NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 0341

STATE OF LOUISIANA

VERSUS

AUBREY WILLIAM SIKES

Judgment rendered September 10, 2010.

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Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 801482
Honorable Bruce C. Bennett, Judge

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AUBREY WILLIAM SIKES

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BEFORE: KUHN, PETTIGREW, JJ., and KLINE, J. *pro tempore*.[1]

[1] Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

PETTIGREW, J.

The defendant, Aubrey William Sikes, was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant pled not guilty. After a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, arguing that the sentence imposed by the trial court is excessive in this case. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

Around April 2007, approximately one year before the instant offense, the defendant, at the age of seventeen years old, began having a sexual relationship with Brooklyn Becc Huber Brown and her then boyfriend, Christopher Slater Brown (the victim). Brooklyn Brown and the victim were in their late twenties at the time.

At some point, Brooklyn Brown and the defendant also began having sexual encounters in the victim's absence and without his knowledge. The sexual relationship between the three individuals sporadically continued during the time period leading to and subsequent to the marriage of the victim and Brooklyn Brown. In February 2008, Brooklyn Brown ended her relationship with the defendant. After the defendant mailed nude photos of her to the victim, she admitted to the outside sexual relationship that took place between her and the defendant.

On the night of April 9, 2008, the defendant came to the Browns' residence and shot the victim. Brooklyn Brown was awakened by the gunfire, and the defendant attempted to have her leave with him. She refused to leave with the defendant and contacted the police. The victim died as a result of the multiple gunshot wounds inflicted by the defendant. Dr. Fraser MacKenzie, the forensic pathologist and expert witness who performed the autopsy, specifically testified that the victim suffered four separate gunshot wounds and that the cause of death was perforating wounds in the lung and heart.

ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant contends that the mandatory life sentence imposed by the trial court is excessive as to this defendant. The defendant notes that he was only seventeen years of age when he was "drawn into a three-way sexual relationship" with the victim and his then fiancée.[2] The defendant further notes that Brooklyn Brown admitted to being about twenty-seven or twenty-eight years of age when the sexual relationship began and further admitted that she and the defendant developed a sexual and loving relationship outside of the encounters that included the victim. The defendant also notes that he did not attempt to conceal the shooting, escape, or resist at the time of his arrest. The defendant concludes that a life sentence is unwarranted, excessive, and a needless imposition of pain "for the single rash act of an emotionally vulnerable young man."

Article I, Section 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. In reviewing a sentence for excessiveness, the appellate court must consider the punishment and the crime in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and, therefore, is nothing more than the needless imposition of pain and suffering. See **State v. Guzman**, 99-1528, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167. The trial court has wide discretion in imposing a sentence within the statutory limits and such a sentence will not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Loston**, 2003-0977, p. 20 (La. App. 1 Cir. 2/23/04), 874 So.2d 197, 210, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing sentence. The trial court need not recite

[2] The offense took place during the month of and just before the defendant's nineteenth birthday. The victim was twenty-seven years old at the time.

the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. **State v. Leblanc**, 2004-1032, p. 10 (La. App. 1 Cir. 12/17/04), 897 So.2d 736, 743, writ denied, 2005-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005); **State v. Faul**, 2003-1423, p. 4 (La. App. 1 Cir. 2/23/04), 873 So.2d 690, 692. Failure to comply with Article 894.1 does not necessitate the invalidation of a sentence or warrant a remand for resentencing if the record clearly illuminates and supports the sentencing choice. **State v. Smith**, 430 So.2d 31, 46 (La. 1983).

In **State v. Dorthey**, 623 So.2d 1276, 1280-1281 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no measurable contribution to acceptable goals of punishment or that the sentence amounts to nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime, he is duty bound to reduce the sentence to one that would not be constitutionally excessive. However, the holding in **Dorthey** was made only after, and in light of, express recognition by the court that the determination and definition of acts that are punishable as crimes is purely a legislative function. It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. **Dorthey**, 623 So.2d at 1278.

In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from a mandatory minimum sentence, albeit in the context of the Habitual Offender Law. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show that:

> [he] is exceptional, which in this context means that because of unusual circumstances this defendant 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.

Johnson, 97-1906 at 8, 709 So.2d at 676. While both **Dorthey** and **Johnson** involve the mandatory minimum sentences imposed under the Habitual Offender Law, the Louisiana Supreme Court has held that the sentencing review principles espoused in **Dorthey** are not restricted in application to the penalties provided by La. R.S. 15:529.1. See **State v. Fobbs**, 99-1024 (La. 9/24/99), 744 So.2d 1274, 1275 (per curiam); **State v. Henderson**, 99-1945, p. 19 n.5 (La. App. 1 Cir. 6/23/00), 762 So.2d 747, 760 n.5, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235; **State v. Davis**, 94-2332, p. 12 (La. App. 1 Cir. 12/15/95), 666 So.2d 400, 407-408, writ denied, 96-0127 (La. 4/19/96), 671 So.2d 925.

In the defendant's motion to reconsider sentence he argued that "the sentence was unconstitutional, illegal, excessive, unduly harsh and severe, and/or a needless imposition of punishment in that the statute in question does not allow any variance in sentencing and is thus unconstitutional and is unconstitutionally harsh, severe and excessive as concerns the punishment it invokes." At the hearing on the motion, the defendant informed the trial court that there was no further argument to add to the motion. Although the defendant was only eighteen at the time of the offense, he has failed to show how his youth justified a deviation from the mandatory sentence. See **State v. Crotwell**, 2000-2551, p. 16 (La. App. 1 Cir. 11/9/01), 818 So.2d 34, 46; **Henderson**, 99-1945 at 19-20, 762 So.2d at 760-761. The defendant did not present any particular facts regarding his family history or special circumstances that would support a deviation from the mandatory sentence provided in La. R.S. 14:30.1B. Based on the record before us, we find that the defendant has failed to show that he is exceptional or that the mandatory life sentence is not meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. Thus, we do not find that a downward departure from the presumptively constitutional, mandatory life sentence was required in this case. The sentence imposed is not excessive. The assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.