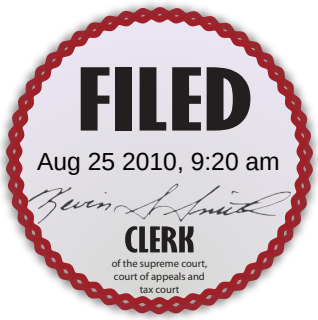

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL YATES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0912-CR-1187
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT I
The Honorable William C. Menges, Judge
Cause No. 34D01-0811-FA-845

August 25, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Michael Yates appeals his convictions for Possession of Cocaine[1], a class D felony, and Possession of Marijuana[2], a class A misdemeanor. Specifically, Yates argues that the State's evidence was insufficient to prove beyond a reasonable doubt that he knowingly or intentionally possessed cocaine or marijuana. Yates also contends that the trial court erred when it sentenced him to an aggregate four-year sentence. Finding both sufficient evidence and an appropriate sentence, we affirm the judgment of the trial court.

FACTS

On November 19, 2008, Officer Greg Smith of the Kokomo Police Department was on patrol when he observed a black vehicle make a sudden turn at a high rate of speed. After running the vehicle's license plate number, Officer Smith discovered that the plate was instead registered to a white vehicle. Moments later, Officer Smith also witnessed the vehicle crossing over the double center lines in the road.

Officer Smith initiated a traffic stop, discovering that Yates was a passenger in the vehicle, which was being driven by Ronald Polk. As Officer Smith was speaking with the two men, he observed Yates place his left hand inside the left pocket of the jacket he was wearing. After Officer Smith commanded Yates to remove his hand from his pocket, he again placed his left hand inside that same pocket.

A drug detection officer and canine unit arrived to assist in the traffic stop, and Yates became visibly nervous, placing his hand inside his left jacket pocket yet again.

[1] Ind. Code § 35-48-4-6(a).

[2] I.C. § 35-48-4-11(1).

The canine unit alerted the police to the presence of drugs, and Polk and Yates were ordered to exit the vehicle. Turning away from the officer and toward the interior of the vehicle, Yates again began to reach into his left jacket pocket. Yates's suspicious and uneasy manner continued after he was ordered out of the vehicle. After exiting the vehicle, he lit a cigarette.

While searching Yates, an assisting officer found in his right jacket pocket a box of Newport brand cigarettes containing eight individually wrapped packets of what was subsequently determined to be cocaine. Found in Yates's left jacket pocket was a clear plastic baggie holding several other small plastic baggies that contained cocaine residue. Yates insisted immediately that neither the jacket he was wearing nor the cocaine in its pockets belonged to him. Then, when Yates removed the jacket and sweatshirt he was wearing for processing at the jail, Officer Smith observed a small bag of what was subsequently determined to be marijuana fall out of Yates's sweatshirt.

On November 20, 2008, the State charged Yates with class A felony dealing in cocaine and class A misdemeanor possession of marijuana. The charges were later amended to include class B felony possession of cocaine, class B felony dealing in cocaine, and class D felony possession of cocaine.

Yates's jury trial commenced on September 25, 2009, and Polk testified that he and Yates had gotten high on November 19, 2008, before setting out in the vehicle. Despite Yates telling the officers at the scene that the jacket was not his, Polk testified that Yates was wearing that same jacket throughout the day. In addition, Polk asserted that he does not smoke cigarettes but that Yates smokes Newport brand. Polk further

testified that Yates contacted him the day before the trial and told him not to testify against him, making a cut throat gesture at Polk with his hand as he spoke.

The trial court granted Yates's motion for directed verdict on two charges: the class A felony dealing in cocaine and the class B felony possession of cocaine. With three charges remaining, the jury found Yates not guilty of class B felony dealing in cocaine but guilty of class D felony possession of cocaine and class A misdemeanor possession of marijuana.

