

Case Summary

Matthew J. Rambo appeals his twenty-year executed sentence for Class A felony dealing in cocaine. We affirm.

Issue

We address one issue, which we restate as whether Rambo was properly sentenced.

Facts

On August 7, 2007, Rambo was charged with Class A felony dealing in cocaine and Class B felony dealing in methamphetamine. On February 12, 2008, Rambo, twenty-three years old at the time, pled guilty to Class A felony distribution of cocaine, and the State dismissed the remaining charge. The plea agreement called for the State to agree to a twenty-year executed sentencing cap. At his sentencing hearing, counsel for the defendant urged the court to suspend twelve years of this sentence. The court rejected that argument and sentenced Rambo to the Indiana Department of Corrections for a period of twenty years. Rambo now appeals his sentence.

Analysis

It is well settled that sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). Notwithstanding the review and revise power discussed below, a trial court's sentencing decisions are subject to review only for abuse of discretion. Id. Provided the sentence falls below the statutory maximum, an abuse of discretion will occur only if the decision is "clearly against the

logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006).

Although a trial court may have acted within its sound discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] . . . independent appellate review and revision of a sentence imposed by the trial court.” Anglemyer, 868 N.E.2d at 491. Applied through Indiana Appellate Rule 7(B), this authority allows a court to “revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Id. Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

In challenging his twenty-year sentence for Class A felony dealing in cocaine, Rambo argues that his sentence is inappropriate under Rule 7(B). At the same time, his argument also incorporates discussion of a factor he claims was improperly considered as an aggravator. Although the former requires review under 7(B), the latter necessitates review under an abuse of discretion standard. As we recently reiterated, “inappropriate sentence and abuse of discretion claims are to be analyzed separately.” King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). We therefore address Rambo’s argument on abuse of discretion and inappropriate sentencing to consider whether: 1) the trial court

abused its discretion in considering an improper aggravating factor; and 2) the sentence is inappropriate when viewed in light of Rambo's character and the nature of the offense.

A. Abuse of Discretion

Rambo argues that the trial court improperly considered the geographic location of his offense as an aggravating factor. Rambo draws support for this argument from the trial court's observation that Rambo may have received a suspended sentence in a larger county. According to Rambo: "It would seem to me that we can not [sic] allow sentences to be imposed just because a person lives in a small county" Appellant's Br. p. 10. Although we recognize that such a consideration would be improper, we cannot agree with Rambo's characterization of the trial court's observation.

Rambo entered a plea of guilty to Class A felony dealing in cocaine. The plea agreement called for the State to recommend a sentencing cap of twenty years. Counsel for the defendant recommended the trial court suspend at least twelve years of the sentence. In responding to this recommendation, the trial court observed that when originally codified, Class A felonies were not suspendable but the legislature subsequently chose to lessen the penalties associated with drug related offenses. The trial court presumed that this was an attempt to deal with an influx of drug related cases, which often times overwhelm larger communities. From these observations, we cannot draw an inference that the trial court considered the location of the offense as an aggravating factor. Instead, the trial court merely recognized that although a suspended sentence may be more common in surrounding counties, it was still free to impose a

penalty within the statutory sentencing range. Therefore, we cannot find that the trial court abused its discretion.

B. Appropriateness of the Sentence

Rambo also argues that his sentence is inappropriate in light of the nature of the offense and his character. In so arguing, Rambo would have us review his sentence in order to determine whether it was “manifestly unreasonable.” Appellant’s Br. p. 7. However, as our supreme court has stated, the rewording of Rule 7(B) to allow revision of “inappropriate” as opposed to “manifestly unreasonable” sentences “changed its thrust from a prohibition on revising sentences unless certain narrow conditions were met to an authorization to revise sentences when certain broad conditions are satisfied.” See Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005).

Even so, we exercise a certain amount of deference when reviewing the trial court’s sentencing decision “both because Rule 7(B) requires us to give ‘due consideration’ to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” See Rutherford v. State, 866 N.E.2d 867, 873 (Ind. App. Ct. 2007).

We conclude Rambo has not carried his burden of persuading us that his sentence is inappropriate. As to the nature of the offense, Rambo argues that “the quantity . . . sold was minimally above the quantity necessary to make the offense a Class A Felony.” Appellant’s Br. p. 9. Thus, he contends the amount of cocaine distributed should mitigate the seriousness of his transgression. We disagree.

Rambo was viewed on videotape dealing cocaine to a confidential police informant. The trial court recognized that Rambo had possessed a scale, was able to work with the product, and appeared well versed in the drug trade. In addition, the quantity dealt reached the threshold determined by our legislature to classify the offense as a Class A felony. This determination necessarily reflects society's view as to the seriousness of Rambo's offense. We decline to adopt Rambo's argument that the harm cause by his offense was somehow de minimis.

As to the nature of his character, we recognize his age as well as his willingness to accept responsibility for his actions weighs in his favor. Nevertheless, the record reveals that Rambo has a previous conviction for an offense involving cocaine. In addition, Rambo was dealing the narcotics in the very same home where his four-year-old daughter lives. Moreover, the record reveals that he is quite conversant in the drug trade. We find that the foregoing reflects poorly on his character.

The nature of the offense justifies Rambo's sentence. Moreover, his knowledge of the drug trade, prior conviction for a cocaine related offense, and disregard for the health, safety, and welfare of his child reflects quite poorly on his character. We cannot say that his twenty-year executed sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion when it observed that Rambo might have been given a suspended sentence in a larger county. In addition, his twenty-year

executed sentence is appropriate in light of his character and the nature of the offense.

We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.