No. _____

In The

Supreme Court of the United States

JOHN GILCREASE
Petitioner

vs.

THE STATE OF LOUISIANA
Respondent

On Petition for Writ of Certiorari to
The Louisiana Supreme Court and Louisiana Court of Appeal, Second Circuit

PETITION FOR WRIT OF CERTIORARI

APPENDIX

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Appointed Attorney for Indigent Petitioner

State v. Gilcrease

Court of Appeal of Louisiana, Second Circuit

November 17, 2021, Judgment rendered

No. 54,122-KA, No. 54,123-KA (Consolidated Cases)

Reporter
329 So. 3d 1173 *; 2021 La. App. LEXIS 1746 **; 54,122 (La.App. 2 Cir. 11/17/21); 2021 WL 5349450

STATE OF LOUISIANA, Appellee versus JOHN E. GILCREASE, Appellant

Subsequent History: As Corrected February 24, 2022.

Decision reached on appeal by State v. Gilcrease, 2022 La. App. LEXIS 2068 (La.App. 2 Cir., Nov. 30, 2022)

Prior History: [**1] Appealed from the First Judicial District Court for the Parish of Caddo, Louisiana. Trial Court No. 367,300. Honorable Katherine Dorroh, Judge.

Disposition: AFFIRMED IN PART; SENTENCE VACATED, REMANDED FOR RESENTENCING.

Core Terms

sentence, battery, obstruction of justice, hard labor, second degree, guilty plea, imprisonment, argues, impose sentence, injuries, offender, charges, felony, cases, criminal investigation, tampering, abused, arrest, fine, neck, maximum sentence, protective order, specific intent, writ denied, circumstances, convictions, concurrent, distorting, six-year, maximum

Case Summary

Overview

HOLDINGS: [1]-Defendant's six-year sentence for second-degree battery was not excessive under La. Const. art. I, § 20 because he had a history of beating women spanning 20 years or more, the record showed that he had received the benefit of lenient sentences and plea deals for his previous offenses but he had not changed his behavior, and the police reports indicated that defendant tormented the victim for several hours by beating and terrorizing her; [2]-The court vacated defendant's 10-year concurrent sentence for obstruction of justice because second-degree battery did not necessarily require a hard labor sentence, and therefore defendant had to be sentenced under the third penalty provision of the statute, whereby the court may impose a fine up to $10,000, a term of imprisonment up to five years, with or without hard labor, or both.

Outcome
Judgment affirmed in part, vacated in part, and case remanded for resentencing.

LexisNexis® Headnotes

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

Criminal Law & Procedure > ... > Sentencing Guidelines > Departures From Guidelines > Family Responsibilities

Criminal Law &

Pet. App. "A" 1

Procedure > Sentencing > Appeals > Proportionality & Reasonableness Review

Criminal Law & Procedure > Appeals > Remand & Remittitur

Criminal Law & Procedure > Appeals > Procedural Matters > Records on Appeal

***HN1*[⬇] Imposition of Sentence, Factors**

Appellate courts utilize a two-pronged analysis in reviewing a sentence to determine whether it is excessive. First, the record must show that the trial court considered the factors in La. Code Crim. Proc. Ann. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. The goal of Article 894.1 is for the court to articulate the factual basis for the sentence, and not simply mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with Article 894.1. The important elements which should be considered are 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. 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 > Appeals > Proportionality & Reasonableness Review

Criminal Law & Procedure > Sentencing > Proportionality

***HN2*[⬇] Fundamental Rights, Cruel & Unusual Punishment**

In the second prong of the analysis in reviewing a sentence to determine whether it is excessive, the court determines whether the sentence is constitutionally excessive. 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 grossly disproportionate sentence shocks the sense of justice when the crime and punishment are viewed in light of the harm done to society.

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

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

Criminal Law & Procedure > Sentencing > Ranges

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

Criminal Law & Procedure > Trials > Judicial Discretion

***HN3*[⬇] Standards of Review, Abuse of Discretion**

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

Constitutional Law > Bill of Rights > Fundamental Rights > Cruel & Unusual Punishment

Criminal Law & Procedure > Sentencing > Cruel & Unusual Punishment

Constitutional Law > State Constitutional Operation

***HN4*[⬇] Fundamental Rights, Cruel & Unusual Punishment**

The Louisiana Constitution prohibits not only cruel and unusual punishment, but also prohibits the imposition of excessive punishment. La. Const. art. I, § 20.

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

***HN5*[⬇] Imposition of Sentence, Factors**

The degree of injuries sustained by a victim of domestic abuse is only one among several factors a court may consider while imposing a sentence, including the defendant's previous criminal behavior.

Counsel: LOUISIANA APPELLATE PROJECT, By: Sherry Watters, Counsel for Appellant.

JAMES E. STEWART, SR., District Attorney, NANCY BERGER-SCHNEIDER, RICHARD S. FEINBERG, Assistant District Attorneys, Counsel for Appellee.

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

Opinion by: MOORE

Opinion

[*1175] [Pg 1] **MOORE, C.J.**

The defendant, John E. Gilcrease, entered guilty pleas for second degree battery, a violation of La. R.S. 14:34.1, and [*1176] obstruction of justice, a violation of La. R.S. 130.1, as well as several misdemeanors, including false imprisonment and 14 counts of violation of a protective order. For the felony convictions, the court sentenced Gilcrease to 6 years at hard labor for his second-degree battery conviction and 10 years at hard labor for his obstruction of justice conviction. The court ordered the felony sentences to run concurrently with the misdemeanor sentences. Gilcrease now appeals both felony sentences, alleging that the court abused its discretion by imposing unconstitutionally excessive sentences for each.

For the following reasons, we affirm [**2] in part, vacate in part, and remand for resentencing.

FACTS

Shortly after midnight on May 28, 2019, Caddo Parish Sheriff's Deputy Joshua Grimes was dispatched to Willis Knighton South to investigate a battery committed just hours earlier at a Keithville, Louisiana residence on May 27, 2019. The victim of the battery, Connie Cliburn, told Grimes that her boyfriend, John Gilcrease, with whom she had lived for one year, had beaten her several times during the previous day. Gilcrease was not present at the hospital.[1]

[Pg 2] Ms. Cliburn said the beatings began around noon the day before in the travel trailer where they have resided for the past year.[2] The dispute erupted over a marriage license and continued during the day until 10:00 p.m. when Ms. Cliburn escaped and ran to her sister's house on foot.

Ms. Cliburn said that Gilcrease walked toward her and hit her in the nose with the palm of his hand. Then, when she tried to scream, he shoved socks in her mouth and choked her with his left hand. He told her he would stop if she would be quiet. He locked the door, preventing her from leaving. Each

1 Gilcrease claims Ms. Cliburn is his wife, as he did with previous victims. Since Ms. Cliburn refers to Gilcrease as her boyfriend and is so reported according to Deputy Grimes's report, we will do the same.

2 The travel trailer was parked in the driveway next to Gilcrease's parents' home.

time she tried to move toward the door, he shoved her to the floor.

Gilcrease told her to get the [**3] gun and shoot him so he could kill her. When she refused, he pinned her down on the bed with his knees on her arms and tied a neck tie around her neck. He put socks in her mouth and covered her mouth with his hand while pinching her nostrils shut. He told her he was going to kill her and then kill himself. She said she blacked out. When she came to, he was standing by the front door, and he told her she was not leaving. He said he did not trust her because she was going to call the cops, and he would go to jail.

She convinced him to let her take a shower, but when she was getting in the shower, he repeatedly slammed the right side of her face into the wall. After the shower, she asked if she could check on her dog staying at his parents' house. She said that when they went into the house, John and his father began arguing. John's father told John he needed to leave. When John went back to the trailer, Ms. Cliburn seized the opportunity to flee on [Pg 3] foot to her sister's house located approximately a mile away. When she arrived there, her sister drove her to the hospital.

Deputy Grimes noted in his report that the victim's right eye was black and almost completely swollen shut. Her [**4] nose was red and swollen as well as her lips. She had [*1177] several scratches on her face and around her neck. She had purple and black bruising on both of her arms.

Gilcrease was subsequently arrested at the Keith Road address. He denied any physical altercation with Ms. Cliburn. He said that he fell down from drinking. Grimes said Gilcrease had scratches on his face and neck, which Gilcrease said resulted from falling down. Grimes informed him that he was being arrested for second degree battery and false imprisonment. Grimes obtained Gilcrease's consent to go in the trailer where he found blood on the floor and on a pillow on the bed. He also found a necktie on the back of a chair seat.

Gilcrease was booked on charges of second degree battery, a violation of La. R.S. 14:34.1 and false imprisonment, a violation of La. R.S. 14:46.

On June 12, 2019, Judge Katherine Dorroh issued a protective order prohibiting Gilcrease from any contact with Ms. Cliburn, either personally, electronically, by telephone, in writing or through a third party. Gilcrease was returned to the CCC that afternoon after he telephoned the victim on her cell phone, ignoring the court's protective order. He continued to contact the victim on her cell [**5] phone some 68 times in the days following, even after Ms. Cliburn repeatedly told him he was not supposed to be calling her. Additionally, he wrote her several letters telling her to recant her statement to police about the incident, and he acknowledged in the same letter that he was asking her to lie about the battery for which he was charged. He told [Pg 4] her he could not live without her, and he would kill himself if she did not take his calls.

For her part, the victim told investigators she was terrified of Gilcrease. She feared that he would get someone to harm her while he was in jail, or that he would harm her after he got out of jail. She said he was manipulative and vindictive.

On September 1, 2020, the state filed an amended the bill of information charging second degree battery and false imprisonment, and violation of a protective order (14 counts) (#372733), an offense defined by La. R.S. 14:79. A second bill was filed charging Gilcrease of obstruction of justice (#370505), in violation of La. R.S. 14:130.1, namely, by "tampering with evidence with specific intent of distorting the results of any criminal investigation."

Trial was set to commence on September 14, 2020. That morning, Gilcrease unsuccessfully [**6] tried to resurrect a rescinded plea offer from the state that he had previously rejected. Faced with the prospect of a trial, Gilcrease ultimately elected to plead guilty to the charges with no agreement, ostensibly to save Ms. Cliburn from the stress of testifying.

The court informed Gilcrease of the sentencing ranges for each offense to which he was pleading

guilty, and properly *Boykinized* Gilcrease before accepting his guilty pleas.

As noted above, the court subsequently sentenced Gilcrease to six years at hard labor for the second degree battery conviction and 10 years at hard labor for the obstruction of justice conviction, concurrent with each other and with the misdemeanor sentences.

[Pg 5] This appeal followed, wherein Gilcrease contends the court abused its discretion by imposing excessive sentences for each of the felony convictions.

DISCUSSION

HN1[⬆] Appellate courts utilize a two-pronged analysis in reviewing a sentence to determine whether it is excessive. First, the record must show that the trial court [*1178] considered the factors in La. C. Cr. P. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines [**7] of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Sandifer*, 53,276 (La. App. 2 Cir. 1/15/20), 289 So. 3d 212; *State v. DeBerry*, 50,501 (La. App. 2 Cir. 4/13/16), 194 So. 3d 657, *writ denied*, 16-0959 (La. 5/1/17), 219 So. 3d 332. The goal of La. C. Cr. P. art. 894.1 is for the court to articulate the factual basis for the sentence, and not simply mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. DeBerry, supra*. The important elements which should be considered are 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. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. DeBerry, supra*. There is no requirement that specific matters be given any particular weight at sentencing. *State v. DeBerry, supra; State v. Shumaker*, 41,547 (La. App. 2 Cir. 12/13/06), 945 So. 2d 277, *writ denied*, 07-0144 (La. 9/28/07), 964 So. 2d 351.

HN2[⬆] [Pg 6] In the second prong of the analysis, the court determines whether the sentence is constitutionally excessive. 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); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A grossly disproportionate sentence shocks the sense of justice when the crime and punishment are viewed in light of the harm done to society. *State v. Weaver*, 01-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Meadows*, 51,843 (La. App. 2 Cir. 1/10/18), 246 So. 3d 639, *writ denied*, 18-0259 (La. 10/29/18), 254 So. 3d 1208.

HN3[⬆] The trial court has wide discretion to impose a sentence [**8] within the statutory limits, and the sentence imposed will not be set aside as excessive absent a manifest abuse of that discretion. *State v. Williams*, 03-3514 (La. 12/13/04), 893 So. 2d 7; *State v. Diaz*, 46,750 (La. App. 2 Cir. 12/14/11), 81 So. 3d 228. 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. Williams, supra; State v. Free*, 46,894 (La. App. 2 Cir. 1/25/12), 86 So. 3d 29.

Six-year sentence for second degree battery

By his first assignment of error, Gilcrease alleges that the district court abused its discretion by imposing a six-year sentence which is constitutionally excessive under the circumstances of this offense and this offender. Gilcrease argues that the Louisiana Constitution affords greater protection in sentencing beyond the U.S. Constitution. ***HN4***[⬆] It prohibits not only "cruel" and "unusual" punishment, but also prohibits the imposition of "excessive" punishment. La. Const. art. I, § 20. He argues that a sentence [Pg 7] may be excessive though neither cruel nor unusual. An excessive sentence occurs, he maintains, when the punishment is too harsh for certain conduct. Hence, a sentence may be excessive even if it is within the statutory limits if it is grossly disproportionate to the severity of the offense.

Furthermore, he argues, second degree battery requires that the offender [**9] intentionally inflict "serious bodily injury to the [*1179] victim." Serious bodily injury is defined as bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty, or a substantial risk of death. Gilcrease argues that Ms. Cliburn's injuries consisted merely of a black eye, scratches to her arms and neck, and emotional trauma. On the spectrum of serious bodily injuries that support a second-degree battery charge, he argues, Ms. Cliburn's injuries were relatively minimal.

Finally, he argues that the broad sentencing range for second degree battery, i.e., "not more than eight years," indicates that the legislature intended to allow the sentencing judge to exercise his or her discretion according to the individual circumstances of the offense and the offender. Gilcrease contends that the sentence imposed on him is at the upper end of the spectrum, which is reserved for the most severe cases, whereas given the fact that the injuries Ms. Cliburn suffered were relatively minor, his punishment does not fit the offense and is therefore excessive. While the sentencing [**10] court found no mitigating circumstances, the sanity report indicated that Gilcrease is 46 years old, a high school graduate, and has two sons. He was employed as a machinist until he witnessed the gruesome [Pg 8] death of a coworker by a machine at work and from which he now suffers from posttraumatic stress syndrome.

Gilcrease cites several cases where defendants were convicted for second degree battery and their victims sustained injuries more severe than Ms. Cliburn, yet they received lesser sentences than his six-year sentence. However, we observe that in all but one of the cases, the maximum sentence for second degree battery was only 5 years at the time of the offense.

In *State v. Francisco*, 10-881 (La. App. 3 Cir. 2/2/11), 55 So. 3d 995, the defendant kicked and punched his girlfriend on the side of her head, dragged her by her hair, and slammed her into a door frame knocking her unconscious. She suffered bruising, swelling on one side of her face, arms and leg and a broken rib. The court imposed the maximum sentence of five years at hard labor for second degree battery. The sentence was affirmed on appeal based on the brutality of the offense and defendant's history of six felonies, including three felony arrests for domestic abuse battery, [**11] trespassing, aggravated battery, and violations of protective orders, and stalking.

Other cases Gilcrease cites are: *State v. Thomas*, 08-1280 (La. App. 3 Cir. 4/1/09), 7 So. 3d 802 (maximum 5-year sentence upheld where victim was stabbed twice in the neck and twice in the back with a knife); *State v. Hopkins*, 96-1063 (La. App. 3 Cir. 3/5/97), 692 So. 2d 538 (maximum 5-year sentence upheld where victim was beaten with a thick, tree branch); *State v. McBride*, 00-422 (La. App. 3 Cir. 11/15/00), 773 So. 2d 849, *writ denied*, 01-294 (La. 2/8/02), 807 So. 2d 858 (4-year, 10-month sentence with fine upheld where weapon was used to cut victim's throat, damaging blood vessels).

[Pg 9] Gilcrease contrasts these maximum or nearly maximum sentence cases with two Second Circuit cases in which the defendants received lesser sentences. In *State v. Tisby*, 33,591 (La. App. 2 Cir. 6/21/00), 764 So. 2d 209, *writ denied*, 00-2236 (La. 6/1/01), 793 So. 2d 181, the defendant was charged with aggravated battery for swinging a "sling blade" (aka a Kaiser or K-blade) at the victim and cutting his face after the victim had intervened in a dispute between the defendant and his girlfriend at a barbeque. The jury returned a responsive verdict of second-degree battery; the defendant was sentenced to 21/2 [*1180] years at hard labor — half the maximum sentence. In *State v. Jackson*, 51,575 (La. App. 2 Cir. 9/27/17), 244 So. 3d 764, this court affirmed a near-maximum sentence of 41/2 years at hard labor for striking his girlfriend in the face during a dispute. The blow fractured her face and broke her nose resulting [**12] in the loss of one eye and permanent disfigurement. The defendant had three prior felony convictions.

In this case, the police reports indicate that the

defendant tormented the defendant for several hours by beating and terrorizing her. He threatened to kill her and himself. He stuffed her mouth with socks so she could not cry for help, strangled her, pinned her down with his knees, and he pinched her nostrils shut so she could not breathe until she was unconscious. He slammed her head against the wall causing one side of her face to be swollen and she had a black eye swollen shut. He also struck her in the nose. She had to run a mile to her sister's house to escape. Her sister immediately took her to the hospital for treatment.

HN5[↑] Regarding Gilcrease's argument that his sentence is excessive compared to other cases because Ms. Cliburn's injuries were relatively minimal, we note that the degree of injuries sustained by a victim of [Pg 10] domestic abuse is only one among several factors a court may consider while imposing a sentence, including the defendant's previous criminal behavior.

Gilcrease has a long history of beating women spanning back 20 years or more. Although there is a gap [**13] in his arrest record of nearly 10 years, we are also aware that many if not most instances of domestic abuse are never reported due to the victim's fear of retribution from the abuser. In addition to the several battery arrests or convictions in the early 2000s, Gilcrease had a recent arrest in 2017 for a similar domestic abuse incident involving another woman just two years prior to this incident. Trial was still pending in that matter when the instant sentences were imposed. The record shows that Gilcrease has received the benefit of lenient sentences and plea deals for his previous offenses, and yet, he has not changed his behavior.

Given these circumstances, we conclude that the sentencing court properly exercised its broad discretion by imposing a sentence that reflects the seriousness of the offense and the degree of culpability of the defendant. Therefore, we conclude that the six-year sentence at hard labor imposed for this offense was neither excessive, cruel and unusual punishment, nor did the sentence constitute an abuse of discretion by the sentencing court.

This assignment is without merit.

Ten-year sentence for obstruction of justice

By this assignment of error, the defendant [**14] alleges that the district court abused its discretion by imposing a 10-year sentence which is more than the statutory maximum for this offense and is constitutionally excessive under the circumstances of this offense and this offender. However, he also maintains that a review of the record discloses an error patent in that "the [Pg 11] State's statement of fact does not match the bill of information and does not provide a legal basis for a valid plea." Hence, the 10-year sentence is invalid, he argues, since a valid sentence for him must rest upon a valid and sufficient statute, indictment and guilty plea. La. C. Cr. P. art. 872.

Gilcrease maintains that the facts alleged in the bill of information do not fit the recitation of facts by the ADA to which he pled guilty and which formed the factual basis of his guilty plea. Specifically, [*1181] he alleges that the bill charges facts that would violate subparagraph (A)(1) of the statute, but the facts the ADA recited at the guilty plea support a violation of subparagraph (A)(2). The bill of information reads:

***

. . .the STATE OF LOUISIANA charges that on or about June 12, 2019, at and in the Parish, District and State aforesaid

JOHN E. GILCREASE

Committed the offense of

R.S. 14:130.1-OBSTRUCTION [**15] **OF JUSTICE**

In that HE

COUNT 1: committed the offense of OBSTRUCTION OF JUSTICE by *tampering with evidence with the specific intent of distorting the results of any criminal investigation.*

***

(Emphasis supplied).

At the guilty plea colloquy, the judge asked the ADA to "state the facts" that formed the basis of the charge and to which the defendant was pleading guilty. The ADA responded:

> The state charges that on or about the date of June 12, 2019, in Caddo Parish, Louisiana, that the defendant, John E. Gilcrease, with a date of birth of 8/12/1972, committed the offense of violating Revised Statute 14:130.1, obstruction of [Pg 12] justice, in that he tampered with evidence or a witness with the specific intent of distorting the results of any criminal investigation, specifically by contacting Connie Cliburn, the witness against him in docket 367,300, which was at that time pending, and attempting to get her to recant or change her version of events all of which was contrary to the laws of the State of Louisiana and against the peace and dignity of the same and committed in Caddo Parish, Louisiana.

Gilcrease agreed to the facts as recited by the ADA.

Clearly, the language used Count 1 in the bill of information tracks [**16] a portion of subparagraph (A)(1) of the statute. However, the bill simply charges a violation of R.S. 14:130.1 - Obstruction of Justice. It does not charge a violation of subparagraph (A)(1) or (A)(2). The language in Count 1 simply alleges that Gilcrease "tampered with evidence with the specific intent of distorting the results of any criminal investigation."

The "result[] of the criminal investigation" in this case was the evidence leading to the instant charge of obstruction in the form of contacts by telephone and by mail wherein Gilcrease attempted to persuade, induce, or cajole Ms. Cliburn into changing her statements made to police that led to his criminal prosecution. Tamper simply means to "meddle" or "interfere" with. In our view, the acts recited by the ADA constitute "tampering with the evidence" with specific intent to distort the results of the criminal investigation.

Importantly, the record does not show that the defense requested a bill of particulars, nor did Gilcrease object to any problems with the bill prior to or at his guilty plea and sentencing proceedings. Gilcrease clearly knew what he was being charged with in the obstruction of justice charge, and he has not shown that he was misled or that his plea was involuntarily, [**17] unknowingly made or that he was prejudiced in any way.

[Pg 13] Accordingly, this error patent claim is without merit.

Sentence exceeds the statutory maximum

Gilcrease argues that the 10-year sentence at hard labor imposed by the [*1182] court for the obstruction of justice conviction exceeds the statutory maximum sentence of five years' imprisonment in this case. This argument has merit.

At the guilty plea hearing, the court reviewed the possible sentencing range or exposure for each crime to which Gilcrease was pleading guilty. The court noted that the penalty for second degree battery is a fine up to $2,000 or imprisonment, *with or without hard labor*, for not more than eight years, or both. For the crime of obstruction of justice, the court read aloud all three penalties in Section 130.1 Paragraph (B):

> (1) When the obstruction of justice involves a criminal proceeding in which a sentence of death or life imprisonment may be imposed, the offender shall be fined not more than one hundred thousand dollars, imprisoned for not more than forty years at hard labor, or both.
>
> (2) When the obstruction of justice involves a criminal proceeding in which a sentence of imprisonment necessarily at hard labor for any period less than a [**18] life sentence may be imposed, the offender may be fined not more than fifty thousand dollars, or imprisoned for not more than twenty years at hard labor, or both.
>
> (3) When the obstruction of justice involves any other criminal proceeding, the offender shall be fined not more than ten thousand dollars, imprisoned for not more than five years, with or without hard labor, or both.

After she completed reading the third penalty

provision for obstruction of justice, the judge told Gilcrease that the third provision would apply to his case.

Inexplicably, however, at sentencing the court imposed a 10-year hard labor sentence to run concurrently with the other sentences. Because second [Pg 14] degree battery *does not necessarily require a hard labor sentence*, Gilcrease must be sentenced under the third penalty provision of the statute, whereby the court may impose a fine up to $10,000, a term of imprisonment up to five years, with or without hard labor, or both.

We therefore vacate the 10-year concurrent sentence imposed for Gilcrease's conviction for obstruction of justice, and remand for resentencing.

Finally, inasmuch as we have vacated the illegal sentence imposed for obstruction of justice, [**19] defendant's argument that his 10-year sentence is excessive is now moot.

CONCLUSION

For the foregoing reasons, we affirm Gilcrease's conviction and six-year sentence at hard labor for second degree battery. We affirm Gilcrease's conviction for obstruction of justice, but we vacate the concurrent 10-year sentence imposed for obstruction of justice, and we remand to the district court for resentencing on that conviction.

AFFIRMED IN PART; SENTENCE VACATED, REMANDED FOR RESENTENCING.

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Judgment rendered November 30, 2022.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 54,905-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA — Appellee

versus

JOHN E. GILCREASE — Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 370,505

Honorable Donald E. Hathaway, Jr., Judge

* * * * *

LOUISIANA APPELLATE PROJECT — Counsel for Appellant
By: Sherry Watters

JAMES E. STEWART, SR. — Counsel for Appellee
District Attorney

JASON W. WALTMAN
REBECCA A. EDWARDS
Assistant District Attorneys

* * * * *

Before MOORE, STEPHENS, and ROBINSON, JJ.

Def. App. "B" 1

MOORE, C.J.

This is an appeal after remand for resentencing of the defendant, John E. Gilcrease, who complains that as a result of resentencing, he received an unconstitutionally harsher sentence for his conviction for obstruction of justice. After review, we conclude that the sentence imposed is not illegal or constitutionally excessive. We therefore affirm.

FACTS

Caddo Parish Sheriff's Deputy Joshua Grimes was dispatched to Willis-Knighton South shortly after midnight on May 28, 2019, to investigate a battery committed just hours earlier at a Keithville, Louisiana, residence on May 27, 2019. The victim of the battery, Connie Cliburn, told Dep. Grimes that her boyfriend, John Gilcrease, with whom she had lived for a year, had beaten her several times during the previous day. Gilcrease, the defendant herein, was not present at the hospital.

According to Ms. Cliburn, the beatings began around noon the day before in the travel trailer where the couple lived next to Gilcrease's parents' home. The battering continued until around 10:00 p.m., when she escaped and ran to her sister's home about one mile away.

The dispute allegedly erupted over a marriage license. Although the couple are not married, Gilcrease referred to Ms. Cliburn as his wife; he also referred to each of his previous victims as his wife, but that was the one knot he never actually tied.

Ms. Cliburn said that Gilcrease walked toward her and hit her in the nose with the palm of his hand. Then, when she tried to scream, he shoved socks in her mouth and choked her with his left hand. He told her he would

stop if she would be quiet. He locked the door, preventing her from leaving. Each time she tried to move toward the door, he shoved her to the floor.

Gilcrease told her to get a gun so he could kill her. When she refused, he pinned her down on the bed with his knees on her arms and tied a necktie around her neck. He stuffed socks in her mouth and covered her mouth with his hand while pinching her nostrils shut. He told her he was going to kill her and then kill himself. She said she blacked out. When she came to, he was standing by the front door and told her she was not leaving. He said he did not trust her because she was going to call the police and he would go to jail.

She convinced him to let her take a shower; but when she was getting into the shower, he repeatedly slammed the right side of her face into the wall. After the shower, she asked if she could check on her dog, which was staying at his parents' house; when they went into the house, Gilcrease and his father began arguing. The father told Gilcrease he needed to leave. When Gilcrease went back to the trailer, Ms. Cliburn seized the opportunity to flee on foot to her sister's house, about a mile away. When she arrived there, her sister drove her to the hospital where she was treated for her injuries.

Gilcrease was booked on charges of second degree battery, a violation of La. R.S. 14:34.1 and false imprisonment, a violation of La. R.S. 14:46.

The obstruction of justice charge came a few weeks later while Gilcrease was in jail, when he tried to persuade Ms. Cliburn to recant her story of the incident resulting in the second degree battery charge.

On June 12, 2019, the district court issued a protective order, instructing Gilcrease in open court that he was prohibited from any contact

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with Ms. Cliburn, either personally, electronically, by telephone, in writing, or through a third party; he was then returned to the Caddo Correctional Center. The very afternoon that the protective order was issued, he telephoned the victim on her cell phone, ignoring the protective order. He continued to contact the victim on her cell phone some 68 times in the days following, even after Ms. Cliburn warned him not to call her. Additionally, Gilcrease wrote her several letters telling her to recant her statement to police about the incident. In one of the letters, he acknowledged that he was asking her to lie about the battery for which he was charged. He told her he could not live without her, and he would kill himself if she did not take his calls.

The victim told investigators she was terrified of Gilcrease, and she feared that he would get someone to harm her while he was in jail, or that he would harm her after he got out of jail. She said he was manipulative and vindictive.

As a result of the violations of the protective order, the state filed an amended bill of information charging second degree battery, false imprisonment, and violation of a protective order (14 counts), an offense defined by La. R.S. 14:79. Subsequently, a second bill under a different docket number was filed charging Gilcrease of obstruction of justice, in violation of La. R.S. 14:130.1, namely, by "tampering with evidence with specific intent of distorting the results of any criminal investigation."

Gilcrease rejected partial plea offers from the state. However, on the morning of trial, he tried to resurrect the plea offers that he previously rejected. The state refused. Faced with the prospect of a trial, Gilcrease ultimately elected to plead guilty to all the charges without any sentencing

agreement, stating that he wanted to spare the victim, Ms. Cliburn, from suffering the stress of having to testify against him.

The court correctly informed Gilcrease of the sentencing ranges for each offense, including the separate obstruction of justice charge, to which he was also pleading guilty, and she properly *Boykinized* Gilcrease before accepting his guilty plea.

Subsequently, the court sentenced Gilcrease to six years at hard labor for the second degree battery conviction and, inexplicably, imposed a statutorily illegal 10-year hard labor sentence for the obstruction of justice conviction. She ordered the two felony sentences to be served concurrently with each other and with the misdemeanor sentences, all with credit for time served.

On appeal, we vacated the illegal 10-year sentence imposed for obstruction of justice and remanded the case for resentencing. *State v. Gilcrease*, 54,122 (La. App. 2 Cir. 11/17/21), 329 So. 3d 1173.

On remand, the court judge imposed a reduced sentence of 4 years (originally 10) at hard labor on the obstruction charge; however, it ordered the sentence to be served *consecutively* to the 6-year sentence imposed for second degree battery. Adding the two sentences together, the result was the same as the original sentence – a 10-year sentence. Gilcrease also complains that the four-year sentence for obstruction of justice is unconstitutionally harsh because it is near the maximum sentence of five years for this grade of the offense under the sentencing provision.

The state argues that the net result from the resentencing is that Gilcrease will serve the same amount of time as the prior sentence. In the original appeal, this court expressly stated that it did not make any

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determination that the sentence was excessive; however, it was clear that the prior sentencing judge inadvertently sentenced the defendant under the middle grade provision for obstruction of justice that provided a 20-year maximum, instead of under the lower grade, which provided a 5-year maximum. Hence, we concluded only that the sentence was statutorily illegal.

Gilcrease argues that the sentencing court on remand was required not only to impose a lesser term of imprisonment under the statute, but also required to order that the sentence imposed be served concurrently with the other sentences, because the vacated sentence was ordered to be served concurrently at the original sentencing.

Penalties for Obstruction of Justice

The penalties of imprisonment for the offense of obstruction of justice have three grades or levels, and the grade is determined by the maximum term of imprisonment for the criminal offense proceeding involving the obstruction of justice by the defendant. In Gilcrease's case, the obstruction of justice involved a criminal proceeding against him for second degree battery. The term of imprisonment for second degree battery is a maximum of eight years with or without hard labor. Because a second-degree battery conviction specifies that the sentence imposed may be "with or without hard labor," the obstruction of justice offense falls under the lowest grade, which provides a maximum term of imprisonment of five years with or without hard labor.

New Resentencing Hearing

Because the original sentencing judge no longer sat on the criminal bench, this resentencing matter fell to Judge Don E. Hathaway. Judge

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Hathaway held a sentencing hearing in which he reviewed the facts of the case in light of La C. Cr. P. art. 894.1(A) & (B). The court concluded that all three factors of La. C. Cr. P. art. 894.1(A) were applicable, and each requires a sentence of imprisonment if applicable to the instant case. Judge Hathaway further found that several aggravating factors in Art. 894.1(B) applied, including (1) the defendant exhibited deliberate cruelty to the victim; and (6) the offender used threats of or actual violence in the commission of the offense. Factors related to the obstruction of justice included (7) the offender used or caused others to use violence, force, or threats with the intent to influence the institution, conduct, or outcome of the criminal proceedings; and (8) the offender committed the offense in order to facilitate or conceal the commission of another offense. The court found that none of the mitigating factors applied.

The factors mentioned by Judge Hathaway differed from those listed by the previous judge, who listed all three factors in Art. 894.1(A), but only factors (1), (6), and (9) under Art. 894.1(B). The difference is that the factors in Art. 894.1(B) listed by the original judge related only to the second degree battery against Ms. Cliburn, whereas factors (7) and (8) identified by Judge Hathaway are clearly related to the obstruction of justice charge and surely had some role in the sentence he imposed.

After listing these factors, the court imposed a four-year sentence at hard labor to be run consecutively to all other sentences. The court further correctly advised Gilcrease of the time delays to file a motion to reconsider, to file a motion to appeal, and instructed him that he had two years from the date his conviction and sentence become final to file for post-conviction relief.

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This appeal followed.

DISCUSSION

Gilcrease's first assignment of error alleges that his constitutional rights were violated when the court reduced the 10-year *concurrent* sentence to a 4-year *consecutive* sentence. First, he argues that since the original 10-year concurrent sentence on the obstruction conviction exceeded the statutory sentencing range, it follows that the reduced 4-year consecutive sentence exceeds the court's statutory sentencing authority because the end result is that the defendant will serve the same 10-year "illegal" sentence.

Second, Gilcrease argues that there is a presumption of vindictiveness by the judge in resentencing by ordering the sentence to be served consecutive to the six-year sentence. However, this argument overlooks that there is no such presumption where a different judge conducts the resentencing. Additionally, there is simply no evidence that the sentencing court was being vindictive.

Third, the defense argues that because there was no change in the actual facts of the case since the initial sentence, the court could not and did not justify imposition of consecutive sentences.

The first illegal sentence and the second, legal sentence are not equivalent. Gilcrease was originally sentenced to a total of 16 years for the two separate felony convictions – 6 years for second degree battery and 10 years for obstruction of justice. The court ordered that the two sentences were to be served concurrently, although they arose out of separate and distinctly different criminal acts by the defendant. On resentencing, Gilcrease was resentenced by a different judge who reviewed the facts, and he independently considered the factors of La. C. Cr. P. art 894.1(A) and

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(B). He identified additional aggravating factors related to the obstruction of justice charge, and he sentenced the defendant to four years' imprisonment at hard labor. This is a statutorily legal sentence that is six years less than the original sentence. As previously stated, this court never found that the original 10-year sentence was excessive, and expressly pretermitted that assignment. We concluded only that the sentence was statutorily illegal, as the court had read the wrong grade of punishment in the statute. While arguably all excessive sentences are illegal, a (statutorily) illegal sentence is not necessarily excessive. The terms are neither synonymous or interchangeable.

The real issue, then, is whether Judge Hathaway's order that the four-year sentence be served consecutively constitutes an illegal or excessive sentence.

La. C. Cr. P. art. 883 states:

> If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. In the case of the concurrent sentence, the judge shall specify, and the court minutes shall reflect, the date from which the sentences are to run concurrently.

The resentencing court was under no obligation to justify imposition of consecutive sentences in this case where the two offenses were not based on the same act. *State v. Johnson*, 38,001 (La. App. 2 Cir. 2/12/04), 865 So. 2d 346; *State v. Nelson*, 467 So. 2d 1159 (La. App. 2 Cir. 4/3/1985).

Nevertheless, the record shows that the court justified the sentence it imposed by finding aggravating circumstances related to the obstruction of

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justice conviction. Although Gilcrease contends that the court had no basis to impose a consecutive sentence because "the facts" of the case have not changed," "the findings" of aggravating factors by the court have indeed changed, as identified by Judge Hathaway. Judge Hathaway identified two aggravating circumstances related to the obstruction of justice charge under Art. 894.1, namely (7) subsequent to the offense the offender used threats with the intent to influence the conduct or outcome of the criminal proceedings, and (8) the offender committed the offense (obstruction) in order to conceal or facilitate the commission of another offense (battery).

Finally, Gilcrease argues that the trial court impermissibly imposed an increased sentence upon him on remand, in contravention of *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). He contends this constituted a judicial "vendetta" against him.

In *North Carolina v. Pearce, supra*, the Supreme Court held that neither the double jeopardy provision nor the Equal Protection Clause imposed an absolute bar to a more severe sentence upon a reconviction. However, the court found that the due process clause of the 14th Amendment prohibited increased sentences when the increase was motivated by vindictiveness on the part of the sentencing judge. "And since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction, due process also requires that a defendant be freed of apprehension of such a retaliatory motivation on the part of the sentencing judge." *Id.*

The Supreme Court has clarified its holding in *Pearce* in several subsequent cases. According to these cases, *Pearce* established a prophylactic rule by which a presumption of vindictiveness is deemed to

exist when a judge imposes a more severe sentence upon a defendant who successfully exercised his right to appeal or to attack his conviction collaterally. This presumption of vindictiveness may be overcome only by objective information in the record justifying the increased sentence.

That decision, as we have said, was premised on the apparent need to guard against vindictiveness in the resentencing process. *Pearce* was not written with a view to protecting against the mere possibility that, once the slate is wiped clean and the prosecution begins anew, a fresh sentence may be higher for some valid reason associated with a need for flexibility and discretion in the sentencing process. The possibility of a higher sentence was recognized and accepted as a legitimate concomitant of the retrial process.

However, "the presumption of vindictiveness is inapplicable where, as here, different sentencers have imposed the different sentences against the defendant, because a sentence 'increase cannot truly be said to have taken place." *Texas v. McCullough*, 475 U.S. 134, 106 S. Ct. 976, 979, 89 L. Ed. 2d 104 (1986); *State v. Rodriguez*, 550 So. 2d 837 (La. App. 2 Cir. 9/27/89).

Where the presumption does not apply, the defendant may still be entitled to relief, but he must affirmatively prove actual vindictiveness. *Wasman v. United States*, 468 U.S. 559, 104 S. Ct. 3217, 82 L. Ed. 2d 424 (1984); *State v. Rodriguez, supra.*

After review, we find no evidence that the resentencing court was acting vindictively when sentencing Gilcrease and ordering that the four-year sentence for obstruction of justice be served consecutive to the sentence for second degree battery.

This assignment is without merit.

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In his second assignment, Gilcrease argues that the four-year sentence is unreasonably close to the five-year maximum sentence in this case, and therefore unconstitutionally excessive.

Appellate courts utilize a two-pronged analysis in reviewing a sentence to determine whether it is excessive. First, the record must show that the trial court considered the factors in La. C. Cr. P. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Sandifer*, 53,276 (La. App. 2 Cir. 1/15/20), 289 So. 3d 212; *State v. DeBerry*, 50,501 (La. App. 2 Cir. 4/13/16), 194 So. 3d 657, *writ denied*, 16-0959 (La. 5/1/17), 219 So. 3d 332. The goal of La. C. Cr. P. art. 894.1 is for the court to articulate the factual basis for the sentence, and not simply mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. DeBerry*, *supra*. The important elements which should be considered are 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. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. DeBerry*, *supra*. There is no requirement that specific matters be given any particular weight at sentencing. *State v. DeBerry*, *supra*; *State v. Shumaker*, 41,547 (La. App. 2 Cir. 12/13/06), 945 So. 2d 277, *writ denied*, 07-0144 (La. 9/28/07), 964 So. 2d 351.

In the second prong of the analysis, the court determines whether the sentence is constitutionally excessive. 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); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A grossly disproportionate sentence shocks the sense of justice when the crime and punishment are viewed in light of the harm done to society. *State v. Weaver*, 01-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Meadows*, 51,843 (La. App. 2 Cir. 1/10/18), 246 So. 3d 639, *writ denied*, 18-0259 (La. 10/29/18), 254 So. 3d 1208.

The trial court has wide discretion to impose a sentence within the statutory limits, and the sentence imposed will not be set aside as excessive absent a manifest abuse of that discretion. *State v. Williams*, 03-3514 (La. 12/13/04), 893 So. 2d 7; *State v. Diaz*, 46,750 (La. App. 2 Cir. 12/14/11), 81 So. 3d 228. 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. Williams*, *supra*; *State v. Free*, 46,894 (La. App. 2 Cir. 1/25/12), 86 So. 3d 29.

The record shows that prior to imposing sentence, the court carefully reviewed the factors under La. C. Cr. P. art. 894.1. The four-year sentence imposed was within the statutory range for the offense, and the record establishes a factual basis for that sentence.

Furthermore, we find that the sentence is neither constitutionally excessive, nor 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*, *supra*; *State v. Bonanno*, *supra*. This sentence

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in no way shocks the sense of justice when the crime and punishment are viewed in light of the harm done to society by this type of crime, namely, the brutal physical abuse of women.

Given Gilcrease's repeated display of utter disrespect for the law and the court by repeatedly violating the protective order issued to prevent him from contacting the victim and trying to persuade her to drop the charges against him, this sentence is not excessive.

This assignment is without merit.

CONCLUSION

Accordingly, for the reasons stated hereinabove, the conviction for obstruction of justice and four-year sentence at hard labor to be served consecutively to all other sentences, is affirmed.

CONVICTION AND SENTENCE AFFIRMED.

05/31/2023 "See News Release 027 for any Concurrences and/or Dissents."

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-K-01845

VS.

JOHN E. GILCREASE

IN RE: John E. Gilcrease - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Caddo, 1st Judicial District Court Number(s) 370,505, Court of Appeal, Second Circuit, Number(s) 54,905-KA;

May 31, 2023

Writ application denied.

PDG
JLW
JDH
SJC
JTG
WJC
JBM

Supreme Court of Louisiana
May 31, 2023
Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

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COPY

IN THE FIRST JUDICIAL DISTRICT COURT

IN AND FOR THE PARISH OF CADDO

SHREVEPORT, LOUISIANA

STATE OF LOUISIANA

VERSUS DOCKET NO.: 370505

JOHN GILCREASE

RESENTENCING

TRANSCRIPT OF THE PROCEEDINGS HAD of the above-styled and numbered cause before HIS HONOR DONALD E. HATHAWAY, JR., Judge of the First Judicial District Court, in and for Caddo Parish, at Shreveport, Louisiana, on the 17th day of March, 2022, A.D.

APPEARANCES:

MR. JASON WALTMAN

Assistant District Attorney

MS. ELIZABETH GIBSON

Counsel for Defendant

FILED

MAY 09 2022

MAGGIE PETERSON, DEPUTY CLERK COURT

CADDO PARISH

Reported by:

Christina Wallace

Official Court Reporter, CSR

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WHEREUPON . . .

the following proceedings were had:

(Whereupon, the defendant was present via video with counsel.)

MR. WALTMAN: Are you John Gilcrease?

THE DEFENDANT: Yes, sir.

MR. WALTMAN: Your Honor, before the Court is John Gilcrease in docket number 370505. He appears via Zoom call or court call remotely. He appears for resentencing.

Who do you show as counsel of record, Mr. Clerk?

MR. LAWRENCE: It's Ms. Gibson.

THE CLERK: She's right outside the door there.

MR. WALTMAN: Can someone get Ms. Gibson? John Gilcrease for resentencing.

(Brief pause in proceedings.)

MR. WALTMAN: Ms. Gibson is now in the courtroom. Your Honor, the Second Circuit affirmed his conviction and sentence for second degree battery. They affirmed his conviction for obstruction of justice, but sent it back for resentencing for a statutory correct sentence.

THE COURT: All right.

MR. WALTMAN: And that's where we are.

THE COURT: All right. Ms. Gibson, are y'all ready for sentencing?

MS. GIBSON: Yes. I have not been able to contact Mr. Gilcrease because when I tried to contact him at CCC he had bonded out, so

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I've not had a conversation with him.

THE COURT: He's incarcerated somewhere.

MS. GIBSON: Huh?

THE COURT: He's incarcerated somewhere.

MS. GIBSON: Yeah, but he wasn't at CCC.

THE COURT: All right. Do you --

MS. GIBSON: He wasn't out there.

THE COURT: -- need to talk to him?

Mr. Gilcrease, are you ready for sentencing at this time? Mr. Gilcrease, are you ready for sentencing at this time?

THE DEFENDANT: Yes, sir.

THE COURT: All right. The defendant pled guilty on September 14th of 2020. The defendant pled guilty to second degree battery, a violation of Louisiana Revised Statute 14:34.1, and obstruction of justice, a violation of Louisiana Revised Statute 130.1, as well as several misdemeanors including false imprisonment and 14 counts of violation of a protective order.

For the felony convictions, the Court sentenced the defendant to six years at hard labor for the second degree battery conviction and ten years at hard labor for his obstruction of justice conviction. The Court ordered the felony sentences to run concurrently with the misdemeanor sentences.

The defendant appealed alleging the Court abused its discretion by imposing excessive sentences for each of the felony convictions. The six-year sentence for second degree

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battery was upheld. The ten-year sentence for obstruction of justice was found to exceed the statutory maximum of a fine of up to $10,000, a term of five years imprisonment with or without hard labor, or both. The case has been remanded to this Court for resentencing.

The evidence showed that the defendant, over a period of time, brutally beat the victim, choked her, shoved socks in her mouth, pinned her down with his knees and tied a necktie around her neck. The defendant told the victim he was going to kill her and then himself.

The evidence further showed the defendant violated a protective order by contacting the victim more than 60 times in the days following. He wrote letters telling her to recant her statement and lie about the incident. The victim is understandably terrified of this defendant.

Whoever commits the crime of obstruction of justice shall be sentenced to a fine up to $10,000, a term of five years imprisonment with or without hard labor, or both. The Court is required to consider 894.1A, paragraphs (1), (2) and (3), and I find (1), (2) and (3) to be applicable to this case. There is an undue risk that during the period of a suspected [sic] sentence of probation the defendant will commit another crime. The defendant is in need of correctional treatment or a custodial environment that can be

provided most effectively by his commitment to an institution, and a lesser sentence will deprecate the seriousness of the defendant's crime.

The Court has considered all of the factors enumerated in Article 894.1B, both mitigating and aggravating. The Court specifically finds the following mitigating and aggravating circumstances apply: One, an aggravating factor is the offender's conduct during the commission of the offense manifested deliberate cruelty to the victim; two, the offender used threats of or actual violence in the commission of the offense; three, subsequent to the offense, the offender used or caused others to use violence, force or threats with the intent to influence the institution, conduct or outcome of the criminal proceedings, and the offender committed the offense in order to facilitate or conceal the commission of another offense. I found none of the mitigating circumstances in Article 894 to apply to this case.

It will be the sentence of the Court that you serve four years at hard labor to run consecutively to all other sentences. You'll be given credit for time served.

And I am obligated to tell you you have a right to appeal the sentence I am imposing today. You have 30 days following the imposition of sentence to file a motion to reconsider the sentence. You have five days

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after the rendition of judgment or 30 days from the ruling on the motion to reconsider sentence to make a motion to appeal your case, and you have two years from the date your sentence and conviction become final to file for any post-conviction relief.

You are hereby remanded to custody.

THE CLERK: Make sure the only one we're correcting was 505, 37505.

THE DEFENDANT: I can't hear. Excuse me, Your Honor.

THE COURT: Yes.

THE DEFENDANT: Okay. You said four years?

THE COURT: Yes.

THE DEFENDANT: And that's ran concurrent with my other charge, second degree battery?

THE COURT: Consecutively.

THE DEFENDANT: Yes, sir. It's ran concurrent with that, right?

THE COURT: Consecutively.

THE DEFENDANT: But the appellate court said they could not run it consecutive. It had to be ran concurrent.

THE COURT: I didn't see that.

THE DEFENDANT: She had sent a -- my appellate lawyer had sent a fax to David McClatchey about that.

THE COURT: I've got nothing in the record to suggest that.

MS. GIBSON: And I've had no conversation with you.

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THE COURT: You can bring it up with your appellate attorney and have her contact the Court. All right. Thank you.

THE BAILIFF: Thank you, Mr. Gilcrease.

THE DEFENDANT: Sir?

THE COURT: You can discuss it with your appellate attorney and bring it before the Court.

MS. GIBSON: With your appellate attorney.

THE DEFENDANT: You're my attorney?

MS. GIBSON: I'm your attorney now, but I'm not your appellate attorney.

THE DEFENDANT: All right. How do I get ahold -- go ahead and file an appeal because she's told her that if this happened to go ahead and file an appeal because I couldn't get no more time than I had the first time.

MS. GIBSON: You need to get back in contact with her.

THE DEFENDANT: Huh?

MS. GIBSON: You need to get back in contact with the appellate attorney.

THE DEFENDANT: Okay. Because I have it in writing that she told me I couldn't face no more time and it had to be ran concurrent.

MS. GIBSON: Okay. Sir? Sir? You need to -- Mr. Gilcrease, you need to talk to your appellate attorney, okay?

THE DEFENDANT: All right. So what is my sentence? It's four years ran consecutive?

MS. GIBSON: Consecutive.

THE DEFENDANT: All right. Thank you.

(End of proceedings.)

REPORTER'S CERTIFICATE

STATE OF LOUISIANA

PARISH OF CADDO

This certificate is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, CHRISTINA M. WALLACE, Official Court Reporter in and for the State of Louisiana, employed as an Official Court Reporter for the First Judicial District Court, for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board or by the Supreme Court of Louisiana, and that I am not related to counsel or to the parties herein nor am I otherwise interested in the outcome of this matter.

Christina M. Wallace

Christina M. Wallace
Official Court Reporter
Louisiana Certificate No. 98001

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