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IN THE COURT OF APPEALS OF INDIANA

ADAM WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-1101-CR-198
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Randy J. Williams, Judge
Cause No. 79D01-0912-FB-50

October 26, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Adam Williams appeals his convictions for Conspiracy to Manufacture Methamphetamine,[1] a class B felony, Dealing Methamphetamine,[2] a class B felony, and three counts of Possession of Precursors,[3] a class D felony. Williams argues that the evidence is insufficient to support his conviction on the conspiracy count, and for one count of possession of precursors. Williams also asserts that his sentence was inappropriate in light of the nature of the offenses and his character. Finding the evidence sufficient and concluding that Williams was properly sentenced, we affirm the judgment of the trial court.

FACTS

On December 10, 2009, Lafayette police officers were conducting surveillance at Andrew Humphreys's residence, after receiving information that he and Williams were manufacturing methamphetamine.

Sometime that afternoon, the police officers followed Williams and Humphreys to various groceries and drug stores in Lafayette, where Humphreys purchased pseudoephedrine, a drug that is commonly used to manufacture methamphetamine. Williams drove a Jeep that was registered to Humphreys to all of those locations. Humphreys purchased the single transaction limit of pseudoephedrine at each store, which amounted to a total of 17.28 grams.

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[1] Ind. Code § 35-48-4-1.1; Ind. Code § 35-41-5-2.

[2] I.C. § 35-48-4-1.1.

[3] I.C. § 35-48-4-14.5(b).

Later that evening, Williams drove Humphreys to a gas station where Humphreys purchased a pair of rubber gloves. Williams then drove to Leslie Mantle's home and offered Mantle $200 to store some items in a pole barn.

The police officers were watching Mantle's pole barn from various locations. At some point, they observed two men walk between the Jeep that Williams was driving, the house, and the adjacent pole barn. One of the men carried something in a duffel bag from the barn to the house.

After the men left, the police saw Humphreys's Jeep speeding down the road. As a result, the police officers conducted a traffic stop. A canine unit alerted to the presence of drugs and the police searched the vehicle. The police found six lithium batteries scattered throughout the vehicle, some alkaline batteries, an opened package of coffee filters on the back seat, and a bottle of clutch fluid. However, the police released Williams and Humphreys and did not collect any evidence.

At approximately 3:30 the next morning, Williams and Humphreys returned to Mantle's home. They returned to the barn and asked Mantle if they could use the basement. Mantle noticed that both men smelled strongly of ammonia, and when he commented on the odor, Humphreys admitted that they were "making a batch of meth." Tr. p. 460, 482. Mantle told Williams to remove the methamphetamine from the barn because Mantle was expecting guests.

Williams and Humphreys left Mantle's home again around 6:30 or 7:00 a.m. After the men left, the police arrived, and Mantle remarked that "those boys are making

meth." Tr. p. 390, 401-02, 485. The police received Mantle's permission to search the barn, and obtained a warrant to search Mantle's home. One of the officers knew, based on his experience, that an odor emanating from the barn was associated with the production of methamphetamine. While searching the barn, the police discovered a container with an "active" batch of methamphetamine cooking, which they estimated had been made at least a couple of hours or up to twelve hours prior to its discovery. Id. at 239, 278-82, 310-11, 437-38, 542.

The liquid later tested positive for both methamphetamine and pseudoephedrine. The police also seized hydrochloric acid generators, a modified air compressor tank containing anhydrous ammonia, remnants of lithium batteries on the barn floor, a reactionary vessel near the basement doors, some camp fuel, and a duffel bag that contained zylene, coffee filters, and a plastic pitcher filled with paper towels. The police also found some "foilies" in the basement, which are used to smoke methamphetamine and several marijuana plants under growing lights. Id. at 247-49.

When Williams and Humphreys left Mantle's home that morning, the police conducted a second traffic stop of the vehicle, and after a canine unit again alerted on the vehicle, the police searched the Jeep. During this search, the police discovered a partially torn box of pseudoephedrine, a lithium battery in the front seat, an open package of coffee filters on the back seat and a spoon with burnt residue that later tested positive for methamphetamine. Although the police collected these items, they again released Williams and Humphrey. However, after further investigation, the police arrested

Humphreys at his home on December 14, 2009. Williams was eventually apprehended at his mother's residence in Florida in May 2010.

Williams was charged with conspiracy to manufacture methamphetamine, a class B felony, dealing methamphetamine, a class B felony, and three counts of possession of precursors, a class D felony. On January 25, 2010, the State amended the information to allege that Williams was a habitual offender and a habitual substance offender.

Following a jury trial on October 21, 2010, Williams was found guilty as charged. Williams was also determined to be a habitual offender.[4] At a sentencing hearing that was conducted on January 31, 2011, the trial court pointed to Williams's extensive history of criminal convictions and juvenile adjudications, history of substance abuse, and the fact that Williams was on probation when he committed the offenses, as aggravating factors. The trial court then identified the hardship that Williams's dependents would suffer as a result of extended incarceration as the sole mitigating circumstance.

The trial court sentenced Williams to concurrent terms of twenty years each for conspiracy to manufacture methamphetamine and dealing methamphetamine, and to three years for each count of possession of precursors. The sentences relating to the possession of precursors were ordered to run concurrently with each other and with the sentences on the conspiracy and dealing counts. The trial court enhanced the sentence that was

[4] The trial court also found that Williams was a habitual substance offender. However, it specifically declined to enter judgment on that Count.

imposed on the conspiracy count by an additional sixteen years in light of the habitual offender finding.

In sum, the trial court's sentencing order provided that Williams was to

> Execute thirty (30) years at the Indiana Department of Correction to include eight (8) years with Tippecanoe County Community Corrections at a level to be determined by Community Corrections. . . . . It is further ordered and adjudged that six (6) years of the sentences of imprisonment should be, and the same hereby are, suspended and defendant placed on supervised probation for four (4) years, and supervised probation for two (2) years.

Appellant's App. p. 159-60. Williams now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Williams argues that the evidence is insufficient to support his convictions. Specifically, Williams maintains that "the State's evidence left reasonable doubt as to the conspiracy and manufacturing charges." Appellant's Br. p. 10. Williams also contends that his conviction for possession of anhydrous ammonia, a precursor used in the manufacture of methamphetamine, must be set aside because the evidence failed to show that he possessed the substance.

When considering challenges to the sufficiency of the evidence, we neither judge witness credibility nor reweigh the evidence. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the probative evidence and reasonable inferences that support the verdict. Id. Conflicting evidence must be considered in the light most favorable to the trial court's ruling, and we will affirm the conviction unless no

reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id. at 146-47. The evidence need not be so overwhelming as to overcome every reasonable hypothesis of innocence. Id. at 147. Sufficient evidence exists if a reasonable inference in support of the verdict may be drawn from the evidence. Id. Finally, we note that a conviction may be based on circumstantial evidence alone. Amos v. State, 896 N.E.2d 1163, 1170-71 (Ind. Ct. App. 2008).

Pursuant to Indiana Code section 35-48-4-1.1(a)(1)(A), a person who knowingly or intentionally manufactures methamphetamine commits a class B felony. And a person who conspires to manufacture methamphetamine also commits a class B felony. I.C. § 35-41-5-2(a). Finally, Indiana Code section 35-41-5-2(a) and (b), provides that a person "conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony," and "either the person or the person with whom he agreed performed an overt act in furtherance of the agreement."

Here, Williams admitted that, on December 9, 2009, he drove Humphreys to various groceries and drug stores to purchase pseudoephedrine. Williams also admitted that he used methamphetamine and wanted to acquire more. Tr. p. 63-71, 564-69, 634-35, 652. Mantle testified that when Williams arrived at his home in the middle of the night, Williams offered him $200 for the use of his barn.

When the men left the barn and went inside Mantle's residence, Mantle commented that both Williams and Humphreys "reeked" of chemicals. Humphreys told

Mantle that it was because they were making methamphetamine. Id. at 460, 481-82. Mantle nonetheless asked Williams to pay him the $200 that was promised.

This evidence confirmed and corroborated the police officers' surveillance. More particularly, it was determined that the police had followed Williams and Humphreys throughout the day and night and saw two men move from the Jeep they had used, to and from the area around the pole barn near Mantle's home where items relating to methamphetamine manufacturing were discovered. Id. at 89-92, 211-12, 233-47, 318-19, 346. During a search of the barn the next morning, the police officers found an active batch of methamphetamine that the officers estimated had been cooking from between two to twelve hours earlier. And this was the period during which Williams and Humphreys were in and around the barn. Id. at 239, 278-82, 310-11, 437-38, 542.

In light of this evidence, and despite Williams's self-serving testimony to the contrary, the jury could reasonably conclude that Williams agreed to manufacture the methamphetamine with both Humphreys and Mantle. And Williams does not dispute that substantial steps were taken toward the actual manufacture of the drug. Williams's arguments on appeal merely invite us to reweigh the evidence, credit his testimony over the other substantial evidence that was presented, and substitute our judgment for that of the jury, which we will not do. Drane, 867 N.E.2d at 146.

