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IN THE
COURT OF APPEALS OF INDIANA

KEENAN A. DAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-1011-CR-740
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0912-FD-1156

May 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Keenan Davis appeals his convictions for possession of a controlled substance as a Class D felony and maintaining a common nuisance as a Class D felony. We affirm.

Issues

Davis raises two issues, which we restate as:

I. whether the evidence is sufficient to sustain his convictions; and

II. whether the trial court abused its discretion when it sentenced him.

Facts

On August 13, 2009, officers from the Fort Wayne Police Department served a search warrant on a residence on Westbrook Drive in Fort Wayne. The officers found Davis, his girlfriend, several other adults, and several children at the residence. The officers found mail with Davis's name and the address of the Westbrook Drive residence. Davis also told the officers that he and his girlfriend lived there and slept in the rear bedroom on the first floor. When officers asked Davis if he knew why they were there, Davis responded, "Drugs, I guess." Tr. p. 65. On a shelf in Davis's bedroom closet, the officers found several bottles of prescription medications and bottles of over-the-counter medications. In the bottles, officers found three Lorazepam pills. In the residence, the officers also found drug paraphernalia, including a piece of paper identified as a drug ledger in the kitchen, a marijuana pipe with residue on a table in the living room, and a crack pipe in an upstairs bedroom.

The State charged Davis with possession of a controlled substance as a Class D felony and maintaining a common nuisance as a Class D felony. After a jury trial, the jury found Davis guilty as charged. At the sentencing hearing, Davis asked the trial court to sentence him according to the probation department's recommendation, which apparently called for a sentence of two years with six months executed and the remainder suspended to probation. The trial court sentenced Davis to concurrent sentences of two years with six months executed and the remainder suspended to probation.

Analysis

I. Sufficiency

Davis claims that the evidence is insufficient to sustain his convictions for possession of a controlled substance as a Class D felony and maintaining a common nuisance as a Class D felony. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id.

Davis was convicted of Class D felony possession of a controlled substance. The offense is governed by Indiana Code Section 35-48-4-7(a), which provides: "A person who, without a valid prescription or order of a practitioner acting in the course of his professional practice, knowingly or intentionally possesses a controlled substance (pure

or adulterated) classified in schedule I, II, III, or IV, except marijuana or hashish, commits possession of a controlled substance, a Class D felony." The State charged Davis with knowingly or intentionally possessing Lorazepam without a valid prescription.

Davis argues that the evidence is insufficient to show that he possessed the drugs. He argues that the controlled substance was not on his person or within his reach and that he shared the bedroom with his girlfriend. Davis was not in actual possession of the drugs the officers found, and thus the State was required to prove that he constructively possessed the drugs. In order to prove constructive possession, the State must show that a defendant had both: (i) the intent to maintain dominion and control over the drugs and (ii) the capability to maintain dominion and control over the drugs. Gee v. State, 810 N.E.2d 338, 340 (Ind. 2004).

Proof of a possessory interest in the premises in which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question. Id. "And this is so whether possession of the premises is exclusive or not." Id. at 341. The officers found mail with Davis's name and the address of the Westbrook Drive residence. Davis lived at the residence and admitted that his bedroom was in the rear of the house on the first floor. The drugs were found on a shelf in Davis's bedroom closet, and this evidence shows that he had the capability to maintain dominion and control over the drugs.

As for intent, if possession of the premises is non-exclusive, "then the inference of intent to maintain dominion and control over the drugs 'must be supported by additional

circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence.'" Id. (quoting Lampkins v. State, 682 N.E.2d 1268, 1275 (Ind. 1997)). Such "additional circumstances" may include, but are not limited to: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) location of substances like drugs in settings that suggest manufacturing; (4) proximity of the contraband to the defendant; (5) location of the contraband within the defendant's plain view; and (6) the mingling of the contraband with other items owned by the defendant. Id.

When the officers arrived at the residence with a search warrant, they asked Davis if he knew why they were there, and Davis responded, "Drugs, I guess." Tr. p. 65. The pills were found at eye-level on a shelf in Davis's bedroom closet. The State presented evidence of incriminating statements by Davis and the comingling of the drugs with other items owned by Davis. Consequently, the State presented evidence of Davis's intent to maintain dominion and control over the drugs. Davis's argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The evidence is sufficient to sustain Davis's conviction for possession of a controlled substance as a Class D felony.

As for Davis's conviction for maintaining a common nuisance, that offense is governed by Indiana Code Section 35-48-4-13(b), which provides:

> A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:
>
> (1) by persons to unlawfully use controlled substances; or

> (2) for unlawfully:
>
> > (A) manufacturing;
> > (B) keeping;
> > (C) offering for sale;
> > (D) selling;
> > (E) delivering; or
> > (F) financing the delivery of;
> >
> > controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5;
>
> commits maintaining a common nuisance, a Class D felony.

The State charged Davis with knowingly or intentionally maintaining a building used one or more times for "unlawfully keeping or selling controlled substances, or items of drug paraphernalia." Appellant's App. p. 9.

Davis argues that the State failed to prove he knew his home was used one or more times for "unlawfully keeping or selling controlled substances or paraphernalia." Appellant's Br. p. 11. Again, when the officers arrived, they asked Davis if he knew why they were there, Davis responded, "Drugs, I guess." Tr. p. 65. The controlled substances were found in Davis's bedroom closet at eye-level. In the residence, the officers also found paraphernalia, including a piece of paper identified as a drug ledger in the kitchen, a marijuana pipe with residue on a table in the living room, and a crack pipe in an upstairs bedroom. Given this evidence, it was for the jury to determine whether Davis knowingly or intentionally maintained a building used one or more times for unlawfully keeping or selling controlled substances or items of drug paraphernalia. Davis's argument is again merely a request that we reweigh the evidence and judge the credibility

of the witnesses, which we cannot do. The evidence is sufficient to sustain Davis's conviction for maintaining a common nuisance as a Class D felony.

II. Sentence

Davis argues that the trial court abused its discretion when it sentenced him. We evaluate a sentence under the current "advisory" sentencing scheme pursuant to Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). The trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer, 868 N.E.2d at 491. The reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. The weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id.

According to Davis, the trial court abused its discretion by failing to enter a proper sentencing statement. Davis argues that his sentence should be reduced to an advisory sentence of one and one-half years.

Davis is correct that the trial court failed to enter a sentencing statement that includes reasonably detailed reasons or circumstances for imposing a particular sentence. A trial court abuses its discretion by failing to enter a sentencing statement. Id. at 490. Where a trial court has abused its discretion in sentencing a defendant, "remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491.

Here, the trial court sentenced Davis to the exact sentence that he requested. At the sentencing hearing, Davis asked the trial court to sentence him according to the probation department's recommendation, which apparently called for a sentence of two years with six months executed and the remainder suspended to probation. The trial court sentenced Davis to concurrent sentences of two years with six months executed and the remainder suspended to probation. Given Davis's sentencing request, we can say with confidence that the trial court would have imposed the same sentence even if it had entered a proper sentencing statement.

Conclusion

The evidence is sufficient to sustain Davis's convictions for possession of a controlled substance as a Class D felony and maintaining a common nuisance as a Class D felony. Further, although the trial court abused its discretion by failing to enter a detailed sentencing statement, we can say with confidence that the trial court would have imposed the same sentence even if it had entered a proper sentencing statement. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.