

Judgment rendered September 25, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

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ON REMAND

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No. 52,323-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA

Appellee

versus

MARC Q. SCROGGINS

Appellant

* * * * *

On Remand from the
Louisiana Supreme Court

Originally Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 314,837

Honorable Brady D. O'Callaghan, Judge

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LOUISIANA APPELLATE PROJECT

Counsel for Appellant

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Before PITMAN, GARRETT, and STEPHENS, JJ.

STEPHENS, J.

Marc Q. Scroggins pled guilty as charged to illegal use of weapons or dangerous instrumentalities, committed while attempting to commit a crime of violence, in violation of La. R.S. 14:94(F). He was sentenced to 17 years at hard labor, to be served without the benefit of probation, parole, or suspension of sentence. He appeals, claiming his sentence is excessive.¹ On remand and for the following reasons, we affirm Scroggins' conviction and sentence.

FACTS AND PROCEDURAL HISTORY

The trial court record contained the offense report by the Shreveport Police Department, with several narrative supplements by the investigating officers, from which we take the facts in this matter.² On May 2, 2013, Shreveport Police Department officers responded to a call at 6004 Bowie Avenue in Shreveport, Louisiana. Upon entering the residence, Corporal J. C. Pettigrew found the victim, Dorothy Johnson, lying on the floor with a bullet wound to her chest. The victim had been in her living room when a

¹ Initially, we found error patent on the record, in that the transcript of the guilty plea proceeding, in our opinion, did not contain a factual basis for Scroggins' plea as required by *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). As a result, we pretermitted consideration of Scroggins' assignment of error, reversed his conviction and sentence, and remanded the case for further proceedings. *State v. Scroggins*, 52,323 (La. App. 2 Cir. 11/14/18), 260 So. 3d 741, 742. The Louisiana Supreme Court granted the state's writ application and ultimately determined, "[T]he record, including the presentence investigation, police reports, and transcript of the sentencing hearing, provides a factual basis for defendant's plea, and the court of appeal erred in setting the plea aside *sua sponte* when defendant's sole complaint on appeal pertained to the sentence imposed." *State v. Scroggins*, 2018-1943 (La. 6/26/19), --- So. 3d ---. As a result, the matter was reversed and remanded for consideration of Scroggins' assignment of error. Notably, the PSI and sentencing hearing transcript were not available to the trial court at the guilty plea proceeding, as they were prepared after the proceedings. As to the police reports, they were part of the trial court record, but neither the trial court judge nor state made any reference to the reports or facts contained therein.

² To avoid repetition, not every narrative supplement to the offense report is referenced.

stray bullet came through her window and hit her. Johnson was transported by ambulance to the hospital. Anika Kendrick was a witness at the scene, and she described to Cpl. Pettigrew that her nephew, Raymond Grant, had argued with another man at a local business office, which argument spilled into the street. The man retrieved a rifle from the trunk of his vehicle and shots were fired.

Corporal C.W. Yarborough was responding to a shooting call on Bowie Avenue, but, while in route, he received information that a black male wearing a black jacket and armed with a gun was running west on Lakehurst Street. He pulled onto the street and asked bystanders if they had seen a man running. Corporal Yarborough and another officer apprehended the man without incident, as well as a pistol he had thrown into some shrubs. The apprehended man turned out to be Raymond Grant. While on the scene with Raymond, Cpl. Yarborough gathered information that another man, named Marc Scroggins, was involved in the incident, and he may have left the scene in his vehicle. Raymond was taken into custody for questioning, but was later released without charges.

Corporal R.R. Debello responded to a call on May 2 at Mainstream Health, a medical clinic. According to a physician at the clinic, Dr. Chidiadi Dike, he and a receptionist were present when an altercation arose. Dr. Dike related to Cpl. Debello that he was in an examination room with Anika Kendrick when Scroggins entered the room without permission and spoke to her. Anika explained to Dr. Dike that Scroggins had threatened her and “that his people were outside.” After Anika left his office, Dr. Dike heard three gunshots outside, but extremely close to the clinic. Dr. Dike acknowledged to Detective Chad Dailey that Scroggins had been his patient

before, and Dr. Dike showed Scroggins' file to the officers. The file contained a copy of Scroggins' driver's license, his address, and his cell phone number. Dr. Dike was also able to inform Cpl. DeBello that Scroggins was attired in gray/blue pants and a white shirt.