Similarly, we find that the evidence was sufficient to sustain Williams's conviction for possession of anhydrous ammonia. A modified air compressor tank containing anhydrous ammonia was discovered in the barn, as was additional ammonia

that was needed to manufacture methamphetamine. Tr. p. 27, 42-48, 240-41, 279-82. As noted above, Mantle testified that when Williams and Humphreys entered his residence, they smelled strongly of ammonia and Humphreys admitted that they were cooking methamphetamine. Tr. p. 460, 481-82. In our view, this evidence established that Williams had possessed, at least constructively, the anhydrous ammonia and was using it in the manufacturing process. Williams's claims that the evidence was insufficient to support his convictions fail.

II. Sentencing

Williams next argues that his sentence must be set aside because it is inappropriate when considering the nature of the offenses and his character. Williams contends that the sentence exceeds the typical sentence "for similar offenses by about a decade" and urges us to revise his sentence to twenty five years, "divided between executed and suspended components in proportion to those originally imposed." Appellant's Br. p. 14, 17.

Pursuant to Indiana Appellate Rule 7(B), we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." When a defendant requests appellate review and revision of his sentence, we have the power to affirm, reduce, or increase the sentence. Akard v. State, 937 N.E.2d 811, 813 (Ind. 2010). Our review should focus on the aggregate sentence rather than its consecutive or concurrent nature, number of counts, or length of the sentence on any individual count. Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). In conducting

our review, we do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is "inappropriate." Fonner v. State, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). A defendant bears the burden of persuading this Court that his sentence meets the inappropriateness standard. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As noted above, the trial court sentenced Williams to an aggregate term of thirty-six years. Williams received the twenty-year maximum sentence for conspiracy to manufacture methamphetamine, a class B felony[5] that was ordered to run concurrent with the twenty year sentence imposed on the dealing count. A three-year sentence was also imposed on each of the three counts for possession of precursors that were ordered to run concurrently with each other and with the other two counts. The sentence on the conspiracy count was then enhanced by sixteen years, in light of the habitual offender finding.[6]

As for the nature of the offenses, the evidence demonstrated that Williams conspired to and did manufacture methamphetamine and possessed several precursors for that purpose. Williams is also a habitual offender. Tr. p. 233-46, 481-82, 561-69, 634-35.

[5] The sentencing range for a class B felony is from six to twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5.

[6] I.C. 35-50-2-8(h), provides that "the court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years."

The record establishes that Williams spent an entire day traveling to various stores so that Humphreys, his co-conspirator, could bypass legal constraints and purchase illegal quantities of pseudoephedrine for the purposes of manufacturing methamphetamine. Later that evening, Williams and Humphreys began the manufacturing process in the barn. In light of these circumstances, we cannot say that the nature of the offenses aids Williams's inappropriateness argument.

Turning to Williams's character, the record shows that he was adjudicated a delinquent in two separate cases for theft, a class D felony if committed by an adult, and three counts of battery resulting in serious bodily injury, a class C felony, if committed by an adult. Appellant's App. p. 181-82. Williams has amassed eleven felony convictions, including possession of marijuana, intimidation, theft, receiving stolen property, forgery, and check fraud. Id. at 182-88. Williams has also accumulated sixteen misdemeanor convictions and has violated probation and community corrections placements. Id. at 188. Williams was on probation when he committed the instant offenses, and he has a substantial history of abusing various illegal drugs. He has been provided with—but has not taken advantage of—numerous opportunities for probation and drug treatment. Tr. p. 709-10.

In short, Williams has shown a disdain for authority and a refusal to seize the opportunities for leniency and treatment provided to him by the courts. And given his lengthy juvenile and criminal history, evincing his indifference to others and to the law,

we conclude that Williams's sentence is not inappropriate in light of his character and the nature of the offenses.

The judgment of the trial court is affirmed.[7]

KIRSCH, J., and BROWN, J., concur.

[7] As an aside, we note that Williams asserts that the habitual offender enhancement could not attach to his dealing conviction because he lacked the requisite prior convictions for dealing. However, as our Supreme Court has observed, "a conviction for conspiracy to deal is not the same as a conviction for dealing for purposes of the general habitual offender enhancement statute." Owens v. State, 929 N.E.2d 754, 757 (Ind. 2010). Because we have affirmed Williams's conspiracy conviction, we decline to set aside the habitual offender sentence enhancement.