STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 29, 2009
v	No. 285829 Wayne Circuit Court
SONTAE SELLERS, Defendant-Appellant.	LC No. 08-001052-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial convictions of possession with intent to deliver at least 50 grams but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v). Defendant was sentenced to concurrent prison terms of 99 months to 20 years and two to four years, respectively, to be served consecutively to the sentence defendant was serving on parole. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the prosecution failed to present sufficient evidence to support his convictions. He argues, in particular, that there was insufficient evidence to support a conclusion that he possessed the drugs, or, if he did possess them, that he intended to sell the cocaine. We disagree.

We review a defendant's allegations regarding sufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we will not interfere with the role of the trier of fact to determine the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Contrary to defendant's insinuation, a defendant need not own a controlled substance or have actual physical possession of it when it is discovered to have "possession" of it. *Wolfe*, *supra* at 519-520. The controlled substance may be constructively possessed or jointly possessed. *Id*. at 520. Citing *United States v Manzella*, 791 F 2d 1263, 1266 (CA 7, 1986), the Supreme Court discussed the "dominion and control" necessary to establish constructive possession in *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517(1995):

> In the foremost discussion of what is necessary to have dominion or control over drugs, Judge Posner explained that a defendant "need not have them literally in his hands or on premises that he occupies but he must have the right (not the legal right, but the recognized authority in his criminal milieu) to possess them, as the owner of a safe deposit box has legal possession of the contents even though the bank has actual custody."

Here, viewing the evidence in the light most favorable to the prosecution, we hold that sufficient evidence connected defendant to the cocaine and the heroin. Defendant himself gave the address where the drugs were found as his own, and another resident verified that defendant lived in the home when asked by defendant's parole agent. Defendant did not tell his parole agent that he had moved out until a number of months after the search had occurred. Nor did he tell the agent at that time that he had moved out before the search. The drugs were found in a locked safe along with defendant's identification and bankcard. Male clothing found in the bedroom provided additional circumstantial evidence that defendant lived there. Considering the circumstantial evidence, the reasonable inferences arising therefrom, and the totality of the circumstances, and resolving all evidentiary conflicts in favor of the prosecution, there was sufficient evidence to show that defendant had dominion and control over the cocaine and heroin in the safe. Even if the evidence might also connect the additional resident to the drugs as well, "possession may be joint, with more than one person actually or constructively possessing a controlled substance." *Wolfe*, *supra* at 520. Nor was the prosecutor required to disprove defendant's assertion that the other resident planted defendant's identification and concocted a story about a break-in in order to allow the police to discover them. See *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant also argues that there was insufficient proof that he possessed the cocaine with the intent to deliver it. However, the officer's testimony about the amount of the cocaine involved, its worth, and its packaging support a finding that the cocaine was not for individual use. In addition, the discovery of a scale supports the finding as well. The prosecution presented sufficient evidence that defendant possessed the cocaine with intent to distribute it.

Defendant also argues that the trial court's failure to award him credit for the 107 days he spent in jail pending trial and sentencing in this case based on his parole status violates Michigan law regarding consecutive sentencing and jail credit. Defendant argues that he is entitled to sentencing credit on his minimum term, notwithstanding that he was on parole at the time he committed the instant offenses. We disagree.

Pursuant to MCL 769.11b:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or

> unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

However, this Court has held that a parolee who is arrested for a new criminal offense is not entitled to credit for time served in jail on the sentence for the new offense, but is instead entitled to have jail credit applied exclusively to the sentence from which parole was granted. *People v Filip*, 278 Mich App 635, 641-642; 754 NW2d 660; *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). This Court has held that this is true even where the defendant is not required to serve additional time on the sentence from which he was paroled. *Filip*, *supra* at 642. Recently, the Supreme Court addressed this issue in *People v Idziak*, 484 Mich 549; ___ NW2d ___ (2009). The *Idziak* Court held that under MCL 769.238(2), a parolee resumes serving his earlier sentence when he is arrested on the new charge. *Idziak*, *supra* at 566. As long as time remains on the sentence for the earlier conviction,[1] the accused remains incarcerated pursuant to this earlier conviction. See, generally, *id*. Thus, inasmuch as he is not being held "because of being denied or unable to furnish bond," MCL 769.11b does not apply, and the defendant is not entitled to receive jail credit for his new sentence. *Idzak*, *supra* at 562-563, 567. The *Idziak* Court also held that the denial of credit against a new minimum sentence does not violate the double jeopardy clauses or the equal protection clauses of the United States or Michigan constitutions. *Id*. at 569-574. Defendant's arguments are without merit.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Jane M. Beckering

[1] Defendant does not argue that the time remaining on the sentence for the earlier conviction expired while he was incarcerated.