STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

25-29

STATE OF LOUISIANA

VERSUS

DAVID SELF

****

APPEAL FROM THE
THIRTIETH JUDICIAL DISTRICT COURT
PARISH OF VERNON, NO. 98666
HONORABLE TONY A. BENNETT, DISTRICT JUDGE

****

VAN H. KYZAR
JUDGE

****

Court composed of Van H. Kyzar, Jonathan W. Perry, and Sharon Darville Wilson, Judges.

AFFIRMED AND REMANDED
WITH INSTRUCTIONS.

Douglas Lee Harville
Louisiana Appellate Project
P.O. Box 52988
Shreveport, LA 71135-2988
(318) 222-1700
COUNSEL FOR DEFENDANT/APPELLANT:
DAVID SELF

Terry W. Lambright
District Attorney
William R. Thornton
Assistant District Attorney
Thirtieth Judicial District
P.O. Box 1188
Leesville, LA 71446
(337) 239-2008
COUNSEL FOR APPELLEE:
STATE OF LOUISIANA

KYZAR, Judge.

Defendant appeals his sentence following guilty pleas to two counts of oral sexual battery, two counts of molestation of a juvenile, and one count of computer-aided solicitation of a minor, wherein the plea agreement stipulated a sentencing cap of fifty years and included the dismissal of other charges. For the reasons assigned, we affirm the convictions and sentences imposed.

FACTS AND PROCEDURAL HISTORY

On August 29, 2023, Defendant, David Self, was charged by bill of information with six counts of oral sexual battery, in violation of La.R.S. 14:43.3; three counts of molestation of a juvenile, in violation of La.R.S. 14:81.2; one count of indecent behavior with a juvenile, in violation of La.R.S. 14:81; one count of crime against nature, in violation of La.R.S. 14:89; and one count of computer-aided solicitation of a minor, in violation of La.R.S. 14:81.3.

Pursuant to a plea agreement, on December 11, 2023, Defendant entered guilty pleas to two counts of oral sexual battery, two counts of molestation of a juvenile, and one count of computer-aided solicitation of a minor. In exchange for his guilty pleas, the State dismissed the remaining charges against him, and the plea agreement stipulated that there was a sentencing cap of fifty years.

The facts of the case underlying the guilty pleas were set forth during the plea hearing:

> Your Honor, the State would offer and introduce our State's response to defense discovery filed in the record of this matter. It would show that, um, Mr. Self was born on March the 15th, 1977 and his victim, initials K.B.,[1] born December 23rd, 2008. He was the stepfather of K.B. for approximately eight years. K.B. disclosed that the defendant would start making her have sex with him and after she had

[1] The initials of the minor victim are being used to protect their identity as per La.R.S. 46:1844(W)(1)(a).

> [become] sexually active with her boyfriend and, in particular, that in her words, he would touch his "front part," meaning his penis, with her mouth until he was finished. And, also, that he would touch her "front part," meaning her vagina, with his mouth. Your Honor, that would constitute oral sexual battery. This happened when the parties lived, um, on Beech Grove Loop in Anacoco, Louisiana, in Vernon Parish.
>
> As far as the molestation of a juvenile, um, this defendant did have, um, vaginal sex with his stepdaughter on multiple occasions, um, in Anacoco, Louisiana, which is [in] Vernon Parish, Louisiana. And in conjunction with that, as well as the computer-aided -- aided solicitation of a juvenile, he would have in depth conversations with K.B. asking her, "So you would let me -- you would let me have it even on your period?" She said, "I don't know. That would be gross." Um, he said, "I don't want you to try anything. I bet you would love it." She said, "I don't know." She said -- he said, "At least you can't get pregnant right now." She said, "I know. It's just nasty because I'm bleeding." "Well, maybe we just won't do it anymore at least for a while until you are more ready." This matter came to -- to the law enforcement's attention pursuant to [the] following texts speaking of the defendant and the stepdaughter talking that he wished that she could have given an answer on the virginity. There were, um, later conversations wherein he would have the victim, K.B., text him and had asked whose penis did she like better, his or her boyfriend's and which she stated, um, his, because it was larger. However, he just -- it hurt when he had sex with her. Your Honor, that would perform -- that would all -- that would justify the computer-aided solicitation of minor as well as add proof to the molestation of a juvenile, Your Honor. All [of] this having occurred in Vernon Parish, Louisiana.