Detective Dailey recounted leaving Dr. Dike's office and going to the adjacent parking lot, where there were three vehicles, one of which had been struck by a bullet. None of the vehicles produced any other evidence of a crime. Detective Dailey interviewed Jamarcia Kendrick, Anika's daughter, who was also at the medical clinic. She witnessed the verbal altercation between Raymond and the other man, whom she watched retrieve a rifle from the trunk of his car. According to Jamarcia, the man fired five shots at Raymond, and ultimately got in the passenger seat of the vehicle—with a woman driving and another man in the back seat. The man fired several more shots in Raymond's direction as the vehicle sped off. When shown a photo lineup, Jamarcia identified Scroggins as the shooter.

Detective Dailey also interviewed Anika, who described her altercation with the man in the medical clinic. Anika stated that Raymond was waiting for her in the waiting room. She related how the man came into the examination room while she was with Dr. Dike, who told the man to leave. When Anika, Raymond, and Jamarcia left the medical clinic and were in the parking lot, the man popped his trunk, retrieved a gun, and started shooting at Raymond. She heard at least 5-6 shots and Raymond left running, with the man chasing him and shooting. Anika said she saw shots hit Johnson's house. She saw the man get into his vehicle and speed away. When initially shown the photo lineup, Anika did not recognize the shooter; however, upon further inspection, she identified Scroggins.

Raymond was also interviewed by Det. Dailey, whose story paralleled the accounts of Anika, Jamarcia, and Dr. Dike. Raymond admitted to firing shots at Scroggins, but he claimed his shots were in a direction away from Johnson's house. When presented with a photo lineup, Raymond identified Scroggins as the shooter.

On May 3, 2013, Det. Dailey received a phone call from an attorney, who identified himself as representing Marc Scroggins. The attorney turned Scroggins in to Det. Dailey at the Shreveport Police Department, and Scroggins declined to give a statement. He was taken into custody and the investigative case was closed by Scroggins' arrest.

On August 31, 2015, Scroggins was charged by amended bill of information with illegal use of weapons or dangerous instrumentalities. The bill specifically alleged that Scroggins committed the offense while attempting to commit a crime of violence, in violation of La. R.S. 14:94(F). Scroggins waived arraignment and pleaded not guilty to the charge.

On June 13, 2016, Scroggins withdrew his former not guilty plea and noted his desire to plead guilty as charged pursuant to *North Carolina v. Alford, supra*. Both the defense and state confirmed that no agreement was made regarding the sentence Scroggins would receive, and the trial court informed Scroggins that he faced a sentence of 10 to 20 years at hard labor, without the benefit of probation, parole, or suspension of sentence. The trial court advised Scroggins of his *Boykin* rights—his right to remain silent, his right to a jury trial and his right to confront his accusers.³ Scroggins waived his rights, explaining he desired to plead guilty, was not under the influence

³ *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969).

of any intoxicating substances, and that his plea was not the product of coercion, inducements, or threats. Furthermore, defense counsel stated his belief that Scroggins understood his rights and the consequences of pleading guilty. The trial court then accepted Scroggins' guilty plea and ordered the preparation of a presentence investigation ("PSI") report.

On November 17, 2016, Scroggins' sentencing hearing was conducted. The state presented the testimony of Dr. Angela Cornelius, the emergency physician who treated Johnson after the shooting. Dr. Cornelius explained that Johnson was shot in the chest and the bullet exited her torso, traveling through her right arm and shattering her humerus. The bullet caused her lung to collapse, and Johnson lost a significant amount of blood, which necessitated her receiving a blood transfusion. Dr. Cornelius opined that Johnson's odds of succumbing to the gunshot wound to her chest ranged from approximately 10 to 33 percent. Additionally, Dr. Cornelius explained that Johnson, employed as a right-handed card dealer at a casino prior to the shooting, would likely face difficulties performing her job in the future given the permanent injuries to her arm and hand.

