

**NOT DESIGNATED FOR PUBLICATION**

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

**KA 07-118**

**STATE OF LOUISIANA**

**VERSUS**

**RAYMOND MICHAEL SUTTON**

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**APPEAL FROM THE  
FOURTEENTH JUDICIAL DISTRICT COURT  
PARISH OF CALCASIEU, NO. 15893-04  
HONORABLE ROBERT LANE WYATT, DISTRICT JUDGE**

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**BILLY HOWARD EZELL  
JUDGE**

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Court composed of Michael G. Sullivan, Billy Howard Ezell, and J. David Painter,  
Judges.

**AFFIRMED.**

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**EZELL, JUDGE.**

On October 20, 2004, the State filed a bill of information charging Defendant, Raymond Michael Sutton, with aggravated arson, a violation of La.R.S. 14:51. On November 29, 2005, Defendant entered a plea of guilty to the charge.<sup>1</sup> After a number of continuances, the trial court held a sentencing hearing on October 18, 2006, and sentenced Defendant to fifteen years at hard labor, the first two years to be served without benefit of probation, parole, or suspension of sentence.

On October 23, 2006, Defendant filed a written motion to reconsider sentence, which the trial court denied without a hearing on the same date. Defendant subsequently filed a written motion for appeal on October 31, which the trial court granted on the same date. Defendant now seeks review by this court, assigning one error.

**FACTS**

At the guilty plea hearing, the following colloquy occurred:

MS. KILLINGSWORTH:

Your Honor, if called to trial the State would prove on or about July 22, 2004, the defendant entered a home located at 609 Ford Stewart Road in Vinton. It was a mobile home.

He lit a candle and put it under a curtain to set the place on fire. There were people who were staying there whose truck also was burned in the fire.

The whole mobile home and all its content[s] were destroyed completely, it was a total loss.

MR. BOUQUET:

Your Honor, there is a lot there we can agree to. I will say upon the information I have the truck that was parked there did not belong to

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<sup>1</sup>The minutes indicate the hearing occurred on November 29, 2005; however, the cover page of the transcript indicates the hearing took place on September 29. It is well-settled that in such conflicts, the transcript controls. However, the transcript of the sentencing hearing also indicates Defendant pled on November 29, as the minutes indicate.

anyone who was residing there. But he did give a statement admitting setting the fire in the trailer.

There was damage to the property in question, there was a truck parked there. But our information is the owner of the truck was not anyone residing there.

THE COURT:

Was not what?

MR. BOUQUET:

Was not owned by someone who was residing at the trailer. I don't know that that makes a difference on the facts, but from the standpoint of taking a plea.

THE COURT:

I understand.

MR. BOUQUET:

But I'm just stating upon information that I have it was not owned by someone who was actually --

THE COURT:

But it was an actual residence, was it not that was --

MR. BOUQUET:

There was a trailer there, yes, sir. And there is some question about who was residing there. I understand the State's position that there was, I think, a couple living there or staying there.

I'm not sure that's correct. I just want to state on information that I have that the truck did not belong to the people in question.

THE COURT:

Okay. Does Mr. Sutton actually concede that it was a residence? There may be some argument as to actually who was living there, but it was actually a residence; was it not?

MR. BOUQUET:

It was a residence. Our information is that there was not utilities connected to the residence, but --

MS. KILLINGSWORTH:

And the victim disputes that.

MR. BOUQUET:

I understand that.

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### **ASSIGNMENT OF ERROR**

In his lone assignment of error, Defendant argues his fifteen-year sentence was excessive because the trailer he burned “was more of a flophouse than a residence.” This differs from the argument Defendant made below, which was a bare claim of excessiveness. Defendant acknowledges this at the beginning of his argument, but goes on to make the contention that the residence was unoccupied at the time of the fire. According to Defendant, the offense at issue was actually a simple arson rather than an aggravated arson, and thus his sentence should be lower.

This court has explained:

The defendant filed a Motion to Reconsider Sentence alleging that his sentence was excessive. None of the grounds asserted by the defendant on appeal were set forth in his Motion to Reconsider Sentence. “Failure to . . . include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.” La.Code Crim.P. art. 881.1(E). Accordingly, this court is relegated to a bare claim of excessiveness in this case. *State v. Whatley*, 03-1275 (La.App. 3 Cir. 3/3/04), 867 So.2d 955.

