NO. 4-09-0790

Filed 1/31/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. THOMAS W. ROBBINS, Defendant-Appellant.	)	Appeal from Circuit Court of Livingston County No. 08CF190 Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Justices Steigmann and Myerscough concurred in the judgment.

ORDER

Held: Where any appeal in this cause would be frivolous, the motion by the office of the State Appellate Defender (OSAD) to withdraw as counsel is granted and the trial court's judgment is affirmed.

In June 2009, the trial court found defendant, Thomas W. Robbins, guilty on single counts of unlawful possession with intent to deliver a controlled substance and unlawful delivery of a controlled substance. In October 2009, the court sentenced him to five years in prison on each count. Thereafter, OSAD was appointed to represent defendant.

On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Anders v. California*, 386 U.S. 738 (1967), contending any appeal in this cause would be frivolous. We grant OSAD's motion and affirm the trial court's judgment.

I. BACKGROUND

In December 2008, the State charged defendant by amended information with one count of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(1) (West 2008)) and one count of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(1) (West 2008)).

In June 2009, defendant's bench trial commenced. Dwight police officer Mike Nolan testified he met with Ronald Scheel, a convicted felon, who agreed to participate in a controlled drug buy. Scheel contacted Shane Wilkey to see if he had any heroin available. Scheel arranged to meet with Wilkey outside a bowling alley in Dwight to purchase six foils of heroin for $100. Prior to providing Scheel with marked bills, Nolan searched him and found no money or contraband. When a van approached, Scheel entered the van for "a minute or so" and he then exited. The van left and returned a short time later. Scheel approached the van, talked with the passenger, and then indicated to police he had purchased heroin. Scheel returned to Nolan's vehicle and handed him a cellophane cigarette wrapper containing seven foils of suspected heroin.

A traffic stop was made of the van, and Wilkey and defendant were taken into custody. During an interview with Nolan, defendant stated he was addicted to heroin. On the night in question, defendant received a call from Wilkey who wanted

defendant to drive him to Cicero to buy heroin. Defendant stated he received heroin in return for driving Wilkey.

Livingston County sheriff's deputy Ryan Bohm testified he participated in the stop of the van in which defendant was driving. A search of the vehicle revealed five plastic bags containing 58 foils of heroin. The report from the Illinois State Police crime laboratory indicated the weight of the heroin involved in the controlled buy weighed 1.3 grams and the weight of the substance found in the van exceeded 5 grams.

Defendant did not testify. Following closing arguments, the trial court found defendant guilty on both counts. In September 2009, defendant filed a motion for a new trial, which the court denied. The court sentenced defendant to concurrent terms of five years in prison on each count. This appeal followed.

II. ANALYSIS

On appeal, OSAD has filed a motion to withdraw as counsel and has attached to the motion a supporting memorandum pursuant to Anders. The proof of service shows service of the motion upon defendant. This court granted defendant leave to file additional points and authorities on or before December 10, 2010. None have been filed. Based on an examination of the record, we conclude, as has OSAD, that no meritorious issues are presented for review and any appeal would be without merit.

A. Sufficiency of the Evidence

OSAD argues no colorable argument can be made that the State's evidence was insufficient to convict defendant beyond a reasonable doubt. We agree.

"When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). "[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable[,] or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

Here, the State charged defendant with unlawful possession with intent to deliver more than five grams of a substance containing heroin and unlawful delivery of more than one gram of a substance containing heroin. A person can be held legally accountable for the criminal conduct of another when:

"[B]efore or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008).

In the case *sub judice*, the facts indicated defendant drove Wilkey to Cicero to purchase heroin, and some of that heroin was sold in Livingston County to Scheel. Thus, defendant facilitated the commission of the crimes here. Accordingly, the evidence was sufficient to find defendant guilty.

B. Speedy Trial

OSAD argues no colorable argument can be made that the trial court abused its discretion in denying defendant's motion to discharge pursuant to section 103-5 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/103-5(a) (West 2008)). We agree.

