IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY 1997 SESSION

FILED

March 27, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 02C01-9601-CC-00006
Appellee,	)
	) Dyer County
V.	)
	) Honorable Joe G. Riley, Judge
	)
JEFFERY L. VAUGHN,	) (Possession of Cocaine with Intent to Sell)
	)
Appellant.	)

FOR THE APPELLANT:

G. Stephen Davis
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(At Trial Only)

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Jeffery Vaughn, was convicted by a jury of possession of cocaine with intent to sell. He was sentenced to 16 years as a Range II offender. He appeals alleging the evidence was insufficient to convict and that his sentence was excessive. Upon review, we affirm the judgment of conviction and sentence.

FACTS

The appellant was stopped by officers on bike patrol in Dyersburg, Tennessee. As the appellant got out of his vehicle, both officers witnessed him attempting to chew a substance that appeared to be contraband. He was immediately asked to spit out the substance. He did not comply. The officer sprayed the appellant with "freeze," a chemical agent similar to Mace, to force him to spit out the substance. He complied and was arrested. He had $667.00 and 1.4 grams of cocaine in his possession at the time of his arrest.

At trial, the appellant took the position that the cocaine he possessed was for his personal use and not intended for resale. In support of this position he presented two witnesses who testified that he had won the $667.00 gambling the day of his arrest. Also, his girlfriend testified that the appellant used crack cocaine and had stolen money in the past to buy crack.

I

The appellant contends that the evidence is insufficient to support his conviction. He claims that the state failed to offer any evidence that the appellant possessed the intent to sell cocaine. Furthermore, he claims that he presented enough evidence to establish that the cocaine was for his personal use.

Great weight is accorded jury verdicts in criminal trials. Jury verdicts accredit state's witnesses and resolve all evidentiary conflicts in the state's favor. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). On appeal, the state is entitled to both the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). Moreover, guilty verdicts remove the presumption of innocence, enjoyed by defendants at trial, and replace it with a presumption of guilt. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). Appellants carry the burden of overcoming a presumption of guilt when appealing jury convictions. Id.

When appellants challenge the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); Tenn. R. App. P. 13(e). The weight and credibility of a witness' testimony are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978).

We do not find appellant's argument compelling. He was arrested in possession of $667.00 and 1.4 grams of cocaine. The jury could have reasonably inferred that he was dealing drugs. This issue has no merit.

II

The appellant next contends that his sentence is excessive. He was sentenced based on the conviction for a Class B felony, as a Range II multiple offender. The trial court found one mitigating factor and three enhancing factors. He received 16 years to run consecutively to a sentence already imposed as a result of a parole violation.

Sixteen years is in the middle of the 12 to 20 year range. The appellant does not challenge the applicability of any of the three enhancement factors used by the trial court. He does not contend that the trial court refused to consider any pertinent mitigating factors. He makes an unsupported accusation that his sentence is excessive.

When a sentencing issue is appealed, this Court shall conduct a de novo review with the presumption that the trial court's findings are correct. Tenn. Code Ann. § 40-35-401(d) (1990); State v. Byrd, 861 S.W.2d 377, 379 (Tenn. Crim. App. 1993). The presumption of correctness is conditioned upon an affirmative showing, in the record, that the trial court considered the sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The burden remains upon the defendant to show the impropriety of his sentence. State v. Anderson, 880 S.W.2d 720, 727 (Tenn. Crim. App. 1994).

In conducting a de novo review of a defendant's sentence, we must consider: (1) the evidence received at the trial and the sentencing hearing, (2) the pre-sentence report, (3) the principles of sentencing and arguments to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating and enhancement factors, (6) any statements made by the defendant in his own behalf, and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-210, -103, and -210 (1990).

Upon review, we find the appellant's contention to be without merit. The trial judge properly applied the principles of sentencing. He felt the enhancement factors outweighed the mitigating factors. The appellant was sentenced in the middle of the range. We find no error.

AFFIRMED.

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PAUL G. SUMMERS, Judge

CONCUR:

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DAVID G. HAYES, Judge

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THOMAS T. WOODALL, Judge