This court has set forth the following standard to be used in reviewing excessive sentence claims:

La. Const. art. I, § 20 guarantees that, “[n]o law shall subject any person to cruel or unusual punishment.” To constitute an excessive sentence, the reviewing court must find the penalty so grossly disproportionate to the severity of the crime as to shock our sense of justice or that the sentence makes no measurable contribution to acceptable

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<sup>2</sup>We note that Defendant acknowledged he agreed with the facts stated in the colloquy and pled guilty to aggravated arson.

penal goals and is, therefore, nothing more than a needless imposition of pain and suffering. *State v. Campbell*, 404 So.2d 1205 (La.1981). The trial court has wide discretion in the imposition of sentence within the statutory limits and such sentence shall not be set aside as excessive absent a manifest abuse of discretion. *State v. Etienne*, 99-192 (La.App. 3 Cir. 10/13/99); 746 So.2d 124, *writ denied*, 00-0165 (La. 6/30/00); 765 So.2d 1067. The relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. *State v. Cook*, 95-2784 (La.5/31/96); 674 So.2d 957, *cert. denied*, 519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996).

*State v. Barling*, 00-1241, 01-1591, p. 12 (La.App. 3 Cir. 1/31/01), 779 So.2d 1035, 1042-43, *writ denied*, 01-838 (La.2/1/02), 808 So.2d 331.

In deciding whether a sentence is shocking or makes no meaningful contribution to acceptable penal goals, an appellate court may consider several factors including the nature of the offense, the circumstances of the offender, the legislative purpose behind the punishment and a comparison of the sentences imposed for similar crimes. *State v. Smith*, 99-0606 (La.7/6/00); 766 So.2d 501. While a comparison of sentences imposed for similar crimes may provide some insight, “it is well settled that sentences must be individualized to the particular offender and to the particular offense committed.” *State v. Batiste*, 594 So.2d 1 (La.App. 1 Cir.1991). Additionally, it is within the purview of the trial court to particularize the sentence because the trial judge “remains in the best position to assess the aggravating and mitigating circumstances presented by each case.” *State v. Cook*, 95-2784 (La.5/31/96); 674 So.2d 957, 958.

*State v. Smith*, 02-719, p. 4 (La.App. 3 Cir. 2/12/03), 846 So.2d 786, 789, *writ denied*, 03-562 (La.5/30/03), 845 So.2d 1061.

*State v. Collins*, 04-1441, pp. 12-13 (La.App. 3 Cir. 3/2/05), 896 So.2d 1265, 1274-75, *writ denied*, 05-1334 (La. 1/9/06), 918 So.2d 1040 (alteration in original).

Defendant faced a possible sentence of six to twenty years for aggravated arson; the first two years of the sentence must be served without benefit of parole, probation, or suspension of sentence. The relevant statute also includes a mandatory fine of not more than twenty-five thousand dollars. La.R.S. 14:51.

Although Defendant is limited to a bare claim of excessiveness, his present argument arguably addresses one of the factors listed in *Smith*, i.e., the nature of the offense. Thus, we will discuss his contention. Defendant claims the crime at issue was actually a simple arson, rather than an aggravated arson, because the trailer he burned was not actually a residence, or because the trailer was unoccupied at the time of the arson.

We find this argument represents an improper attempt to re-litigate the facts and elements of the underlying offense. As shown in the “Facts” section of this opinion, Defendant entered a guilty plea to aggravated arson and conceded that the trailer was a residence. Therefore, Defendant’s argument lacks merit.

Regarding the nature of the offense as a *Smith* factor, we note that aggravated arson is a “crime of violence” pursuant to La.R.S. 14:2(B)(18). As for the nature of the offender, the court stated that Defendant’s record included four prior felonies and numerous misdemeanors and arrests. Thus, the second *Smith* factor weighs heavily against Defendant. Regarding the third factor, the legislative purpose of the statute, we suggest said purpose is apparent from the language of La.R.S. 14:51 (emphasis added), which states, in pertinent part: “[A]ggravated arson is the intentional damaging by any explosive substance or the setting fire to any structure, watercraft, or movable *whereby it is foreseeable that human life might be endangered.*” The language emphasized differentiates the offense from simple arson, which is defined by La.R.S. 14:52(A): “[S]imple arson is the intentional damaging by any explosive substance or the setting fire to any property of another, without the consent of the owner and except as provided in R.S. 14:51.” Thus, both statutes protect property, but La.R.S. 14:51 also protects human life. This *Smith* factor does not weigh in

Defendant's favor, as his act of burning a residence appears to be exactly the sort of conduct that La.R.S. 14:51 was written to proscribe.

