

APPENDIX "A"
RULING FROM THE LOUISIANA SUPREME COURT

State v. Boudreaux

Supreme Court of Louisiana. November 12, 2025 420 So.3d 707 (Mem) 2025-00749 (La. 11/12/25) (Approx. 1 page)

420 So.3d 707 (Mem)
Supreme Court of Louisiana.

STATE of Louisiana
v.
Rusty L. BOUDREAUX

No. 2025-KO-00749
November 12, 2025

Applying For Writ Of Certiorari, Parish of Beauregard, 36th Judicial District Court
Number(s) CR-2022-776, Court of Appeal, Third Circuit, Number(s) 25-4.

Opinion

***1** Writ application denied.

All Citations

420 So.3d 707 (Mem), 2025-00749 (La. 11/12/25)

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SUPREME COURT OF LOUISIANA

No. _____

STATE OF LOUISIANA

Respondent

VERSUS

RUSTY BOUDREAUX

Appellant

WRIT OF CERTIORARI

FROM THE DIRECT APPELLATE JUDGEMENT OF DENIAL
RENDERED BY THE LOUISIANA COURT OF APPEAL, THIRD CIRCUIT
IN DOCKET No. KA-25- 740004

WRIT OF CERTIORARI FILED ON BEHALF OF RUSTY BOUDREAUX,
APPELLANT - DEFENDANT

EXHIBITS ATTACHED

- a.) Copy of appellant's direct appeal brief.
- b.) Copy of State vs. Boudreax, ____ So.3d ____, 2025 WL 1350316, 2025-4, (La. App. 3 Cir. 5/08/25)

Respectfully Submitted By:

Rusty Boudreax

Rusty I. Boudreaux #508891
Camp-C, Wolf #3
Louisiana State Penitentiary
Angola, La 70712

SUPREME COURT OF LOUISIANA

No. _____

STATE OF LOUISIANA

Respondent

VERSUS

RUSTY BOUDREAUX

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**FROM THE DIRECT APPELLATE JUDGEMENT OF DENIAL
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IN DOCKET No. 2025 WL 1350316, 2025-4, (La. App. 3 Cir.5/08/25)**

**WRIT OF CERTIORARI FILED ON BEHALF OF RUSTY BOUDREAUX,
APPELLANT - DEFENDANT**

TO THE HONORABLE, THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of Rusty L. Boudreaux, appellant herein, applying for Writ of Certiorari respectfully represents that:

Appellant, after having been convicted of one count of first degree rape, in violation of La. R.S. 14:42(A) (5), one count of third degree rape, in violation of La. R.S. 14:43(A)(4) and one count of sexual battery, in violation of La. R.S. 14:43.1(A)(1), (A)(2), and (C) (2), was sentenced to life imprisonment for first degree rape, twenty-five years for third degree rape, and forty years for sexual battery. Each sentence was ordered to be served at hard labor without the benefit of parole, probation, or suspension of sentence, and to run consecutively.

On May 08, 2025, the Louisiana Court of Appeal for the Third Circuit affirmed Appellant's convictions and sentences. The Louisiana Court of Appeal for the Third Circuit forwarded its decision to Edward K. Bauman, the Attorney for the Louisiana Appellate Project, who mailed a copy of the decision to appellant at the Louisiana State Prison, where, on May 12, 2025, appellant signed a reception slip for the copy of the judgment rendered by the Louisiana

Court of Appeal for the Third Circuit.

Appellant now applies to this Honorable Supreme Court for Writ of Certiorari, claiming that the Louisiana Court of Appeals for the Third Circuit erred in its decision that denied the relief he sought in his direct appeal application.

NOTICE OF PRO-SE FILING

Applicant request that this Honorable Court view this claim in accordance with the ruling pronounced in **Haines vs. Kerner**, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), (i.e., "pro-se, petitioners are held to less stringent standards than formal pleading drafted by lawyers; Includes the prison mail box rule.)

Applicant is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings as is a licensed attorney.

WRIT GRANT CONSIDERATION

It is submitted that this writ application should be granted in accordance with consideration that the judgments rendered by the lower courts that affirmed Appellant's imposed consecutive sentences, which stemmed from three offenses based on the same course of action, resulted in a decision that was contrary to, and involved an unreasonable application of, clearly established laws of the Federal and State Constitutions, Statutes, and Jurisprudences as determined by the Supreme Court of the United States and the State of Louisiana; [i.e., the U.S. Const., Amend(s) VIII. and XIV; the La. Const. Art. 1, §§ 2 and 20; the La. Code. Crim. Proc. Art. 883; and *State vs. Scott*, 593 So.2d 704 at 701 (La. App. 4 th Cir. 1991), citing *State vs. Messer*, 408 So.2d 1354 (La. 1982).