Scroggins was permitted to elicit testimony regarding the events of May 3, 2013, at the sentencing hearing. Britney Casey testified on behalf of Scroggins that she and her cousin were with Scroggins on May 3, 2013, when he went to his doctor's appointment. According to Britney, Scroggins got into a verbal altercation with Raymond over who would be seen by the doctor first. Britney stated she convinced Scroggins to go to the parking lot to smoke a cigarette. However, Britney claimed Raymond came out after them and pointed a gun at her. She called for Scroggins, and Raymond fired

two shots at Scroggins, who then returned fire. Britney said she ran away after the men started shooting.

Britney explained she had known Scroggins since they were in elementary school, claiming, “he’s not on the same . . . level as someone his age” and had a mental age of “maybe a 12- or 13-year-old.” She also described Scroggins as suffering from bipolar disorder and schizophrenia. Britney stated Scroggins is never left alone and is not permitted to cook for himself for fear he will start a fire. However, when questioned by the trial court, Britney admitted Scroggins was allowed to handle firearms, including the one used in the instant crime. According to Britney, Scroggins was at the doctor’s office on the day of the incident getting a medication refill.

Scroggins’ mother, Eureka Scroggins, testified that Scroggins was born prematurely, and he stopped breathing for approximately 2½ minutes. When Scroggins was about two, his mother started noticing he was developmentally challenged. Eureka stated Scroggins was hospitalized approximately 8-10 times for mental health issues, takes psychotropic and mood medications, and has taken medication his entire life for his mental illness. On cross-examination, Eureka claimed Scroggins had never been violent with her, but conceded he was convicted of domestic abuse battery arising from an incident involving her. Eureka also acknowledged she was aware that Scroggins had threatened to kill Britney.

After hearing the witnesses, the trial court noted its review of the PSI report, the testimony of witnesses for both the state and defense, a letter by the victim, the reports of the doctors who conducted sanity evaluations of Scroggins prior to his guilty plea, and the sentencing factors provided in La. C. Cr. P. art. 894.1. The trial court found the following aggravating factors

to apply: (1) Scroggins knowingly created a risk of death or great bodily harm to more than one person; (2) Scroggins used actual violence in the commission of the offense; (3) Scroggins' crime caused significant permanent injury or significant economic loss to his victim; (4) Scroggins used a dangerous weapon during his commission of the offense; (5) the offense involved multiple victims or incidents (due to the number of shots fired and potential victims); (6) Scroggins had a criminal history, including a conviction for domestic abuse battery of his mother and simple assault committed while he was on bond in the instant case; and, (7) Scroggins foreseeably endangered human life by discharging a firearm during the commission of the offense. Notably, the trial court explained that the projectiles fired from Scroggins' rifle were "military caliber rounds . . . perfectly capable of penetrating vehicles, perfectly capable of penetrating multiple people." Additionally the trial court observed, "even taking a conservative estimate of six or seven rounds or, as the State suggests, eleven that struck Ms. Johnson's house, there was a risk of death or great bodily harm to more than one person."

In mitigation, the trial court noted Scroggins acted under some provocation as the police reports indicated two shots were fired at Scroggins. The trial court also found Scroggins' mental condition offered some mitigation of his offense as he was likely unable to fully comprehend the extent of potential danger he created. However, the trial court explained Scroggins' mental illness did "not in any way diminish the harm that the victim suffered." In light of these circumstances, the trial court sentenced Scroggins to 17 years at hard labor, to be served without the benefit of probation, parole, or suspension of sentence.

On February 6, 2018, Scroggins filed a motion to reconsider his sentence arguing that he is not the worst of offenders and the sentence imposed by the trial court was too severe given the facts of the case. But the trial court denied Scroggins' motion to reconsider sentence as untimely and without merit. The trial court explained it had thoroughly considered the applicable aggravating and mitigating factors prior to imposing Scroggins' sentence.

On April 10, 2018, Scroggins was granted an out-of-time appeal, and this appeal ensued.

