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**IN THE
COURT OF APPEALS OF INDIANA**

GARY COMBS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A03-0607-CR-318

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0508-FB-145

December 5, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Gary Combs (Combs), appeals his conviction for manufacturing methamphetamine, a Class B felony, Ind. Code § 35-48-4-1.

We affirm.

ISSUES

Combs raises two issues on appeal, which we restate as:

- (1) Whether the evidence was sufficient to sustain Combs' conviction for manufacturing methamphetamine; and
- (2) Whether Combs' sentence was appropriate under Ind. Appellate Rule 7(B).

FACTS AND PROCEDURAL HISTORY

On April 15, 2005, Officer Michael Daly (Officer Daly) of the Elkhart Sheriff's Department reported to Broadmore Estates in Goshen, Indiana, on a tip from individuals living at the development who had witnessed a white male loading and unloading suspicious items from a vehicle into a set of dumpsters just outside his home. Upon arriving at Broadmore Estates, Officer Daly inspected the dumpsters, and found them to be filled with what appeared to be a discarded methamphetamine lab – buckets containing bottles and hoses, stained coffee filters, stripped batteries, a large quantity of salt, several gasoline tanks, and a fire extinguisher with a strong odor of anhydrous ammonia.

Based on his suspicions, Officer Daly contacted the Indiana State Police to handle the materials in the dumpster. While waiting for the Indiana State Police to arrive, Officer Daly spoke with the witnesses who had reported the activity. The witnesses

provided him with the license plate number of the vehicle they had observed, which police traced to Jo Ellen Scott. It was later discovered that Scott had previously loaned the vehicle to her daughter, Combs' wife.

After confirmation from the Indiana State Police that the contents in the dumpster did, in fact, constitute a methamphetamine lab and, believing Combs was a possible suspect, Officer Kyle Dukes (Officer Dukes) of the Indiana State Police located Combs at his residence on the evening of April 15, 2005. Officer Dukes spoke with Combs outside his home, where he reported his friend, Jason Burkey (Burkey), had run a methamphetamine lab from Burkey's home. Combs admitted he had helped Burkey discard the methamphetamine lab into the dumpster because Burkey believed the police were coming.

On August 8, 2005, Combs was charged with manufacturing methamphetamine, a Class B felony, and a jury trial was held on October 31, 2005. At Combs' trial, Burkey testified that Combs' assisted him in the purchase of methamphetamine ingredients. Burkey also stated that he operated the lab in his residence, and Combs was the primary supplier of the necessary supplies. In exchange for his contribution, Combs received some of the finished product. (Burkey was arrested and charged with manufacturing methamphetamine, and pled guilty to the charge. He received a twelve-year sentence to be served at the Indiana Department of Correction with two years suspended.) A guilty verdict was returned on November 1, 2005. On December 1, 2005, Combs was sentenced to fifteen years in the Indiana Department of Correction, with two years suspended.

Combs now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Combs first contends there was insufficient evidence to support his conviction for manufacturing methamphetamine. We disagree. When the sufficiency of the evidence to support a conviction is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses. *Ikemire v. State*, 852 N.E.2d 640, 642 (Ind. Ct. App. 2006). We affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. *Id.*¹

Dealing in methamphetamine, a Class B felony, is governed by I.C. § 35-48-4-1, and provides that: “A person who...knowingly or intentionally...manufactures [methamphetamine]... commits...a Class B felony. Manufacture is defined as:

(1) the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. It does not include the preparation, compounding, packaging, or labeling of a controlled substance:

¹ Citing *Houston v. State*, 730 N.E.2d 1247, 1251 (Ind. 2000), Appellant's counsel suggests the court is “duty bound to sift and probe the evidence.” We disagree and further caution Appellant's counsel not to misstate a dissenting opinion for the majority's holding.

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(2) the organizing or supervising of an activity described in subdivision (1).

I.C. § 35-48-1-18. Accordingly, the State had to prove beyond a reasonable doubt that Combs intentionally produced methamphetamine.

The record shows that at trial, Burkey testified that he and Combs produced methamphetamine in a joint operation. Specifically, Burkey operated the methamphetamine lab in his residence and Combs supplied the necessary ingredients in exchange for finished methamphetamine. Further, Sergeant Don McCay testified as to the many items typical of a methamphetamine lab he found in the same dumpster where the reporting witnesses observed a man transferring materials. Finally, Officer Dukes testified that when he questioned Combs, he admitted to assisting Burkey dispose of the methamphetamine lab, admitted to specific knowledge regarding Burkey's lab, and admitted to purchasing methamphetamine from Burkey in exchange for his assistance.

By disputing the credibility of Burkey's testimony, Combs has invited us to reweigh the evidence. We decline that invitation. Based on our review of the record, we conclude that substantial evidence of probative value exists from which the trier of fact could have found that Combs manufactured methamphetamine and

was guilty beyond a reasonable doubt of dealing in methamphetamine as a Class B felony.

II. *Appropriateness of Sentence*

Next, Combs argues that his sentence is inappropriate in light of his character and the nature of the offense. Under Article VII, Section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences. *Dixon v. State*, 825 N.E.2d 1269, 1271 (Ind. Ct. App. 2005), *trans. denied*. However, under Appellate Rule 7(B), we will not revise a sentence authorized by statute unless it is inappropriate in light of the nature of the offense and the character of the offender. *Kien v. State*, 782 N.E.2d 398, 416 (Ind. Ct. App. 2003), *reh'g denied, trans. denied*.

Testimony at trial reflected that the methamphetamine lab Combs and Burkey were operating was the largest law enforcement had observed in the region. As with any methamphetamine lab, but particularly one of such great size, a corresponding risk of inhalation hazard and explosion hazard was created to other individuals in the area. Moreover, by assisting in the reckless placement of such hazardous materials in the dumpster, Combs contributed to a threat to public health. Considering the nature of the offense, we find Combs' sentence to be appropriate.

With regard to Combs' character, we find his sentence equally appropriate. Combs is not a first-time offender. His record includes two felony convictions, in 1999 and 2000, and nine misdemeanor convictions. At the time the present offense was committed, Combs was on probation and was unsatisfactorily discharged. He has undergone extensive substance abuse treatment; however, he continues to use controlled

substances. Although the constitutional requirement that a sentence be appropriate to the offense does not require us to compare the sentence in a particular case to sentences of others convicted of the same crime, we note the record shows that unlike Burkey, Combs has expressed no remorse and has not accepted responsibility for his actions in this matter. *See Willoughby v. State*, 660 N.E.2d 570, 584 (Ind. 1996). Thus, based on the character of the offender, we find Combs' sentence to be appropriate.

CONCLUSION

Based on the foregoing, we find there was sufficient evidence to sustain Combs' conviction of manufacturing methamphetamine and find his sentence is appropriate in light of the nature of the offense and his character.

Affirmed.

BAILEY, J., and MAY, J., concur.