Cite as 2022 Ark. App. 272

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-21-227

SHARON K. MOYE APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** June 1, 2022 APPEAL FROM THE FRANKLIN COUNTY CIRCUIT COURT, NORTHERN DISTRICT [NOS. 24OCR-18-146; 24OCR-18-60] HONORABLE WILLIAM M. PEARSON, JUDGE AFFIRMED; MOTION TO WITHDRAW GRANTED

RAYMOND R. ABRAMSON, Judge

This is a no-merit appeal following Sharon Moye's drug-related convictions in the Franklin County Circuit Court. Moye's counsel filed a timely notice of appeal followed by a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2020), along with a motion to be relieved as counsel, asserting that there is no issue of arguable merit on appeal. Under *Anders*, counsel seeking to withdraw from representation must satisfy this court that he or she has thoroughly reviewed the record for appealable issues and explain why any potential issue is frivolous for appellate purposes.

This court's review when counsel submits an *Anders* brief is twofold. We ask whether counsel adequately fulfilled the requirements and whether an independent review of the record presents any nonfrivolous issues. *Walton v. State*, 94 Ark. App. 229, 231, 228 S.W.3d 524, 526 (2006). The clerk of this court served Moye with a copy of her counsel's brief and

notified her of her right to file a pro se statement of points for reversal. She has not done so. We affirm the revocation and grant counsel's motion to withdraw.

Moye was initially charged with possession with purpose to deliver methamphetamine, pursuant to Arkansas Code Annotated section 5-64-420 (Supp. 2021), and possession of Schedule VI controlled substance (marijuana) with purpose to deliver, pursuant to Arkansas Code Annotated section 5-64-436 (Repl. 2016) on March 16, 2018. On July 30, Moye was charged with another count of possession of Schedule VI controlled substance (marijuana) with purpose to deliver, pursuant to Arkansas Code Annotated section 5-64-436.

A jury trial was held on July 18, 2019. Jason Parsons of the Altus Police Department testified that he found marijuana, methamphetamine, scales, and baggies in Moye's home at the time of her arrest in February 2018. The evidence was seized and sent to the Arkansas State Crime Laboratory (crime lab). Moye was later released. Officer Parsons testified that he searched the house again on July 9, 2018, and found six individually wrapped baggies of marijuana. They were all identically bagged; every one of them in the exact same way and in the exact same amount. Moye was arrested, and the items were submitted to the crime lab.

Nick Dawson, a forensic chemist at the crime lab, confirmed the presence of 3.2626 grams of methamphetamine mixed with dimethyl sulfone; 79.8 grams of marijuana; quetiapine fumarate, which is not a controlled substance; baclofen (a muscle relaxer); and 0.1574 grams of diazepam, a Schedule IV controlled substance. Amanda Blox, another forensic chemist at the crime lab, also testified and stated that she tested the marijuana, and

it weighed 42.8 grams. Moye's counsel moved for a directed verdict, arguing that the State had failed to show Moye's intent to deliver.[1] The circuit court denied the motion, and the jury convicted Moye of possession of methamphetamine with purpose to deliver and two counts of possession of marijuana with purpose to deliver.

During sentencing, Jake Jones, a probation and parole officer, testified that Moye was previously on probation for a conviction of manufacturing methamphetamine. At Moye's probation intake on July 29, 2015, she tested positive for amphetamine, methamphetamine, benzodiazepines, and marijuana. Moye began outpatient drug treatment on July 31 that year but did not complete the program because she failed a drug test. Eventually, in March 2016, she completed twelve weeks of outpatient drug treatment. Jones testified he was not familiar with the drug-patient rehabilitation in the Arkansas Department of Correction, but he knew there were treatments available for those incarcerated.

Moye was sentenced to twelve years on each of the charges of possession of marijuana with the purpose to deliver and thirty years, as a habitual offender, on the charge of possession of methamphetamine with the purpose to deliver, for a total of fifty-four years' imprisonment. Her timely no-merit appeal is now properly before us.

Counsel has demonstrated there is no nonfrivolous argument that could serve as the basis for an appeal regarding the sufficiency of the State's evidence against Moye. In

[1]Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides that in a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all the evidence. Ark. R. Crim. P. 33.1(a). However, renewal of a directed-verdict motion is not required to preserve a sufficiency challenge on appeal when the defense rests, as it did here, without presenting any evidence. *Donaldson v. State*, 2016 Ark. App. 391.

reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict is supported by substantial evidence, direct or circumstantial. *Kourakis v. State*, 2015 Ark. App. 612, 474 S.W.3d 536. Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* This court views the evidence in the light most favorable to the verdict; only evidence supporting the verdict will be considered. *Id.*

In order to obtain a conviction for possession of methamphetamine with the purpose to deliver, the State must prove that it is unlawful if a person possesses methamphetamine or cocaine with the purpose to deliver the methamphetamine or cocaine. "Purpose to deliver may be shown by any of the following factors: (1) The person possesses the means to weigh, separate, or package methamphetamine or cocaine; . . . (3) The methamphetamine or cocaine is separated and packaged in a manner to facilitate delivery; . . . or (6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver methamphetamine or cocaine." Ark. Code Ann. § 5-64-420(a)(1), (3) & (6) (Supp. 2021).