On October 23, 2009, Yates's pre-sentence investigation (PSI) report was completed. Yates was twenty-five years old when he committed the offenses in the case at bar; however, this was not his first conviction. In 2001, Yates was convicted of class B felony robbery and class C felony battery and was sentenced to an aggregate sentence of ten years in April 2002. Therefore, he was on parole at the time of the instant matter. Moreover, on November 18, 2008, Yates also received a one-year suspended sentence for an operating while suspended conviction. Then, while free on bond in this matter, Yates was arrested in two more separate cases and charged with class B felony armed robbery, class B felony unlawful possession of a firearm, and class A misdemeanor resisting law enforcement. Those cases were pending at the time of this sentencing.

The PSI also reported that Yates admitted cocaine, crack, LSD, and ecstasy use and admitted to using marijuana daily until mid-2009. Yates did not report that he had ever sought out any substance abuse treatment. Furthermore, Yates and his girlfriend were expecting their first child in November 2009.

In determining Yates's sentence, the trial court did not find any mitigating factors but found multiple aggravating factors, including his prior criminal history and the fact that he was arrested in two more separate cases while out on bond in this matter. As a result, the trial court sentenced Yates to one year at Howard County Jail for the possession of marijuana conviction and three years at the Indiana Department of Correction for the possession of cocaine conviction, which are to be served consecutively. Yates now appeals.

DISCUSSION AND DECISION

I. Insufficient Evidence

Yates first contends that there is insufficient evidence to prove beyond a reasonable doubt that he knowingly or intentionally possessed cocaine and marijuana. Specifically, Yates argues that the evidence failed to demonstrate that the drugs were his.

It is well established that a conviction must be supported by evidence beyond a reasonable doubt as to each material element of the crime charged. Meredith v. State, 439 N.E.2d 204, 205 (Ind. Ct. App. 1982). In a claim of insufficient evidence, the Court will affirm the conviction unless "no rational fact-finder" could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000). In making this determination, our Court does not reweigh the evidence or judge the credibility of the witnesses and instead examines only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

To convict Yates of class D felony possession of cocaine, the State was required to prove beyond a reasonable doubt that he, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possessed cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II. I.C. § 35-48-4-6(a). To convict him of class A misdemeanor possession of marijuana, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally possessed (pure or adulterated) marijuana, hash oil, or hashish. I.C. § 35-48-4-11(1). Yates only challenges the sufficiency of the State's evidence to prove that he knowingly or intentionally possessed cocaine and marijuana and does not dispute the other elements of the crimes.

Yates's argument is, in large part, comprised of his version of events at the traffic stop on November 19, 2008. He contrasts this to the testimony presented by the States's witnesses, namely, Polk and members of the Kokomo Police Department, and reiterates that neither the jacket he was wearing nor the cocaine in its pockets belonged to him and that he did not know the jacket contained cocaine. Yates also highlights that neither paraphernalia used to ingest the controlled substances nor items commonly accompanying drug dealers were found at the scene.

We find Yates's argument wholly unconvincing. It is merely a request to reweigh the evidence, and it is well established that our Court will not reweigh the evidence or judge the credibility of the State's witnesses. McHenry, 820 N.E.2d at 126. In considering only that evidence which supports the trial court's verdict, we find that the circumstances surrounding the two convictions demonstrate that Yates knowingly

possessed cocaine and marijuana. A person acts knowingly if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b). Intent is a mental function and, absent admission, it must be determined by courts and juries from a consideration of the defendant's conduct and the natural and usual consequences of such conduct. Lashley v. State, 745 N.E.2d 254, 261 (Ind. Ct. App. 2001).

During the traffic stop, Yates appeared nervous and wide-eyed, particularly when the canine unit arrived. He repeatedly reached into the left pocket of the jacket he was wearing, where cocaine was subsequently discovered. When ordered to exit the vehicle, Yates turned away from the officers and toward the interior of the vehicle, again attempting to reach into this same jacket pocket. Then, once outside the vehicle, Yates lit a cigarette. Polk testified that he does not smoke cigarettes but that Yates smokes Newport brand. Cocaine was found inside a Newport cigarette box, located inside the jacket Yates was wearing.

