

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD DANYEL BOWMAN,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 208294

Macomb Circuit Court

LC No. 97-000934-FH

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals by right from his conviction of conspiracy to commit first-degree retail fraud, MCL 750.356c(2); MSA 28.588(3)(2); MCL 750.157a; MSA 28.354(1), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree retail fraud, and conspiracy to commit first-degree retail fraud. The charges were elevated to the level of first-degree retail fraud based on defendant's prior convictions of retail fraud. MCL 750.356d(2); MSA 28.588(4)(2). At trial, the evidence showed that defendant and a companion entered a store, separated briefly, and then reunited. Defendant assisted in concealing a jacket under his companion's coat, and then the two men left the store. The companion evaded capture, but defendant was apprehended as he left another store. The total value of the goods of which defendant was accused of stealing or conspiring to steal was less than \$100.

The jury acquitted defendant of first-degree retail fraud, but convicted him of conspiracy to commit retail fraud. The trial court sentenced defendant as an habitual offender to three to fifteen years in prison, consecutive to the term he was serving when he committed the instant offense.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440

Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), lv gtd 460 Mich 851 (1999).

On appeal, defendant argues that insufficient evidence was produced to support his conviction of conspiracy to commit first-degree retail fraud. He asserts that no evidence showed that his companion was aware of his prior convictions for retail fraud, and conspired with him to commit a crime that was elevated to first-degree retail fraud based on the existence of those prior convictions. We disagree. A conspiracy is a mutual agreement or understanding between two or more persons to commit a criminal act or to accomplish a legal act by unlawful means. The agreement or understanding may be express or implied. *People v Cotton*, 191 Mich App 377, 392-393; 478 NW2d 681 (1991). Not all coconspirators need have knowledge of the full extent of the enterprise. A person is guilty of conspiracy by cooperating to further the object of the conspiracy, knowing that a conspiracy exists and that others are involved in it. *People v Cooper*, 326 Mich 514, 521; 40 NW2d 708 (1950), aff'd on rehearing 328 Mich 159; 43 NW2d 310 (1950). Here, the evidence showed that defendant and his companion acted in concert to commit an illegal act. It was not necessary that defendant's companion have knowledge of the full ramifications of the conspiracy, i.e., that defendant would be deemed to have committed first-degree retail fraud because of his prior convictions. MCL 750.356d(2); MSA 28.588(4)(2); *Cooper, supra*. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction. *Wolfe, supra*.

Furthermore, defendant argues that he is entitled to resentencing because the trial court failed to articulate its reasons for imposing the sentence that it did. We disagree. The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). A sentencing court must articulate on the record the criteria considered and the reasons for the sentence imposed. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987). Here, the trial court based its sentence on defendant's prior record, the fact that he was on parole at the time he committed the instant offense, and the fact that his substance abuse problem caused him to engage in continuing criminal activity. The trial court's articulation of reasons was sufficient. *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989). Defendant has demonstrated that he is unable to conform his conduct to the requirements of the law. His sentence was within the statutory limits, MCL 769.12(1); MSA 28.1084(1), and did not constitute an abuse of discretion under the circumstances.

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey