

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00071 COA

TYRONE HALL

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. HOWARD Q. DAVIS, JR.

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

STAN PERKINS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: JOYCE CHILES

NATURE OF THE CASE: CRIMINAL: SALE OF COCAINE

TRIAL COURT DISPOSITION: CONVICTED OF THE SALE OF COCAINE AND
SENTENCED TO SERVE A TERM OF TWENTY-FIVE (25) YEARS IN THE MISSISSIPPI
DEPARTMENT OF CORRECTIONS AND ORDERED TO PAY A FINE OF \$5,000.00.

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

PER CURIAM:

The Defendant, Tyrone Hall, was tried and convicted for the sale of cocaine. He was sentenced to serve a term of twenty-five (25) years in the Mississippi Department of Corrections and ordered to pay a fine of \$5,000.00. Hall appeals his conviction contending that the sentence and fine imposed upon him were excessive and that the verdict was against the overwhelming weight of the evidence. Finding that both issues raised by Hall are without merit, we affirm the judgment of the lower court.

In his first assignment of error, Hall alleges that the sentence and fine were excessive in comparison to the actual crime. He also contends that the sentence was in violation of the Federal Sentencing Guidelines and the Eighth Amendment of the United States Constitution. Hall was convicted and sentenced under Code section 41-29-139 which states that the maximum penalty for the sale of cocaine is thirty (30) years with a \$1,000,000.00 fine. Hall was sentenced to twenty-five (25) years and ordered to pay a fine of \$5,000.00.

Our supreme court has said, that "[W]hen sentences are within the limits of the statute, the imposition of such sentences is within the sound discretion of the trial court and this Court will not reverse them." *Hopson v. State*, 625 So. 2d 395, 404 (Miss. 1993). Usually a sentence will not be regarded as cruel and unusual when the sentence is within the statutorily prescribed guidelines. *Barnwell v. State*, 567 So. 2d 215, 222 (Miss. 1990). Moreover, Mississippi has not adopted the Federal Sentencing Guidelines, and therefore Hall's contention that the Guidelines have been violated has no merit. Also, we find that Hall has not supported his contention that the sentence is disproportionate to the sentences imposed in other jurisdictions with even a scintilla of factual evidence. For the foregoing reasons, we find that Hall's sentence was not excessive and affirm the judgment of the lower court on this issue.

Hall also claims that the verdict was against the overwhelming weight and sufficiency of the evidence. The only argument Hall presents to this Court in support of his position is that the witnesses for the State made contradictory statements during the course of trial and that the confidential informant who testified against Hall was a three-time offender.

The Mississippi Supreme Court has held that "[t]he jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993) (citations omitted); *see also Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993) (witness credibility and weight of conflicting testimony are left to the jury); *Kelly v. State*, 553 So. 2d 517, 522 (Miss. 1989) (witness credibility issues are to be left solely to the province of the jury). Furthermore, "the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion." *McClain*, 625 So. 2d at 781 (citing *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987)). The decision to grant a new trial "rest[s] in the sound discretion of the trial court, and the motion [for a new trial based on the weight of the evidence] should not be granted except to prevent an unconscionable injustice." *Id.* This Court will reverse only for abuse of discretion, and on review will

accept as true all evidence favorable to the State. *Id.*

Here, the jury heard the witnesses and the evidence presented by both the State and the defense. The jury was within its power to weigh the evidence and the credibility of the witnesses' testimony and to convict Hall. The trial court did not abuse its discretion by refusing to grant Hall a new trial based on the weight of the evidence. The jury verdict was not so contrary to the overwhelming weight of the evidence that, to allow it to stand, would have been to promote an unconscionable injustice.

THE JUDGMENT OF THE WASHINGTON COUNTY CIRCUIT COURT OF CONVICTION OF THE SALE OF COCAINE AND SENTENCE OF TWENTY-FIVE (25) YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF FIVE THOUSAND DOLLARS (\$5,000.00) IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO WASHINGTON COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.J.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, J.J., CONCUR.