GROUND'S FOR SUPERVISORY JURISDICTION

In context of the question of law presented herein, Supervisory jurisdiction is hereby invoked pursuant to Article 5 § 5 of the Louisiana 1974 Constitution.

THE ISSUES

Whether the trial court abused its discretion when it, in the absence of stating its reasons, imposed consecutive sentences that resulted from offenses that arose from the same course of actions.

ASSIGNMENT OF ERRORS

In this Writ for Certiorari relief, Appellant claims the trial court abused its discretion when it, in the absence of stating its reasons, imposed consecutive sentences that resulted from offenses that arose from the same course of actions. The consecutive sentences imposed in this case makes no measurable contribution to acceptable penal goals; and, therefore, it is nothing more than a needless imposition of pain and suffering, in violation of Art. 883 of the La. Code. Crim. Proc.; the U.S. Const., Amend(s) VIII. and XIV, and the La. Const. Art. 1, §§ 2 and 20.

LEGAL STANCE

Prior to this case, Appellant had no criminal record. He was convicted of one count of first degree rape, in violation of La. R.S. 14:42(A) (5); one count of third degree rape, in violation of La. R.S. 14:43(A)(4), and one count of sexual battery, in violation of La. R.S. 14:43.1(A)(1), (A)(2), and (C)(2). He was sentenced to life imprisonment for first degree rape; twenty-five years for third degree rape, and forty years for sexual battery. Each sentence was ordered to be served consecutively, at hard labor without the benefit of parole, probation, or suspension of sentence.

In pertinent part, the Louisiana Legislature in Art. 883 of the La. Code. Crim. Proc. Enforces:

"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."

In cases involving offenders **without** prior felony record, concurrent rather than consecutive sentences should be imposed, particularly where the convictions arise out of the same course of conduct. **State vs. Urena**, 215 So.3d 813 (La. 3 Cir. 2016).

Pursuant to Louisiana jurisprudence, the trial court must articulate justification for its decision to impose consecutive sentences. **State vs. Scott**, 593 So.2d 704 at 701 (La. App. 4

th Cir. 1991), citing **State vs. Messer**, 408 So.2d 1354 (La. 1982).

Among the factors to be considered in determining whether a sentence be consecutive or concurrent include: (1.) the defendant's criminal history, (2.) the gravity or dangerousness of the offense, (3.) the viciousness of the crimes, (4.) the harm done to the victims, (5.) whether the defendant constitutes an unusual risk of danger to the public, (6.) the potential for the defendant's rehabilitation, and (7.) whether the defendant received a benefit as part of a plea bargain. **State vs. Young**, 270 So. 3d 770 (La. App. 3 Cir. 2019).

In this case, the trial court did not express reasons for imposing the consecutive sentences.

The Eighth Amendment to the United States Constitution and Art. 1, Section 20 of the Louisiana Constitution provides protection against the imposition of excessive sentences.

Amendment Eight of the United States Constitution enforces:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Art. 1, Section 20 of the Louisiana Constitution, in relevant part, enforces:

"No law shall subject any person to euthanasia, to torture, or to cruel, excessive or unusual punishment."

Jurisprudence holds that when a sentence makes no measurable contribution to acceptable penal goals, and is nothing more than a needless imposition of pain and suffering, it is deemed excessive, in violation of the Amendment Eight of the United States Constitution and Art. 1, Section 20 of the Louisiana Constitution. **State vs. Campbell**, 404 So.2d 1205 (La.1981). **State vs. Everett**, 530 So.2d 615 (La. App. 3d Cir. 1988).

In light of the fact that concurrent rather than consecutive sentences are the general rule for convictions arising out of a single course of action at least for defendant without a previous criminal record and in the absence of a showing that the public safety requires a longer sentence, the imposition of the consecutive sentences imposed on appellant, who had no prior criminal record, in the absent of an articulated reason for the imposed consecutive sentences, demonstrates a manifestation of abusive sentencing discretion.

In conclusion, appellant claims the trial court abused its discretion when it, in the absence of stating its reasons, imposed three consecutive sentences that resulted from offenses that arose from the same course of actions. The three consecutive sentences imposed in this case makes no measurable contribution to acceptable penal goals; and, therefore, it is nothing more than a needless imposition of pain and suffering, in violation of

Art. 883 of the La. Code. Crim. Proc.; the U.S. Const., Amend(s) VIII. and XIV, and the La.
Const. Art. 1, §§ 2 and 20.

