

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2022-KH-01391

VS.

CHARLES RAY THOMPSON

IN RE: Charles Thompson, Jr. - Applicant Defendant; Applying For Supervisory Writ, Parish of St. Tammany, 22nd Judicial District Court Number(s) 559,308, Court of Appeal, First Circuit, Number(s) 2022 KW 0556;

May 02, 2023

Writ application granted. See per curiam.

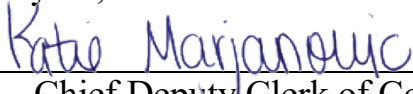
JDH

JTG

PDG

Weimer, C.J., dissents and assigns reasons.
Crichton, J., concurs and assigns reasons.
Crain, J., dissents and assigns reasons.
McCallum, J., dissents.

Supreme Court of Louisiana
May 02, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-KH-01391

STATE OF LOUISIANA

VS.

CHARLES RAY THOMPSON

**ON SUPERVISORY WRIT TO THE 22ND JUDICIAL DISTRICT COURT,
PARISH OF ST. TAMMANY**

PER CURIAM

Motion granted; Writ granted. In 2015, Charles Ray Thompson was convicted of two counts of distribution of cocaine, a violation of La. R.S. 40:967(A)(1) (counts 2 and 3); possession with intent to distribute cocaine, a violation of La. R.S. 40:967(A)(1) (count 4); possession of Alprazolam, a violation of La. R.S. 40:969(C) (count 5); and possession of a firearm by a person convicted of a felony, a violation of La. R.S. 14:95.1 (count 6). For these crimes, Mr. Thompson faced a sentencing exposure up to 115 years.¹ The trial court sentenced Mr. Thompson on count 2, to 20 years imprisonment at hard labor; on count 3, to 20 years imprisonment at hard labor; on count 4, to 15 years imprisonment at hard labor; on count 5, to 5 years imprisonment at hard labor; and on count 6, to 15 years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The court ordered that the sentences run concurrently with each other for a total of 20 years. Thereafter, the State filed a habitual offender bill of information listing five predicate offenses.²

¹ Mr. Thompson was convicted of three counts under La. R.S. 40:967, which in 2014 provided a maximum sentence of 30 years, for a total of 90 years. He was also convicted under La. R.S. 40:969(C), which, in 2014, provided a maximum sentence of five years, and under La. R.S. 14:95.1, which provided a maximum sentence of 20 years. If each of these sentences were run consecutively, it would amount to a punishment of 115 years imprisonment.

² The predicate offenses listed on the habitual offender bill of information included: (1) January 28, 2012 conviction for possession of marijuana (second offense), a violation of La. R.S. 14:966(D)(2); (2) January 28, 2012 conviction for possession of marijuana (second offense), a violation of La. R.S. 14:966(D)(2); (3) May 6, 2009 conviction for distribution of a Schedule II CDS, a violation of La. R.S. 40:967(A)(1); (4) March 27, 2000 conviction for illegal discharge of a weapon, a violation of La. R.S. 14:94; and (5) May 1, 2015 conviction for possession of a

After a hearing, the district court vacated the previously imposed sentence on count 2 and sentenced Mr. Thompson as a third-felony habitual offender to a term of life imprisonment without the benefit of parole, probation, or suspension of sentence.

Counsel for Mr. Thompson did not file a motion to reconsider the sentence. For that reason, on direct appeal, the appellate court found that Mr. Thompson's assignment of error challenging his sentence as excessive was procedurally barred from being reviewed. *State v. Thompson*, 2015-1983, pp. 6–7 (La. App. 1 Cir. 9/16/16), 202 So.3d 998, 1002.

Mr. Thompson subsequently filed an application for post-conviction relief in which he argued that he was denied effective assistance of counsel in relation to his habitual offender sentencing. In *State v. Harris*, 18-1012, p. 1 (La. 7/9/20), 340 So.3d 845, we held that an “ineffective assistance of counsel at sentencing claim is cognizable on collateral review.” Under the standard for ineffective assistance of counsel provided in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), a reviewing court must vacate a sentence if the defendant establishes (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's deficient performance prejudiced defendant to the extent that the outcome of the proceeding is rendered unreliable. We have explained that

[a]n objectively reasonable standard of performance requires that counsel be aware of the sentencing options in the case and ensure that all reasonably available mitigating information and legal arguments are presented to the court. Since Louisiana law prohibits excessive sentences, and requires that individual circumstances be considered, counsel acts unprofessionally when he fails to conduct a reasonable investigation into factors which may warrant a downward departure from the mandatory minimum.

Harris, 18-1012, p. 19, 340 So.3d at 858.

Schedule II CDS (cocaine in an amount of twenty-eight grams or more, but less than two hundred grams), a violation of La. R.S. 40:967(F)(1)(a).

A sentence may be excessive under Article I, Section 20 of the Louisiana Constitution, even if it falls within the statutory range established by the Legislature. *State v. Johnson*, 97-1906, p. 6 (La. 3/4/98), 709 So.2d 672, 676; *State v. Sepulvado*, 367 So.2d 762, 767 (La. 1979). In *State v. Dorthey*, 623 So.2d 1276, 1280–81 (La. 1993), we held that this extends to the minimum sentences mandated by the Habitual Offender Law and that the trial court must reduce a sentence to one not unconstitutionally excessive if the trial court finds that the sentence mandated by the Habitual Offender Law “makes no measurable contribution to acceptable goals of punishment” or is nothing more than “the purposeful imposition of pain and suffering” and “is grossly out of proportion to the severity of the crime.”

Here, defense counsel failed to file a motion to reconsider the mandatory life sentence. Counsel did not apprise the trial court of its discretion to depart from the mandatory life sentence under *Dorthey* on the grounds it was excessive. Counsel also failed to present any mitigating evidence. In particular, counsel failed to emphasize that none of Mr. Thompson’s predicate offenses were enumerated crimes of violence under La. R.S. 14:2(B)(57) or sexual in nature. In addition, the initial sentence imposed—20 years—was far below the maximum available penalty for the most recent convictions. The life sentence was likewise shielded from review on appeal as a result of counsel’s failure to motion for its reconsideration.

We find that sentencing counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms. As a result of his deficient performance, the trial court imposed a mandatory life sentence that was excessive as applied to Mr. Thompson. Accordingly, Mr. Thompson’s right to effective assistance of counsel as required by the Sixth Amendment to the Constitution of the United States and Article I, Section 13 of the Louisiana Constitution was violated and his sentence must be vacated.

Accordingly, we reverse the ruling of the trial court, which denied the application for post-conviction relief. We vacate Mr. Thompson's life sentence and remand to the trial court, which is instructed to re-sentence Mr. Thompson to a term of imprisonment that is not unconstitutionally excessive. We note that while ameliorative sentencing changes may not apply retroactively, they may likewise guide the court when imposing the new sentence. *See generally, State v. Clark*, 391 So.2d 1174 (La. 1980). In resentencing, the trial court must state for the record its considerations and factual basis. *See* La.C.Cr.P. art. 894.1(C). We also grant the State's motion to file an appendix in excess of 25 pages.

REVERSED AND REMANDED