STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY ANTHONY WILLIS,

Defendant-Appellant.

UNPUBLISHED
April 15, 1997

No. 187858
Muskegon Circuit Court
LC No. 94-037576-FH

Before: Bandstra, P.J., and Hoekstra and S.F. Cox*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of conspiracy to deliver 650 or more grams of a mixture containing cocaine, MCL 750.157a; MSA 28.354(1), MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and sentenced to a term of mandatory life imprisonment without parole. Defendant now appeals as of right, and we affirm.

We have examined defendant's claims on appeal and conclude that defendant is essentially arguing that his conviction was supported by insufficient evidence because the evidence presented at trial did not support a finding that 650 grams or more of a mixture containing cocaine had been delivered by defendant prior to his arrest. He raises several claims regarding the weight of two bags of cocaine which were admitted for demonstrative purposes and how the trial court's findings[1] relied on the weight of these bags in determining the amount of cocaine involved in the conspiracy.

What defendant fails to appreciate however, is that the crime of conspiracy does not require that the actions which form the basis of the conspiracy be completed. The essence of the statutory offense of conspiracy is the agreement to commit the illegal act; an overt act by the defendant is not required. *People v Meredith (On Remand)*, 209 Mich App 403, 408; 531 NW2d 749 (1993). In determining whether the evidence presented at the bench trial was sufficient to support defendant's conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

* Circuit judge, sitting on the Court of Appeals by assignment.

Here, examining the evidence in a light most favorable to the prosecution, including testimony that defendant and his brother told others of their intent to bring a "bird"[2] of cocaine to the Muskegon area from the Detroit area and testimony regarding defendant's involvement in the ongoing distribution of large amounts of crack cocaine, we find that defendant's conviction was supported by sufficient evidence.

Likewise, we find no abuse of discretion in the trial court's decision to deny defendant's motion for a new trial, which defendant claimed was required to avoid a miscarriage of justice. Defendant's arguments in this respect again involve allegedly erroneous mathematical computations and also a claim that testimony regarding the weight of an average rock of cocaine sold in Muskegon given in an unrelated trial by an officer who testified at defendant's trial should have been introduced in defendant's trial. Again, defendant's arguments regarding the weight of the crack previously delivered are irrelevant because defendant was charged and convicted of conspiracy. Here, the trial court made a specific ruling that defendant was guilty of this crime and a proper application of the law to the court's factual findings supports this result. See *People v Daniels*, 172 Mich App 374, 384; 431 NW2d 846 (1988). Appellate reversal is not required where the trial court reaches the right result for the wrong reason. *Id.* We agree with the trial court that no miscarriage of justice occurred warranting a new trial. See *People v Cooper (On Rehearing)*, 328 Mich 159; 43 NW2d 310 (1950).

Finally, defendant claims that his trial counsel rendered ineffective assistance by failing to argue that defendant's sentence was unconstitutionally cruel or unusual. We disagree. While in *People v Bullock*, 440 Mich 15, 21, 37-41; 485 NW2d 866 (1992), our Supreme Court held that a mandatory sentence of life imprisonment without parole for simply possessing 650 grams or more of a mixture containing cocaine constituted cruel or unusual punishment, in *People v Lopez*, 442 Mich 889; 498 NW2d 251 (1993), a summary affirmance, the Court held that the same punishment was not cruel or unusual when applied to the offense of conspiracy to possess with intent to deliver 650 grams or more of a mixture containing cocaine. Specifically, our Supreme Court stated:

> The Supreme Court opinion in *People v Bullock*, 440 Mich 15 (1992), distinguished the possession offense committed by the defendants in that case from the offense of possession with intent to deliver. See 440 Mich at 37, including footnote 19. That same point of distinction would obviously apply to the offense of conspiracy to possess with intent to deliver. Thus, the Court did not hold in *Bullock* that the mandatory nonparolable life sentence for possession with intent to deliver over 650 grams of cocaine or for conspiracy to possess with intent to deliver over 650 grams of cocaine was cruel or unusual punishment under Const 1963, art 1, § 16. For the reasons explained in *Bullock* and reflected in the Legislature's enactment of separate sections governing mere possession and possession with intent to deliver, the Court concludes that possession with intent to deliver is a significantly more serious offense than mere possession.

We believe the crime of which defendant was convicted, conspiracy to deliver 650 grams or more of a mixture containing cocaine, to be equally as serious or more serious than the crime of conspiracy to

possess with intent to deliver discussed in *Lopez*, *supra*.[3] Accordingly, any argument by defendant's counsel regarding this issue would have been meritless, and we find no prejudice to defendant based upon counsel's failure to make this argument.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Sean F. Cox

[1] Defendant argues that the trial court's factual findings involve incorrect mathematical computations and are therefore clearly erroneous. We need not address this issue because even assuming the calculations were incorrect, defendant's conviction was still supported by sufficient evidence, as discussed *infra*.

[2] There was testimony at trial that a "bird" was a common term for a "kilo" of cocaine.

[3] Unlike the crime of simple possession, which is contained in a separate statutory section, both the crimes of delivery and possession with intent to deliver are contained in MCL 333.7401; MSA 14.15(7401).