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IN THE
COURT OF APPEALS OF INDIANA

SYLVESTER BONDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-295
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 23
The Honorable Patrick Murphy, Master Commissioner
The Honorable William E. Young, Judge
Cause No. 49G23-0609-FA-180442

November 20, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Sylvester Bonds (Bonds), appeals his conviction for Count II, possession of cocaine, a Class D felony, Ind. Code § 35-48-4-6; Count III, dealing in cocaine, a Class B felony, I.C. § 35-48-4-6; and Count IV, possession of cocaine, a Class D felony, I.C. § 35-48-4-6.

We affirm.

ISSUES

Bonds raises three issues on appeal, which we consolidate and restate as the following two issues:

(1) Whether the State presented sufficient evidence to disprove Bonds' entrapment defense; and

(2) Whether the trial court properly sentenced Bonds.

FACTS AND PROCEDURAL HISTORY

In September 2006, Captain Scott Evans (Captain Evans), of the Lawrence Police Department undercover narcotics unit, was assigned to a district with known drug and prostitution problems. Captain Evans' investigation led him to one apartment complex in particular. It was there that Captain Evans met Bonds. The two engaged in a series of conversations. During one of those conversations, Bonds indicated to Captain Evans that he could get him "crack cocaine, marijuana, prostitutes," and at one point there was discussion of Bonds acquiring a weapon for Captain Evans. (Transcript p. 82). All the while, Bonds was unaware Captain Evans was an undercover police officer.

On September 19, 2006, Captain Evans went to Bonds' apartment to buy cocaine. Bonds did not have any cocaine, but made a call from Captain Evans' cell phone in an attempt to locate some cocaine. Captain Evans then drove Bonds to a location where Bonds purchased cocaine with money provided to him by Captain Evans. Bonds gave Captain Evans most of the cocaine, but also kept some for himself.

Two days later on September 21, 2006, Captain Evans returned to Bonds' apartment to purchase more cocaine. Bonds did not have any cocaine, but again made a phone call from Captain Evans' cell phone; Captain Evans drove Bonds to a location, different from before, where again Bonds purchased cocaine with money provided by Captain Evans. Bonds put most of the cocaine on the floor of the vehicle and kept the rest. While returning to Bonds' apartment, Captain Evans was stopped in a prearranged traffic stop. Bonds was arrested, but swallowed the cocaine he retained from the buy.

On September 22, 2006, the State filed an Information charging Bonds with Count I, dealing in cocaine, a Class A felony, I.C. § 35-48-4-1; Count II, possession of cocaine, a Class B felony, I.C. § 35-48-4-6; Count III, dealing in cocaine, a Class B felony, I.C. § 35-48-4-1; and Count IV, possession of cocaine, a Class D felony, I.C. § 35-48-4-6. On February 1, 2007, the State filed an amended Information reducing Count II, possession of cocaine, from a Class B felony to a Class D felony. On February 20, 2007, a jury trial was held; the jury found Bonds guilty of Count II, possession of cocaine, a Class D felony; Count III, dealing in cocaine, a Class B felony; and Count IV, possession of cocaine, a Class D felony. Bonds was found not guilty of Count I, dealing in cocaine, a Class A felony.

On March 1, 2007, the trial court held a sentencing hearing. After finding Bonds' criminal history of five prior felony convictions as an aggravating factor and his drug addiction as a mitigating factor, the trial court sentenced Bonds to two years for Count II, possession of cocaine, and fifteen years for Count III, dealing in cocaine. The trial court did not impose a sentence for Count IV, possession of cocaine, as it found Count IV merged with Count III. The sentences were ordered served concurrently for an aggregate sentence of fifteen years.

Bonds now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Entrapment*

Bonds first argues the State did not present sufficient evidence to disprove his entrapment defense. Specifically, Bonds claims he was induced by Captain Evans to sell him drugs and that he was otherwise not predisposed to deal cocaine.

The defense of entrapment is set forth in I.C. § 35-41-3-9, which provides:

> (a) It is a defense that:
>
> (1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in conduct; and
>
> (2) the person was not predisposed to commit the offense.
>
> (b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

The State may rebut a defendant's defense of entrapment either by (1) disproving police inducement, or (2) proving the defendant's predisposition to commit the crime. *Riley v. State*, 711 N.E.2d 489, 494 (Ind. 1999). If a defendant indicates that he intends to rely on the defense of entrapment and establishes police inducement, the burden shifts to the State to demonstrate that the defendant was predisposed to commit the crime. *Espinoza v. State*, 859 N.E.2d 375, 386 (Ind. Ct. App. 2006). Whether a defendant was predisposed to commit the crime charged is a question for the trier of fact, which the State must prove beyond a reasonable doubt. *Id.* On appeal, we review entrapment defense claims as we do other sufficiency matters: we neither reweigh the evidence nor judge the credibility of the witnesses, but instead we consider only the evidence that supports the verdict, and we draw all reasonable inferences from that evidence. *Riley*, 711 N.E.2d at 494.

Here, even if we were to presume that Bonds established police inducement, the State presented sufficient evidence beyond a reasonable doubt he was predisposed to commit the crime. Captain Evans testified that upon first meeting Bonds, Bonds told Captain Evans, "he could get [him c]rack cocaine, marijuana, [and] prostitutes." (Tr. p. 82). Although Bonds did not have any cocaine in his apartment, he knew how to find some both times Captain Evans come to Bonds' apartment. In fact, Bonds was able to procure cocaine for Captain Evans that same evening. *See Martin v. State*, 537 N.E.2d 491, 495 (Ind. 1989) (evidence of a predisposition to sell drugs includes solicitation of future drug sales, knowledge of drug sources and suppliers, and multiple sales to undercover officers). Thus, we find the evidence

provided by the State in the instant case sufficiently establishes a predisposition to deal cocaine, and therefore sufficient to rebut Bonds' entrapment defense.

III. *Bonds' Sentence*

Bonds also claims the trial court did not properly sentence him. Specifically, he claims the trial court did not provide a sufficient sentencing statement to support an aggravated sentence, and alternatively, the sentence is inappropriate with respect to the nature of the offense and his character. Bonds was sentenced to two years for Count II, possession of cocaine, a Class D felony, for which the advisory sentence is one and a half years, with a maximum sentence of three years and a minimum sentence of six months. *See* I.C. § 35-50-2-7. On Count III, dealing in cocaine, a Class B felony, Bonds was sentenced to fifteen years. The advisory sentence for a Class B felony is ten years with a maximum sentence of twenty years and a minimum sentence of six years. *See* I.C. § 35-50-2-5.

A. *Standard of Review*

Our supreme court has clarified a defendant's right to appellate review of a trial court's sentencing decision by stating, "[s]o 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, 490 (Ind. 2007). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). Further, a trial court may impose any sentence within the statutory range without regard to the existence of aggravating or mitigating circumstances. *Anglemyer*, 868 N.E.2d at 489. However, to perform our function of reviewing the trial

court's sentencing discretion, "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." *Id*. at 490 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). Such facts must have support in the record. *Anglemyer*, 868 N.E.2d at 490.

Accordingly, where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence through Ind. Appellate Rule 7(B). *Id*. at 491. This rule provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B).

B. *Sentencing Statement*

Bonds argues the trial court did not issue a sentencing statement adequately explaining the sentence it imposed. Where we find an irregularity in the trial court's sentencing decision, we may (1) remand to the trial court for a clarification or new sentencing determination, (2) affirm the sentence if the error is harmless, or (3) reweigh the proper aggravating and mitigating circumstances independently. *Merlington v. State,* 814 N.E.2d 269, 273 (Ind. 2004). Bonds cites *Ramos v. State*, 869 N.E.2d 1262 (Ind. Ct. App. 2007), as support of his request that we remand to the trial court for remediation. However, we find the instant case distinguishable from *Ramos*, and decline Bonds' invitation to remand this case.

In *Ramos*, the trial court failed altogether to issue a sentencing statement when sentencing the defendant,[1] and we reversed and remanded instructing the trial court to issue a sentencing statement. The same is not true in the instant case. First, Bonds was sentenced post-*Anglemyer*, thus putting the trial court on notice of its responsibility to enter a sentencing statement. Second, the trial court did in fact enter a reasonably detailed sentencing statement. The trial court discussed lessons Bonds should have learned and his criminal history, which is comprised of five felony convictions. The trial court also addressed Bonds' drug addiction as a mitigating factor, but noted that it does not mitigate much against his criminal history. Thus, we conclude the trial court entered a reasonably detailed sentencing statement explaining its reasons for the given sentence.

C. *Indiana Appellate Rule 7(B)*

In the alternative, Bonds argues his sentence is inappropriate based on the nature of the offense and his character. With respect to the nature of the offense, Bonds claims "there is nothing in the record to support the inference that [the transactions between himself and Captain Evans] were anything other an anomalous." (Appellant's Brief p. 14). However, our review of the record indicates otherwise. Captain Evans' investigation of drug and prostitution in his district led him to Bonds' apartment complex. Upon first meeting Captain Evans, Bonds indicated he could provide him with drugs, prostitutes, and maybe even weapons. Then, when Captain Evans later approached Bonds about acquiring some cocaine, Bonds obliged. Bonds' knowledge and ability to obtain cocaine does not suggest luck.

[1] Incidentally, in *Ramos*, the trial court sentenced the defendant prior to *Anglemyer*, and therefore was

Rather, it suggests acquiring drugs is not an unusual activity for Bonds. Thus, we find Bonds' aggravated sentence for dealing in cocaine is not inappropriate with respect to the nature of this offense.

With respect to Bonds' character, he argues "his felonious days [are] behind him." (Appellant's Br. p. 15). While it is true that before the instant offense Bonds' most recent felony conviction was in 1990, here, he did not simply act as the middleman when purchasing cocaine for Captain Evans as he kept a portion of the buy for himself on both occasions. Therefore, not only did he enable someone else to acquire cocaine, but he also kept some for himself indicating his desire to use or sell the remaining portion. As such, we are not persuaded that his felonious days are behind him, or that the aggravated sentence imposed by the trial court is inappropriate with respect to his character.

CONCLUSION

Based on the foregoing, we conclude (1) the State provided sufficient evidence to rebut Bonds entrapment defense; (2) the trial court provided a sentencing statement that adequately explained the sentence imposed; and (3) Bonds' sentence is not inappropriate based on the nature of the offense or his character.

Affirmed.

FRIEDLANDER, J., and SHARPNACK, J., concur.

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unaware of its obligation to enter a sentencing statement. *See Ramos*, 869 N.E.2d at 1264 n. 3.