

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1141

ROBERT RAY JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 7, 2009

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CR-08-2-4]

HONORABLE CAROL CRAFTON
ANTHONY, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Robert Ray Johnson, was the target of four controlled buys, which led to his conviction on three counts of delivery of a controlled substance, methamphetamine; one count of delivery of a controlled substance, marijuana; one count of possession of a controlled substance, marijuana, with the intent to deliver; and one count of maintaining a drug premises. At sentencing, the circuit court ordered that the sentences run consecutively for a total of eighty-six years' imprisonment. On appeal, appellant argues that the court should not have run the four delivery counts consecutively, because the police, in conducting the four controlled buys, engaged in "sentencing manipulation." Because we conclude that this concept has no applicability to the sentencing procedures used in this case, we affirm.

Police conducted four controlled buys from appellant.¹ On August 22, 2007, a confidential informant introduced to appellant an undercover officer who sought to purchase five pounds of marijuana from appellant. Because that amount was not immediately available, the officer instead purchased 3.222 grams of methamphetamine from appellant. The officer conducted three more controlled buys with appellant that were described as purchases of 2260.5 grams of marijuana on August 24, 2009, 13.8233 grams of methamphetamine on September 11, 2007, and 13.6234 grams of methamphetamine on October 16, 2007. Appellant was not arrested until December 14, 2007.

Appellant was convicted on the four delivery offenses and two other offenses, and the case proceeded to sentencing. At sentencing, appellant argued that the court should not follow the jury's recommendation of consecutive sentences. Appellant argued, "I think this was a phenomenon known as sentencing entrapment where the police keep going back and going back and going back when they don't really need to and it just enhances their exposure beyond all reason." The court ordered that appellant's sentences run consecutively.

On appeal, and relying on case law from the United States Court of Appeals for the Eighth Circuit, appellant contends that, by conducting four drug buys with appellant, the police engaged in "sentencing manipulation," and thus the trial court should not have run the sentences consecutively. Particularly, he argues that the controlled buys had the effect of

¹Appellant also states in his brief that there was a controlled buy made on August 21, 2007, by a confidential informant, but he acknowledges that this was not part of the evidence presented at trial.

“boosting the exposure of appellant to enhanced sentencing on each count,” and asserts that this amounted to a due-process violation.

According to case law from the Eighth Circuit, sentencing manipulation occurs when the government unfairly exaggerates a defendant’s sentencing range by engaging in a longer-than-needed investigation that increases the drug quantities for which the defendant is responsible. *United States v. Torres*, 563 F.3d 731 (8th Cir. 2009). If the federal court finds sentencing manipulation, it should grant a downward departure to the federal sentencing guidelines range that it believes would apply absent the manipulation, since such manipulation artificially inflates the offense level by increasing the quantity of drugs included in the relevant conduct. *Id.*

But as our court explained in *Ford v. State*, 99 Ark. App. 119, 257 S.W.3d 560 (2007), this concept was developed in response to perceived abuses of the restrictive sentencing ranges under federal sentencing guidelines. The *Ford* court observed that Arkansas law affords state courts broader discretion in the imposition of sentences than that afforded to federal courts by the federal sentencing guidelines. Accordingly, the *Ford* court rejected the application of the concept where police had conducted four controlled buys that led to Ford’s conviction on nine offenses and consecutive sentences totaling 153 years. Thus, based on our decision in *Ford*, we likewise conclude that the concept of sentencing manipulation has no applicability to the sentencing procedures used in this case, and we affirm the circuit court’s decision.

Affirmed.

Cite as 2009 Ark. App. 650

VAUGHT, C.J., and GRUBER, J., agree.