

3 of 19 DOCUMENTS

MICHAEL R. CONKLIN, Appellant, v. STATE OF INDIAN, Appellee.

No. 64S00-9207-CR-596

SUPREME COURT OF INDIANA

596 N.E.2d 1369; 1992 Ind. LEXIS 194

July 31, 1992, FILED

PRIOR HISTORY: [*1]

APPEAL FROM THE PORTER SUPERIOR COURT.
The Honorable Thomas W. Webber, Judge. Cause No.
64D01-8904-CF-114D. 64A03-9103-CR-69.

DISPOSITION:

We remand the cause for a new trial on the charge of dealing.

COUNSEL:

For Appellant: Gary S. Germann, Chudom, Meyer & Germann, Portage, Indiana 46368.

For Appellee: Linley E. Pearson, Attorney General of Indiana, Louis E. Ransdell, Deputy Attorney General, Indianapolis, Indiana 46204.

JUDGES: SHEPARD, C.J., DeBRULER, DICKSON, and KRAHULIK, JJ., concur. GIVAN, J., would grant transfer and affirm the trial court.

OPINIONBY: PER CURIAM

OPINION:

On Petition To Transfer

PER CURIAM.

A jury found appellant Michael B. Conklin guilty of dealing cocaine, a class, B felony, and the trial court sentenced him accordingly. A divided Court of Appeals held that the admitting certain evidence about Conklin's prior dealing in cocaine was error and reversed. *Conklin v. State (1992), Ind. App., 587 N.E.2d 725*. We grant transfer and summarily affirm their holding on that issue. Ind. Appellate Rule 11(B)(3).

Having held that the trial court committed reversible error, the Court of Appeals remanded with instructions to enter a conviction on the lesser included offense of possession of cocaine. [*2] Such a mandate does not give either party its due. Appellant alleged trial error; having prevailed, he is entitled to be tried anew. Similarly, the penal interests of the State entitle the prosecution to pursue its allegation that the Conklin committed the crime of dealing in cocaine.

We remand the cause for a new trial on the charge of dealing.