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No. 3–09–0220

Order filed March 16, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	for the 14th Judicial Circuit,
Plaintiff-Appellee,)	Henry County, Illinois
)	
v.)	No. 07–CF–475
)	
DAVID BELONGA,)	Honorable
)	Charles H. Stengel,
Defendant-Appellant.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

Held: The trial court did not err in sentencing defendant Belonga to a 18-year term of imprisonment. The sentence was not disparate to the lesser sentences imposed on his co-defendants who were not similarly situated.

Defendant David Belonga was convicted after a bench trial of four cannabis-related offenses and sentenced to a term of imprisonment of 18 years. He argues that his sentence was excessive as compared to the four- and eight-year sentences his co-defendants received. We affirm Belonga's sentence.

FACTS

Belonga was charged by statewide indictment with cannabis trafficking, unlawful possession of cannabis with intent to deliver, unlawful possession of cannabis, and conspiracy (cannabis trafficking). 720 ILCS 550/5.1, 5(g), 4(g) (West 2006); 720 ILCS 5/8-2(a) (West 2006). The indictment alleged that Belonga brought more than 5,000 grams of a substance containing cannabis into Illinois with the intent to deliver it, that he made an agreement with Hector Salazar and Lawrence Ornelas to commit the offense of cannabis trafficking, and that in furtherance of the agreement, he and Salazar drove a car carrying over 5,000 grams of cannabis from Arizona to Illinois. Salazar plead guilty to possession of cannabis and was sentenced to four years' imprisonment. Ornelas plead guilty to possession of cannabis with intent to deliver. Belonga was tried before the trial court at which the following evidence was presented.

Belonga and Salazar had met in Arizona two or three weeks prior to their trip to Illinois. Belonga told Salazar he needed money and Salazar offered to pay him to drive cannabis to Illinois for \$3,000 or \$4,000 if the trip ended in Ohio. At Salazar's request, Belonga arranged to rent a Nissan Altima for the trip. They picked up the cannabis bundles in Arizona and drove to Illinois to deliver them to Ornelas. They were stopped in Henry County by Illinois State Police Sergeant Floyd Blanks for speeding. Belonga provided the officer a rental contract for the car which did not list him as an additional driver. He also provided a Michigan identification card but no driver's license. When Blanks requested further identification, Belonga got into the back passenger seat area to retrieve a backpack. Blanks noticed a faint odor of cannabis and searched the vehicle. Six bundles of cannabis were found in the trunk; the cannabis weighed 9,920 grams and had a street value of \$287,500. Belonga and Salazar were arrested. Blanks thereafter determined that Belonga's driver's

license was suspended.

After their arrest, Belonga and Salazar agreed to participate in a controlled delivery to Ornelas. Salazar provided the detailed information to make the delivery and was “more knowledgeable and basically orchestrated what went on.” They met Ornelas in Chicago after he flew in from Arizona and gave him the Nissan keys. He was then arrested. Belonga denied knowing that there was cannabis in the trunk, submitting that he was merely an unknowing driver. The trial court found him guilty of cannabis trafficking.

A sentencing hearing took place. Belonga’s criminal history was presented which revealed nine convictions, including two felony offenses. The State argued for a 25-year term of imprisonment, citing Belonga’s demeanor and character as necessitating a lengthy sentence. The defense argued for a 12-year term, raising various mitigating factors. Belonga pointed to his successful completion of several terms of probation and his abusive and tragic childhood. His mother was killed when he was four years old and his father was a drug user who beat Belonga and was ultimately sentenced to a lengthy term in prison. He and his sister were removed from the home when Belonga was seven years old and he lived in a number of foster homes before he was adopted at age 11. He had engaged in extensive counseling due to post-traumatic stress disorder resulting from his abusive childhood. Belonga had two preschool-age children, a number of skills, and an apparent cancer diagnosis. The defense argued that his lesser role in the offense warranted a sentence in the low range. The defense also pointed to Belonga’s cooperation with law enforcement and his participation in the controlled delivery as mitigating factors.

The trial court acknowledged that Belonga had a difficult childhood but stated that it did not excuse his conduct. It noted the sizable amount of cannabis that Belonga drove to Illinois and that

Belonga arranged for the rental car that was used to transport it here. The trial court raised Belonga's prior record, stating that he "will not follow the law" and that he does "what David Belonga wants to do." It found that Belonga's attitude indicated he was likely to commit another crime and that a sentence was necessary to deter others. The trial court noted that Belonga did not provide support for his children who were in Michigan but rather moved to Arizona and that no hardship would result from his imprisonment. The trial court stated it did not believe that Belonga had no knowledge that there was cannabis in the Nissan's truck. It sentenced Belonga to an 18-year term of imprisonment and imposed various fines and fees.

Belonga filed a motion to reconsider sentence, arguing in part that the trial court failed to adequately consider his cooperation with law enforcement that resulted in the arrest of Ornelas and Salazar, the prime movers in the transaction who received lesser sentences. The trial court denied Belonga's motion. It stated that a disparity in the sentences was based on Belonga's criminal record and on his participation in the delivery in that he provided the transportation for the delivery of cannabis. Belonga appeals his sentence.

ANALYSIS

The sole issue on appeal is whether the trial court imposed an excessive sentence on Belonga. He contends that his sentence is disparate from that of his co-defendants, Salazar and Ornelas, in light of his minimum participation in the offense and their lesser sentences. He asks this court to reduce his sentence to a term of 12 years.

Fundamental fairness and respect for the law dictate that similarly situated defendants should not receive grossly disparate sentences. *People v. Tate*, 122 Ill. App. 3d 660, 668 (1984). "Similarly situated" refers to the defendant's rehabilitation potential or the nature or extent of participation.

People v. Jackson, 145 Ill. App. 3d 626, 646 (1986). A disparate sentence may be warranted by a defendant's more serious criminal record, greater participation in the offense, or his lack of character and potential for rehabilitation. *People v. McCann*, 348 Ill. App. 3d 328, 339 (2004). It is not the disparity that controls but the reason for it. *People v. Spriggle*, 358 Ill. App. 3d 447, 455 (2005). Where defendants are not similarly situated, disparate sentences may be warranted. *People v. Cooper*, 239 Ill. App. 3d 336, 363 (1992). Sentences that were reached as part of plea agreements cannot be a basis for comparison with sentences reached after a trial. *People v. Portis*, 147 Ill. App. 3d 917, 926 (1986). We review a trial court's imposition of sentence for an abuse of discretion. *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988).

Belonga asserts that his lesser culpability outweighs his co-defendants' negotiated pleas and makes his more severe sentence an abuse of discretion. We disagree with his assertion. In imposing an 18-year sentence on Belonga, the trial court did not consider that his co-defendants' sentences resulted from plea negotiations. Rather, it sentenced Belonga based on his prior record and degree of participation in the offense. At the hearing on Belonga's motion to reconsider sentence, the trial court expressly stated it based the disparate sentence on Belonga's criminal record and his critical participation in the delivery in that he provided the transportation. Belonga is not similarly situated to Ornelas and Salazar. Neither co-defendant had a criminal history. Belonga had nine prior convictions, including two felonies. While Ornelas and Salazar may have orchestrated the delivery, it would not have occurred without Belonga providing the rental car, as the trial court determined.

We find that Belonga's sentence is not improperly disparate to that of his co-defendants. The trial court did not abuse its discretion in sentencing him to 18 years' imprisonment. 720 ILCS 550/5.1(b); 730 ILCS 5/5-8-1(a)(3) (West 2006) (12 to 60 year term of imprisonment for cannabis

trafficking). We affirm his sentence.

For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

Affirmed.