

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 2025 – 2014
	:	
vs.	:	CRIMINAL DIVISION
	:	
MIKAIL HANDY,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant’s Post-Sentence Motion, filed October 13, 2015. Argument was scheduled for November 17, 2015, but just prior to the time for argument, counsel agreed to have the court rule on the motion based on the motion only.

After a jury trial on June 2, 2015, Defendant was convicted of one count each of possession with intent to deliver crack cocaine, delivery of crack cocaine, possession of crack cocaine and criminal use of a communication facility. On August 25, 2015, Defendant was sentenced to 18 months to five years incarceration for possession with intent to deliver, and a concurrent term of 6 months to two years incarceration for criminal use of a communication facility. The other two charges were held to merge for sentencing purposes. In his Post-Sentence Motion, Defendant contends there was insufficient evidence to support the verdict, that the verdict was against the weight of the evidence, and that the sentence was excessive.

In addressing a challenge to the sufficiency of the evidence, the court is to view all of the evidence admitted at trial in the light most favorable to the Commonwealth as verdict winner, and the verdict will be upheld if there is sufficient evidence to enable the fact-finder to find every element of the crimes

charged beyond a reasonable doubt. Commonwealth v. Adams, 882 A.2d 496 (Pa Super. 2005). A “weight of the evidence” claim contends the verdict is a product of speculation or conjecture, and requires a new trial only when the verdict is so contrary to the evidence as to shock one’s sense of justice. Commonwealth v. Dougherty, 679 A.2d 779 (Pa. Super. 1996).

At trial, the Commonwealth presented the testimony of a confidential informant, four state troopers and a city police officer, as well as audio recordings of two conversations Defendant had while in the county prison after his arrest.

The confidential informant testified that on August 8, 2014, she arranged over the telephone to buy cocaine from a certain person, that a state trooper transported her that day to the proposed location and provided her with buy money, that she met with someone in a white Chevy Impala (identified by her at trial to be the defendant), provided him with the money and received from him two bags of crack cocaine, and then returned to the trooper’s vehicle and provided him with the drugs.

The trooper who transported the informant to the buy location confirmed the informant’s testimony regarding having transported her that date and provided her with buy money, and testified further that he observed her getting into the white Chevy Impala, and then observed her returning to his vehicle and that she then provided him with two bags of crack cocaine. He also testified that when he presented her with a photo array about a month later, she identified the defendant as the person who had sold her the drugs on that date.

A second trooper testified that he had been in the back seat of the vehicle which transported the informant to the buy location on the date on question, that he observed a white Chevy Impala, observed the informant get into the Impala,

observed the vehicle drive away and then seconds later, observed the informant return to the car and turn over the drugs she had purchased.

A third trooper testified that he had been surveilling a certain residence on the date in question, that he observed the defendant go into and out of that residence and then drive away in a white Chevy Impala, and that within three to four minutes thereafter he was informed by the trooper involved in the controlled buy that he and the informant were meeting with the person in that vehicle.

A fourth trooper testified that on the date in question he observed the white Chevy Impala and then followed it and observed the informant get out of the Impala and walk toward the trooper's vehicle.

A city police officer testified that he arrested Defendant based on the arrest warrant issued by the State Police, and that at the time of arrest, Defendant had on his person two cell phones and \$644 in cash. One of the cell phones had the same number that had been used by the informant to contact the person from whom she purchased the cocaine on August 8, 2014.

The audio recordings of two conversations Defendant had while in the county prison after his arrest evidenced Defendant's statement to his fiancé that he had been "hustling", which was explained by another witness to refer to selling drugs.

Considering all of this evidence, the court finds there is sufficient evidence of each of the elements of all of the crimes charged to support the jury's findings of guilt: Defendant possessed crack cocaine with the intent to deliver it, he did deliver it, and he used a cell phone to arrange the delivery.

With respect to Defendant's claim that the verdict was against the weight of the evidence, while defense counsel did attempt to raise an issue respecting the

identity of the person from whom the informant purchased the cocaine, and also attempted to impeach the informant's credibility by pointing out that she was testifying for the Commonwealth in exchange for leniency with respect to outstanding charges against her, and by highlighting her prior crimes of dishonesty, as the informant's testimony was corroborated by others, the verdict is not contrary to the evidence and certainly does not shock one's sense of justice.

Finally, to address the claim that the sentence of 18 months to five years is excessive,¹ the court is guided by the general principle that the sentence imposed should be the minimum sentence consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. See Commonwealth v. Hoag, 665 A.2d 1212 (Pa. Super. 1995). In this case, the standard range for the offense, based on Defendant's prior record score of "5", is 12 to 18 months. The court sentenced Defendant to the top of the standard range based on the fact that he had three previous felony drug convictions and thus a lighter sentence would not serve to protect the public; it appears that Defendant will simply continue to sell drugs once he is released based on his history. Further, Defendant's conviction now, following those previous convictions, indicates that any rehabilitative efforts have failed and would at this time serve no purpose. Considering all the circumstances, the court believes the sentence imposed was not excessive.

¹ The court will consider only this portion of the sentence as the other portion, the sentence of six months to two years, is to run concurrent, and Defendant did not specify which of the two sentences he is addressing by his motion. Therefore, the longer sentence will be considered as being the subject of the motion.

ORDER

AND NOW, this day of December 2015, for the foregoing reasons,
Defendant's Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson