

Judgment rendered March 7, 2007
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 41,882-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

Appellee

versus

ANTHONY CARL SPARKS

Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 243,782

Honorable Jeanette G. Garrett, Judge

* * * * *

EDWARD K. BAUMAN
Louisiana Appellate Project

Counsel for
Appellant

PAUL J. CARMOUCHE
District Attorney

Counsel for
Appellee

J. DHU THOMPSON
TOMMY J. JOHNSON
Assistant District Attorneys

* * * * *

Before STEWART, CARAWAY and DREW, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal.

CARAWAY, J.

Charged with aggravated second degree battery, the defendant was convicted by jury of the lesser included offense of aggravated battery. The trial court sentenced him to payment of a \$500 fine, four years imprisonment at hard labor, and payment of \$5,000 victim restitution. The defendant now appeals his sentence as constitutionally excessive. Finding no merit to the defendant's assignment of error and arguments, we affirm.

Facts

The defendant and the victim were friends since childhood and gathered at the victim's grandmother's house where others were drinking and playing cards or dominos. The victim described defendant as "acting-out" and "disrespecting people." During the evening, the fight was started by the victim, who was also drinking, and who threw the first punch. The fight was eventually broken up and the victim went inside to go to bed. The defendant slept inside on a couch after he passed out. Several hours after the fistfight, he woke up and began hitting the victim with a shovel in what he considered a response to the previous attack. The victim's brother saw the defendant enter the victim's room, heard two "smacking" sounds, and watched him leave the house with the shovel. Two minutes later, the victim left his bedroom with a swollen, bloody face. He thought a fan had fallen on him. Then, on his way to the hospital, he saw the defendant walking down the street, swinging a shovel. The victim's treatment for facial fractures required a 4-to-5 day hospitalization. The defendant was

apprehended later crawling out the back window of a house. Police noticed bloodstains on his shirt and retrieved the bloodied shovel.

The bill of information charged defendant with aggravated second degree battery. He was convicted of aggravated battery. Before sentencing, the trial court reviewed the pre-sentence investigation report. The defendant's previous convictions consisted of misdemeanor traffic offenses and disturbing the peace. At the sentencing hearing, the trial court acknowledged observing the defendant's demeanor while testifying and noted he became angry and upset – confirming other trial testimony regarding the defendant's problematic temper. It also noted that defendant admitted striking the victim with a shovel, but saw himself as the victim in the attack. The trial court observed the tragic nature of the crime, since the two were childhood friends. The trial court commented that although the victim was "really, really drunk," the defendant was apparently sober enough to crawl out the window to escape the next morning. The trial court specifically noted that the defendant, a first felony offender, inflicted permanent disabling injuries on his childhood friend by his deliberate cruelty. The defendant was sentenced to pay a fine of \$500, serve four years imprisonment at hard labor, and make restitution to the victim in the amount of \$5,000. The defendant appeals.

Discussion

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. First, the record must show that the trial court took cognizance of the criteria set forth in La. C. Cr. P.

art. 894.1. The trial 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. Dunn*, 30,767 (La. App. 2d Cir. 6/24/98), 715 So. 2d 641. The articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows 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. Hampton*, 38,017-38,022 (La. App. 2d Cir. 1/28/04), 865 So. 2d 284, *writs denied*, 04-0834 (La. 3/11/05), 896 So. 2d 57 *and* 04-2380 (La. 6/3/05), 903 So. 2d 452. 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 offense and the likelihood of rehabilitation. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Haley*, 38,258 (La. App. 2d Cir. 04/22/04), 873 So. 2d 747, *writ denied*, 04-2606 (La. 06/24/05), 904 So. 2d 728. There is no requirement that specific matters be given any particular weight at sentencing. *State v. Jones*, 33,111 (La. App. 2d Cir. 3/1/00), 754 So. 2d 392, *writ denied*, 00-1467 (La. 2/2/01), 783 So. 2d 385.

Second, a sentence violates La. Const. art. 1, §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. Smith*, 2001-2574 (La. 1/14/03), 839 So. 2d 1; *State v. Dorthey*, 623 So. 2d 1276

(La. 1993); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. *State v. Weaver*, 01-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Lobato*, 603 So. 2d 739 (La. 1992); *State v. Hogan*, 480 So. 2d 288 (La. 1985); *State v. Bradford*, 29,519 (La. App. 2d Cir. 4/2/97), 691 So. 2d 864.

Absent a showing of manifest abuse of that discretion we may not set aside a sentence as excessive. *State v. Guzman*, 99-1528, 99-1753 (La. 5/16/00), 769 So. 2d 1158; *State v. June*, 38,440 (La. App. 2d Cir. 5/12/04), 873 So. 2d 939; *State v. Lingefelt*, 38,038 (La. App. 2d Cir. 1/28/04), 865 So. 2d 280, *writ denied*, 04-0597 (La. 9/24/04), 882 So. 2d 1165.

The record shows the trial court's painstaking enumeration of the aggravating and mitigating circumstances of the crime, thoroughly complying with La. C. Cr. P. art. 894.1, and its tailoring of the sentence imposed to this offender. The defendant was sentenced to less than half of the maximum possible prison sentence for the responsive verdict of aggravated battery, and less than one-third the maximum possible prison sentence for the charged offense of aggravated second degree battery. His sentence is neither grossly out of proportion to the seriousness of the offense, nor is it nothing more than a purposeless and needless infliction of pain and suffering. *State v. Smith, supra*; *State v. Dorthey, supra*; *State v. Bonanno, supra*. When the defendant's crime and punishment are viewed in light of the harm done to society by such a senseless act of violence and its permanently debilitating consequences, it does not shock the sense of

justice. *State v. Weaver, supra; State v. Lobato, supra; State v. Hogan, supra; State v. Bradford, supra.* Finding no manifest abuse of discretion, this court may not set aside a sentence as excessive. See *State v. Guzman, supra; State v. June, supra; State v. Lingefelt, supra.*

The defendant's sentence is therefore affirmed.

AFFIRMED.