IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 02C01-9506-CC-00168
	)	
	)	Dyer County
v.	)	
	)	Hon. Joe G. Riley, Judge
	)	
LAMAR WEDDLE,	)	(Possession of over one-half
	)	gram of cocaine for resale)
Appellant.	)	

For the Appellant:

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District Public Defender
and
Clarence Cochran
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(AT TRIAL)

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(ON APPEAL)

For the Appellee:

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OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The defendant, Lamar Weddle, was convicted in a jury trial in the Dyer County Circuit Court of possession of over one-half gram of cocaine for resale, a Class B felony. The trial court sentenced the defendant as a Range I, standard offender to eight years in the custody of the Department of Correction and imposed a fine of two thousand dollars. In this appeal as of right, the defendant contends (1) that the evidence is insufficient to support his conviction and (2) that the trial court erred by refusing to grant him some form of sentencing alternative to incarceration. We disagree.

At trial, Kim Walton testified that on April 21 and 22 of 1994, she and her sister, Lisa Sipes, were working as undercover agents for the Dyersburg Police Department. She said that two adjoining motel rooms were rented for purposes of conducting an undercover drug operation. One room was set up with surveillance equipment for them to conduct drug transactions, and the other room was used by the officers conducting the operation. Walton stated that the officers would place one hundred dollars in a drawer in their room before each transaction.

Walton testified that while driving around on April 21 at approximately 8:30 p.m., they saw the defendant and told him to follow them to their motel room because they wanted to purchase one hundred dollars worth of crack cocaine. She said that she knew the defendant from earlier drug transactions. Then, the defendant followed them and parked in front of their motel room. The defendant was driving a blue, four-door Oldsmobile. Because he refused to go inside the motel room, Walton then took the one hundred dollars that the officers had placed in a drawer and went out to the defendant's car. Walton testified that she gave the one hundred dollars to the defendant, and he

gave her five rocks of crack cocaine. She said that she then went inside the motel room and gave the cocaine to the officers.

On cross-examination, Walton admitted that she contacted the police after being arrested for shoplifting. She said that she was on parole at the time of her arrest and that she approached the police in an attempt to avoid parole revocation. She stated that another reason for contacting the police was because she wanted to get help for her addiction to cocaine. For her undercover work, Walton said that she was paid one hundred dollars. She confessed that she and Sipes used cocaine after each night of the operation. Two days after her undercover work, Walton violated her parole by failing a drug screen, and her parole was subsequently revoked. Walton also conceded that she had thirty-one prior convictions, including convictions for forgery, aggravated burglary, theft over one thousand dollars, theft under five hundred dollars, and burglary of automobiles.

Lisa Sipes corroborated Walton's testimony regarding the drug transaction with the defendant. Sipes testified that she was standing in the open doorway to the motel room when she saw Walton give the defendant, the driver of the car, the one hundred dollars and the defendant hand drugs to Walton. Sipes admitted that she was addicted to cocaine and had prior convictions for possession of drugs for resale and theft under five hundred dollars. On cross-examination, Sipes stated that she also agreed to work undercover after being arrested for shoplifting to avoid revocation of a community corrections sentence. She denied using cocaine during the two nights of the operation.

Officer Ernie Roberts, Sergeant Jim Joyner, and Criminal Investigator Jim Porter conducted the undercover drug operation consisting of twelve individual drug transactions in two nights. Sergeant Joyner testified that before each drug transaction,

they placed one hundred dollars in a drawer for the undercover agents to use. He said that he was looking through a crack in the curtains when the defendant drove up and parked his car in front of their motel rooms approximately twelve to fifteen feet away. Sergeant Joyner further testified that he checked the license plate number of the car and it matched an Oldsmobile owned by the defendant. He also stated that he saw the defendant give Walton something when she handed him the money. When Walton came back inside the motel room, she gave five rocks of crack cocaine to Officer Roberts. Officer Roberts also stated that he saw the defendant's car parked in front of the motel room as he was looking through the partially opened curtains in their motel room. He said that he saw the defendant sitting in the driver's seat and Shondell Young sitting in the passenger seat. Officer Roberts acknowledged that he did not see the actual drug transaction. The officers admitted that they did not search either Walton or Sipes for drugs or money before the exchange. They also denied knowing that the undercover agents used drugs during the operation.

For the defense, Tammy Strayhorn, the defendant's cousin, testified that she saw Shondell Young at the Game Room around 8:10 p.m. on April 21, 1994, shortly after leaving work. She said that he told her he would pay her five dollars to drive him to his girlfriend's motel room. When they arrived at the motel at approximately 8:35 p.m., Young went inside and stayed almost three minutes. Strayhorn recalled seeing two Caucasian girls come to the door. She then dropped Young off at the Game Room. As she was driving towards her grandmother's house, she was stopped by the police and questioned, but she was allowed to leave. Strayhorn testified that the defendant was at their grandmother's house when she arrived around 8:40 p.m. Later, the police confiscated Strayhorn's car.

The defendant's aunt, Eloise Maze, testified that the defendant and Strayhorn were at her house on April 21, 1994, at approximately 8:00 p.m. eating

supper at a family gathering. She said that the defendant left around 9:30 p.m. to go to a party and returned at approximately 11:00 p.m.

Two other family members as well as the defendant corroborated Maze's testimony. The defendant, eighteen years old at the time of the offense, also denied going to the motel or being with Young on the day of the offense. He said that he owned a blue Oldsmobile that his father had given to him. The defendant further explained that he owned a pager in case his aunt needed to contact him.

