IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
FEBRUARY SESSION, 1997

FILED

May 7, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	No. 01C01-9601-CC-00008
Appellee	)	
	)	WILLIAMSON COUNTY
vs.	)	
	)	Hon. **DONALD P. HARRIS**, Judge
CALVIN C. LEACH,	)	
	)	(Sale of cocaine in excess of
Appellant	)	one-half gram)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Calvin C. Leach, was convicted, by a Williamson County jury, of one count of sale of cocaine in excess of one-half gram, a class B felony. In addition, the jury assessed a fine of ten thousand dollars. The trial court imposed a sentence of ten years incarceration in the Department of Correction and reduced the fine to two thousand dollars. The appellant now appeals both his conviction and sentence, challenging (1) the sufficiency of the evidence and (2) the length of his sentence.

After a review of the record, we find no error in the judgment of the trial court. Accordingly, the appellant's conviction and sentence are affirmed.

I. Background

On August 25, 1994, Officers of the Franklin City Police Department Drug Unit met with State Trooper Guinn Hall and a confidential informant to coordinate plans to purchase illegal drugs. The area of the city targeted for the potential drug purchases was the "Hard Bargin" area, known for its illegal drug activity. Trooper Hall was outfitted with a body transmitter and the City Drug Officers were equipped with a receiver and recorder to monitor and record any potential drug transaction.

In furtherance of their plan, Trooper Hall drove to the "Hard Bargin" area accompanied by the confidential informant. At approximately 7:30 p.m., Hall parked in front of a house where several persons were gathered. The area was well lit with street lights. The appellant approached Hall's vehicle, and stated "Hey Flip" after apparently recognizing the confidential informant in the

passenger's seat. The appellant then engaged in a brief conversation with the confidential informant. He then instructed Hall to "make the block." Trooper Hall complied. When he returned, the appellant again approached the car and asked Hall, "Do you want a seventy?" meaning $70 worth of crack cocaine. Hall answered affirmatively and the appellant got into the back seat of the vehicle and instructed Hall to, again, "make the block." When Hall next parked the car, the appellant delivered four loose rocks of crack cocaine to the informant, who, in turn, delivered them to Hall. Hall then gave $70 to the informant who handed it to the appellant. After the exchange was complete, the appellant left the vehicle and Trooper Hall placed the crack rocks in a small plastic bag. Although Trooper Hall did not know the appellant's name at that time, he described the subject as an African-American male with black hair in braids, approximately 205 pounds, approximately 6' tall, wearing black shorts, a black shirt, and black shoes, and referred to as "Coolidge." Trooper Hall positively identified the appellant at trial as the person who sold him the crack cocaine on August 25, 1994.

Glenn Everett, a forensic chemist with the Tennessee Bureau of Investigation Crime Lab, testified that he had identified the substance as cocaine base weighing .58 grams. Based upon this evidence, the jury found the appellant guilty of the sale of cocaine in excess of one-half gram.

II. Sufficiency of the Evidence

The appellant initially contends that the evidence adduced at trial does not establish, beyond a reasonable doubt, that the appellant sold cocaine in any quantity. Specifically, the appellant challenges his identification by the trooper as the perpetrator in this case “notwithstanding the fact that [Trooper Hall] saw the subject for the first time for only a few minutes after dark under streetlights.”

Once the accused is convicted of an offense, the presumption of innocence once attached to him is replaced with one of guilt, so that on appeal he has the burden of demonstrating that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, this court neither reweighs nor reevaluates the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Furthermore, the State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). If the evidence, viewed under these standards, is sufficient for any rational trier of fact to have found the essential elements of the offenses beyond a reasonable doubt, then this court must affirm the conviction. Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); Tenn. R. App. P. 13(e).