On August 9, 2024, Defendant filed a motion to withdraw his guilty pleas, asserting that he "did not really understand what had happened at the time of the plea." On August 28, 2024, the trial court denied Defendant's motion, finding that Defendant clearly understood and voluntarily waived his rights.

Defendant was sentenced on September 25, 2024, to ten years at hard labor, without the benefit of probation, parole, or suspension of sentence, for each of the two counts of sexual battery, and ten years at hard labor, without the benefit of probation, parole, or suspension of sentence, for computer-aided solicitation of a minor. He was also sentenced to ten years at hard labor for each of the two counts of molestation of a juvenile. The trial court also ordered the sentences to run

consecutively with one another, equating to a total of fifty years imprisonment. According to a review of the record, no motion to reconsider sentence was filed.

Defendant now appeals his sentences, arguing that his total sentence is unconstitutionally excessive.

DISCUSSION

In his sole assignment of error, Defendant claims that his total sentence for two counts of oral sexual battery, two counts of molestation of a juvenile, and one count of computer-aided solicitation of a minor is unconstitutionally excessive. Specifically, Defendant argues that his combined sentences totaling fifty years constitute a life sentence, which is not warranted by the facts of this case.

The Plea Agreement: Is this an Appealable Issue?

As a preliminary matter, we must determine whether Defendant can seek review of the sentences imposed under these circumstances. Louisiana Code of Criminal Procedure Article 881.2(A)(2) states: "The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea." However, this court has previously held that it is "not automatically precluded from reviewing a sentence unless the plea agreement provides a specific sentence or sentencing cap." *State v. Curtis*, 04-111, p. 2 (La.App. 3 Cir. 8/4/04), 880 So.2d 112, 114, *writ denied*, 04-2277 (La. 1/28/05), 893 So.2d 71. Moreover, in *State v. Percy*, 09-1319 (La.App. 3 Cir. 5/5/10), 36 So.3d 1115, *writ denied*, 10-1253 (La. 12/17/10), 51 So.3d 17, this court held that a defendant may not seek review of a sentence imposed in accordance with an agreed upon sentencing cap.

In this case, the plea agreement form entered into the record stated:

> The defendant herein will be permitted to plead guilty to the offense(s) of Counts 1 & 2 Oral Sexual Battery 14:43.3 A(1) & C(1) without benefit[;] Counts 7 & 8 Molestation of a Juvenile 14:81.2 A(1) & B(1) with benefit of Prob. Parole or Suspens.[; and] Count 12 Computer Solicitation of a Minor 14:81.3 A(1) & B(1)a without Benefit of probation, parole or suspension of sentence[.] In exchange for an agreed upon sentence of 50 year sentencing cap under [La.Code Crim.P. art.] 881.2[.]

The form further provided that the "[s]entences are consecutive to each other."

At the plea hearing, counsel for Defendant discussed the plea agreement and identified that there was a sentencing cap, stating:

> And, Your Honor, in this matter, Mr. Self will withdraw his former plea of not guilty and tender a plea of guilty to Counts 1 and 2, oral sexual battery, 14:43.3 (A) (1) and (C) (1), that -- that is without benefit; Counts 7 and 8, molestation of a juvenile, 14:81.2 (A) (1) and (B) (1), that one is with the benefit of probation, parole, suspension of sentence; Count 12, computer solicitation of a minor, 14:81.3 (A) (1) and (B) (1) (a), without benefit of probation, parole, or suspension of sentence. All those are to run consecutive to each other. Judge, there's gonna [sic] be a 50-year -- we're plead -- in exchange for pleading guilty to those, the agreed upon sentence is a 50-year sentencing cap under Criminal Code of Procedure 80 -- 881.2. All sentences are to run consecutive to each other. And, in turn, the State agrees to dismiss the charges of Counts 3, 4, 5, 6, 9, 10, and 11. There will be a special condition of permanent protective order in favor of the victim. That, of course, Mr. Self will have to register as a sex offender as required, and he has received that notice. That a sentencing hearing be held and set by the court. Of course, also, a -- a presentence investigation, Judge. And, Your Honor, to that effect, Mr. Self has signed the plea agreement, he has signed the sex offender notification, he has signed his constitutional waiver of rights form, his disclosures mandate. And since this is not a -- a probation eligible, I didn't have him sign a waiver[.]

