IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY FRANCES ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48628

FILED

MAY 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of trafficking in a controlled substance. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Mary Frances Anderson to serve a prison term of 10 to 25 years.

First, Anderson contends that the district court erred by finding that the search warrant was valid and denying her motion to suppress evidence. She claims there was no basis for the warrant because there was no evidence of wrongdoing on her part and the evidence sought by the police could have been retrieved without the warrant.

In her pretrial suppression motion, Anderson claimed that the warrant was based on information obtained from an informant who the police knew to be untruthful. The district court held a hearing on the motion and heard testimony from the informant, the affiant, and two law enforcement officers.

The district court found that in many respects the informant's information was unreliable and untruthful, the police informed the magistrate of the informant's inaccuracies and untruths, and some of the informant's information was believed to be known only by the police and

some of his other information was substantiated by the police. The district court further found that even if the informant's questionable information had been stricken from the warrant application, the remaining information would have provided sufficient probable cause to believe that evidence of narcotics activity and paraphernalia was present in Anderson's house. The district court concluded that the warrant was valid on its face, and it denied Anderson's suppression motion. We conclude that the district court's factual findings are supported by substantial evidence and that Anderson has not demonstrated that the district court erred in denying her motion.[1]

Second, Anderson contends that the district court erred by denying her motion for a new trial based on newly discovered evidence. While cleaning her house, Anderson discovered a report of a mental health examination that she underwent roughly two years before her trial. Anderson claims that the district court should have granted "a new trial upon learning more about [her] disabilities. At minimum, a hearing should have been held to determine whether [her] mental disabilities affected her ability to waive her right to remain silent or to possess the requisite criminal intent to be found guilty of the offense charged."

"The grant or denial of a new trial on the ground of newly discovered evidence is within the discretion of the trial court."[2] Here, the district court applied the general standard for a new trial based on newly

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[1]See State v. McKellips, 118 Nev. 465, 469, 49 P.3d 655, 658-59 (2002).

[2]Hennie v. State, 114 Nev. 1285, 1289, 968 P.2d 761, 764 (1998).

discovered evidence and found that (1) the report was not newly discovered evidence because it was in Anderson's possession before the trial; (2) it was not material to the defense because Anderson's depression or difficulty performing tasks is not a defense to her possession of more than 28 grams of methamphetamine; (3) it could have been discovered and produced for trial with reasonable diligence as Anderson admits that it was in her house; (4) it was cumulative of Anderson's testimony regarding her depression and treatment; (5) it would not render a different result probable upon retrial; (6) it was not be used to contradict, impeach, or discredit a former witness; and (7) it was not the best evidence the case admits, because Anderson's own testimony about her current medical condition is better than a report that is roughly two years old.[3] The district court concluded that Anderson failed to make the required showing that a new trial was warranted based on newly discovered evidence. We conclude that the district court's findings are supported by the record and that Anderson has not demonstrated that the district court erred by denying her motion for a new trial.

Third, Anderson contends that the evidence presented at trial was insufficient to support her conviction because it failed to establish the requisite criminal intent. Anderson specifically claims that she is mentally ill and therefore incapable of forming the mens rea necessary to commit a crime.[4] However, our review of the record reveals sufficient

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[3]See Callier v. Warden, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995) (citing Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991)).

[4]Anderson cites to Finger v. State, 117 Nev. 548, 27 P.3d 66 (2001).

evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[5]

We note that the jury heard evidence that Anderson told law enforcement officers where the methamphetamine was located in her house and that she sold drugs because she needed the money to support her family. Moreover, during her testimony, Anderson acknowledged that she knowingly possessed the drugs. We conclude that a rational juror could reasonably infer from the evidence presented that Anderson had the necessary intent to commit the crime of trafficking in a controlled substance. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[6]

Fourth, Anderson contends that the application of NRS 453.3385 to the facts in her case is unconstitutional. Anderson claims that "the statute only requires that the person knowingly or intentionally possess the controlled substance, but is not required to know or have the intent to possess a specific quantity, which causes the level of possession to rise from one category to another." Anderson declares that this amounts to "strict liability," but she fails to argue how this makes the statute unconstitutional and she does not support her declaration with

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[5]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[6]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev at 56, 825 P.2d at 573.

citations to relevant legal authority.[7] "All statutes are presumed constitutional and the party attacking the statute has the burden of establishing that the statute is invalid."[8] We conclude that Anderson has not met her burden.

Fifth, Anderson contends that her sentence constitutes cruel and unusual punishment, and that it is unduly harsh given her medical conditions. However, regardless of its severity, a sentence that is within the statutory limits is not "'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'"[9] Here, the relevant statute is constitutional, Anderson's sentence falls within the statute's parameters, and the sentence is not unreasonably disproportionate to Anderson's crime.[10]

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[7]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

[8]Williams v. State, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002).

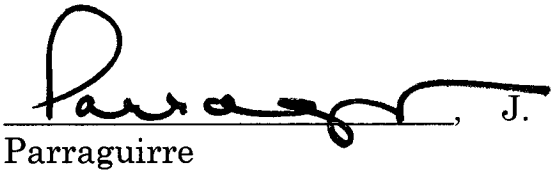
[9]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

[10]See NRS 453.3385(3)(b) (actual or constructive possession of 28 or more grams of a controlled substance is punishable by a prison term of 10 to 25 years).

Sixth, Anderson contends that her statements to the police should have been suppressed because she is mentally ill.[11] Anderson specifically refers to statements that she made to the police while they were searching her house. However, Anderson failed to raise this contention below,[12] and she has not demonstrated that it constitutes plain error.[13]

Having considered Anderson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.



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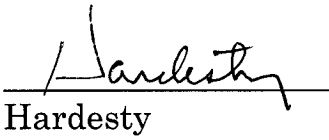
Parraguirre



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[11]Anderson cites to American Bar Association Standards 7-5.8(a) and 7-5.9(a).

[12]McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

[13]See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

cc: Hon. Robert E. Estes, District Judge
Martin G. Crowley
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk