDERED THE DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF TO AWAIT SENTENCING. THE COURT ORDERED A PRE-SENTENCE INVESTIGATION REPORT THROUGH PROBATION AND PAROLE. CASE WAS CONTINUED UNTIL DECEMBER 13, 2017 FOR FURTHER PROCEEDINGS. THE DEFENDANT WAS PRESENT WITH COUNSEL DURING ALL PROCEEDINGS THIS DAY. (JUDGE BRADY D O'CALLAGHAN) D. OLIVER