Later, the trial court and Defendant engaged in the following colloquy:

> Q. All right, and I do want to make another statement here. I read to you the maximum and the minimum penalties, but I want to make sure, as part of the plea agreement, uh, that there are special conditions that you are agreeing that these sentences shall be consecutive to each other; a permanent protective order in favor of the victim will be issued; uh, and, of course, as part of this, you are required to register as a sex offender; and you understand that your maximum exposure is 50 years and you specifically agree that 50 years will be considered a sentencing cap, uh, according to Code of Criminal Procedure Article 881.2; and you

are receiving a benefit by the State dismissing the remaining charges. Do you understand all of that?

A. Yes, sir.

Q. All right. All right, sir, did you read and did you sign the Waiver of Constitutional Rights and Plea of Guilty form I have before me?

A. Yes, sir.

Q. Did you talk to your attorney about that?

A. Yeah.

Q. You'll have to answer.

A. Yes, sir.

Q. Did you understand the things that y'all talked about?

A. Yes, sir.

. . . .

Q. And you also understand there is no recommended sentence in this case, uh, there is going to be a sentencing hearing and a presentence investigation and then, of course, the court will sentence you accordingly. Is -- do you understand that?

A. Yes, sir.

In accordance with La.Code Crim.P. art. 881.2(A)(2) and *Percy*, Defendant is barred from appealing his fifty-year sentence, which was imposed in conformity with a plea agreement set forth in the record at the time of his plea.[2] However,

---

[2] In its sentencing memorandum, the State referenced La.Code Crim.P. art. 881.2 and notes the following:

> The defendant's plea was conducted under Criminal Procedure Article 881.2 in that he stated he understood that his maximum exposure was 50 years, and he specifically agreed that 50 years would be considered the cap as he was receiving a benefit by having the other charges dismissed. Courts have repeatedly denied the contention that the statutory maximum sentence for a crime is a sentencing cap which would preclude a defendant from appealing their sentence under Article

Defendant argues that he is not precluded from seeking review of his sentences because he was told by one of his attorneys on the record that he had "'the right to appeal the sentence'" and that he was advised by the State that he could appeal his sentence even though it was in conformity with a plea agreement.[3] Defendant further argues that the trial court, at sentencing, noted that he could appeal his sentence.

The remarks made by counsel for Defendant and the State were made at the hearing on Defendant's motion to withdraw his plea. Further, the trial court advised Defendant at sentencing that he could appeal, stating: "You're advised that under Code of Criminal Procedure Article 914 any appeal must be taken by no later than 30 days after the judgment or ruling from which the appeal is taken."

In brief, Defendant relies on *State v. Kennon*, 19-998 (La. 9/1/20), 340 So.3d 881, to support his argument that he is not barred from appealing his sentence. Therein, the defendant argued that his sentence was reviewable even though it was imposed pursuant to a plea agreement. According to the defendant, he was not precluded from review because "he was not informed he was waiving his right to appellate review of the sentence, and he was informed of the time in which to appeal." *Id.* at 885. In finding the defendant's sentence to be reviewable, the supreme court stated:

> The record shows that during the original plea colloquy held on August 1, 2016, the district court advised defendant that he was waiving the right to appeal, but, after imposing sentence, the court also informed defendant he had 30 days to appeal his sentence. On remand after the court of appeal set aside the sentence, the district court once again

---

881.2. However, defendant has received a benefit of having seven of the twelve felonies dismissed.

(Footnote omitted.)

[3] Despite the reference to La.Code Crim.P. art. 881.2, the following is stated on the plea form signed by all parties: "I understand that I have thirty days after the rendition of the judgment to file a motion to appeal my sentence or any other orders or judgments of the court."