The jury found the appellant guilty of sale of cocaine over one-half gram in violation of Tenn. Code Ann. § 39-17-417(a)(3), (c)(1) (1994 Supp.). In order to convict under this statute, the State must prove that the accused knowingly sold a controlled substance, to wit: cocaine, in an amount equal to or greater than one-half gram. Id. The substance and quantity of the sale are not disputed. Moreover, Trooper Hall positively identified the appellant as being the person who sold him four rocks of cocaine on August 25, 1994. Questions involving the credibility of eyewitness testimony identifying the accused as the perpetrator of the indicted offense are for the jury's determination and not this court's. State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993) (citing State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982)); see also State v. Williams, 623 S.W.2d 118, 120 (Tenn. Crim. App. 1981). Accordingly, the appellant has failed to show that the evidence at trial is insufficient for any rational trier of fact to find the essential elements of this offense beyond a reasonable doubt. Tenn. R. App. P. 13(e). This issue is without merit.

III. Sentencing

The appellant, in his final issue, contends that the sentence imposed by the trial court is excessive. Review, by this court, of the length, range, or manner of service of a sentence is *de novo* with a presumption that the determination made by the trial court is correct. Tenn. Code Ann. § 40-35-401(d) (1990). This presumption only applies, however, if the record demonstrates that the trial court properly considered relevant sentencing principles. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). In the case before us, the trial court properly considered the relevant sentencing principles. Thus, the presumption applies.

In making our review, this court must consider the evidence heard at trial and at sentencing, the presentence report, the arguments of counsel, the nature and characteristics of the offense, any mitigating and enhancement factors, the defendant's statements, and the defendant's potential for rehabilitation. Tenn. Code Ann. § 40-35-102, -103(5), -210(b)(1990); see also State v. Byrd, 861 S.W.2d 377, 379 (Tenn. Crim. App. 1993) (citation omitted). The burden is now on the appellant to show that the sentence imposed was excessive. Sentencing Commission Comments, Tenn. Code Ann. § 40-35-401(d).

At the conclusion of the sentencing hearing, the trial court declined to find any applicable mitigating factors, but found the following enhancement factors:

> (1) The defendant has a history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range;
> (8) The defendant has a history of unwillingness to comply with the conditions of a sentence involving release in the community; and
> (13) The felony was committed while the defendant was on probation.

Tenn. Code Ann. § 40-35-114. The appellant does not contest the application of

these enhancement factors. However, he contends that the trial court erred in declining to find as a mitigating factor Tenn. Code Ann. §40-35-113(1) (1990), "defendant's criminal conduct neither caused nor threatened serious bodily injury." We disagree. This court has repeatedly denied application of this mitigating factor to drug offenses, and, even when applied, the weight given to this factor is negligible. See State v. Mann, No. 02C01-9504-CC-0010 (Tenn. Crim. App. at Jackson, Oct. 18, 1995), perm. to appeal denied, (Tenn. Apr. 1, 1996); State v. Gardner, No. 01C01-9302-CR-00060 (Tenn. Crim. App. at Nashville, Aug. 12, 1993), perm. to appeal denied, (Tenn. Nov. 29, 1993); State v. Billy Smith a/k/a "Abu", No. 02C01-9112-CC-00278 (Tenn. Crim. App. at Jackson, Feb. 17, 1993); Arwood v. State, No. 335 (Tenn. Crim. App. at Knoxville, May 9, 1991). Thus, we conclude that the trial court's application of three enhancement factors and no mitigating factors was proper.

When there are enhancement factors and no mitigating factors, the trial court may set the sentence above the minimum of the applicable sentencing range, but still within the range. Tenn. Code Ann. § 40-35-210(d). The appellant was convicted of a class B felony, and was found to be a range I offender. Thus, the sentence range for the appellant is eight to twelve years. The court imposed a mid-range sentence of ten years for the offense. We find the length of this sentence to be justified and not excessive under the guidelines of the 1989 Sentencing Act. This issue is without merit.

IV. Conclusion

For the foregoing reasons, we conclude that the evidence is sufficient to convict the appellant of sale of cocaine in excess of one-half gram. Furthermore, we conclude that the sentence imposed by the trial court is appropriate.

Accordingly, the judgment of the trial court is affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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GARY R. WADE, Judge

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J. CURWOOD WITT, JR., Judge