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**IN THE
COURT OF APPEALS OF INDIANA**

SHAMIR R. ROBINSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 20A03-0712-CR-544

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0704-FB-00016

JUNE 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Shamir R. Robinson (“Robinson”) appeals from his conviction after a jury trial of two counts of dealing in cocaine or a narcotic drug, Class B felonies.

The facts most favorable to the conviction reveal that on March 22, 2007, Lieutenant Shaun Turner of the Goshen Police Department was serving on the Interdiction and Covert Enforcement Unit of Elkhart County. The unit was approached by an informant claiming familiarity with Robinson, who was dealing drugs from an apartment in Elkhart, Indiana. Turner arranged for an undercover police officer to go with the informant to determine if Robinson would sell them drugs.

The informant was searched and was not in possession of contraband or money. The undercover officer drove the informant in an unmarked vehicle to the apartment building. The officer parked the car in a nearby alley, went to the apartment indicated by the informant, and was told that Robinson was not there. The officer and informant returned to the vehicle and called Turner to ask if they should remain at the building or leave. As the officer was making the call, Robinson walked up to the vehicle’s passenger door. The informant asked Robinson if he could “hook me up.” Tr. p. 23. Robinson leaned inside the passenger window and produced a clear plastic baggie containing smaller bags of crack cocaine. The informant produced \$40.00 in marked bills, and the undercover officer also gave the informant \$20.00 in marked bills. The informant handed the money to Robinson, who removed four smaller bags of cocaine and gave them to the informant. Robinson and the informant, who lived in the apartment above Robinson’s,

were joking with each other during the transaction. After selling the drugs to the officer and the informant, Robinson walked back into his apartment.

On March 27, 2007, Turner arranged for the informant and the undercover officer to make another purchase of cocaine from Robinson. The undercover officer drove the informant, who had been searched and found not to have contraband or money, to Robinson's apartment. Once they arrived there, the officer was told that Robinson was not there. The informant and the undercover officer returned to the unmarked vehicle and the officer began to call Turner to ask if they should leave or wait for Robinson. Robinson exited from the apartment building and walked up to the passenger side of the unmarked vehicle. The informant asked Robinson if they could buy "a ball," or an eighth of an ounce of crack cocaine. The informant suggested that they go to the informant's apartment in order to evade observation. Once inside the apartment, the informant again asked for a ball, and was told that it would cost \$160.00.

The undercover officer and the informant produced \$160.00 and gave it to Robinson, who produced a bag holding six individually-wrapped pieces of cocaine which normally sold for \$20.00 each. The informant and Robinson began negotiating because Robinson did not have \$160.00 worth of cocaine. At one point Robinson left the apartment to find the cocaine he needed in order to meet the price. Robinson returned telling the informant and undercover officer that he did not have any more cocaine, but would sell them the cocaine he had plus four more pieces of cocaine at a later time in exchange for the \$160.00. Robinson told them he would provide the fourth piece of cocaine at no additional charge to compensate them for the inconvenience. Robinson

gave the informant and the undercover officer the six pieces of cocaine in exchange for their money, and the men left the informant's apartment.

Turner had monitored both of the transactions with Robinson from another parked vehicle by means of a transmitter attached to the informant. Some time after the second sale, Turner directed the undercover officer to return to the area, find Robinson, and ask him for the additional cocaine he had promised to obtain. The undercover officer returned to the area alone in an unmarked vehicle. He pulled the vehicle to the curb when he saw Robinson, and asked Robinson for the cocaine. Robinson said he did not have it and the undercover officer drove away. Robinson was then placed under arrest by a uniformed officer pursuant to Turner's order.

Robinson, who was twenty years old at the time of the transactions, was wanted on an outstanding warrant for his failure to appear in another criminal case involving the charge of carrying a handgun without a license. Robinson previously had been convicted of possession of cocaine, a Class D felony. He had been released from that sentence about eight months prior to the commission of the instant offenses. Robinson had also failed to appear in, and had been convicted of, a misdemeanor charge for not having a driver's license. Robinson told his probation officer that his parents were chefs working in Detroit and were still married. Robinson indicated that none of his siblings had been arrested and that his childhood had been free from abuse.

In sentencing Robinson, the trial court found that his age and lack of education were mitigating factors, but that Robinson's failure to complete high school or earn a

G.E.D. or other educational activity was the result of choices on Robinson's part. The trial court did not give those factors substantial weight.

The court found the fact that Robinson had sold drugs on two separate occasions to be an aggravating factor. Other aggravating factors were Robinson's failure to appear for other court cases, which showed a disdain for the judicial system, and an unwillingness to comply with court orders. Also found in aggravation was the fact that Robinson had been released from his previous drug sentence only a few months before selling drugs in this case. The trial court observed that prior incarceration had no effect on Robinson's rehabilitation, and that he was unlikely to obtain lawful employment without further education or training. The trial court sentenced Robinson to a term of fifteen years executed on each count to be served concurrently. Robinson appeals.

Robinson argues that there is insufficient evidence in the record to sustain Robinson's convictions. More specifically, Robinson argues that the State's failure to produce the informant as a witness at trial "creates a failure with respect to the sufficiency of the evidence." Appellant's Br. at p. 4.

Our standard of review in sufficiency cases is well established. In considering such a claim, this court considers only the probative evidence and reasonable inferences supporting the judgment, without weighing the evidence or judging witness credibility, and determines therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Richards v. State*, 816 N.E.2d 72, 74 (Ind. Ct. App. 2004). If there is substantial evidence of probative value supporting the verdict, this court will affirm. *Id.*

As an initial matter, the State points out that the informant was unable to testify at trial because he had been murdered. At trial, the State filed a motion in limine prohibiting testimony about the fact that the informant had been murdered and prohibiting testimony on the informant's absence from trial. Robinson did not object to this motion, and did not raise the issue at trial. The State claims that Robinson has waived this issue for purposes of appellate review.

Potential waiver notwithstanding, the evidence supporting Robinson's convictions was sufficient. A panel of this court has held that the testimony of a single eyewitness to a crime is sufficient to sustain a murder conviction. *See Dixon v. State*, 865 N.E.2d 704, 714 (Ind. Ct. App. 2007) *citing Green v. State*, 756 N.E.2d 496, 497 (Ind. 2001).

In the present matter, the undercover officer testified at trial regarding the controlled buys at issue. He identified Robinson as the person from whom he purchased the cocaine. The undercover officer testified about the location and specific dates of the buys, as well as, the cost and quantity of the cocaine. The undercover officer testified about his contact with the informant and the precautions taken in making sure he was not in possession of contraband or money. There was sufficient evidence to sustain Robinson's convictions.

Next, Robinson argues that the sentence he received is inappropriate given the nature of the offense and the character of the offender. Robinson argues that the trial court should have given more weight to his limited education. Moreover, Robinson contends that any portion of his sentence beyond the advisory sentence should have been ordered served through community corrections and probation. Robinson claims that he

has never had the opportunity to utilize those options before regarding sentences he has received for his crimes.

Ind. Appellate Rule 7(B) provides that "the court may revise a sentence ... if, after due consideration of the trial court's decision, the reviewing court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

The sentencing range for a Class B felony is a fixed term anywhere from six to twenty years. Ind. Code §35-50-2-5. The advisory sentence for a Class B felony is ten years. *Id.* Robinson received two fifteen-year sentences to be served concurrently.

Our review of the nature of the offense reveals that Robinson conducted two drug sales with the undercover officer and informant within a period of five days. Robinson knew what the informant meant when he asked Robinson if he could "hook me up." Robinson also was familiar with how much cocaine was in a "ball" and offered free cocaine in order to compensate the undercover officer and the informant for any inconvenience. Robinson indicated that he could obtain more cocaine within a short amount of time. A sentence may be enhanced, by a trial court's finding as an aggravating circumstance, that multiple crimes had occurred. *See McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007).

With respect to Robinson's character, the record reveals that the trial court considered Robinson's age, twenty years old, as a mitigating circumstance. However, by the age of twenty, Robinson had accumulated two prior convictions including a felony

conviction of possession of cocaine. At the time of the instant offenses, Robinson was on pretrial release stemming from charges of illegally carrying a handgun. Robinson was wanted on a bench warrant for his failure to appear in that matter. Robinson had been out of prison for less than a year when he committed these crimes. Robinson dropped out of school and made no effort to receive additional education. As of the date of the sentencing hearing, Robinson failed to accept responsibility for his offenses, instead claiming that he was framed and that his attorney failed to properly assist him.

In this case, the trial court listed aggravating and mitigating circumstances in its sentencing order and, thus, was required to state its reasons for imposing the sentence it did. *Ray v. State*, 838 N.E.2d 480, 492 (Ind. Ct. App. 2005). This requirement is intended to ensure that the trial court considered proper matters in determining the sentence and facilitates meaningful appellate review of the reasonableness of the sentence. *Id.* It is for the trial judge to determine the sentencing weight to be given the aggravating or mitigating circumstances. *Id.* at 493. Here, the trial judge did not abuse his discretion by failing to give Robinson's limited education substantial weight. The trial judge noted that Robinson's lack of education largely was the result of his own choice to drop out of school and fail to pursue other means, for example a G.E.D., to further his education.

The trial court did not err by committing Robinson to the Department of Correction for a term of fifteen years. Robinson failed to appear as required for hearings. Robinson was on pretrial release for a pending charge when he committed the instant offenses. Furthermore, he had been released from prison on a possession conviction only

eight months prior to the instant offenses. According to Robinson's pre-sentence investigation report, all of Robinson's family, including parents and siblings lived in Detroit, Michigan. Robinson was not enrolled in educational courses, and reported that he worked on cars as his source of income. A commitment to the Department of Correction likely will provide Robinson the structure he needs to turn his life around. Moreover, Robinson asked the court for concurrent sentencing somewhere around the presumptive, now advisory, sentence, and that is what Robinson received. The trial court did not err.

The trial court's choice of a fifteen-year concurrent sentence for two Class B felony convictions for dealing in cocaine or a narcotic drug is not inappropriate given the nature of the offenses and Robinson's character.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.