Respectfully submitted;

Rusty Boudreaux
Rusty I. Boudreaux #508891
Camp-C, Wolf #3
Louisiana state penitentiary
Angola, La. 70712

PRAYER

WHEREFORE, APPELLANT PRAYS that this Honorable Court decree and declare:

That the Louisiana Court of Appeals for the Third Circuit erred in its decision which affirmed the trial court's imposition of his three consecutive sentences and denied the relief he sought in his direct appeal application;

That the decision rendered by the lower courts that affirmed appellant's three imposed consecutive sentences be reversed;

That he be accorded any and all other needful writs, orders and decrees and such additional relief to which he may be entitled under the law and jurisprudence of this State.

Respectfully submitted;

Rusty Boudreaux
Rusty I. Boudreaux #508891
Camp-C, Wolf #3
Louisiana State Penitentiary
Angola, La. 70712

VERIFICATION OF APPLICATION FOR WRITS

STATE OF LOUISIANA
PARISH OF EAST FELICIANA

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in accordance with law in and for the State and Parish aforesaid, personally came and appeared Rusty I. Boudreaux, appellant herein, who, having been first duly sworn, deposed and stated that:

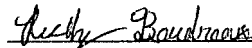
He is the Pro-Se appellant in these proceedings;

All of the allegations contained in the above and foregoing application for Writ of Certiorari are true and correct to the best of his knowledge, information and belief;

A copy of this application has been served on the Honorable District Attorney in and for the 36th Judicial District of Louisiana prior to filing of same in the Supreme Court of Louisiana, by use of the United States postal service;

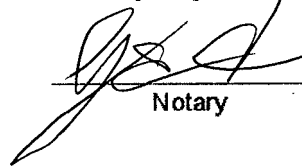
All of the documents attached hereto and filed herewith are true and correct copies of the original documents filed in the record herein.

Appellant's signature:


Rusty I. Boudreaux #508891
Camp-C, Wolf #3
Louisiana State Penitentiary
Angola, La 70712

SWORN TO AND SUBSCRIBED before me, Notary, this 11th day of June, 2025.

Notary's signature:


Notary

APPENDIX "B"
RULING FROM LOUISIANA COURT OF APPEAL, THIRD CIRCUIT

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

25-4

STATE OF LOUISIANA

VERSUS

RUSTY L. BOUDREAUX

**APPEAL FROM THE
THIRTY-SIXTH JUDICIAL DISTRICT COURT
PARISH OF BEAUREGARD, NO. CR-2022-776
HONORABLE MARTHA ANN O'NEAL, DISTRICT JUDGE**

**SHARON DARVILLE WILSON
JUDGE**

Court composed of Sharon Darville Wilson, Wilbur L. Stiles and Clayton Davis,
Judges.

AFFIRMED.

James R. Lestage, District Attorney
THIRTY-SIXTH JUDICIAL DISTRICT/BEAUREGARD PARISH
124 South Stewart Street
DeRidder, Louisiana 70634
(337) 463-5578
COUNSEL FOR APPELLEE:
State of Louisiana

Edward K. Bauman
LOUISIANA APPELLATE PROJECT
Post Office Box 1641
Lake Charles, Louisiana 70602
(337) 491-0570
COUNSEL FOR DEFENDANT/APPELLANT:
Rusty L. Boudreaux

WILSON, Judge.

A unanimous jury found Defendant, Rusty L. Boudreaux, guilty of one count of first degree rape, in violation of La.R.S. 14:42(A)(5), one count of third degree rape, in violation of La.R.S. 14:43(A)(4), and one count of sexual battery, in violation of La.R.S. 14:43.1(A)(1), (A)(2), and (C)(2). The trial court sentenced Mr. Boudreaux to life imprisonment for first degree rape, twenty-five years for third degree rape, and forty years for sexual battery. Each sentence was ordered to be served at hard labor without the benefit of parole, probation, or suspension of sentence, and to run consecutively. Mr. Boudreaux now appeals. For the following reasons, we affirm the convictions and sentences.

I.

ISSUES

We must decide:

- (1) whether the trial court erred in failing to determine if a life sentence was excessive in this case;
- (2) whether the trial court erred in failing to consider any mitigating or aggravating factors in accordance with La.Code Crim.P. art. 894.1; and
- (3) whether Mr. Boudreaux received ineffective assistance at trial and at sentencing.

II.