Yates's claim that the jacket he was wearing did not belong to him and that he did not know cocaine was inside the pocket is unconvincing because Polk testified at trial that Yates was wearing the same jacket earlier in the day as well. The marijuana was discovered in the sweatshirt Yates was wearing, and Yates never contested ownership of the sweatshirt. Tr. pp. 96, 155-56; Appellee's Br. p. 8. Therefore, he was in actual possession of the marijuana. A trier of fact may reasonably infer that a defendant knows the contents of his own pockets. Bocks v. State, 769 N.E.2d 658, 663 (Ind. Ct. App. 2002). Lastly, Yates offers no legal authority for the proposition that the State was

required to show that he was also in possession of other items that can be associated with drug dealers or users. Appellant's Br. p. 9.

In sum, we conclude that the State produced sufficient evidence to establish that Yates knowingly possessed both cocaine and marijuana. Therefore, we decline to set aside these convictions. Clark, 728 N.E.2d at 887.

II. Inappropriate Sentence

Next, Yates argues that the trial court erred in sentencing him. Yates contends that a four-year aggregate sentence for the two convictions is inappropriate in light of the nature of his offenses and his character. He further argues that the trial court improperly relied on the aggravating factors it considered when determining his sentence.

In reviewing a challenge to the appropriateness of a sentence, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade the Court that the sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). This Court may revise a sentence authorized by statute only where the Court, after due consideration of the trial court's sentencing decision, finds that the sentence imposed is inappropriate in light of the nature of the offenses and the defendant's character. Ind. Appellate Rule 7(B).

Yates offers no argument as to why his sentence is inappropriate in light of the nature of his offenses. Appellant's Br. pp. 9-10. Therefore, he fails to meet his burden, inasmuch as the sentence must be inappropriate in light of both the nature of the offenses and the defendant's character. Id.

Nevertheless, we note that the record shows that both Yates and Polk got high before setting off in the vehicle, and Yates enlisted an impaired Polk to drive because he did not have a valid driver's license. Tr. pp. 125, 131. Hence, Yates endangered other motorists on the road for his own convenience. Further, although Yates was already arrested and being processed at the jail, he did not voluntarily relinquish the marijuana inside his sweatshirt. The marijuana was just minutes away from being introduced into the jail environment when it was finally discovered. In light of these circumstances, Yates's nature of the offense argument does not aid his inappropriateness claim.

As for Yates's character, the record shows that he was on parole for two prior felony convictions when he committed the instant offenses. Furthermore, on November 18, 2008, one day before he was arrested in the instant matter, Yates received a one-year suspended sentence for an operating while suspended conviction. Then, while free on bond in the instant matter, Yates was arrested in two more separate cases and charged with class B felony armed robbery, class B felony unlawful possession of a firearm, and class A misdemeanor resisting law enforcement. Appellant's App. pp. 3, 5, 105. Even though the new armed robbery charge was actually committed before the instant offenses and these charges were still pending at the time of this sentencing, the record shows a clear pattern of his propensity for criminal activity. It is apparent that Yates has still not been deterred from criminal conduct and instead has shown a clear disregard for the law.

Yates has demonstrated his poor character in additional ways. Polk testified that Yates threatened him with physical harm if he testified against him. Tr. pp. 129-30. Yates admits to a history of heavy substance abuse for which he has never sought

treatment and admits to continuing to abuse drugs while on bond for the instant offenses. Appellant's App. p. 107. In light of the aforementioned criminal record, charges, and substance abuse, Yates showed a tremendous lack of responsibility when he fathered a child at a time when he is facing multiple felony charges and years of incarceration.

Finally, Yates contends that the trial court improperly considered his arrests while free on bond as aggravating factors when determining his sentence. He supports his argument with the fact that he was only arrested for one new offense while on bond because one arrest was for a previously committed armed robbery. However, the trial court recognized this fact in its sentencing statement. Tr. p. 245.

Also, even though the two new cases were pending at the time of the instant matter, the fact that Yates was arrested twice more, and for offenses that involved a firearm and violence, cannot be ignored. Id. While a record of arrest does not necessarily establish that the defendant committed an offense, it "may reveal that a defendant has not been deterred even after having been subject to the police authority of the State." Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005). Therefore, this information is relevant to the trial court's assessment of Yates's character in terms of the risk that he will commit another crime. Id. In considering all of the abovementioned illustrations of Yates's character, we conclude that the four-year aggregate sentence was not inappropriate.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.