

# **SUPREME COURT OF LOUISIANA**

**No. 96-K-3041**

**STATE OF LOUISIANA**

**Versus**

**DONALD JOHNSON**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FOURTH CIRCUIT, PARISH OF ORLEANS, STATE OF LOUISIANA**

## **JOHNSON, Justice, Dissenting**

The purpose of the multiple offender law is to get violent criminal offenders off of the streets. In the instant case, the defendant was charged with a non-violent crime -- particularly, the theft of cheap tennis shoes valued at \$5.00 from a Family Dollar Store. Non-violent crimes of this nature were traditionally handled in municipal court. Under the facts and circumstances of this case, a sentence of 26 years and 8 months is not only excessive and grossly disproportionate to the crime, but an unjustified, unnecessary and wasteful use of resources and of the taxpayers' dollars.

Our citizens often complain about the amount of their tax dollars spent annually to maintain those incarcerated, and about the limited jail space. The jail space defendant will be occupying for 26 years and 8 months, basically for the theft of a cheap pair of tennis shoes, could be reserved for occupancy by a violent criminal or one convicted of a more serious crime. This defendant, although a multiple offender, has no history of violent crimes.

A sentence is constitutionally excessive when it is grossly out of proportion to the seriousness of the offense or is nothing more than a purposeless and needless

infliction of pain and suffering. *State v. Lobato*, 603 So. 2d 739, 751 (La. 1992), *citing* *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *Lobato*, 603 So. 2d at 751, *citing* *State v. Hogan*, 480 So. 2d 288 (La. 1985). Imposition of a mandatory sentence of 26 years and 8 months, with no possibility of parole, for shoplifting a pair of cheap tennis shoes is constitutionally excessive. Moreover, the fact that defendant failed to raise excessiveness as an assignment of error should be of no consequence. This court has previously vacated a sentence as excessive irrespective of the defendant's failure to raise excessiveness as an assignment of error. *See State v. Dumaine*, 541 So. 2d 880 (La. 1989). Subjecting this defendant to an excessive sentence, basically because of a questionable technicality, is inequitable and unreasonable under the facts and circumstances of this case.

For the foregoing reasons, I respectfully dissent.