

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1236-2019
	:	CR-1786-2019
v.	:	CR-1792-2019
	:	
WILLIAM LINCOLN,	:	POST-SENTENCE MOTION
Petitioner	:	

OPINION AND ORDER

Following the consolidation of the three (3) above-captioned cases and severance of firearm charges, a jury trial was conducted on April 30, 2021. The jury found William Lincoln (Petitioner) guilty of eight (8) counts of Possession with Intent to Deliver a Controlled Substance, five (5) counts of Delivery of a Controlled Substance, nine (9) counts of Possession of a Controlled Substance, five (5) counts of Criminal Use of a Communication Facility, and five (5) counts of Possession of Drug Paraphernalia. On September 21, 2021, this Court sentenced Petitioner to an aggregate term of incarceration in a state correctional institution for a minimum of seventeen (17) years and three (3) months to a maximum of thirty-four and a half (34 ½) years.

Petitioner, through his counsel, filed a timely Post-Sentence Motion on October 1, 2021. This Court held a hearing on the motion on November 4, 2021. In his motion, Petitioner advances three issues for the Court to address. First, Petitioner submits a motion in arrest of judgment alleging various claims of insufficient evidence or testimony. Secondly, Petitioner asserts a motion for a new trial over purported errors at trial. Thirdly, Petitioner alleges that the Court failed to consider various factors at sentencing and requests the reconsideration of his sentence.

Analysis

Motion in Arrest of Judgment

Petitioner challenges the sufficiency of the evidence presented at trial and raises the following issues for the Court's review.

1. The evidence presented at trial was insufficient to establish delivery/possession with intent to deliver beyond a reasonable doubt.
2. The testimony at trial failed to prove that Petitioner delivered or possessed controlled substances with the intent to deliver to confidential informants on March 29, 2019 and July 16, 17, 23, and 24, 2019.
3. The evidence presented at trial was insufficient to establish possession or possession with intent to deliver any substances found in the apartment at 1201 Packer Street.

When ruling on a motion in arrest of judgment, a trial court is limited to ascertaining “the absence of presence of that quantum of evidence necessary to establish the elements of the crime.” Commonwealth v. Marquez, 980 A.2d 145, 147 (Pa. Super. 2009) (*en banc*). “At this stage in the proceedings, the trial court is limited to rectifying trial errors, and cannot make a redetermination of credibility and weight of the evidence.” Id. at 147-148. “In order for a trial court to properly grant a criminal defendant’s motion in arrest of judgment on the ground of insufficient evidence, ‘it must be determined that accepting all of the evidence and all reasonable inferences therefrom, upon which, if believed [the verdict could properly have been based], it would be nonetheless insufficient in law to find beyond a reasonable doubt that the [defendant] is guilty of the crime charged.’” Id. at 148 (*citing Commonwealth v. Melechcio*, 658 A.2d 1285, 1387 (Pa. Super. 1995) (citations omitted).

Petitioner’s first issue is whether the evidence at trial established delivery and/or possession with intent to deliver beyond a reasonable doubt. Petitioner also contends that the testimony at trial did not prove Petitioner delivered or possessed controlled substances with

intent to deliver on five (5) separate dates. Petitioner's differentiation between these two issues is unnecessary because the evidence and testimony are considered together in determining whether the Commonwealth has satisfied their burden and this Court will treat them as the same issue. Essentially, Petitioner's argument equates to whether the evidence at trial was sufficient in its aggregate to convict him of possession with intent to deliver and delivery of controlled substances.

Pursuant to 35 Pa.C.S. § 780-113(a)(30), the "manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act..." is considered a crime. A person is guilty of possession of a controlled substance when they "knowingly or intentionally" possess "a controlled or counterfeit substance." 35 Pa.C.S. § 780-113(a)(16). The first controlled buy occurred on March 29, 2019 and was facilitated by Detective Curt Loudenslager (Loudenslager) of the Lycoming County District Attorney's Office. Loudenslager testified to meeting with the confidential informant identified by Loudenslager as Chelsea Golden (Golden). N.T. 4/29/2021, at 28. The CI was subjected to a strip search and then contacted an individual known to them as "Jag" and had a listed phone number of 267-355-9836. Id. at 29, 34. Golden and "Jag" agreed to the sale of two (2) grams of cocaine for eighty (80) dollars. Id. at 32. Photos of the text messages and phone calls between "Jag" and Golden setting up the exchange were photographed by Loudenslager and presented to the jury. Id. at 30-34.