Here, there was evidence of scales and baggies consistent with the requirements in section 5-64-420(a)(1) and (a)(3), respectively. Officer Parsons testified that on February 20, 2018, he found digital scales, a metal tin with a green leafy substance and some methamphetamine, and several clear baggies, indicative of drug sales. The baggies were in a hidden compartment under the dining table. The officer testified that someone who was using marijuana and methamphetamine for personal use would not have any need for that many individual bags. Furthermore, Officer Parsons testified that at Moye's second arrest,

Moye told him that she did not need scales because she had been doing this long enough that she could weigh marijuana just by looking at it.[2]

Chemist Dawson testified that the evidence collected on February 20, 2018, contained 3.26 grams of methamphetamine. If the defendant is in possession of two grams or more but less than ten grams of methamphetamine or cocaine by aggregate weight, including an adulterant or diluent, the crime is classified as a Class B Felony, pursuant to Arkansas Code Annotated section 5-64-420. The sentence for a Class B Felony shall be not less than five years nor more than twenty years. *See* Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2013). The extended term of imprisonment for a defendant who has been convicted or found guilty of more than one but fewer than four felonies for a conviction of a Class B felony is a term of imprisonment of not less than five years nor more than thirty years. *See* Ark. Code Ann. § 5-4-501(a)(1)(A)(i)–(ii) & (a)(2)(C) (Supp. 2021). The jury sentenced Moye to thirty years as a habitual offender; therefore, there is no meritorious argument that this is an illegal sentence or that substantial evidence did not support the jury's verdict.

A person commits possession of a Schedule VI substance with the purpose to deliver if he possesses a Schedule VI controlled substance and the State proves purpose to deliver by any of the following factors:

> (1) The person possesses the means to weigh and separate a Schedule VI controlled substance;
>
> (2) The person possesses a record indicating a drug-related transaction;

[2]Neither scales nor methamphetamine was found at this arrest on July 9, 2018.

(3) The Schedule VI controlled substance is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule VI controlled substance;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule VI controlled substance.

Ark. Code Ann. § 5-64-436(a).

Marijuana is a Schedule VI controlled substance. Ark. Code Ann. § 5-64-215(a)(1) (Supp. 2021). As to possession of drug paraphernalia, "[d]rug paraphernalia" includes "[a] scale or balance used, intended for use, or designed for use in weighing or measuring a controlled substance." Ark. Code Ann. § 5-64-101(12)(B)(v) (Supp. 2021). Marijuana that is separately packaged has been held to be substantial evidence of intent to deliver, even when the aggregate amount of the drug in question falls below the weight required to trigger the statutory presumption. *See Brown v. State*, 2010 Ark. App. 781 (citing *Thomason v. State*, 91 Ark. App. 128, 208 S.W.3d 830 (2005)).

In *Lockheart-Singleton v. State*, 2018 Ark. App. 307, because the marijuana had been separated into thirty-four packages, which would have facilitated delivery, this court held that there was substantial evidence that the appellant intended to deliver the controlled substance. Similarly, Officer Parsons testified that at Moye's first arrest, there were five bags of marijuana considered ready for sale that were preweighed, and each weighed the same amount. Officer Parsons found digital scales and several clear baggies, indicative of drug sales. The baggies were found in the hidden compartment under the dining table.

On July 9, 2018, Officer Parsons found a large amount of marijuana all identically bagged; each one was bagged in the exact same way and contained the exact same amount. Chemist Dawson testified that the evidence collected on February 20, 2018, contained 79.8 grams of marijuana. Blox, another crime lab chemist, testified that the evidence collected on July 19, 2018, contained 42.8 grams of marijuana. Moye was sentenced to a prison term of twelve years for each of her convictions for possession of a Schedule VI controlled substance with the purpose to deliver.

A conviction pursuant to Arkansas Code Annotated section 5-64-436 is a Class D felony if the person possessed more than fourteen grams but less than four ounces by aggregate weight, including an adulterant or diluent of a Schedule VI controlled substance. The required sentence for a Class D felony shall not exceed six years. *See* Ark. Code Ann. § 5-4-401(a)(5). The extended term of imprisonment for a defendant who has been convicted or found guilty of more than one but fewer than four felonies of a Class D felony is a term of imprisonment of not more than twelve years. *See* Ark. Code Ann. § 5-4-501(a)(1)(A)(i), (ii) & (a)(2)(E). Accordingly, Moye's sentence was not an illegal one, and there is no meritorious argument for reversal.

Viewing the evidence in the most favorable light to the State and considering only the evidence that supports the verdict, we hold that the circuit court did not err in finding that there was substantial evidence to support the jury's decision to convict Moye of possession of methamphetamine with purpose to deliver and two counts of possession of marijuana with purpose to deliver. As such, there could be no meritorious ground for appeal.

When filing a no-merit brief, the test for counsel is not whether there is any reversible error but whether an appeal would be wholly frivolous. *See Honey v. State*, 2020 Ark. App. 496; *Wright v. State*, 2015 Ark. App. 300. Pursuant to *Anders*, however, we are required to fully examine all the proceedings to determine whether the case is wholly frivolous. *Williams v. State*, 2021 Ark. App. 164. From our review of the record and the brief presented to us, we find compliance with Rule 4-3(k) and conclude that there is no merit to an appeal. Thus, we affirm and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

KLAPPENBACH and BROWN, JJ., agree.

Dusti Standridge, for appellant.

One brief only.