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IN THE
COURT OF APPEALS OF INDIANA

LARRY D. GRISSETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0904-CR-166
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Charles C. Wicks, Judge
Cause No. 20D05-0809-FD-325

August 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Larry D. Grissett appeals his conviction and sentence for Possession of Cocaine, as a Class D felony.[1] We affirm.

Issues

I. Whether there was insufficient evidence that Grissett knowingly possessed the cocaine;

II. Whether the trial court abused its discretion in sentencing Grissett; and

III. Whether the sentence is inappropriate.

Facts and Procedural History

On the evening of September 25, 2008, Elkhart Police responded to a reported burglary in progress at an address on Marion Street. As the officers approached, Grissett was exiting the house and had a bicycle as he was walking down the porch. Corporal Eric Sommer ordered Grissett to stop and explained why the police were called to the residence. Corporal Sommer noticed that Grissett appeared to have something balled up in his hand, which Grissett attempted to subtly shove into the watch pocket of his jeans. Due to his apparent nervousness, it took a couple tries before Grissett was successful in stowing the item. As the officer's flashlight was trained on Grissett, Corporal Sommer was able to identify the item as a small plastic bag containing a white substance. Subsequently, a cut-corner baggy containing a substance, which later tested positive as crack cocaine, was recovered from the watch pocket of Grissett's jeans.

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[1] Ind. Code § 35-48-4-6.

The next day the State charged Grissett with Possession of Cocaine, as a Class D felony. A jury found him guilty as charged. The trial court sentenced Grissett to three years imprisonment at the Indiana Department of Correction.

Discussion and Decision

I. Sufficiency of Evidence

First, Grissett claims that the evidence is insufficient to support his conviction because the State did not prove that he knowingly possessed the cocaine. In addressing a claim of insufficient evidence, we neither reweigh the evidence nor reevaluate the credibility of the witnesses. Rohr v. State, 866 N.E.2d 242, 248 (Ind. 2007), reh'g denied. We view the evidence most favorable to the verdict and the reasonable inferences therefrom. Id. We will affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Brown v. State, 868 N.E.2d 464, 470 (Ind. 2007) (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

To convict him of Class D felony Possession of Cocaine as charged, the State had to prove that Grissett knowingly possessed cocaine. See Ind. Code § 35-48-4-6. Grissett's argument essentially requests that we reweigh the evidence in favor of his explanation of his jeans pocket containing the cocaine. We decline to do so and conclude that a reasonable fact-finder could infer Grissett's knowledge of his possession of cocaine from the evidence of Grissett nervously shoving a small plastic bag into his pocket when approached by police. Therefore, there is sufficient evidence supporting the conviction.

II. Sentencing by Trial Court

Second, Grissett contends that the trial court abused its discretion in finding his criminal record to be a significant aggravator and by imposing a drug interdiction fee. Neither contention is viable. His argument regarding his criminal history is that his prior offenses do not constitute a significant aggravator to warrant the maximum sentence. However, the relative weight assignable to properly found aggravators is not subject to review. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007).

As for the drug interdiction fee, Indiana Code Section 33-37-5-9(b) provides that when a person is convicted of an offense under Chapter 35-48-4, "[t]he court shall assess a drug abuse, prosecution, interdiction, and correction fee of at least two hundred dollars ($200) and not more than one thousand dollars ($1,000)[.]" (emphasis added). Grissett asserts that the trial court abused its discretion by failing to examine his ability to pay the imposed $200 fee. However, the term "shall" requires the imposition of a fee when a defendant is convicted of a crime under the relevant chapter. Taylor v. State, 786 N.E.2d 285, 287 (Ind. Ct. App. 2003). Therefore, because the fee imposed here is the minimum mandatory fee of $200, the inquiry into the defendant's ability to pay as required by subsection c[2] is not triggered. Id. at 288. Thus, the trial court did not err by imposing the minimum mandatory fee without considering Grissett's ability to pay it.

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[2]"In determining the amount of the drug abuse, prosecution, interdiction, and correction fee assessed against a person under subsection (b), a court shall consider the person's ability to pay the fee." Ind. Code § 33-37-5-9(c).

III. Appropriateness of Sentence

Finally, Grissett argues that his sentence is inappropriate. In Reid v. State, our supreme court reviewed the standard by which 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.

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

More recently, the court reiterated 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. "[W]hether 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.

Grissett was convicted of a Class D felony, which has a sentencing range of six months to three years, with one and one half years as the advisory. See Ind. Code § 35-50-2-7. The trial court sentenced Grissett to the maximum term of three years.

As to the nature of the offense, Grissett had possession of a bag containing .05 grams of crack cocaine.

As to the character of the offender, Grissett's long history of criminal conduct continued when he moved from Illinois to Indiana in 1999. Since then Grissett has been convicted of two counts of Domestic Battery, as Class A misdemeanors, Domestic Battery, as a Class D felony, Battery Resulting in Bodily Injury, a Class D felony, and Battery By Means of a Deadly Weapon, as a Class C felony. Furthermore, Grissett was on parole at the time of the current offense.

In light of the nature of the offense and the character of the offender, Grissett has not convinced this Court that his maximum sentence is inappropriate.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.