FACTS AND PROCEDURAL HISTORY

L.J., the victim of count one, was eighteen years old at the time of trial.¹ From the ages of twelve to sixteen she lived in a house near Turkey Drive in DeRidder, Louisiana. In 2021, L.J. lived in the main house with her grandparents, and her father, stepmother, and baby brother lived in a shed behind the home. At some point,

¹ The victims' initials are used in accordance with La.R.S. 46:1844(W).

another family moved into the shed along with Mr. Boudreaux. L.J. testified that one day, when she was fourteen, she was in the shed with Mr. Boudreaux putting up insulation in the loft area. According to L.J., her father, Brian Jose, caught Mr. Boudreaux touching L.J.'s breast and told them to come down from the loft. Her father asked Mr. Boudreaux if he wanted to have sex with L.J. Without L.J.'s consent, she was forced to have sexual intercourse with her father, while also performing oral sex on Mr. Boudreaux. L.J. testified that her father frequently had sexual intercourse with her prior to this incident. L.J. also stated that prior to this incident, Mr. Boudreaux had touched her "lower area" without her consent while they were in the pool. She testified that she had sex with Mr. Boudreaux on other occasions as well. In June 2021, her twin sister, R.J., came forward with allegations against Mr. Boudreaux. At that point, the police became involved, but L.J. did not disclose anything until 2022.

R.J. testified that a little before her fifteenth birthday an incident occurred when her father and stepmother left the house, and she was in the shed alone with Mr. Boudreaux watching a movie. Mr. Boudreaux kissed her and told her she was beautiful. He then instructed her to lock the door, which she did. She went back and sat on the bed where she and Mr. Boudreaux had sexual intercourse. R.J. said she was scared to tell Mr. Boudreaux to stop, and she did not feel like she had any control over what was happening. She eventually reported the incident to her stepmother, and the Beauregard Parish Sheriff's Office (BPSO) began an investigation of a sexual assault complaint by R.J. against Mr. Boudreaux. In August 2021, R.J. was pressured by her father to say she had made up the allegations, and the case was closed. Mr. Boudreaux was subsequently banned from the home.

R.J. testified that prior to the incident she had with Mr. Boudreaux, she had seen him touch her sister's breast on a different occasion than the one testified to by

L.J. She also saw him force L.J. to touch his penis while he and L.J. were in the loft and L.J. tried to pull her hand away.

K.M., twelve at the time of trial, testified that Mr. Boudreaux lived with her and her family in the Green Acres subdivision in DeRidder. She stated that Mr. Boudreaux touched her with his hands on her "lower area" on more than one occasion, though she did not want him to. This mostly occurred over her clothes, but occasionally it was under the clothes. K.M. also testified that Mr. Boudreaux showed her his private area and asked her if she wanted to touch it. Mr. Boudreaux told her not to tell anyone because he did not want to get in trouble, and she was scared he was going to hurt her if she told anyone. Eventually, K.M. complained to her stepmother, Ashely Trahan, that she did not want to return to her home in Green Acres because she was being sexually abused. A second investigation was opened by the DeRidder City Police Department into Mr. Boudreaux based on K.M.'s complaint. K.M. revealed to Detective Jed Irvine that Mr. Boudreaux had digitally penetrated her vagina on multiple occasions and had also touched/rubbed her genitals, buttocks, and breasts. A Child Advocacy Center (CAC) interview was done with K.M. on May 3, 2022.

L.J. and R.J. eventually came forward with allegations of sexual abuse by their father, Brian Jose. On June 3, 2022, in connection with the investigation of Brian Jose, CAC interviews were done with L.J. and R.J. during which both disclosed sexual acts involving Mr. Boudreaux. Due to these disclosures involving Mr. Boudreaux, the original investigation was re-opened.

On July 11, 2022, Mr. Boudreaux was arrested for several counts of sexual battery, indecent behavior with a juvenile, third degree rape, and first degree rape in connection with the three victims. On September 12, 2022, Mr. Boudreaux was indicted by a grand jury for one count of first degree rape, two counts of third degree

rape, two counts of indecent behavior with a juvenile, and four counts of sexual battery. The state later filed an amended bill of indictment charging Mr. Boudreaux with one count of first degree rape, one count of third degree rape, and one count of sexual battery.

A jury trial commenced on September 23, 2024. L.J., R.J., and K.M. all testified at trial. The court also heard the testimony of detectives Tiffany Maks and Jed Irvine, who led the two investigations into Mr. Boudreaux. K.M.'s stepmother, Ashely Trahan, also testified along with Otis Jacobs and Bailey McCuller (Lapointe) from the Child Advocacy Center. The recorded CAC statements of all three victims were published to the jury. On September 26, 2024, Mr. Boudreaux was convicted on all three counts of the amended indictment by a unanimous jury. Through counsel, Mr. Boudreaux filed a motion for new trial. The motion was heard and denied on October 15, 2024. He was sentenced on October 23, 2024. A motion for appeal was granted.

III.

LAW AND DISCUSSION

ERRORS PATENT

In accordance with La.Code Crim.P. art. 920, all appeals are reviewed for errors patent on the face of the record. After reviewing the record, we find that there are no errors patent.

EXCESSIVE SENTENCE

In his first assignment of error, Mr. Boudreaux contends that the trial court erred in failing to determine if a life sentence was excessive in this case. In his appellate brief, Mr. Boudreaux correctly notes that punishment is constitutionally excessive, in violation of La.Const. art. 1, § 20, if it makes no contribution to

acceptable goals of punishment, is nothing more than a purposeless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. *State v. Dorthey*, 623 So.2d 1276 (La.1993). Mr. Boudreaux then explains that for his conviction of first degree rape, he was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence as mandated by La.R.S. 14:42(D)(1). He contends that neither he nor his attorney was given the opportunity to address the court prior to or following sentencing, and it appeared that the trial court felt it had no authority to consider a lesser sentence than life as the sentence was mandated by statute. The trial court never considered whether a downward deviation was warranted under *Dorthey* in this case. Thus, Mr. Boudreaux contends that his case should be remanded for a new sentencing hearing for the trial court to consider arguments as to whether the imposition of a life sentence was constitutional in this case.

At sentencing, after the attorneys made their appearances for the court, the judge indicated that she was ready to proceed but asked, "Anything before I proceed?" The prosecutor offered the suit record for sentencing purposes and informed the defense that the State had filed a motion for recommendation of sentencing. Defense counsel responded that he had no objection, and the court proceeded with sentencing, after which defense counsel stated, "Your Honor, it's my understanding we're filing a couple of motions." Contrary to Mr. Boudreaux's assertion, defense counsel was given an opportunity to address the court but did not do so.

As part of his third assignment of error, Mr. Boudreaux also contends his counsel was ineffective for failing to present any evidence to show that he was exceptional and that the sentence was not meaningfully tailored to the offense. Had this been done, Mr. Boudreaux contends he would have shown that he deserved a downward departure from the mandatory life sentence.

Prior to imposing Mr. Boudreaux's life sentence, the court stated:

At this time, in the matter the Court is ready to proceed. The defendant here in, Rusty L. Boudreaux stood trial by jury in the before stated matter in this court, division A beginning September 23rd, 2024[,] with the selection of the jury. At the conclusion of the jury trial on September 26, 2024, the defendant was found guilty of the following felonies: Count one, First Degree Rape; Count two, Third Degree Rape; and Count three, Sexual Battery of a child under thirteen.

This Court heard the testimony presented to the jury which proves the defendant to be a sexual monster that preyed on children. Today the defendant is 38 years of age. These acts of the defendant have been found guilty took place approximately two to three years ago. As counts one and two, relating to the juveniles R.J. and L.J., the testimony presented proves that the defendant took advantage of the juveniles' vulnerable circumstances, that is the defendant had knowledge that the juveniles were already victims of sexual acts by their own father. The defendant attempted to normalize sexual relations with these young ladies even though they did not understand the relationship or have the ability to consent to such acts. The defendant did this for his own gratification with total disregard to [the] ages of the children and their inability to grant lawful consent. At this time, you may stand for sentencing, Mr. Boudreaux.

Mr. Boudreaux is correct that the trial court did not consider the possibility of a downward departure from the mandatory life sentence. The supreme court has suggested that the onus is on defense counsel to bring the sentencing court's attention to the possibility of a downward departure:

As previously mentioned, relator claimed that the trial judge was unaware that he possessed the authority to deviate downward from the statutorily mandated life sentence, and therefore due process mandates that his life sentence be vacated and the matter remanded for resentencing. Evidence of that claim would be of support in proving his ineffective assistance of counsel at sentencing claim, as trial counsel should have ensured that the court was aware of its responsibilities under *Dorthey*. See ABA Standards for Criminal Justice Standard on Sentencing 4-8.3 ("Defense counsel should become familiar with the client's background, applicable sentencing laws and rules, and what options might be available as well as what consequences might arise if the client is convicted."; "Defense counsel should present all arguments or evidence which will assist the court or its agents in reaching a sentencing disposition favorable to the accused.")

State v. Harris, 18-1012, p. 18 (La. 7/9/20), 340 So.3d 845, 857 n. 18.

In *State v. Armstrong*, 23-414, pp. 30-32 (La.App. 3 Cir. 4/24/24), 387 So.3d 792, 816-17 (alteration in original), *writs denied*, 24-582, 24- 657 (La. 2/19/25) 400 So.3d 924, this court addressed a similar issue:

Defendant was asked if he had any statement to make or evidence to present, and he responded that he did not. The court then imposed life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence.

In *State v. Little*, 50,776, pp. 4-5 (La.App. 2 Cir. 8/10/16), 200 So.3d 400, 403 (citations omitted), *writ denied*, 16-1664 (La. 6/16/17), 219 So.3d 341, the court stated:

It is within the legislature's prerogative to determine the length of the sentence imposed for the crimes classified as felonies, and the courts are charged with applying these punishments unless they are found to be unconstitutional. The decision to assess mandatory life sentences is within the prerogative of the legislature.

When there is a constitutional mandatory sentence, a trial court need not justify, under La. C. Cr. P. art. 894.1, a sentence it is legally required to impose.

In rare circumstances, a downward departure from a mandatory sentence may be warranted if the defendant shows, by clear and convincing evidence, that he is exceptional, namely, that he is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case. Although courts have the power to declare a mandatory minimum sentence excessive under Article 1, § 20 of the Louisiana Constitution, this power should be exercised only in rare cases and only when the court is firmly convinced that the minimum sentence is excessive.

In *State v. Griffin*, 21-452, pp. 10-11 (La.App. 3 Cir. 3/3/22), 351 So.3d 385, 390-91, (footnote omitted) *writ denied*, 22-600 (La. 6/1/22), 338 So.3d 496, this court addressed a claim of ineffective assistance based on counsel's failure to seek a downward departure from a mandatory life sentence:

Claims of ineffective assistance are analyzed using the two-pronged test in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). First, Defendant must show his counsel's performance was deficient, and second, he must show the deficiency prejudiced him. If Defendant cannot prove that a

downward departure from the mandatory life sentence for first degree rape was warranted, he cannot prove prejudice. *State v. Monceaux*, 17-1052 (La.App. 3 Cir. 5/9/18), 2018 WL 2138289 (unpublished opinion). "To obtain a downward departure from a mandatory life sentence, Defendant must clearly and convincingly show that he is 'exceptional' by proving that the imposed sentence is not meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case." *Id.* at 6. As said earlier, Defendant has not presented any evidence to show that he is exceptional or that his sentence was not meaningfully tailored to the offense; therefore, Defendant has failed to prove that he deserves a downward departure. Further, the remarks of the trial court regarding the gravity of Defendant's crime, its impact on the victim, and the trial court's opinion that a life sentence was "justly deserved" indicate that even had counsel sought reconsideration, there is no reasonable probability that the same could have been granted. We find no merit to Defendant's second assignment of error.

Since the trial court was required to impose a mandatory sentence of life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence, the only viable ineffective assistance of counsel claim is that counsel failed to seek a downward departure from the mandatory life sentence required by La.R.S. 14:30.1. Defendant has not proven that a downward departure was warranted and thus cannot prove prejudice. Defendant has not "clearly and convincingly show[n] that he is 'exceptional' by proving that the imposed sentence is not meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case." *Griffin*, 351 So.3d at 390 (citing *Monceaux* at 6). The trial court gave a lengthy recitation of the facts of the case and the factors he considered in sentencing Defendant, remarking that justice demands that the defendant be sentenced to life. Accordingly, as in *Griffin*, even had counsel argued for a downward departure, there is no reasonable probability that he would have been successful. This assignment of error lack merit, and we affirm Defendant's sentence.

As in *Griffin* and *Armstrong*, in this case, Mr. Boudreaux has failed to show that a downward departure from the mandatory life sentence was warranted. Mr. Boudreaux alleges the legal conclusion that his mandatory life sentence for first degree rape is excessive but never articulates how or why this sentence is constitutionally excessive. He failed to allege any facts to support the conclusion that he is the rare defendant who deserves a downward deviation from the mandatory

life sentence required by law and fails to cite any legal authority to support his claim. Thus, even assuming defense counsel's performance was deficient, Mr. Boudreaux has not proven the deficiency prejudiced him. Accordingly, the above assignments of error lack merit.

SENTENCING FACTORS

In his second assignment of error, Mr. Boudreaux asserts that the trial court erred in failing to consider any mitigating or aggravating factors when imposing sentences for third degree rape and sexual battery. For this reason, he contends his sentences for third degree rape and sexual battery should be vacated and the case remanded for resentencing with proper consideration being given to La.Code Crim.P. art 894.1. As a part of his third assignment of error, Mr. Boudreaux notes that although counsel filed a motion to reconsider sentence, he simply argued that the sentence was excessive for someone with no criminal history without any mention of Article 894.1.

In sentencing Mr. Boudreaux for third degree rape and sexual battery, the court stated:

Likewise, on count two, this Court sentences the defendant Rusty L. Boudreaux found guilty by a unanimous jury on count two as charged and as stated in the bill of indictment as follows: between March 1st, 2021[,] and August 30, 2021, Rusty L. Boudreaux did willfully and unlawfully violate Revised Statute 14:43A4, Third Degree Rape in that he [had] vaginal and oral sexual intercourse on multiple occasions with the juvenile R.J., who was born on July 7th, 2006, without the lawful consent of the juvenile, felony. . . .

. . . .

According to the testimony, the defendant after being banned from the home of the above-mentioned juveniles moved to another location and [began] to prey on another juvenile K.M. Only nine or ten years of age at the time of the offense. The testimony presented by the juvenile was compelling. The defendants' [sic] actions harmed this precious child and scarred her causing some ongoing permanent emotional damage.

On count three this Court sentences the defendant, Rusty L. Boudreaux, found guilty by a unanimous jury on count three, between September 1, 2021, and June 30th, 2022, Rusty L. Boudreaux did willfully and unlawfully violated [sic] revised statute 14:43.1a12 and c2, Sexual battery in that he intentionally touched the anus or genitals on multiple occasions of K.M., a victim under thirteen years of age that was born on March 26, 2012, without consent, a felony.

The issues raised in this assignment of error were addressed by this court in *State v. Meaux*, 21-522, pp. 6–11 (La.App. 3 Cir. 2/23/22), 335 So.3d 309, 314–17 (first four alterations added), albeit in a situation where no motion to reconsider sentence was filed, unlike the present case where a motion was filed, but noncompliance with La.Code Crim.P. art. 894.1 was not raised:

In Defendant's second assignment of error, he alleges the trial court erred in failing to comply with the sentencing mandates in La.Code Crim.P. art. 894.1. In his third assignment of error, Defendant contends defense counsel was ineffective because he failed to make or file a motion to reconsider sentence to preserve his right to object to the excessiveness of his sentence on the specific grounds in La.Code Crim.P. art. 894.1. Because the assignments of error are intertwined, we will address them together.

As discussed, defense counsel did not make or file a motion to reconsider the sentence. Therefore, the trial court's failure to comply with the sentencing mandates in La.Code Crim.P. art. 894.1 was not raised at the trial court level and cannot be raised for the first time on appeal. *Jackson*, 146 So.3d 631. Accordingly, we are precluded from reviewing this argument.

However, because trial counsel's failure to make or file a motion to reconsider sentence deprives Defendant of review of the trial court's compliance with La.Code Crim.P. art. 894.1, we will consider whether Defendant was denied effective assistance of counsel.

....

Defendant argues defense counsel was ineffective for failing to make or file a motion to reconsider sentence. The failure to make or file a motion to reconsider sentence does not necessarily constitute ineffective assistance of counsel. Nevertheless, a defendant may have a basis to claim ineffective assistance when he can show a reasonable probability that but for defense counsel's error, his sentence would have been different. *State v. Blake*, 03-1465 (La.App. 3 Cir. 5/5/04), 872 So.2d 602. Furthermore, in *State v. Francis*, 99-208 (La.App. 3 Cir. 10/6/99), 748 So.2d 484, writ denied, 00-544 (La. 11/13/00), 773 So.2d 156, this court noted that where the record was sufficient to resolve the

claim and the claim was raised by assignment of error on appeal, it may be considered. In the present case, the record is sufficient to address the claim of ineffective assistance of counsel for failure to make or file a motion to reconsider the sentence.

Louisiana Code of Criminal Procedure Article 894.1(C) requires the trial court to "state for the record the considerations [of La.Code Crim.P. art. 894.1(B)] taken into account and the factual basis therefor in imposing sentence." Nevertheless, "[w]here the record clearly shows an adequate factual basis for the sentence imposed[, the supreme] court has held that remand is unnecessary, even where there has not been full compliance with Article 894.1." *State v. Lanclos*, 419 So.2d 475, 478 (La.1982) (citing *State v. Boatright*, 406 So.2d 163 (La.1981); *State v. McDonald*, 404 So.2d 889 (La.1981); *State v. Martin*, 400 So.2d 1063 (La.1981); and *State v. Douglas*, 389 So.2d 1263 (La.1980)). *See also State v. Parker*, 49,009, p. 21 (La.App. 2 Cir. 5/15/14), 141 So.3d 839, 852 ("the failure to state the factual basis for a sentence is not grounds for reversal where the basis is apparent from the record.")

Furthermore, due to the trial judge's unique position of reviewing subjective factors not available on appeal, he is given a wide discretion in the imposition of sentences within the statutory limits, and a sentence imposed by him should not be set aside as excessive in the absence of a manifest abuse of his discretion.

State v. Maxie, 438 So.2d 1199, 1201 (La.App. 3 Cir. 1983), *writ denied*, 443 So.2d 1118 (La.1984).

"While the trial judge need not articulate every aggravating and mitigating circumstance outlined in art. 894.1, the record must reflect that he adequately considered these guidelines in particularizing the sentence to the defendant." *State v. Smith*, 433 So.2d 688, 698 (La.1983) (citing *State v. Ray*, 423 So.2d 1116 (La.1982); *State v. Keeney*, 422 So.2d 1144 (La.1982); *State v. Duncan*, 420 So.2d 1105 (La.1982)).

In this case, Defendant claims the trial court's compliance with La.Code Crim.P. art. 894.1 was inadequate to support his sentence. Specifically, Defendant argues the trial court should have given more significance to his mental health issues at the time of the incident. The State maintains that the trial court's considerations during sentencing were in accordance with La.Code Crim.P. art. 894.1. Further, the State points out that Defendant fails to introduce any new information that might have been raised at the sentencing hearing.

In sentencing Defendant, the trial court made the following observations:

YOUR HONOR: All right. In review of the evidence submitted to this Court, I hereby find -- I hereby

find that Mr. Kelby Meaux is a 21-year-old white male and has been classified as a first felony offender.

I hereby find that, due to the nature of the crime, in consideration of Article 893 as well as 890.3, he is not provided with the benefit of having a suspension of sentence and therefore will serve his sentence at hard labor without the benefit of probation, parole, or suspension of sentence.

I really don't have any evidence to suggest that he was not in his right mind at the time of the crime. The crime is one of the most violent crimes and, by the grace of God, Ms. Zaunbrecher was not killed. Had she been killed, he would be serving life without benefit. But obviously, God intervened and she is with us today.

You showed total disregard for her, total disregard for someone you supposedly loved at some point. So you had no mercy on her. I don't know why I should have any mercy on you.

Now, I will say I will consider your mental health as a mitigating factor. However, it does not excuse your actions. I will consider your youth as a mitigating factor. However, it does not excuse your actions.

I see from the PSI and from the victim's impact statement there was a prior history of domestic violence and a very volatile relationship between both the defendant and the victim, which the Court will take into consideration for sentencing.

From the sentencing transcript, it is clear the trial court considered Defendant's mental health and youth as mitigating factors. The trial court found Defendant was a first offender but noted a history of domestic violence between Defendant and the victim. Therefore, we find the trial court's compliance with La.Code Crim.P. art. 894.1 was adequate.

Even considering Defendant's age, mental health issues, and lack of criminal history, we further find his twenty-year sentence does not shock the sense of justice and is not disproportionate to the severity of the offense under these facts and circumstances. Defendant has not proven counsel's failure to make or file a motion to reconsider sentence would have resulted in a lesser sentence. Therefore, we find the failure to make or file a motion to reconsider sentence to preserve Defendant's right to object to the excessiveness of his sentence on the specific grounds in La.Code Crim.P. art. 894.1 did not result in ineffective assistance of counsel.

Beyond arguing the trial court erred in failing to properly assess the mitigating and aggravating factors as statutorily required, Mr. Boudreaux does not allege what mitigating factors the court should have considered. Additionally, considering the facts of the case as discussed above, the record clearly shows an adequate factual basis for the sentences imposed for third degree rape and sexual battery, making remand unnecessary. The imposition of a twenty-five-year sentence for third degree rape and a forty-year sentence for sexual battery does not shock the sense of justice and is not disproportionate to the severity of the crimes under the facts of this case. Thus, Mr. Boudreaux has not proven that counsel's failure to raise the court's non-compliance with La.Code Crim.P. art. 894.1 in his motion to reconsider sentence resulted in him receiving ineffective assistance of counsel. Accordingly, these assignments of error also lack merit.

In addition to the alleged errors discussed above, in his third assignment of error, Mr. Boudreaux states, "In addition, Defense counsel rendered ineffective assistance at trial by filing a 'Motion to Set a New Trial' without stating what the newly discovered evidence was as alleged in his motion." "All assignments of error and issues for review shall be briefed. The court may deem as abandoned any assignment of error or issue for review which has not been briefed." Uniform Rules—Courts of Appeal, Rule 2–12.4(B)(4). The above statement is insufficient to brief the issue, and, therefore, this portion of the assignment of error is deemed abandoned.

IV.

CONCLUSION

For the foregoing reasons, the conviction and sentences of Defendant, Rusty L. Boudreaux, are affirmed.

AFFIRMED.