Loudenslager drove Golden to Brandon Park where "Jag" had instructed her to meet him. Id. at 32. Loudenslager testified that Golden exited his vehicle and entered the park, at which point Loudenslager lost sight of Golden. Id. at 34. Surveillance informed Loudenslager that Golden met up with an individual in the park. Id. at 35. At some point, Loudenslager was

able to observe Golden and the individual, who was a black man wearing “an olive colored winter coat, grey hooded sweatshirt and I remember a Philadelphia 76ers knit stocking cap.” Id. Golden returned to Loudenslager’s vehicle and immediately surrendered what appeared to be cocaine. Id. at 36. The cocaine provided to Loudenslager was admitted into evidence and shown to the jury. Id. at 37-38. Golden was strip searched again and debriefed following the controlled purchase. Id. at 38-39. Loudenslager identified Petitioner as the individual he saw with the confidential informant. Id. at 35.

Detective Tyson Havens (Havens) of the Lycoming County Narcotics Enforcement Unit also testified regarding the controlled purchase on March 29, 2019. Havens stated his role was to conduct surveillance of the controlled buy and to record video footage of the exchange as it occurred. Id. at 48. Havens testified that he observed a black male exit a white vehicle and meet up with Golden on the bleachers in Brandon Park. Id. at 50. The footage of the controlled purchase was presented to the jury. Id. at 51. Havens also identified Petitioner in court as the individual he saw sell drugs to the confidential informant on March 29th. Id. at 52, 58. Additionally, Golden testified to the controlled purchase on that date consistently with the testimony from Havens and Loudenslager. Id. at 138-154. Golden also positively identified Petitioner in court as “Jag”, or the man who sold her the cocaine. Id. at 141.

Trooper Andrew Corl (Corl) of the Pennsylvania State Police testified about the four (4) remaining controlled buys that occurred in July 2019. Id. at 69. The confidential informant used in these buys was a woman named Amber Fisher (Fisher). Id. Fisher knew of a black man named “J” or “Jag”. Id. at 69-70. On July 16, 2019, Corl met up with Fisher who indicated that she believed she could buy heroin from “Jag”. Id. at 71. Havens had provided a still photograph of the suspect in question from the video footage of the controlled purchase on March 29th so

that Corl knew who to expect at this exchange. Id. at 70-71. Fisher communicated to Corl that “Jag” commonly dealt drugs in Brandon Park, drove a white Cadillac, and lived north of the park. Id. at 71. Surveillance located a white Cadillac at 1201 Packer Street in Williamsport, which is an address north of Brandon Park. Id. at 72.

Fisher initiated conversation with “Jag” through text messages to the same phone number as the dealer Golden communicated with in the first controlled purchase. Id. at 73. Fisher asked to purchase two (2) bundles of heroin, or twenty (20) packages, otherwise known as “honeybuns”. Id. at 74. Photos of their communication were presented to the jury as well as photos of the prerecorded cash used for the controlled purchase. Id. at 73-75. Trooper Eichenseer (Eichenseer) drove Fisher to Brandon Park while Corl maintained a surveillance position. Id. at 76. Other surveillance units observed Petitioner leave 1201 Packer Street, enter the white Cadillac, and drive to Brandon Park where he met up with Fisher. Id. at 77. Fisher handed Eichenseer the suspected heroin and Eichenseer provided the narcotics to Corl. Id. The bags containing the heroin were stamped with a label that said “New Arrival”. Id. at 78. Photographs of the bundles of heroin were shown to the jury and admitted into evidence in addition to the seized heroin itself. Id. at 78-79. Surveillance also tracked Petitioner back to 1201 Packer Street following the controlled buy. Id. at 81. Video footage of this buy was recorded and shown to the jury. N.T. 4/30/2021, at 66-67.

Corl also testified similarly about the controlled purchase conducted on July 17, 2019. N.T. 4/29/2021, at 82-93. This purchase was for one (1) bundle of heroin. Id. at 85. Once again, photos of the communications between Fisher and “J” and the prerecorded funds were shown to the jury. Id. at 85, 87. Corl transported Fisher to Brandon Park and witnessed a hand-to-hand exchange between Petitioner and Corl. Id. at 89-90. Fisher provided Corl with the bags of

heroin, stamped with “New Arrival” as soon as she re-entered his vehicle. Id. at 90. The bags of heroin were shown to the jury. Id. at 92. Petitioner was observed entering 1201 Packer Street following the controlled buy. Id. at 93. Corl further testified about a similar controlled buy that occurred on July 23, 2019. Id. at 105-112. Fisher arranged this buy for two (2) bundles of heroin in the same way as the other two (2) buys she had cooperated with law enforcement. Id. at 105-106. Once completed in Brandon Park, Fisher handed the heroin over to Corl in bags marked “Demolition Man.” Id. at 111. Corresponding photos of the same evidence was presented for this controlled purchase in addition to the physical bags of heroin. Id. at 109-112.

Corl testified about the fourth controlled purchase that took place on July 24, 2019 for a bundle of heroin which was conducted in an analogous fashion to the other three (3) buys supervised by Corl. Id. at 113-120. Video footage of the fourth buy was played for the jury and entered into evidence. Id. at 185. Furthermore, Fisher testified to her involvement with the four (4) controlled buys while cooperating with law enforcement. Id. at 155-170. Various stipulations were entered detailing the laboratory test results of the narcotics from the controlled purchases, confirming the presence of cocaine, 3-methylfentanyl, and heroin, all of which are controlled substances in Pennsylvania. Id. at 191-199.

Following this Court’s review of the vast amount of evidence and in the examination of the trial transcript, this Court finds Petitioner’s argument to be meritless. There are eyewitness accounts from various law enforcement officers and the confidential informants themselves verifying the process that established the controlled purchases and that Petitioner is the individual who sold the narcotics. There are photographs and video footage to support the testimony of the witnesses. Petitioner can be seen in aforementioned video footage selling controlled substances to the confidential informant. The laboratory tests confirm that the

substances are in fact illegal drugs. The amount of inculpatory evidence against Petitioner in this case for possession of controlled substances, delivery of controlled substances, and possession with intent to deliver certainly rises to the level of beyond a reasonable doubt. The amount of drugs actually delivered to confidential informants and particularly the two (2) different stamps on the baggies of drugs support the notion that these narcotics were not for personal use and were intended to be delivered and sold to other individuals. Therefore, this Court finds that the evidence is sufficient to establish beyond a reasonable doubt that Petitioner delivered and possessed controlled substances with the intent to deliver.

Petitioner also argues that the evidence at trial was insufficient to establish Petitioner's possession of any controlled substances found at 1201 Packer Street nor was it adequate to convict him of possession with intent to deliver. On July 25, 2019, a search warrant was executed for 1201 Packer Street following the four (4) controlled purchases in July of 2019 and the singular controlled purchase in March of 2019. Following law enforcement taking Petitioner into custody from the white Cadillac Petitioner was driving, keys were found in that vehicle that opened the apartment at 1201 Packer Street as well as a safe located inside the residence. N.T. 4/30/2019, at 20-21. A photograph of the mailbox for this residence showed a white card attached to the mailbox that documented the names of the occupants. Id. at 24. This card included Petitioner's name as a resident of 1201 Packer Street. Id. at 25. Photographic evidence taken during the execution of the search warrant shows Petitioner's Pennsylvania identification card with a photo of Petitioner next to a band of approximately 5,486 dollars in cash. Id. at 30.

Inside the residence, police located significant amounts of heroin, crack cocaine, methamphetamine, and cocaine. Id. at 30-31. Some of the heroin located inside 1201 Packer

Street was packaged in baggies notated “New Arrival” and some of the baggies had been stamped with “Demolition Man.” Id. A box of syringes and facemasks as well as digital scales were also discovered in the home. Id. at 32. After being qualified as an expert on possession with the intent to deliver controlled substances, Corl testified that it was his expert opinion that the cocaine and crack cocaine found in 1201 Packer Street were possessed with the intent to deliver. Id. at 19-20, 35-36. Corl also testified that it was his expert opinion that the heroin found in 1201 Packer Street was possessed with the intent to deliver based on the amount of protective gear also found in the home as well as the volume of heroin and the manner in which it was packaged. Id. at 38. Corl was also of the opinion that the methamphetamine found at the residence was not for personal use, but for selling to other individuals. Id. at 39.

Additionally, 440 dollars of prerecorded funds used in the controlled buys leading to these charges were recovered in the safe discovered in the bedroom at 1201 Packer Street next to Petitioner’s photo identification card. Id. at 40-41. Based on the surveillance done on this house where Petitioner was the only individual seen coming and going, and the fact that Petitioner’s keys opened the front door to the apartment and to the safe, Corl testified it was his belief that Petitioner resided at 1201 Packer Street. Id. at 50-52. Furthermore, Corporal Gerald Lydon (Lydon) of the Pennsylvania State Police testified that he conducted a “stop and ID” on a vehicle that was a target in Corl’s investigation. Id. at 62. Lydon approached the vehicle consistent with the description given to him by Corl and spoke with Petitioner, who Lydon positively identified in court as the individual he spoke to. Id. at 64-65. Petitioner provided Lydon with a Pennsylvania driver’s license with a Philadelphia address listed. Id. Lydon asked Petitioner if this address was current, and Petitioner responded that it was not and that he currently resided at 1201 Packer Street in Williamsport. Id.

