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IN THE
COURT OF APPEALS OF INDIANA

ORLANDO TELLID ROSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 53A04-0902-CR-67
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Mary Ellen Diekhoff, Judge
Cause No. 53C05-0708-FA-772

July 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Orlando Ross appeals his convictions and sentence for two counts of Dealing in Cocaine[1] as class A felonies. Ross presents two issues for review:

1. Did the State present sufficient evidence to support his convictions?

2. Is his aggregate forty-year sentence inappropriate?

We affirm.

Chris George worked as a confidential informant (CI) for the Bloomington Police Department. On August 2, 2007, George contacted Cody Forston, a narcotics detective with the Bloomington Police Department, and told him he could purchase cocaine from Ross, who George knew as "Mechi" and/or "Peanut." *Transcript* at 174. Detective Forston had used George as a CI on approximately thirty to forty cases and knew him to be a credible informant.[2] Detective Forston arranged for George to participate in a controlled buy.

At approximately 6:00 p.m. the same day, Detective Forston met George at a prearranged location, searched his pockets, socks, and mouth, and then equipped George with an audio and video transmitter. George was then given money to complete the drug transaction. Detective Forston was present when George placed a phone call to a number Ross had reportedly provided to George. When Ross answered, George told him that he had a "bill, meaning one hundred dollar bill for some crack cocaine." *Id.* at 177. Ross instructed George to come to his second-floor apartment but to call him when George reached the

[1] Ind. Code Ann. § 35-48-4-1 (West, Premise through 2008 2nd Regular Sess.).

[2] George became a CI approximately two years prior when he was charged with selling crack cocaine. To avoid criminal prosecution, George "worked off" the charges by conducting three controlled buys. *Transcript* at 228. Thereafter, George continued to work as a CI and was compensated as much as $60 for each controlled buy in which he participated.

bottom of the stairs. George did as Ross instructed, and Ross met George midway up the stairs. George gave Ross the money, and Ross gave George the crack cocaine.

George engaged in further conversation with Ross, telling Ross that the man for whom he was buying the drugs did not have enough money for an "eight ball"[3] but that he wanted to purchase more crack cocaine. *Id*. at 181. Ross told George that he did not have an eight ball and then George asked Ross how much he did have to sell. Ross told George that he had five $40 bags of crack cocaine. Ross and George then negotiated a deal in which George could purchase four bags of crack cocaine for $150. Ross told George to come back if he wanted to purchase the additional crack cocaine. George left and returned to Detective Forston's vehicle. George gave the cocaine to Detective Forston and then Detective Forston subjected George to a second search of his person. While George was briefly out of the officer's sight during the controlled buy, George was continuously monitored with the audio and visual device.

Later that evening, at approximately 9:00 p.m., Detective Forston arranged for George to participate in a second controlled drug buy. After meeting at a prearranged location, Detective Forston took the same preparatory measures followed during the earlier controlled drug buy. This time, George approached Ross's apartment and knocked on the door. Ross left the apartment and George handed him a $100 bill in exchange for crack cocaine. George explained that he did not have the rest of the money, and Ross indicated that was fine. Ross then told George that he "packed them way fatter" and ended the conversation indicating that

[3] An "eight ball" is approximately 3.5 grams of crack cocaine.

he was available "twenty-four-seven" if George needed additional crack cocaine. *Id.* at 247, 248.

George left Ross's apartment, but went in a different direction than prearranged because he thought Ross would see the detective monitoring the situation from his car parked out front. Detective Forston called George and told him where to meet up with other officers. Although George was out of sight for two to three minutes, the officers continued to monitor the audio and video equipment he was wearing. George met up with a second detective and handed him two plastic baggies of cocaine. Tri-North Middle School is approximately 441 feet behind the apartment complex where the drug buys occurred.

Ross was placed under arrest. Ross's distinct tattoos were visible on the videos of the drug buys that were admitted into evidence and shown to the jury. Further, the cell phone in Ross's possession at the time of his arrest reflected the phone number George called to set up the first controlled buy. The crack cocaine George purchased from Ross during the two controlled buys totaled 1.5 grams.

On August 22, 2007, the State charged Ross with two counts of dealing in cocaine as class A felonies. A two-day jury trial commenced on September 22, 2008 and ended with the jury finding Ross guilty of both counts. At a sentencing hearing on October 24, 2008, the trial court sentenced Ross to concurrent forty-year terms.

