

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

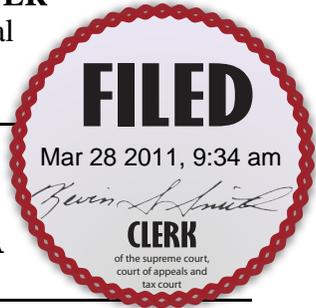
KRISTIN A. MULHOLLAND
Office of the Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



KRISTIN M. ESCAMILLA,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

)
)
)
)
)
)
)
)
)
)

No. 45A04-1009-CR-570

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-1002-FA-00006
45G02-0604-FC-00040

March 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Kristin M. Escamilla pleaded guilty to dealing in narcotics, a Class B felony, and appeals her sentence of eight years in prison. The sole issue on appeal is whether the sentence is inappropriate in light of the nature of the offense and Escamilla's character. Concluding that the sentence is not inappropriate, we affirm.

Facts and Procedural History

On February 23, 2010, a confidential informant made a controlled purchase of 0.1 gross grams of heroin from Escamilla in an apartment within one thousand feet of a federally-funded housing complex. On February 25, 2010, the same confidential informant arranged and carried out another controlled purchase from Escamilla at the same apartment, this time for 0.3 gross grams of cocaine and a 60-milligram morphine tablet.

The State charged Escamilla with two counts of dealing in narcotics and one count of dealing in cocaine, all Class A felonies, and later added a third charge of dealing in narcotics as a Class B felony. The Probation Department filed a petition to revoke Escamilla's probation from a 2007 conviction for check fraud, a Class D felony, for her arrest, failure to pay probation user fees, and failure to report.

Pursuant to a plea agreement, Escamilla pleaded guilty to dealing in narcotics as a Class B felony and agreed to pay restitution, and the State dismissed all other charges and agreed not to seek Escamilla's classification as an habitual offender. Under the agreement, the trial court would determine a sentence of no more than ten years in prison. Following a sentencing hearing, the trial court sentenced Escamilla to eight years,

revoked her probation for check fraud, and ordered she serve her eighteen-month check fraud sentence concurrent with her eight-year sentence for dealing in narcotics. Escamilla now appeals her sentence.

Discussion and Decision

I. Standard of Review

This court has authority to revise a sentence “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.” Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. Nevertheless, the defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). “[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.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Eight-Year Sentence

Escamilla argues her eight-year sentence for dealing in narcotics as a Class B felony is inappropriate because she committed a victimless crime, her sentence would create a substantial hardship to her four young children, she has expressed remorse, and she acknowledges and is seeking help for her drug problem. For a Class B felony, the statutory sentencing range is six to twenty years, and the advisory sentence is ten years. Ind. Code § 35-50-2-5.

As to the nature of Escamilla's offense, Escamilla contends this is a "victimless" crime because she sold drugs to a confidential informant. Brief of the Appellant at 9. We disagree, and evaluate her conduct as she intended – to sell drugs to another member of the community. If, as she intended, she sold drugs to another member of her community, her crime certainly would not have been victimless. On the contrary, our national, state, county, and city authorities and innumerable researchers frequently recount the social, medical, and economic costs of drugs in local communities. Among the most heart-wrenching statistics time after time are those describing – as Escamilla can now relate to – young children of the addicted who are left behind while their parents are incarcerated and seek control over their addiction. This is certainly not a victimless crime. Although Escamilla's conduct is relatively unremarkable as a case of dealing drugs, her eight-year sentence does not strike us as inappropriate given the nature of the offense.

This is especially so, considering that Escamilla did not receive an enhanced sentence. Escamilla's eight-year sentence is only two years more than the minimum permitted by the law, and two years less than the advisory sentence for a Class B felony. Similarly, her eight-year sentence is two years less than the maximum sentence permitted under the plea agreement. In executing her plea agreement, Escamilla acknowledged and agreed that the trial court may sentence her to up to ten years in prison. Although we find her conduct to be relatively unremarkable as an instance of drug dealing, the nature of her offense does not make her sentence for less than the advisory sentence dictated by the General Assembly and less than that to which she agreed under the plea agreement inappropriate.

As to Escamilla's character, we are first drawn to her Pre-Sentence Investigation Report ("PSI"), which informs us that, beginning in 2002, Escamilla has previously been convicted of one felony and one misdemeanor reduced from a felony. Her PSI also notes – and she to some extent concedes – that she has been abusing drugs illegally since 2006 and has completed at least two formal drug treatment programs. Although she has completed the programs, she has not reformed her lifestyle to avoid returning to her addiction, and therefore these voluntary submissions to treatment do not reflect especially positively on her character. Her history of convictions, although unrelated to the current offense, demonstrates her relatively long-term struggle with abiding by the law.

We are encouraged by Escamilla's care and attention to her young children as testified to at her sentencing hearing, her expression of remorse, and recent acknowledgement and efforts to seek help for her drug problem. However, Escamilla's family and loved ones are perhaps better served by her first gaining control of her addictions. Even aside from the various drug treatment programs that may be available to her while in prison, incarceration itself will indirectly provide her with drug treatment because she will no longer have access to drugs. Further, the mitigating value of Escamilla's agreement to plead guilty is lessened because the plea agreement provided her with a substantial benefit, the State's dismissal of three Class A felony charges, see McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007), and the State's agreement not to seek habitual offender status.

Therefore, although we are encouraged by Escamilla's character as she intends on conducting herself in the future, we do not find her eight-year sentence inappropriate

given her present state of addiction.

Conclusion

Escamilla's sentence is not inappropriate in light of the nature of her offense and her character, and is therefore affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.