

Following a jury trial, Myron Bernard James was convicted of conspiracy to commit dealing in cocaine¹ as a Class B felony and sentenced *in absentia* to forty-five years imprisonment. James presents one issue on appeal, which we restate as: whether the trial court abused its discretion in sentencing James *in absentia*.

We affirm.

FACTS AND PROCEDURAL HISTORY

In October 2007, the State charged James with conspiracy to commit dealing in cocaine as a Class B felony, dealing in cocaine as a Class A felony, possession of cocaine as a Class A felony, and obstruction of justice as a Class D felony. James was informed of his trial date in person and ordered to appear. His attorney sent him a letter confirming the trial date and later spoke with him before trial to verify the date. James failed to appear the first day of his trial, and even after communicating with his attorney, failed to appear the remainder of the trial. A jury found James guilty *in absentia* of conspiracy to commit dealing in cocaine as a Class B felony and not guilty of the remaining charges. James failed to appear for his pre-sentence interview and was sentenced *in absentia* to a term of forty-five years of imprisonment. He now appeals.

DISCUSSION AND DECISION

James contends that the trial court abused its discretion in sentencing him *in absentia*. Specifically, James argues that no evidence was presented to find his absence was knowing and voluntary. We disagree. A decision to sentence a defendant *in absentia* is reviewed for an abuse of discretion. *Cleff v. State*, 565 N.E.2d 1089, 1091-92

¹ See Ind. Code §§ 35-48-4-7, 35-41-5-2.

(Ind. Ct. App. 1991). As a reviewing court, we consider the entire record to determine if the right to be present at the trial was knowingly and voluntarily waived. *Slocumb v. State*, 568 N.E.2d 1068, 1070 (Ind. Ct. App. 1991).

It is well established that a defendant has the right to be present at sentencing. *Disney v. State*, 441 N.E.2d 489, 492 (Ind. Ct. App. 1982); *see also* Ind. Code § 35-38-1-4(a). However, a defendant may waive his right to be present at sentencing if it is shown that his absence is knowing and voluntary. *Gillespie v. State*, 634 N.E.2d 862, 863 (Ind. Ct. App. 1994). A defendant's absence from trial may be considered knowing and voluntary when he was present in the court the day the trial date was set. *Fennell v. State*, 492 N.E.2d 297, 299-300 (Ind. 1986). A defendant's continued post-conviction absence at sentencing may be considered a knowing and voluntary waiver of his right to be present. *Williams v. State*, 526 N.E.2d 1179, 1180 (Ind. 1988); *Gillespie*, 634 N.E. 864.

Here, James was present on the day his trial was set in open court and, the judge ordered him to be present at trial. He then failed to appear for the trial. Following James's voluntary absence from trial, his continued absence at sentencing constituted a voluntary waiver of his right to be present at sentencing. *Williams*, 526 N.E.2d at 1180. "To find otherwise would be to permit defendants to delay sentencing or to evade indefinitely a final judicial administration of their cases simply by keeping their whereabouts unknown to the courts. *Gillespie*, 634 N.E.2d at 864. We conclude that the trial court did not abuse its discretion in sentencing James *in absentia*. Affirmed.

MATHIAS, J., and VAIDIK, J., concur.