Based on the review of the evidence, it is abundantly clear that Petitioner was residing at 1201 Packer Street and was in possession and control over the items within the home. Petitioner admitted to Lydon that he was living there, his name was on the mailbox, Petitioner's keys opened the front door and the safe found in the bedroom, and Petitioner's identification card was also found. In addition, law enforcement observed Petitioner leaving the residence before the majority of the controlled buys and returning to the residence after completing the sale. It is completely unfounded that the Commonwealth did not demonstrate Petitioner's possession or possession with intent to deliver the items found in 1201 Packer Street and therefore, Petitioner's argument fails on this issue as well.

Motion for a New Trial

Petitioner argues that he is entitled to a new trial due to this Court's error. "A motion for a new trial is addressed to the trial judge's discretion." United States v. Console, 13 F.3d 641, 665 (3d Cir. 1993). "A motion for a new trial is not favored and is viewed with great caution." United States v. Miller, 987 F.2d 1462, 1466 (10th Cir. 1993). This power should be used sparingly and "should be granted only where there is a reasonable probability that the trial error could have had a substantial impact on the jury's decision." United States v. Patrick, 985 F.Supp. 543, (E.D. Pa. 1997); *See also* United States v. Delgado, 367 F.Supp.3d 286 (M.D. Pa. 2019). First, Petitioner submits that the trial court erred by denying Petitioner's request to drug test the witnesses who testified that they purchased controlled substances from Petitioner. In particular, Petitioner avers that two (2) witnesses were not drug tested despite Petitioner's request for them to be tested. However, the Commonwealth articulated that drug testing these witnesses was not relevant to the outcome of Petitioner's trial. Both witnesses took the witness stand under oath and testified to their history as drug users. This Court agrees with the

Commonwealth on this issue. The lack of drug tests for two (2) witnesses who testified to their reliance on controlled substances would not be sufficient to have a substantial impact on the jury's determination of guilt. The jury was presented with testimony that the witnesses were drug users, either actively or in recovery, and cooperated with law enforcement by participating in various controlled purchases of narcotics, and the jury still made the decision to convict Petitioner on all counts. A drug test would have only confirmed the testimony of the witnesses and their honesty about their lifestyle. Therefore, Petitioner's argument fails on this issue.

Secondly, Petitioner argues that the Court erred by admitting a video into evidence that was not disclosed to Petitioner or his counsel until after the start of trial. After a review of the trial transcript, this situation unfolded as follows. After reconvening the jury following the Court's breaking for lunch on the first day of trial, counsel for the Commonwealth requested a conference on the record in chambers to discuss multiple issues that arose during the lunch break. N.T. 4/29/2021, at 96. One such issue was that, during the Commonwealth's preparation on the morning of the first day of trial, video footage of the controlled buy that occurred on July 17, 2019 was discovered by police in their review of the evidence and communicated to the Commonwealth's attorney for this matter at approximately eleven (11) o'clock in the morning. Id. at 100. This video was provided to Petitioner and his counsel over the lunch break that lasted from 12:02 p.m. to 1:41 p.m. Id. at 95, 100.

The Commonwealth stated they wanted to allow Petitioner's counsel to review the footage and consult with Petitioner before showing the video to the jury. Id. at 100. The Commonwealth suggested entering the video into evidence the next day to allow Petitioner and his counsel to review the video. Id. Petitioner's counsel objected to the admission of the video. Id. at 101. The Court dismissed the jury temporarily to allow Petitioner and his counsel to

watch the footage together and discuss. *Id.* at 104. At the hearing on this motion, Petitioner argued that because the video was provided to Petitioner at lunch on the first day of trial, Petitioner could not properly prepare a defense or adjust accordingly. The Commonwealth argues that the video was not exculpatory, had no prejudicial effect, and was further evidence of a controlled buy between Petitioner and another individual. The Commonwealth also asserts that Petitioner was present at the trial and could assist his counsel in the defense against the video evidence.

This Court finds no merit in Petitioner's argument on this issue. The video of the second controlled purchase was incredibly similar to other various video surveillance conducted and admitted into evidence at Petitioner's trial. Petitioner and his counsel would have known and been able to anticipate the issues to their trial strategy upon their first viewing of the other videos of the controlled buys Petitioner was charged with. Furthermore, the video was delivered to Petitioner's counsel over the lengthy lunch break, the Court dismissed the jury to provide an opportunity for Petitioner and his counsel to view the video together, and the video was not admitted into evidence or played for the jury until the following day. Therefore, Petitioner had ample time to prepare a defense to a comparable video demonstrating similar conduct as the other videos admitted into evidence and this did not overly prejudice him. As such, Petitioner shall not be granted a new trial on these grounds.

Motion for Reconsideration of Sentence

Petitioner requests reconsideration of his sentence for being manifestly excessive and an abuse of the Court's discretion. Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." Commonwealth v. Hoch, 936 A.2d 515, 517 (Pa. Super. 2007). An abuse of

discretion “is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.” Id. at 517-18. Firstly, Petitioner argues that the Court failed to consider that no one suffered direct injuries as a result of his conduct. Secondly, at the time of sentencing, Petitioner was thirty-nine (39) years old and Petitioner believes the Court failed to consider his age. Petitioner asserts that this Court effectively sentenced him to life, and that Petitioner faces a severe state parole violation.

At the hearing on this motion, Petitioner also argued that Petitioner is non-violent and therefore not a threat to the public. Petitioner further argued that it was inappropriate for the Court to consolidate these offenses at trial and then separate them at sentencing to give a longer sentence. However, the Commonwealth contends that Petitioner posed a threat to the safety of the community, primarily because some of the drug deliveries contained fentanyl. Fentanyl is considered deadly and is accordingly given greater significance and weight by the sentencing commission as evidenced by lengthier sentence guideline ranges for charges related to fentanyl. The Commonwealth also argues that Petitioner had a Prior Record Score (PRS) of five (5) and was a repeat controlled substances dealer. Lastly, the Commonwealth rearticulates that the jury found him guilty of all charged offenses in the three (3) above captioned dockets.

This Court believes that Petitioner’s sentence was not an abuse of the Court’s discretion. To begin, the Court specifically mentioned Petitioner’s age into the record while contemplating Petitioner’s sentence. N.T. 9/21/2021, at 3. Additionally, the Court evaluated a pre-sentence investigation report that detailed Petitioner’s upbringing, employment history, criminal history, and education. Id. at 3-6. Furthermore, contrary to Petitioner’s argument, this

Court deliberated on the longevity of Petitioner's sentence and the reality that created for him. Specifically, the Court stated,

the guidelines are different for different drugs for a reason so for me to not factor that in would be to disregard what the legislature has identified that when a person is in possession of these particular charges for the purposes of delivering them, they should be punished for that and then that begs the question if I do all of that what type of life sentence am I essentially imposing because of the number of charges and the number of months is so large.

Id. at 14-15. Ultimately, this Court determined it was proper to sentence Petitioner on the individual charges that did not merge instead of each transaction as a whole. The Court cited to the fact that Petitioner was on parole for selling narcotics at the time he committed these offense, Petitioner had a high PRS, and Petitioner was selling particularly dangerous controlled substances such as fentanyl and methamphetamine that carry a considerable offense gravity score. Moreover, as the Commonwealth argued at sentencing, simply because Petitioner was convicted of multiple offenses does not entitle him to a "volume discount" on his aggregate sentence. *See Commonwealth v. Foust*, 180 A.3d 416, 434 (Pa. Super. 2018); *see also Commonwealth v. Green*, 149 A.3d 43, 54 (Pa. Super. 2016). Therefore, this Court did not abuse its discretion in sentencing Petitioner and his argument fails on this issue.

ORDER

AND NOW, this 26th day of January, 2022, upon review of the record and after an evidentiary hearing, Petitioner's Post-Sentence Motions are **DENIED**.

Petitioner is hereby notified that he has the right to appeal this order. An appeal is initiated by the filing of a Notice of Appeal with the Lycoming County Clerk of Courts within thirty (30) days after entry of this order. *See Pa.R.App.P. 902, Pa.R.App.P. 903, Pa.R.App.P.*

904. Petitioner has the right to assistance of counsel in the preparation of the appeal. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122 of the Pennsylvania Rules of Criminal Procedure. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than two (2) years, the Petitioner has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of two (2) years or more, the Petitioner does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the Petitioner's release on bail is conditioned on the Petitioner filing an appeal with thirty (30) days after the entry of this order. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time-period, Petitioner may lose forever his right to raise these issues.

By the Court,

Nancy L. Butts, President Judge

cc: DA
PD (JF)
Law Clerk (JMH)

NLB/jmh