

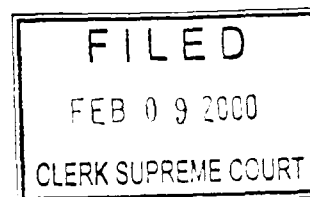
IN THE COURT OF APPEALS OF IOWA

No. 1999-538 (9-799) / 98-2077
Filed February 9, 2000

STATE OF IOWA,
Appellee,

vs.

JASON KENT MAHONY,
Appellant.



Appeal from the Iowa District Court for Madison County, Donna L. Paulsen (trial) and David L. Christensen (sentencing), Judges.

On appeal from his conviction for possession of a controlled substance (methamphetamine) with intent to manufacture, the defendant contends the court erred in concluding the minutes of testimony supplied sufficient evidence to find him guilty. **REVERSED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Martin L. Ramsey, County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

VOGEL, J.

Jason Kent Mahony appeals his conviction and sentence for the charge of possession of a controlled substance with the intent to manufacture in violation of Iowa Code section 124.401(1)(c)(6) (1997). Mahony contends there was insufficient evidence to convict him of the necessary elements of the charge. Because we find this was a bench trial on the stipulated minutes rather than a plea and the minutes contain insufficient evidence to support a conviction, we reverse.

Background facts. On June 10, 1997, Mahony was arrested while officers and narcotics agents executed a search warrant on the home of Rita Gifford. The search produced items used to manufacture methamphetamine and traces of methamphetamine and marijuana. On June 17, 1997, Mahony was charged with conspiracy to manufacture methamphetamine in violation of Iowa Code section 124.401(1)(c)(6) (1997). Mahony waived his right to a speedy trial. He filed a motion to suppress in August which was denied in February. Thereafter, Mahony entered into an agreement which stipulated:

[T]he witness identified in the minutes of testimony, if called, would testify in conformity with the minutes and the Court can consider the minutes of testimony and make its own decision on whether the defendant is guilty of the amended charge of manufacture – or possession with intent to manufacture methamphetamine as charged in Iowa Code Section 124.401(1)(c)(6).

The court found Mahony guilty as charged and sentenced him to an indeterminate ten year incarceration term. This, however, was suspended and Mahony was placed on probation for two years. Mahony now appeals.

Scope of review. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). The same standard for substantial evidence applies to both jury and bench trials. *State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990).

Nature of the proceedings. Before we can assess whether there was sufficient evidence to convict Mahony of possession with the intent to manufacture, we must determine what type of agreement was entered into by Mahony and the State. The State asserts it was a plea agreement in which Mahony pled guilty in return for the State's recommendation of a suspended sentence and probation. Mahony contends the agreement was that he would stipulate to the minutes and let the court decide his guilt or innocence in exchange for the state's sentencing recommendation.

This determination is pivotal to the appeal. If the agreement was a guilty plea with a stipulation to the minutes as providing the factual basis, Mahony may not appeal the sentence unless he filed a timely motion in arrest of judgment. Iowa R. Cr. P. 23(3)(a); see *State v. Miller*, 590 N.W.2d 724, 725 (Iowa 1999). He did not preserve error in this way. Therefore, an appeal on this ground would

be barred. If, on the other hand, Mahony agreed to a bench trial on the stipulated minutes, the appeal process is available to him.

We find that although the record reveals Mahony and the court used conflicting language to characterize the proceedings, this was a bench trial. When conflicting language is used, the court may look to the entire record to determine what type of proceeding was used. *See State v. Sayre*, 566 N.W.2d 193 (Iowa 1997) (record was so confused as to prevent appellate court from determining what type of proceeding was intended). During the proceedings, Mahony's attorney stated:

[W]e're not making any admission of any guilt. We're simply stipulating that the evidence set forth in the minutes of testimony, if the Court considers that, we will not put on any evidence of our own. If the Court considers the minutes, the Court can decide whether Mr. Mahony is guilty or innocent of charges that have been filed against him pursuant to the State's oral amended Trial Information.

The trial court later stated:

All right. Then at this time then based on the record presented, the Court accepts the stipulation of the parties and finds that the defendant has committed the offense as amended, that being he has possessed with intent to manufacture methamphetamine in violation of Iowa Code Section 124.401(1)(c)(6). . . the Court finds that the defendant is thus guilty of the crime charged.

The court did not say it accepted a guilty plea but that it found Mahony guilty. This finding, however, was made on a document captioned, "Plea Order." However, the court did not apprise Mahony of his right to file a motion in arrest of judgment, as a guilty plea requires. Iowa R. Cr. P. 8(2)(d). Rather, the court explained his right to move for a new trial. Although there is conflict in the terminology used by the court, defense counsel's consistent statements and the

substance of the proceedings lead us to conclude this was a bench trial on the stipulated minutes.

Having determined that this was indeed a trial, the State concedes there were insufficient facts in the record to support a finding of guilt. See *State v. Schminkey*, 597 N.W.2d 785 (Iowa 1999) (minutes lacked a factual basis to support a guilty plea). Finding the record lacks sufficient evidence to convict on these charges, we reverse.

REVERSED.