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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-836**

State of Minnesota,
Respondent,

vs.

Marvin Laurn Buckner, Jr.,
Appellant.

**Filed April 19, 2011
Affirmed
Bjorkman, Judge**

Brown County District Court
File No. 08-CR-09-13

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Robert D. Hinnenthal, Brown County Attorney, New Ulm, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's imposition of a \$25,000 fine as part of his sentence. Because we conclude that the fine is not unconstitutionally excessive, we affirm.

FACTS

On January 6, 2009, appellant Marvin Larn Buckner, Jr. was charged with third-degree controlled-substance crime in violation of Minn. Stat. § 152.023, subd. 1(5) (2008), for his role in an attempted sale of approximately 41 pounds of marijuana. After a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, the district court convicted Buckner of the charged offense.

A presentence investigation (PSI) was conducted, and the probation agent recommended a stayed 21-month prison term with probation and a \$10,000 fine. The PSI report noted the statutory “minimum” fine for the offense is \$75,000, but recommended a lower amount “[d]ue to the defendant’s indigent status[.]” At the sentencing hearing, the state argued for the statutory minimum fine, emphasizing that Buckner chose to support himself almost entirely by selling drugs. Buckner urged the court to impose a lower fine, arguing that his felony conviction will adversely impact his employment prospects. The district court imposed the recommended stayed prison sentence and a \$25,000 fine. This appeal follows.

DECISION

The United States and Minnesota constitutions protect individuals from excessive fines. *See* U.S. Const. amend. VIII; Minn. Const. art. I, § 5. Whether the imposition of a fine violates these constitutional provisions presents a question of law that we review *de novo*. *State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000).

The touchstone of the excessive-fine analysis is proportionality: the fine “must bear some relationship to the gravity of the offense that it is designed to punish.” *Id.* at

413. To prevail on a claim that a fine violates constitutional standards, the defendant must show that it is “grossly disproportional to the gravity of the offense.” *Id.* When determining proportionality, courts consider: (1) the gravity of the offense and the harshness of the penalty; (2) how the contested fine compares with fines imposed for the commission of other crimes in the same jurisdiction; and (3) how the contested fine compares with fines imposed for commission of the same crime in other jurisdictions. *Id.* In making this determination, “[n]o one factor is dispositive.” *State v. Kujak*, 639 N.W.2d 878, 883 (Minn. App. 2002), *review denied* (Minn. Mar. 25, 2002).

Gravity of the offense and harshness of the penalty

We first consider the gravity of the offense and the harshness of the penalty. *Rewitzer*, 617 N.W.2d at 414. The maximum fine for a third-degree controlled-substance conviction is \$250,000, Minn. Stat. § 152.023, subd. 3(a) (2008), and the legislature requires courts to impose a fine not less than 30% of that maximum fine, which equals \$75,000. *See* Minn. Stat. § 609.101, subd. 3(a) (2008). As we noted in *Kujak*, the maximum fine reflects the legislature’s assessment that controlled-substance crime is serious because of its broad social and economic impact. 639 N.W.2d at 884.

Buckner first challenges the fine on the ground that his act was less serious than the standard offense because it is not clear that he would have received “all of the profit” from the drug sale or that the sale was “part of a major ongoing operation.” He also argues that because his conviction resulted from a controlled buy, his conduct had “little, if any, effect on the community.” We disagree. Buckner orchestrated a significant drug sale involving over 40 pounds of marijuana

with a value of at least \$1,200 per pound. He invested \$15,000 in the operation and expected to receive a return of \$30,000. Buckner admitted to the PSI agent that he made approximately \$12,000 selling marijuana during the year prior to the charged offense. In *Rewitzer*, the district court fined the defendant over \$270,000 for selling 23.8 grams of marijuana and 20.5 grams of mushrooms containing psilocyn—a quantity of drugs with a street value of “less than \$200.” 617 N.W.2d at 414 & n.4; *see also Kujak*, 639 N.W.2d at 884 (holding that \$100,000 fine was not excessive where defendant’s drug dealing produced \$12,200 in profits the prior year). On this record, we conclude that the \$25,000 fine was not unduly harsh.

Buckner next argues that the fine is excessive because he is indigent. But “sentencing judges need not specifically find that a defendant has the ability to pay a fine before imposing the fine as part of a sentence.” *Kujak*, 639 N.W.2d at 885. And although a sentencing court is authorized to reduce an indigent defendant’s fine to an amount “not less than \$50,” the court is not required to do so. *See* Minn. Stat. § 609.101, subd. 5(b) (2008). The fine imposed amounts to one-third of the statutory minimum fine. Accordingly, we conclude that the gravity-of-the-offense and harshness-of-the-penalty factors support a determination that the fine imposed is not disproportional to the offense.

Comparison to other Minnesota crimes

Next, we compare Buckner’s fine with those that courts may impose for the commission of other crimes in Minnesota. *Rewitzer*, 617 N.W.2d at 414. To make this comparison, we consider the authorized fines for other crimes at the same offense level. *See, e.g., id.; Kujak*, 639 N.W.2d at 884-85. Third-degree controlled-substance crime is a

level VI offense with a maximum fine of \$250,000. Some examples of maximum fines for other level VI offenses include \$35,000 for first-degree burglary, second-degree aggravated robbery, and kidnapping; \$20,000 for second-degree assault; and \$100,000 for theft involving more than \$35,000. *See* Minn. Stat. §§ 609.222, .245, .25, .52, 582 (2008); Minn. Sent. Guidelines V (2008).

Buckner argues that the \$250,000 maximum fine for third-degree controlled-substance crime is constitutionally unsound because it “far exceeds the maximum fines” for similarly classified non-drug offenses and higher-level crimes. We disagree. While there is a disparity in authorized fine amounts between drug and non-drug offenses, the distinction reflects the legislature’s determination that controlled-substance crimes are grave offenses for which “severe maximum penalties” are appropriate. *See Kujak*, 639 N.W.2d at 884. And we note that the fine imposed here not only falls below the authorized maximum fine, it falls below the legislature’s recommended 30% minimum fine.

Buckner also points to sentencing data for other third-degree controlled-substance crime convictions for portions of 2009 and 2010, noting that the fine he received was “substantially higher” than the fines imposed on other defendants. But “statistics alone do not control our decision . . . and without a factual context for them, they are unpersuasive.” *Id.* at 884 n.1. Accordingly, we conclude that the fine is not unconstitutionally excessive when compared with authorized fines for other Minnesota crimes.

Comparison to other jurisdictions

We finally consider how Buckner's fine compares with fines imposed for commission of the same crime in other jurisdictions. *Rewitzer*, 617 N.W.2d at 415. Buckner argues that he would have received only a "nominal" fine under the Federal Sentencing Guidelines because a federal court must consider the defendant's "ability to pay" and the "burden" of the fine. *See* U.S. Sent. Guidelines Manual § 5E1.2(d) (2008). We disagree. The range of fines for Buckner's offense under the federal guidelines is \$5,000 to \$50,000. U.S. Sent. Guidelines Manual § 2D1.1, 5E1.2(c)(3) (2008). Buckner's \$25,000 fine falls squarely within that range. Accordingly, we conclude that Buckner's fine is not grossly disproportionate when compared to fines imposed in other jurisdictions for the same offense.

Because Buckner's fine is not grossly disproportional to the gravity of his crime, we conclude the fine is not unconstitutionally excessive.

Affirmed.