In rebuttal, Officer Porter testified that on April 21 at approximately 10:52 p.m., Young sold drugs to the undercover agents in the motel room. He said that when Young left the motel room, he got into the back seat of a car driven by an African-American female and gave her the money.

SUFFICIENCY OF THE EVIDENCE

The defendant challenges his conviction on grounds that the evidence is insufficient to establish his guilt beyond a reasonable doubt. Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). This means that we do not reweigh the evidence, but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

The defendant asserts that the evidence is not sufficient to convict because Walton was the only person to testify that she saw the defendant give her five

rocks of crack cocaine in exchange for one hundred dollars. Further, the officers did not search the undercover agents for money or drugs before the transaction occurred. The defendant also argues that the undercover agents were not credible because both agents admitted that they were addicted to cocaine and were motivated to testify to prevent revocations of parole and a community corrections sentence. However, questions concerning the credibility of witnesses and the weight and value to be given to their testimony are resolved by the trier of fact. State v. Cabbage, 571 S.W.2d at 835. Both Sergeant Joyner and Sipes testified that they saw the drug transaction. It was the jury's prerogative to reject the defendant's alibi. We conclude that ample evidence supports the jury's verdict of guilt for the offense of possession with the intent to sell over one-half gram of cocaine.

DENIAL OF ALTERNATIVE SENTENCING

Next, the defendant argues that the trial court erred by refusing to impose a sentencing alternative to confinement, such as probation or a sentence under the Community Corrections Act. Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. §§ 40-35-401(d), -402(d). As the Sentencing Commission Comments to these sections note, the burden is now on the appealing party to show that the sentencing is improper. This means that if the trial court followed the statutory sentencing procedure, made findings of fact that are adequately supported in the record, and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

However, "the presumption of correctness which accompanies the trial court's action is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances."

State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). In this respect, for the purpose of meaningful appellate review,

> the trial court must place on the record its reasons for arriving at the final sentencing decision, identify the mitigating and enhancement factors found, state the specific facts supporting each enhancement factor found, and articulate how the mitigating and enhancement factors have been evaluated and balanced in determining the sentence. T.C.A. §§ 40-35-210(f) (1990).

State v. Jones, 883 S.W.2d 597, 599 (Tenn. 1994).

In conducting a de novo review, we must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his own behalf and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-102, -103 and -210; see State v. Ashby, 823 S.W.2d at 168; State v. Moss, 727 S.W.2d 229, 236-37 (Tenn. 1986).

At the sentencing hearing, Sergeant Joyner testified that there was a very serious drug problem in Dyer County, especially with crack cocaine. He stated that a longer sentence of incarceration deterred the individual and others.

The defendant also testified at the sentencing hearing. He said that he had not completed his high school education but wanted to obtain his G.E.D. The defendant denied using drugs or alcohol, although he admitted that he had tried marijuana once. He admitted having three prior convictions as a juvenile. He also stated that he had worked one twelve-hour shift at a factory but was currently unemployed. The defendant said that his aunts gave him money to transport the children that lived with them and that they paid his monthly payments for his beeper.

The presentence report reflects that the defendant dropped out of high school during the ninth grade. His only job lasted one day. The defendant's three juvenile convictions consisted of two traffic violations and disorderly conduct. The report also showed that the defendant tried marijuana on one occasion.

The trial court sentenced the defendant to eight years in the custody of the Department of Correction and denied alternative sentencing. In sentencing the defendant, the trial court found no enhancement factors but recognized the following mitigating factors: (1) the defendant's conduct neither caused nor threatened serious bodily injury, see T.C.A. § 40-35-113(1), and (2) the defendant lacked any prior felony convictions, see T.C.A. § 40-35-113(13). The trial court stated that the defendant would have been a proper candidate for alternative sentencing had he not attempted to "beat the system." Essentially, the trial court found that the defendant was not truthful during his testimony at trial or at the sentencing hearing. For instance, the trial court did not believe the defendant's claim that his beeper was for his family to notify him. The trial court described the defendant's potential for rehabilitation to be poor in light of his inability to be candid with the court. The trial court also found that a term of incarceration was necessary to avoid depreciating the seriousness of the offense and that there was a need to deter others from committing drug-related offenses in Dyer County. See T.C.A. § 40-35-103(1)(B). Although the trial court denied the defendant's request for alternative sentencing, it noted on the special conditions portion of the judgment that the defendant may be a good candidate for boot camp, a Department of Correction program that would ultimately result in probation. See T.C.A. §§ 40-20-201, -206, and -207.

For his Class B felony conviction, the defendant received a sentence of eight years and is therefore eligible for probation. See T.C.A. § 40-35-303(a). The defendant also meets the requirements for eligibility for alternative sentencing under the

Community Corrections Act because he was convicted of a drug-related felony offense not involving a crime against a person. See T.C.A. § 40-36-106(a)(2). However, eligibility for alternative sentencing does not equate to entitlement. See State v. Taylor, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987). The defendant is not statutorily presumed to be a favorable candidate for a sentence other than confinement because of his Class B felony conviction. See T.C.A. § 40-35-102(6) (alternative sentence presumption applies only to certain Class C, D or E felony offenders).

The trial court's factual findings and sentencing determinations are supported by the record. The defendant had shown enough lack of candor under the circumstances to warrant the trial court's assessment of the defendant's low rehabilitation potential. For this reason, the defendant has failed to overcome the presumption that the trial court's sentencing determinations are correct.

In consideration of the foregoing and the record as a whole, we affirm the judgment of the trial court.

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Joseph M. Tipton, Judge

CONCUR:

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Paul G. Summers, Judge

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Jerry L. Smith, Judge