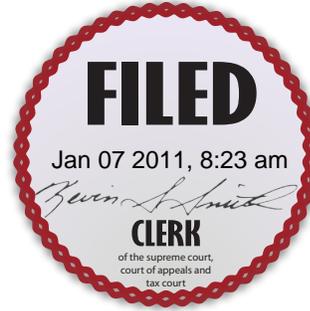


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

COURTNEY LONG,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-1005-CR-286
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G20-0907-FA-063433

January 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Courtney Long (“Long”) appeals from his convictions for Dealing in Cocaine, as a Class A felony¹, Resisting Law Enforcement, as a Class A misdemeanor², and Driving While License Suspended, as a Class A misdemeanor.³ We affirm.

Issue

Long presents two issues for our review, which we restate as:

- I. Whether the trial court erred when it denied Long’s motion for directed verdict as to the charge of Dealing in Cocaine because there was insufficient evidence of his intent to distribute cocaine ; and
- II. Whether the aggregate sentence the trial court imposed was inappropriate.

Facts and Procedural History

On July 10, 2009, Officer Phillip Bulfer (“Officer Bulfer”) observed Long, driving a black Ford Taurus, make two lane changes without signaling and cut off another driver, narrowly avoiding a collision. Officer Bulfer activated his light bar to initiate a traffic stop.

Long did not stop his vehicle, instead driving around the block in a “slow roll.” (Tr. 39.) Officer Bulfer followed, making eye contact two or three times with Long as Long looked back at Officer Bulfer in his rearview mirror.

As Officer Bulfer followed Long’s car, a previously hidden individual in the passenger seat took control of the car while Long opened the driver’s door and exited the

¹ Ind. Code § 35-48-4-1(a)(2)(c) & (b)(1).

² I.C. § 35-44-3-3(a)(3).

³ I.C. § 9-24-19-2.

vehicle. Long began to run holding a baggie in one hand and looking back once or twice at Officer Bulfer. Officer Bulfer stopped his vehicle, radioed his location and a description of Long, ordered Long to stop, and gave chase.

As Officer Bulfer pursued him, Long threw the baggie into a clump of bushes and surrendered soon after. Other officers eventually arrived on the scene. After apprehending Long, Officer Bulfer returned to the clump of bushes and recovered the baggie Long had been holding, which was later determined to hold 61.70 grams of cocaine in still-compressed brick form.

On July 13, 2009, Long was charged with Dealing in Cocaine, Possession of Cocaine, as a Class C felony⁴, Resisting Law Enforcement, and Driving While License Suspended. A jury trial was held on April 14, 2010; Long moved for a directed verdict upon completion of the State's case in chief, which the trial court denied. The jury found Long guilty on all four counts.

On May 3, 2010, Long renewed his motion for a directed verdict at his sentencing hearing. The trial court again denied the motion; it then entered judgment against Long for Dealing in Cocaine, Resisting Law Enforcement, and Driving While License Suspended.⁵ Long was sentenced to forty-five years imprisonment for Dealing in Cocaine, one year imprisonment for Resisting Law Enforcement, and one year imprisonment for Driving While License Suspended, all to be served concurrently.

⁴ See I.C. § 35-48-4-6(a) & (b)(1)(A).

⁵ The court did not enter judgment for Possession of Cocaine because it was a lesser included offense of Dealing in Cocaine.

This appeal followed.

Discussion and Decision

Denial of Long's Motion for Directed Verdict

Long first argues that the trial court erred when it denied his motion for directed verdict.

For a trial court to appropriately grant a motion for a directed verdict, there must be a total lack of evidence regarding an essential element of the crime, or the evidence must be without conflict and susceptible only to an inference in favor of the defendant's innocence. Barrett v. State, 634 N.E.2d 835, 837 (Ind. Ct. App. 1994). If the evidence is sufficient to sustain a conviction upon appeal, then a motion for directed verdict is properly denied. Id. Thus, our standard of review is essentially the same as that upon a challenge to the sufficiency of the evidence.

Proffit v. State, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), trans. denied.

When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh evidence. Id. We will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

To convict Long of Dealing in Cocaine, as a Class A felony, the State had to prove beyond a reasonable doubt that Long knowingly possessed cocaine with intent to deliver,

where the amount of cocaine possessed was greater than three grams. I.C. § 35-48-4-1(a)(2) & (b)(1); App. 28. Long asserts that the State did not present sufficient evidence of intent to deliver cocaine. Because intent is a mental state and a defendant may not always verbally express intent, the fact-finder must draw inferences from the evidence and surrounding circumstances to determine intent. Chandler v. State, 581 N.E.2d 1233, 1237 (Ind. 1991). In a case related to dealing in narcotics, generally “[t]he more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally,” though other factors may play a role. Davis v. State, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003) (quoting Love v. State, 741 N.E.2d 789, 792 (Ind. Ct. App. 2001)), trans. denied.