> informed defendant that he had 30 days to appeal the sentence after resentencing him. Citing jurisprudence within its circuit, the court of appeal found the district court's statements sufficient to preserve defendant's right to appellate review of his sentence. [*State v.*] *Kennon-2*, 52,661, p. 5, [(La.App. 2 Cir. 5/22/19)] 273 So.3d [611,] 616, citing *State v. Thomas*, 51,364 (La. App. 2 Cir. 5/17/17), 223 So.3d 125, *writ denied*, 17-1049 (La. 3/9/18), 238 So.3d 450; *State v. Brown*, 50,138 (La. App. 2 Cir. 9/30/15), 181 So.3d 170; *State v. Fizer*, 43,271 (La. App. 2 Cir. 6/4/08), 986 So.2d 243. Under that jurisprudence, "when the right to appeal has been mentioned by the district court during the plea colloquy, even though there is an agreed sentence or sentence cap, the defendant's sentence may be reviewed." *Thomas*, 51,364, p. 9, 223 So.3d at 130.
>
> While the district court's advisements of the time to appeal were made after the sentences were imposed and did not occur during either plea colloquy, there is an even clearer indication here that the parties and the court intended for defendant to be able to seek appellate review of the sentence. On remand, the district court appointed a public defender to represent defendant and to advance arguments with regard to the sentence on defendant's behalf. Although the district court ultimately rejected those arguments and resentenced defendant to the same 60-year term of imprisonment, the court clearly stated that it wanted to preserve the record for appellate review.

Id. at 885.

In *State v. Granado*, 18-485 (La.App. 3 Cir. 12/6/18), 261 So.3d 51, *writ denied*, 19-48 (La. 9/6/19), 278 So.3d 968, this court held that a sentence was reviewable even though the defendant was sentenced pursuant to a plea agreement. In that case, the defendant's plea agreement documents included a waiver of his right to appeal his sentence. However, at sentencing, the trial court informed the defendant that he had the right to appeal his sentence. Therefore, this court held that the defendant had not waived his right to appeal his sentence and subsequently reviewed the sentence.

However, this court, in *State v. Miller*, 17-1050 (La.App. 3 Cir. 5/2/18) (unpublished opinion) (2018 WL 2054899), *writ denied*, 18-915 (La. 3/6/19), 266 So.3d 896, held that a defendant was precluded from reviewing his sentence that was

imposed in conformity with a plea agreement. In that case, the defendant was sentenced to the statutory maximum of ten years for hit-and-run driving after entering a guilty plea. The defendant appealed, arguing that his sentence was constitutionally excessive. The defendant acknowledged that his sentence was imposed in conformity with a plea agreement but claimed that under *State v. Moten*, 14-1169 (La.App. 3 Cir. 3/4/15), 158 So.3d 972, *writ denied*, 15-609 (La. 2/5/16), 186 So.3d 1162, his sentence was reviewable because the statutory maximum sentence for a crime was not considered a sentencing cap.

In affirming the defendant's sentence, this court distinguished the facts at issue in *Miller* from those in *Moten*, wherein the argument was that the maximum sentence imposed by the statute at issue equated to a sentencing cap:

> In *Moten*, the state and the defendant could not reach any agreement regarding sentence, other than that the defendant would not be charged as a habitual offender. Indeed, the trial court specifically acknowledged the failure of the parties to reach an agreed-upon sentence in ordering a PSI. This court's ruling in *Moten* merely reflected the long-standing jurisprudential rule that the mere presence of a statutory-maximum sentence in a criminal statute pled to by a defendant does not mean that he has agreed to that maximum as being an agreed sentence for his plea under La.Code Crim.P. art. 881.2(A)(2).
>
> In the case *sub judice*, Defendant specifically agreed to a sentencing range of no less than four years and up to a maximum of ten years. This agreement was recognized in open court during his plea and in the written plea agreement. Additionally, Defendant's sentencing memorandum specifically states that "[a]s part of the plea agreement, a Presentence Investigation was ordered, with a potential sentence range of **four (4) to ten (10) years at hard labor** on one count of Hit and Run." There is no question that Defendant agreed upon a sentencing range that included the statutory maximum sentence for his crime.
>
> As the first circuit stated in *State v. Smith*, 99-946, p. 4 (La.App. 1 Cir. 2/18/00), 755 So.2d 351, 353, "considering the plea agreement as to the maximum sentences which could be imposed, we find that defendant is precluded from seeking review of the sentences imposed." The defendant in *Smith* was charged with first degree murder, but agreed to plead guilty to manslaughter and armed robbery, with the understanding that he would receive the statutory maximum sentence

