

Stephen C. Wood appeals his conviction of and sentence for Class B felony conspiracy to commit dealing in methamphetamine.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On April 1, 2010, Wood, Michael O'Banion, and David Johnson were at the home of Johnson's father, near a wooded area in Greene County. Officer Ryan Van Horn was hunting mushrooms in the adjacent woods when he saw Wood and Johnson carrying duffle bags into the woods. After speaking with Johnson regarding the trio's activity, Officer Van Horn obtained Johnson's permission to search the residence. He found a green tank that held anhydrous ammonia, a can of camp fuel, two pipe wrenches, a salt container, a box of pseudoephedrine pills, a package of lithium batteries, wire cutters, drain cleaner, vinyl tubing, and two empty glass jars. Officer Van Horn identified all of those items as supplies used in the manufacture of methamphetamine. Officer Van Horn spoke with Wood, O'Banion, and Johnson at the scene, and Wood indicated he had salt and a pipe wrench and he thought the bag he was carrying contained the tank with anhydrous ammonia.

Wood was charged with Class B felony attempted dealing in methamphetamine² and class B felony conspiracy to commit dealing in methamphetamine. After a jury trial, Wood was convicted of both charges. To avoid double jeopardy, the trial court entered a judgment of conviction of Class B felony conspiracy to commit dealing in methamphetamine and pronounced an eighteen-year sentence, all executed.

¹ Ind. Code §§ 35-41-5-2 and 35-48-4-1.1.

² Ind. Code § 35-41-4-1.1.

DISCUSSION AND DECISION

1. Sufficiency of the Evidence

When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court's decision. *Id.* at 147.

To obtain a conviction of Class B felony conspiracy to commit dealing in methamphetamine, the State must prove Wood entered an agreement with O'Banion or Johnson with the intent to manufacture methamphetamine and Wood, O'Banion, or Johnson committed an overt act in furtherance of that agreement. *See* Ind. Code §§ 35-41-5-2 and 35-48-4-1.1(a). The State is not required to show an express formal agreement to conspire; an agreement may be inferred by circumstantial evidence, including the overt acts of the parties in furtherance of the criminal act. *Mullins v. State*, 523 N.E.2d 419, 424 (Ind. 1998).

Wood asserts one of the State's witnesses had "substantial motivation to implicate Wood falsely," (Br. of Appellant at 16), and lied when testifying. This is an invitation for us

to judge the credibility of the witness, which we cannot do. *See Drane*, 867 N.E.2d at 146. The State presented substantial evidence that Wood had spoken with O'Banion the night before the crime about manufacturing drugs, O'Banion and Wood spoke with Johnson regarding a place to "make some meth," (Tr. at 306), Wood asked his girlfriend to purchase pseudoephedrine pills, and Officer Van Horn saw Wood with a bag that held a tank of anhydrous ammonia.³ We therefore affirm his conviction.

2. Appropriateness of Sentence

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 217 (Ind. 2007). The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

When considering the appropriateness of the sentence for a particular offense, we first consider the advisory sentence for the crime. *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *modified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The advisory sentence for a Class B felony is ten years, with a sentencing range of six to twenty years. Ind. Code § 35-50-2-5. Wood argues his sentence of eighteen years is inappropriate based on his character and the

³ According to the State's brief, Wood also admitted he was at Johnson's residence to "help him with some dope." (State Ex. 5a.)

nature of his offense.

As Wood's offense was not "particularly egregious, beyond what the legislature contemplated when it prescribed the presumptive sentence for that offense," *Biddinger v. State*, 846 N.E.2d 271, 278 (Ind. Ct. App. 2006), we cannot find his sentence justified by the nature of the offense. However, Wood's significant criminal history prohibits us from declaring his sentence inappropriate.

When considering the "character of the offender," one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Wood's involvement with the criminal justice system began in 1992, and he has continued breaking the law ever since. He has had one felony juvenile adjudication, nine misdemeanor convictions, and six felony convictions in those nineteen years.

Wood argues that despite his lengthy criminal history, his sentence should not be enhanced because his past crimes are not related to the current offense. We acknowledge most of Wood's past convictions are theft-related, but note he has been convicted of Class A misdemeanor possession of marijuana and then was arrested in 2009 for Class D felony possession of methamphetamine.

Wood has violated his probation on many occasions and has not taken advantage of substance abuse treatment opportunities. The trial court noted, "I think that a substantial sentence here is necessary and appropriate because less restrictive shorter term efforts of

incarceration and probation and alternative programs have proven to be of no consequence in assisting you to meet any goals of rehabilitation.” (Tr. at 526-27.) We agree. We cannot say Wood’s sentence is inappropriate based on his lengthy criminal history and failed attempts at rehabilitation.

CONCLUSION

As the evidence was sufficient to convict Wood, and his sentence is appropriate based on the nature of his offense and his character, we affirm.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.