Long insists that the amount of cocaine in his possession, 61.70 grams, is not by itself sufficient evidence of intent to deliver. In Chandler, our supreme court noted that “[t]estimony ... revealed that average personal consumption of cocaine is from 1-3 grams per day at a street value of about \$100 per gram, and that 55 grams is usually consistent with both a business and a personal use.” 581 N.E.2d at 1237. Long seeks to distinguish his case from Chandler and numerous other cases on the ground that the police obtained only cocaine upon his arrest and not any money, firearms, or other paraphernalia indicative of active dealing in drugs. See, e.g., id. (holding sufficient evidence of intent to deliver when police seized fifty five grams of 92% pure cocaine, five wads of currency totaling \$3310, and a beeper); Davis, 791 N.E.2d at 270 (holding sufficient evidence of intent to deliver when defendant was arrested with 5.6225 grams of cocaine wrapped in forty-five “bundles” consistent with packaging for sale, with testimony stating the amount was consistent with that held by a

dealer, not a user).

In light of the evidence produced at trial, Long's argument is unpersuasive. Detective Jeremy Ingram ("Detective Ingram") of the Indianapolis Metropolitan Police Department's Drug Task Force testified that the amount of cocaine Long was carrying was almost exactly "half a mack," or sixty-two grams. (Tr. 152.) Detective Ingram testified that this amount is typical of and popular with cocaine dealers because they can turn a significant profit off their investments in the drug without risking too much of their own money, and because the amount of the drug is easier to hide than a full kilogram of cocaine. Detective Ingram also testified that this amount was inconsistent with what would be obtained in an arrest of a typical user, who would in his experience purchase and carry no more than .5 grams of cocaine at any time as opposed to the "big chunk" recovered from Long. (Tr. 168). He also noted that non-dealing users would be much more likely to have the paraphernalia of drug use on their persons, and would typically consume only about 2.5 grams of cocaine per week, far less than the amount at issue here. (Tr. 168.) Detective Ingram also testified that the apparent high quality of the cocaine Long was carrying—the drug was in compressed form rather than being loose or "shaky"—was consistent with the cocaine a dealer would possess, but not a user. (Tr. 163.) Finally, Detective Ingram indicated that not all dealers would be found with paraphernalia of any kind on their persons, or even necessarily large amounts of cash, noting that experienced dealers could break off doses from a larger chunk without use of scales and that a dealer "wouldn't bring \$10,000 to a \$2,000 dope deal." (Tr. 165.)

In light of the amount of cocaine recovered and its form and the testimony of

Detective Ingram as to their significance, we cannot agree with Long that there was insufficient evidence to support his conviction for Dealing in Cocaine.

Length of Long's Sentence

Long also argues that his sentence is inappropriate and asks us to revise his sentence downward under Appellate Rule 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

The sentencing range for Dealing in Cocaine, as a Class A felony, runs from twenty to

fifty years imprisonment, with an advisory term of thirty years. I.C. § 35-50-2-4. Long was sentenced to forty-five years imprisonment for Dealing in Cocaine, fifteen years above the advisory term and five years short of the statutory maximum term. He was also sentenced to one year each for Resisting Law Enforcement and Driving While License Suspended, each as Class A misdemeanors. The statutory maximum sentence for a Class A misdemeanor is one year. I.C. § 35-50-3-2. Long requests a downward revision of his overall sentence but does not specify the extent of the desired revision.

Conviction for Dealing in Cocaine as charged requires possession of more than three grams of the drug. Long was arrested with 61.70 grams of cocaine—far above the amount required for his Class A felony conviction. Long did not simply flee Officer Bulfer—he instead led Officer Bulfer on an extended foot chase, failing to respond to numerous orders to stop from Officer Bulfer and another officer, Gregory Williams. Finally, not only did Long drive a vehicle while his license was suspended, he nearly collided with another vehicle and failed to use turn signals on multiple occasions.

As to his character, Long insists that his young age be taken into account in evaluating the appropriateness of his sentence. Any effect of his young age is more than undone by his extensive history as both a juvenile offender and as an adult. This history includes four true findings for offenses that would constitute felonies if committed by an adult. It also includes two felony convictions prior to the convictions in this case, one for Dealing in Cocaine or Narcotic, as a Class A felony (the same as the instant offense), and the other for Possession of Cocaine or Narcotic Drug, as a Class D felony. Long has been convicted on several

occasions of driving while his license was suspended and resisting law enforcement, and has been convicted of reckless driving, carrying a handgun without a license, and refusal to identify himself to law enforcement. Long also had numerous conduct reports issued against him while imprisoned by the Indiana Department of Correction. Finally, while out of jail on bond in the instant case, he was again arrested and pled guilty to another charge of driving with a suspended license. At the time of his sentencing, Long also faced additional criminal charges in other cases.

Given the nature of his offenses and his character, we do not find Long's sentence inappropriate.

Conclusion

There is sufficient evidence of Long's intent to deliver to support his conviction for Dealing in Cocaine. Long's sentence is not inappropriate in light of the nature of his offense and his character.

Affirmed.

NAJAM, J., and DARDEN, J., concur.