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IN THE
COURT OF APPEALS OF INDIANA

CARLOS RAMIREZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0907-CR-337
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0808-FA-36

February 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Carlos Ramirez contends that his aggregate sentence of forty years for Dealing in Cocaine[1] is inappropriate. We revise and remand.

Facts and Procedural History

On June 12, June 18, and July 2, 2008, police, working with a confidential informant, were able to conduct three successful controlled buys of cocaine from Ramirez in Goshen, Indiana. One buy involved an amount of cocaine in excess of three grams. The State charged Ramirez with three counts of Dealing in Cocaine, two as Class B felonies and one as a Class A felony.[2] After a jury trial, Ramirez was found guilty as charged. The trial court sentenced him to fifteen years for each of the Class B felonies and to forty years for the Class A felony. The sentences were ordered to be served concurrent.

Ramirez now appeals.

Discussion and Decision

In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

> Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may 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

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[1] Ind. Code § 35-48-4-1.

[2] "The offense is a Class A felony if: (1) the amount of the drug involved weighs three (3) grams or more . . . ." I.C. § 35-48-4-1(b)(1).

> of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

More recently, the court reiterated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to "leaven the outliers." Id. at 1225. "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Id. at 1224.

Here, Ramirez was convicted of three counts of Dealing in Cocaine, one as a Class A felony and two as Class B felonies. For a Class A felony, the sentencing range is twenty to fifty years, with thirty years as the advisory. Ind. Code § 35-50-2-4. A Class B felony has a sentencing range of six to twenty years, with ten years as the advisory. Ind. Code § 35-50-2-5. The trial court sentenced Ramirez to forty years for the Class A and fifteen years for each of the Class B felonies, with the sentences running concurrent.

As to the nature of the offense, Ramirez sold cocaine to a confidential informant three times, one of which involved an amount over three grams. The under-cover police officer on the case described Ramirez as a middle-man because Ramirez had to make numerous phone calls to obtain the cocaine for each deal. Based on the circumstances, the nature of the

offense is not extraordinary.

As to the character of the offender, Ramirez has no prior criminal history. However, he is a citizen of Mexico who entered and has remained in this country illegally. He obtained work in Indiana by using a false name. While the record indicates that Ramirez had been in the Elkhart area since 2008, it is unclear how long he has been in the United States. Ramirez also admitted to being addicted to and using cocaine for six years prior to his conviction. After due consideration of Ramirez's illegal status and lack of criminal history, we conclude that these characteristics are in equipoise and warrant advisory sentences.

In light of the nature of the offense and the character of the offender, we conclude that the sentences are inappropriate. We remand for the trial court to impose a thirty-year sentence for the Class A felony and a ten-year sentence for each of the Class B felonies, all of which is to be served concurrently.

Revised and remanded.

BAKER, C.J., and ROBB, J., concur.