The final factor of *Smith* is the comparison of the sentence at issue with other sentences for similar offenses. In *State v. Qutoum*, 02-780 (La.App. 5 Cir. 1/28/03), 839 So.2d 323, writ denied, 03-595 (La. 5/30/03), 845 So.2d 1059, the court approved a ten-year sentence for a first offender, who knew a family was in the building on the day of the fire. In *State v. Newsome*, 524 So.2d 133, 135 (La.App. 4 Cir. 1988), a majority of the court affirmed a maximum (twenty-year) sentence for a first offender, explaining:

Few decisions are reported that address the appropriateness of sentences imposed for aggravated arson. None were found in which the trial judge imposed the maximum twenty year sentence. However, in *State v. Simmons*, 443 So.2d 512 (La.1983), a fifteen year sentence was imposed for this crime where defendant set fire to a bingo hall containing approximately 100-150 individuals.

Other courts have imposed the following sentences for aggravated arson: ten years in *State v. Washington*, 421 So.2d 887 (La.1982) where defendant was a third offender and set fire to the jail where he was incarcerated; nine and one half years in *State v. Smith*, 448 So.2d 778 (La.App. 2nd Cir.1984) where drunk defendant set fire to the house where his wife lived; six years in *State v. Williams*, 457 So.2d 610 (La.1984) where defendant set fire to the hotel at which his ex-girlfriend worked; seven years in *State v. Barnes*, 495 So.2d 310 (La.App. 4th Cir.1986) where defendant set fire to ex-girlfriend's house.

Notwithstanding the absence of decisions in which the trial court imposed a maximum penalty for aggravated arson, given the facts of this case we conclude that it was not an abuse of the trial court's discretion in imposing this sentence. The defendant indicated his intention to set fire to his ex-girlfriend's apartment and to kill her, her boyfriend, her brother and her five children. He stayed outside the apartment waving a gun so that the occupants of the house, even though the apartment was on fire, were afraid to leave the apartment for fear of being shot. Under these facts the imposition of the maximum penalty was warranted. The sentence is not disproportionate to the crime. Nor does the imprisonment result in "purposeless and needless imposition of pain and suffering" since the trial court correctly concluded that the defendant's incarceration was necessary to protect the public.

In the present case, the trial judge stated:

The Court takes into consideration Mr. Sutton's extensive adult criminal record, which includes four prior felonies and numerous other arrests and misdemeanor arrests and convictions.

The Court will take into consideration also the fact of the numerous other matters which have been involved in Mr. Sutton's life up to this point also.

The statute[,] aggravated arson[,] provides for sentencing not less than six years nor more than 20 years, not more than \$25,000 fine, two years of this sentence must be without benefit of parole, probation, or suspension of sentence.

It is of some consolation to the Court that, of course, there was no one actually in the residence at the time that the fire was set. The report and the presentence investigation indicates that Mr. Sutton went into the residence and started the fire from within.

Giving Mr. Sutton the benefit of the doubt and giving him some due in this situation, this Court would want to believe that Mr. Sutton ascertained that there was no human presence in the mobile home at the time.

So, if I look at it from that perspective then let's just assume that this would be a simple arson as opposed to an aggravated arson, and I'm not suggesting that this is a simple arson because it is not.

Simple arson, the maximum would be 15 years. Aggravated arson, maximum is 20 years. The reason I say that is because if, in fact, this could have been a simple arson as opposed to an aggravated arson. Although, it does technically fit the criteria for an aggravated arson.

The most this Court could have given Mr. Sutton is 15 years. The bottom line at this time is that based on all these circumstances I'm sentencing Mr. Raymond Michael Sutton to 15 years, [with the] Department of Corrections.

The first two years without benefit of parole, probation, or suspension of sentence, as the statute qualifies.

Credit for time served that he has been incarcerated on these charges.

Although Defendant's actions in the present case appear to have been much less egregious than that of some other defendants discussed in the relevant jurisprudence, Defendant's criminal background suggests he does not respect the

rules of modern society and has learned nothing from his prior experiences in the criminal justice system. Further, the record shows that the trial court carefully considered the nature of both the offense and the offender, in formulating the sentence.<sup>3</sup> Thus, we are unable to say the trial court abused its discretion by sentencing him to fifteen years at hard labor.

### **CONCLUSION**

Defendant's sentence is affirmed.

**AFFIRMED.**

This opinion is NOT DESIGNATED FOR PUBLICATION.  
Uniform Rules - Court of Appeal. Rule 2-16.3.

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<sup>3</sup>The exact nature of Defendant's prior criminal record is not clear from the record. We did not order the PSI (pre-sentence investigation report) because Defendant did not, and does not now, dispute its contents. Defense counsel stated Defendant had recently pled to a federal charge of possession of a firearm by a convicted felon and had been sentenced to fifty-seven months. The court stated that the PSI showed the federal charge and pending State charges of simple burglary of an inhabited dwelling, possession of stolen things, aggravated battery, and a probation revocation in Texas.