DISCUSSION

Scroggins asserts one assignment of error, and submits the trial court erred in imposing an excessive sentence. Specifically, Scroggins argues his 17-year sentence is excessive given the fact that he is a person of low intelligence with a history of mental illness and psychotic disorders. Scroggins argues that the trial court failed to adequately consider his mental health problems and the mitigating effect they had on his crime. More particularly, Scroggins urges that his low IQ and mental illness hindered his ability to comprehend the risk of death or great bodily injury he created, or the foreseeability that human life would be endangered. Scroggins contends that his mental deficiencies prevented him from understanding that there might have been someone in a nearby house that was injured from his gunfire. Whereas Scroggins concedes that the sanity commission's findings would not support an insanity defense at trial, he argues that his mental issues should have been given greater consideration during sentencing. We disagree.

An appellate court utilizes a two-pronged test in reviewing a sentence for excessiveness. First, the record must show the trial court took cognizance of the criteria set forth in La. C. Cr. P. art. 894.1. 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. DeBerry*, 50,501 (La. App. 2 Cir. 4/13/16), 194 So. 3d 657, *writ denied*, 2016-0959 (La. 5/01/17), 219 So. 3d 332.

Second, the court must determine 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); *State v. Jones*, 52,672 (La. App. 2 Cir. 5/22/19), 273 So. 3d 585. 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*, 2001-0467 (La. 1/15/02), 805 So. 2d 166; *State v. DeBerry*, *supra*.

The trial court has wide discretion in the imposition of sentences within the statutory limits and such sentences should not be set aside as excessive in the absence of a manifest abuse of that discretion. *State v. Williams*, 2003-3514 (La. 12/13/04), 893 So. 2d 7; *State v. Allen*, 49,642 (La. App. 2 Cir. 2/26/15), 162 So. 3d 519, *writ denied*, 2015-0608 (La. 1/25/16), 184 So. 3d 1289. A trial judge is in the best position to consider

the aggravating and mitigating circumstances of a particular case, and, therefore, is given broad discretion in sentencing. *State v. Allen, supra*. 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. Jackson*, 48,534 (La. App. 2 Cir. 1/15/14), 130 So. 3d 993.

As a general rule, maximum or near-maximum sentences are reserved for the worst offenders and the worst offenses. *State v. Cozzetto*, 2007-2031 (La. 2/15/08), 974 So. 2d 665; *State v. Hogan*, 47,993 (La. App. 2 Cir. 4/10/13), 113 So. 3d 1195, *writ denied*, 2013-0977 (La. 11/08/13), 125 So. 3d 445.

Louisiana R.S. 14:94(F) provides in relevant part:

Whoever commits the crime of illegal use of weapons or dangerous instrumentalities by discharging a firearm while committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit a crime of violence or violation of the Uniform Controlled Dangerous Substances Law, shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.

The record evidences the trial court's careful consideration of the applicable La. C. Cr. P. art. 894.1 sentencing factors, including the relevant aggravating and mitigating circumstances of the case. Contrary to Scroggins' assertions, the record reveals that the trial court specifically and carefully considered Scroggins' mental illness and/or mental deficiencies when tailoring its sentence. The trial court noted its review of the reports generated by the sanity commission, as well as its consideration of Britney Casey's and Eureka Scroggins' testimony. However, while the trial court determined that Scroggins' mental illness and/or mental deficiencies were mitigating factors, their significance was outweighed by the potentially

lethal injuries suffered by Johnson—a completely innocent party. The trial court also pointed out that despite his mental infirmities, Scroggins was completely capable of using a military-style rifle to callously unload multiple rounds in a neighborhood setting, thus endangering the lives of numerous unsuspecting innocent bystanders.

The 17-year sentence, while on the higher end of the 20-year sentencing range, does not shock the sense of justice. As noted by the trial court, Scroggins' indiscriminate firing of a rifle in an inhabited neighborhood severely injured one innocent person and created the potential for the death or injury to many others, including children. Additionally, Scroggins' criminal history indicates he has violent tendencies and this incident was not some isolated one-time lapse of judgment. The grave injuries Scroggins inflicted, as well as the dangerous situation he created, justify the sentence imposed. This assignment of error lacks merit.

CONCLUSION

Considering the foregoing, the conviction and sentence of Marc Q. Scroggins are affirmed.

AFFIRMED.