Section 103-5(a) of the Code provides, in part, as follows:

"Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant."

725 ILCS 5/103-5(a) (West 2008).

On a motion to dismiss based on a speedy-trial violation, "the defendant bears the burden of affirmatively establishing the violation." *People v. Wynn*, 296 Ill. App. 3d 1020, 1026, 695 N.E.2d 903, 906 (1998). "The trial court's determination as to who is responsible for a trial delay is entitled to great deference, and a reviewing court should sustain it absent a clear abuse of discretion." Wynn, 296 Ill. App. 3d at 1026, 695 N.E.2d at 907.

In this case, defendant filed a motion for discharge, claiming he had been in custody for 141 days without trial. The record indicates defendant was taken into custody on January 5, 2009, where he remained for approximately 170 days until the discharge hearing and the start of his bench trial on June 23, 2009. However, multiple delays during that period were attributable to defendant. For example, on February 18, 2009, defense counsel moved to continue the trial from the March calendar to the April calendar. On March 17, 2009, defense counsel declined a trial setting for April and asked the case be set for status hearing, and during that hearing on April 27, 2009, counsel agreed to a trial date of June 23, 2009. We find no abuse of discretion in the trial court's denial of the motion for discharge.

C. Evidentiary Rulings

OSAD argues no colorable argument can be made that the trial court erred by allowing the State to introduce Wilkey's inconsistent statement. We agree.

Here, the State examined Wilkey as a hostile witness. During the examination, the State asked Wilkey what he told Officer Nolan was the reason why defendant dropped him off at a house. Wilkey told Nolan he was stopping at a friend's house. The State sought to introduce Wilkey's written statement, stating it was inconsistent with his testimony. In that statement, Wilkey indicated he had defendant drop him off "to check if things were clear."

Section 115-10.1 of the Code provides that evidence of an inconsistent statement is not made inadmissible by the hearsay rule if the witness is subject to cross-examination concerning the statement, the statement narrates an event of which the witness had personal knowledge, and the statement is proved to have been written or signed by the witness. 725 ILCS 5/115-10.1 (West 2008). It is within the trial court's discretion as to whether a witness's testimony is admissible under section 115-10.1. *People v. Harvey*, 366 Ill. App. 3d 910, 922, 853 N.E.2d 25, 35 (2006).

The requirements of section 115-10.1 were met here. Further, the trial court admitted the statement only as to the reference that defendant dropped off Wilkey to check to see if

things were clear. We find no abuse of discretion.

D. Sentence

OSAD argues no colorable argument can be made that the trial court abused its discretion in sentencing defendant. We agree.

A trial court has broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). "A reviewing court gives great deference to the trial court's sentencing decision because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the cold record." *People v. Evangelista*, 393 Ill. App. 3d 395, 398, 912 N.E.2d 1242, 1245 (2009). Thus, the court's decision as to the appropriate sentence will not be overturned on appeal "unless the trial court abused its discretion and the sentence was manifestly disproportionate to the nature of the case." *People v. Thrasher*, 383 Ill. App. 3d 363, 371, 890 N.E.2d 715, 722 (2008).

Here, defendant was convicted of unlawful possession with intent to deliver a controlled substance and unlawful delivery of a controlled substance. As both offenses involved more than 1 gram but less than 15 grams of a substance containing heroin, the offenses were classified as Class 1 felonies. 720 ILCS 570/401(c)(1) (West 2008). A person convicted of a Class 1

felony is subject to a sentencing range of 4 to 15 years in prison. 730 ILCS 5/5-8-1(a)(4) (West 2008).

The trial court sentenced defendant to concurrent five-year terms on each count. As the court's sentence fell within the applicable sentencing range, we find no abuse of discretion. Accordingly, as any appeal in this cause would be frivolous, OSAD is granted leave to withdraw as counsel.

III. CONCLUSION

For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment.

Affirmed.