> of forty years for the manslaughter conviction and a maximum of fifty years for the armed robbery conviction. He was subsequently sentenced to those exact sentences and sought review. That is exactly the case here. Defendant agreed to plead guilty pursuant to a specific plea agreement, resulting in the dismissal of another charge and an agreement by the state to forgo habitual offender proceedings, with a sentence to be imposed at the discretion of the trial court of between four and ten years at hard labor. Defendant's misinterpretation of *Moten* is fatal to his argument, and he is precluded from seeking review of his sentence under La.Code Crim.P. art. 881.2(A)(2).

Miller, 17-1050, pp. 3-4 (alteration in original).

Miller suggests that Defendant's sentences should be precluded from review because Defendant agreed to the sentencing cap equating to the statutory maximum sentence for each of the crimes, and further that there were multiple references to La.Code Crim.P. art. 881.2(A)(2) in the plea which would not allow his sentences to be reviewable on appeal. However, considering *Kennon* and *Granado*, a review of this record suggests that Defendant should not be precluded from a review of his sentences even though they were imposed in conformity with a plea agreement because Defendant was informed by the trial court at the sentencing hearing that he could seek an appeal in accordance with La.Code Crim.P. art. 914. Thus, out of an abundance of caution, we elect to review Defendant's sentences for excessiveness.

Excessive Sentence Claim

A review of the record reveals that Defendant failed to file a motion to reconsider sentence, which is required to preserve sentencing claims for appellate review. La.Code Crim.P. art. 881.1(E). However, counsel for Defendant made a general objection to the sentence after it was pronounced.

> Under Article 881.1 the defendant must file a motion to reconsider and set forth the "specific grounds" upon which the motion is based in order to raise an objection to the sentence on appeal. However, in order to preserve a claim of constitutional excessiveness, the defendant need not allege any more specific ground than that the sentence is excessive. If the defendant does not allege any specific

> ground for excessiveness or present any argument or evidence not previously considered by the court at original sentencing, then the defendant does not lose the right to appeal the sentence; the defendant is simply relegated to having the appellate court consider the bare claim of excessiveness. Article 881.1 only precludes the defendant from presenting arguments to the court of appeal which were not presented to the trial court at a point in the proceedings when the trial court was in a position to correct the deficiency.

State v. Mims, 619 So.2d 1059, 1059-60 (La.1993) (per curiam).

As Defendant made only a general objection to the sentence, he is relegated to a bare claim of excessiveness.

> 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 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, p. 12 (La.App. 3 Cir. 1/31/01), 779 So.2d 1035, 1042-43 (alteration in original), *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.

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.

Defendant was convicted of two counts of oral sexual battery, in violation of La.R.S. 14:43.3(A)(1),[4] which provides that "oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when" "the victim is under the age of fifteen years and is at least three years younger than the offender." Louisiana Revised Statutes 14:43.3(C)(1) provides the penalty, stating "[w]hoever commits the crime of oral sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years."

Defendant was convicted of two counts of molestation of a juvenile, in violation of La.R.S. 14:81.2(A)(1), which defines the crime as "[t]he commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen" "with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile[,]" where there is an age difference of greater than two years between the two persons. Pursuant to La.R.S. 14:81.2(B)(1), "[w]hoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, shall be fined not more than five thousand dollars, or

[4] The offenses occurred between December 2019 and December 2022. In 2022, La.R.S. 14:43.3 was amended to delete the requirement that the victim not be the spouse of the offender. 2022 La. Acts No. 173, § 1 (effective August 1, 2022).

imprisoned, with or without hard labor, for not less than five nor more than ten years, or both."

Finally, Defendant was convicted of computer-aided solicitation of a minor, in violation of La.R.S. 14:81.3(A)(1), which provides, in part, that the crime is committed when the offender, who is seventeen years of age or older, "knowingly contacts or communicates, through the use of electronic textual communication . . . with the intent to persuade, induce, entice, or coerce [a minor] to engage or participate in sexual conduct or a crime of violence[,]" when the minor is under the age of seventeen and there is an age difference of greater than two years with the offender, or when the minor is reasonably believed to be under seventeen and is reasonably believed to be at least two years younger that the offender. Louisiana Revised Statutes 14:81.3(B)(1)(a) provides that "when the victim is thirteen years of age or more but has not attained the age of seventeen[,]" the offender "shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence."

At sentencing, the trial court provided the following statement before announcing Defendant's sentence:

> The court considered the Sentencing Guidelines under Article 894.1, the presentence report. I also reviewed the memorandums filed by both parties and there was also a letter filed on behalf of Mr. Self and the court, of course, reviewed that as well. In looking at the factors of Code of Criminal Procedure Article 894.1, uh, I'm not sure there was necessarily economic -- economic harm to the victim at the time. Certainly, there are no substantial grounds exist [sic] that tend to justify or excuse the defendant's criminal conduct. The defendant did not act under strong provocation by the victim or others. This defendant is 46 years of age. He is separated. He has four children and two stepchildren. He is in decent health. He has a history of high blood pressure and diabetes. The employment record shows that he was a truck driver for Ash Timber at the time of the arrest, where he claimed to have worked

for 12 years. His education shows that he completed the 8th grade at Anacoco High School. He denied having a GED or any other technical training. There is no history of drug or alcohol abuse. He has not received drug or alcohol treatment in the past. When I look at -- well, is there an undue risk that during the period of a suspended sentence or probation that he would commit another crime? Absolutely. Is the defendant in need of correctional treatment or a custodial environment that can be provided most effectively by commitment in an institution? Uh, absolutely. And a lesser sentence will deprecate the seriousness of this charge. And, as I said, I did look at the memorandums from the State and the defense.

Uh, as far as his criminal history, on August the 18th of 2001, he was arrested for unauthorized entry of inhabited dwelling and simple criminal damage to property. Those charges were released for insufficient evidence. Uh, March the 30th of 2002, he was arrested for reckless operation of a vehicle. There was a bench warrant that was later forfeited [sic] a cash bond. He is classified as a first felony offender.

The court considered the record consisting of all discovery, a sentencing hearing, and the memos. The court also considered all aggravating and mitigating factors in Code of Criminal Procedure Article 894.1, the Sentencing Guidelines. When I look at the aggravating factors, based on the facts of this case, the court believes there is an undue risk that during the period of a suspended sentence or probation the defendant will commit another crime. And -- and I want to say that, according to the statements of the victim, this began when she was around ten or 11 [sic] years of age. Uh, the offender's conduct during the commission of the offense manifested deliberate cruelty to the victim. The offender knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to her extreme youth. The offender used his position or status to facilitate the commission of the offense. As far as mitigating factors, the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the instant crime. I want to say that the date of birth of the victim is 12/23 of 2008.

After I reviewed this I just want to say, this is one of the most egregious crimes there is. You, sir, [were] the stepfather of this little girl. Your job was to protect her. As I read through the text messages between you and her of all the vile and horrendous things you did to her, I couldn't help but notice that the messages coming from you were listed as "Dad" in her phone. That's how she had you listed, as "Dad." That is very sickening. You groomed this little girl to be your personal plaything. Instead of teaching her how a father and protector should be, you used your influence over her to defile and abuse her. For example, a simple request by her to download an app on her phone was used by

> you as a bargaining chip to inappropriately touch her body. This child will be scarred for life because of all the horrendous things you did to her. The court sees no way this young lady will ever be able to have a normal relationship with a partner because of the horrific things you did to her. I want to add, that in her statement, she says this behavior began when she was around ten or 11 [sic] years old. The bill of information alleges it happened from December the 19th [sic], uh, to December, 2022. That's three years of abuse by you that they allege. You, sir, are the worst of the worst. With you on the streets, the court believes no children would be safe. If you will do this to your stepdaughter, a person you supposedly -- supposedly love, no one is safe. You are a sexual deviant. It is the desire of the court that you never draw another breath of free air. There was an agreement between the DA and the defense that your sentence would be capped at 50 years. As part of that agreement, four oral sexual battery charges were dismissed and as was [sic] a molestation of a juvenile, along with an indecent behavior with a juvenile, and a crime against nature charge. Those dismissals drastically reduced the possible sentence you could receive. You also received another huge benefit in that from reading these facts you could have been charged with the victim being under 13 years of age, which sentence on some of these charges is up to 99 years in prison. Those are the sentencing benefits you have received.

