

IN THE COURT OF APPEALS

7/29/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-01254 COA

JAMES CURTIS APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. LAMAR PICKARD

COURT FROM WHICH APPEALED: CLAIBORNE COUNTY CIRCUIT

ATTORNEY FOR APPELLANT: ROBERT L. MORAN

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JOLENE LOWRY

DISTRICT ATTORNEY: ALEXANDER MARTIN

NATURE OF THE CASE: SALE OF CONTROLLED SUBSTANCES

TRIAL COURT DISPOSITION: CONVICTION FOR SALE OF COCAINE AND SENTENCE OF 30 YEARS IN MDOC

MANDATE ISSUED: 8/19/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PER CURIAM:

James Curtis, the appellant, was tried and convicted for the sale of cocaine in the Claiborne County Circuit Court. He was sentenced to serve a term of thirty years in the Mississippi Department of Corrections. Aggrieved of the judgment and sentence, Curtis appeals to this Court asserting the following issues: (1) that the verdict was against the overwhelming weight of the evidence and (2) that the lower court erred in failing to reduce the sentence. Finding no reversible error, we affirm.

FACTS

On June 15, 1993, Undercover Officer James Whitehead of the Claiborne County Sheriff's Department, and a confidential informant were driving around Port Gibson, Mississippi in search of crack cocaine. Whitehead and the informant were under surveillance that was conducted by Richard McMillan of the North Central Narcotics Task Force.

Whitehead and the informant saw Curtis, and asked him where they could find some crack cocaine. Curtis told the men that he could take them to where they could buy some crack. Curtis got in the car and led them to two men standing in front of an old mechanic shop. At that point, Curtis got out of the car and asked Whitehead what he needed. Whitehead gave Curtis \$40 to buy two twenty-dollar rocks. Curtis returned with the crack and asked Whitehead if he could have some. Whitehead responded that he could not give any to Curtis, but instead gave him three dollars. After the transaction, Whitehead dropped off Curtis and met with McMillan to give him the evidence which was sealed and tagged.

Curtis testified that Whitehead tried to buy drugs from him several times; however, he refused to deal with Whitehead. He maintains that he never sold drugs to Whitehead.

DISCUSSION

WEIGHT OF EVIDENCE

Curtis argues that the verdict was against the overwhelming weight of the evidence. Our standard of determining whether a jury verdict is against the overwhelming weight of evidence is well settled. We must accept as true the evidence which supports the verdict. *Robinson v. State*, 662 So. 2d 1100, 1104 (Miss. 1995). We will only reverse where the trial court abused its discretion in not granting a new trial. *Id.*

Officer Whitehead testified that he bought two twenty-dollar rocks of crack cocaine from Curtis. Furthermore, Richard McMillan testified that he had equipped Whitehead's car with a video camera and a body mike in order to monitor the transaction. McMillan corroborated Whitehead's account of the events that transpired from what he heard through the microphone. Applying our standard of review to the evidence and testimony presented at trial, we do not find any merit to this issue.

SENTENCING

Curtis argues that the lower court erred by refusing to reduce his sentence of thirty years. He claims that the sentence is disproportionate under the present circumstances because Curtis has had no prior felony convictions. "Our Court has long been governed by the established rule that a trial court will not be held in error or held to have abused its discretion if the sentence imposed is within the limits fixed by statute." *Hart v. State*, 639 So. 2d 1313, 1319 (Miss. 1994).

Section 41-29-139 of the Mississippi Code provides in pertinent part that Curtis may, upon conviction, be imprisoned for not more than thirty (30) years and shall be fined not less than \$1,000 nor more than one million dollars or both. Miss. Code Ann. § 41-29-139 (b)(1) (Supp. 1993). The sentence imposed upon Curtis was clearly within the limits dictated by the statute. Thus, we find no reversible error.

THE JUDGMENT OF CONVICTION BY THE CLAIBORNE COUNTY CIRCUIT COURT FOR THE UNLAWFUL SALE OF COCAINE AND SENTENCE OF THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO CLAIBORNE COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.