1.

Ross first argues that the State failed to present sufficient evidence to support his convictions. Specifically, Ross argues that the State failed to establish that he sold crack

cocaine to George. Ross acknowledges that he is pictured in the videotapes of the controlled drug buy, but asserts that the videos do not show him actually providing the cocaine to George. Ross also asserts that George had the opportunity and motivation to get cocaine from a different source and then claim it came from Ross. Finally, Ross directs us to many inconsistencies between his and George's testimonies and essentially asks that we credit his version of events.

It is well settled that when reviewing the sufficiency of the evidence, we will not reweigh the evidence or judge the credibility of witnesses. *Alkhalidi v. State*, 753 N.E.2d 625 (Ind. 2001). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). Moreover, we will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625.

To convict Ross of dealing in cocaine, the State was required to prove that Ross knowingly or intentionally delivered cocaine within 1,000 feet of school property. As noted above, Ross challenges the evidence only as it relates to delivery of cocaine on two different occasions on August 2, 2007; Ross does not contest that the substance delivered was cocaine or that the cocaine was delivered within 1,000 feet of Tri-North Middle School.

With regard to delivery, the State's evidence demonstrated that each controlled drug buy was conducted after taking several preparatory measures, including searching George's person to make sure that he had no contraband and equipping him with audio and video

recording devices. George's actions were monitored, even when briefly out of sight of detectives. The State introduced the audio and video of each of the controlled buys and Ross does not deny that he is visible on the videos. George testified that during both controlled buys he gave the buy money provided to him by Detective Forston to Ross and Ross gave him cocaine in return. Immediately after leaving Ross, George returned to the detectives monitoring the situation and gave them the cocaine he had purchased from Ross. From this evidence, the jury could have concluded that Ross delivered the cocaine. We hereby reject Ross's invitation to reweigh the evidence and judge the credibility of witnesses. The evidence is sufficient to support Ross's convictions for dealing in cocaine.

2.

Ross also challenges the forty-year aggregate sentence imposed. Ross first argues that the trial court's sentencing statement is unsupported by the record. Sentencing decisions are within the discretion of the trial court. So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218.

> "In order to carry out our function of reviewing the trial court's exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence . . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course such facts must have support in the record."

Anglemyer v. State, 868 N.E.2d at 490 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and

actual deductions to be drawn therefrom. *Anglemyer v. State*, 868 N.E.2d 482. A trial court may abuse its discretion if the record does not support the trial court's reasons for the sentence imposed. *Id*.

In sentencing Ross to concurrent forty-year terms, the trial court explained as follows:

> Okay. Mr. Ross, I was also present obviously at the jury trial in this cause. And I'll give you my impressions of what the jury saw. I watched the videotape. It was clear to me Mr. Ross that that was you on the videotape. It was also clear to me Mr. Ross that there was in fact an illegal transaction taking place on viewing it on the videotape. [Defense counsel] characterizes you as someone who is a user. You sir in fact are a dealer. By watching the videotape there was no doubt in my mind, and I'm a little surprised that there's still doubt in your mind, but that it was you and in fact an illegal transaction was taking place. The other thing that I found interesting Mr. Ross about your testimony at that trial was that you indicated that you came to Bloomington Indiana because of a girlfriend. You also indicated that you stayed because you thought it was a pretty place and it had good parties. You didn't have any livelihood, you didn't have a job, you had no real family here, you have no real ties here. So the Court's impress [sic] sir is that you came to Bloomington Indiana to sell drugs. Which is in fact what you were convicted of doing. The Court notes for the record that Mr. Ross was in fact on parole at the time that he was charged with this offense, and that he has a prior felony conviction which makes the twenty years of this sentence non-suspendable. So we're starting with twenty years, Mr. Ross, that there is nothing that the Court can do about that. [Defense counsel], with all due respect to you, that also, those counter to your argument that the twenty years, the minimum is appropriate. Mr. Ross has a prior felony and he was on parole when this was committed and I would also note for the record that Mr. Ross was allowed to bond out of jail and he was allowed in fact to leave the state and go to Colorado. The Court knew that he was in Colorado. We had discussion about that and we had to go to Colorado and get him. Which causes me some concern about putting Mr. Ross on any kind of probation. We seem to have difficulty in keeping him where he's suppose to be. Now before I impose Mr. Ross I want to make something quite clear to you. I do not in anyway [sic] whatsoever am influenced [sic] by the fact that you are from Gary Indiana, because sir so am I. That fact that you are from Gary Indiana doesn't frighten me. It doesn't cause me to think any less of you. Doesn't cause me to have any particular negative feelings about you at all. In fact I frequently go back to Gary Indiana because I have relatives there. And I grew up there and I now live here. So the fact I

> saw that you mentioned in the PreSentence that you believe that was a factor with the jury, I wanted to assure you this afternoon that it is not any kind of factor with me. The fact that you're from Gary Indiana, like I said, it doesn't denote anything negative at all about the fact that you're from there and that you came here. What I do find as I just indicated disturbing about you coming here was that you came here for no other real purpose and seemed to have stayed here for no real purpose other than, it's the Court's belief to sell illegal drugs. The Court therefore finds that the imposition of the minimum is not appropriate based upon the fact that Mr. Ross was on parole as I indicated, and that he has the prior felony and that he went to Colorado and had to be returned. The Court in fact does not find any mitigators to this sentence and believes that the imposition of an aggravated sentence in this cause is appropriate.

Transcript at 437-40.

Ross takes issue with the trial court's stated belief that Ross moved to Bloomington, Indiana for no other purpose than to sell drugs. Ross notes that the evidence in the record shows that he moved to the area to be with his girlfriend and that he stayed for two years because he liked Bloomington, including Indiana University sporting events and parties. Ross also points out that he has worked, helping people move or haul items.

The court acknowledged that Ross moved to Bloomington to be with his girlfriend. The court noted, however, that Ross had no livelihood, no job, and no ties to the community, which are each supported by the record. To be sure, Ross had no significant work history. In the words of his attorney, Ross only performed "rinky dinky" jobs from time to time. *Id.* at 349. The court also rejected Ross's claim that he was being punished because he was from Gary, Indiana. The court made clear that such did not "denote anything negative at all" about him. *Id.* at 439. We further note evidence in the record, from Detective Forston's testimony, that dealing cocaine in Bloomington, Indiana is more lucrative than in larger cities. Having

considered the record, we cannot say that the trial court's sentencing statement is unsupported by the record. In any event, although the court found Ross's motive to sell drugs was "disturbing," the court did not rely on that conclusion in imposing a sentence above the advisory. *Id*. Rather, the court focused on Ross's criminal history, he was on parole at the time of the instant offenses, and the fact that he absconded from the jurisdiction while out on bond.

Ross also argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). On appeal, Ross bears the burden of persuading us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to his character, Ross asserts that his young age (i.e., twenty-four at the time of sentencing), that he endured a difficult childhood, and that he has three biological children and another child that he supports financially demonstrates that he is not deserving of a sentence greater than the advisory sentence of thirty years.[4] Further, while

[4] Ind. Code Ann. § 35-50-2-4 (West, Premise through 2008 2nd Regular Sess.) ("[a] person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years").

acknowledging his criminal history, Ross maintains that it is limited and should not be given much weight.

Telling of Ross's character is the fact that at his relatively young age, he has accumulated convictions for conversion (2002), resisting law enforcement (2004 and 2005), illegal possession of alcohol (2004), and class D felony theft (2005). At the time of the instant offenses, Ross was on parole after serving a sentence for a Marion County probation violation. Further telling of Ross's character is that he fled the jurisdiction while on bond and did not return to Indiana of his own volition. Ross's history also includes a series of arrests in Lake County and Monroe County. In 2005, Ross was arrested for conspiracy to deal cocaine, though the court failed to find probable cause for the charges. Also in 2005, Ross was charged with armed robbery, which cause was dismissed without prejudice by the prosecuting attorney. Clearly, Ross has not led a law-abiding life and he is only a young adult. Ross's character is not deserving of a lesser sentence.

As for the nature of the offense, Ross notes that the offenses involved a relatively small amount of cocaine, i.e., a total of 1.5 grams of cocaine between the 2 transactions. We agree that the nature of the offense is not egregious and that it involved a small amount of cocaine. Nevertheless, Ross engaged in 2 drug transactions within 1,000 feet of a middle school. Ross's conduct is a threat to society and our legislature has deemed it punishable as a class A felony, which carries with it a possible sentence of fifty years. In light of Ross's character and the nature of the offense, we cannot say that an aggregate forty-year sentence for two counts of dealing in cocaine is inappropriate.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.