Thereafter, the trial court sentenced Defendant to ten years imprisonment, the maximum penalty for each offense, and ordered the sentences to run consecutively to each other, equating to a total of fifty-years imprisonment.

Defendant argues that his consecutive sentences totaling fifty years for oral sexual battery, molestation of a juvenile, and computer-aided solicitation of a minor are unconstitutionally excessive. Specifically, Defendant claims that the combined sentences constitute a life sentence, as he was forty-six-years old when sentenced. According to Defendant, the sentences were not warranted because "[h]e had an established work history[]" and "no prior felony convictions." In brief, Defendant does not provide any case law to support his assertion that his sentences for each offense are constitutionally excessive. Rather, Defendant argues against only the totality of his sentences. Although he acknowledges that his offenses are serious, he ultimately asserts that his sentences are excessive and "serve no purpose[.]"

Conversely, the State argues that Defendant did not prove that the trial court abused its wide sentencing discretion when imposing sentence upon Defendant. It asserts that Defendant's sentences are legal and in conformity with the sentencing cap in his plea agreement. As such, the State posits that the sentences are not excessive given the facts of the case and that Defendant did not allege or prove any error by the trial court in sentencing.

At the sentencing hearing, the trial court noted that Defendant used his position as a stepfather to groom and prey on the victim, who was his then stepdaughter. According to the trial court, Defendant started abusing his stepdaughter around the age of eleven and continued to make her "his personal plaything" until she was fourteen years old. Defendant received a significant benefit by pleading guilty, as the State dismissed the remaining seven charges against him, which included four counts of oral sexual battery, one count of molestation of a juvenile, one count of indecent behavior with a juvenile, and one count of crime against nature. Although Defendant argues that the fifty-year sentence constitutes a life sentence for him and is not warranted by his status as a first felony offender, the trial court did not abuse its discretion in sentencing him to fifty years, as it stated that Defendant was "the worst of the worst[]" offenders. We agree with this assessment. In conclusion, Defendant agreed to a fifty-year sentencing cap as part of his plea agreement, and the State and the trial court complied with the agreement. Accordingly, Defendant sentences are affirmed.

ERRORS PATENT

In accordance with La.Code Crim.P. art. 920, all appeals are reviewed for errors patent on the face of the record. After reviewing the record, we find no errors patent, but we find that the Uniform Commitment Order requires correction.

According to the sentencing transcript, the trial court did not order Defendant's two sentences for molestation of a juvenile to be served without benefit of parole, probation, or suspension of sentence. The sentencing minutes correctly reflect this, but the commitment order reflects that the two ten-year sentences for molestation of a juvenile are to be served "without benefit." "[W]hen the minutes and the transcript conflict, the transcript prevails." *State v. Wommack,* 00-137, p. 4 (La.App. 3 Cir. 6/7/00), 770 So.2d 365, 369, *writ denied*, 00-2051 (La. 9/21/01), 797 So.2d 62. Although the sentencing minutes are correct, this court has also ordered correction of the commitment order when it conflicts with the transcript. *See State v. Barker*, 24-379 (La.App. 3 Cir. 2/5/25), __ So.3d __ (2025 WL 396146). Thus, the trial court is ordered to have the Uniform Commitment Order amended to remove the denial of these benefits from the two sentences for molestation of a juvenile.

DECREE

Defendant's convictions and sentences are affirmed. This matter is remanded, and the trial court is instructed to amend the Uniform Commitment Order to remove the denial of the benefit of parole, probation, or suspension of sentence from Defendant's two sentences for molestation of a juvenile.

AFFIRMED AND REMANDED WITH INSTRUCTIONS.