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FILED
Jun 16 2011, 9:17 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JOHN PINNOW
Special Assistant to the State Public Defender
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY R. ROM
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LUCIANO TORRES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 44A03-1011-CR-615
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAGRANGE CIRCUIT COURT
The Honorable J. Scott VanDerbeck, Judge
Cause No. 44C01-0909-FA-6

June 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Luciano Torres appeals his sentence for dealing in cocaine as a class B felony. Torres raises one issue which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On August 25, 2009, Indiana State Police Officer Nicholas Meade initiated a traffic stop on Torres, who was driving accompanied by a passenger, for "[u]nsafe lane movement" in LaGrange County, Indiana. Transcript at 4. Based upon his training, Officer Meade recognized "key indicators in the vehicle" that the vehicle was being used to transport narcotics. Id. at 5. Specifically, Officer Meade recognized a "medallion hanging from the gearshift of the vehicle . . . associated with [] a patron saint in Mexico for drug smugglers," noticed that there was "[a] single key in the ignition," and noticed that there were "[a] lot of pop cans, fruit—a lot of food in the vehicle for hard driving, saying it had never stopped." Id. at 6.

Officer Meade asked Torres to exit the vehicle and spoke with Torres at the rear of the vehicle. Officer Meade then issued Torres a warning for unsafe lane movement and explained the warning to Torres in English. Afterwards, Officer Meade informed Torres that he was free to go but also asked if he could search the vehicle. Officer Meade told Torres that he could refuse the search, but Torres told Officer Meade that he could search the vehicle. During the search Officer Meade recovered a bag from the front center console containing 3.5 grams of a white powdery substance which tested positive for the

presence of cocaine. Officer Meade then placed Torres and the passenger in custody and the vehicle was impounded.

After obtaining a search warrant, Officer Meade again searched the vehicle and employed the help of a K-9 unit. The K-9 alerted to the presence of narcotics in the vehicle. Officer Meade, along with Officers Pete Bradley and Jeff Dolson recovered "[a]pproximately two kilos of cocaine," which is equivalent to about 4.4 pounds and which had a street value of about $60,000, from "a natural void of the rear door . . . ." Id. at 13, 15. Afterwards, the officers issued Miranda warnings to Torres and the passenger. Torres chose to waive his Miranda rights and was interviewed by the officers including Officer Dolson who spoke Spanish. Torres indicated during the interview that he was paid approximately $4,000 to transport the cocaine from Chicago to Philadelphia.

On September 1, 2009, the State charged Torres with dealing in cocaine as a class A felony. On July 12, 2010, Torres filed a motion to suppress, and on August 10, 2010, the court held a suppression hearing in which Torres testified that Officer Meade spoke to him in English, and that he did not know whether Officer Meade asked him "if it was okay to search the vehicle" because he did not "understand much English." Id. at 79. On cross examination, Torres testified that when Officer Meade asked him the question he "did not say anything to him. [Torres] absolutely did not say yes or no, [he] just did not say anything." Id. at 82.

On September 7, 2010, the day before a jury trial was set to begin, Torres filed a Motion to Vacate Jury for Guilty Plea hearing which the trial court granted. The next

day, the court held a guilty plea hearing in which the State and Torres discussed with the court an agreed-upon plea agreement that Torres would plead guilty to the lesser included offense of dealing in cocaine as a class B felony and would serve a term of imprisonment of between ten and fifteen years executed. The court accepted Torres's guilty plea. On October 19, 2010, the court held a sentencing hearing and sentenced Torres to fifteen years executed in the Department of Correction.

The issue is whether Torres's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Torres argues that his sentence should be reduced because his "role was as a low level drug courier or mule" and that "[h]e had no prior convictions and his guilty plea saved the State the expense of a trial, and a possible retrial." Appellant's Brief at 4. Torres also argues that his guilty plea "benefited the State" and that if he "had been convicted after a trial, he had a viable evidentiary issue to argue on appeal." Id. at 6. The State argues that "the manner in which [Torres] transported the cocaine suggests that he was no novice to drug trafficking." Appellee's Brief at 4.

Our review of the nature of the offense reveals that Torres was trafficking 4.4 pounds of cocaine through the State of Indiana which, as noted in the sentencing order, is an amount "well beyond what one person could consume in his lifetime." Appellant's Appendix at 11. The cocaine had a street value of approximately $60,000 and Torres was paid $4,000 to transport it.

Our review of the character of the offender reveals that Torres pled guilty to one count of dealing in cocaine as a class B felony, but the State reduced the charge from a class A felony to a class B felony. The plea agreement also established that Torres would be sentenced to between ten and fifteen years in the Department of Correction. Torres is a legal resident alien and has lived in the United States since 1988. Over the course of the proceedings in this case, Torres indicated that he did not understand the English language, utilizing an interpreter, and he attempted to get the seized evidence suppressed based upon a lack of consent to search his vehicle. However, Officer Meade testified that during the traffic stop Torres "was answering [Officer Meade's] questions just fine." Transcript at 54. The record indicates that Torres has not been previously convicted of a crime, but he has previously been charged in Illinois with related crimes; in 2001, he was charged with possessing "900 plus grams of cocaine and in 2007 . . . for 15 plus grams of cocaine." Id. at 18.

Torres was given the opportunity to plead guilty to dealing cocaine as a class B felony despite admitting to trafficking two kilograms of the substance which is well over the amount necessary to be charged with and convicted of dealing in cocaine as a class A

felony. Thus, Torres received a substantial benefit in return for pleading guilty. In light of this fact, and after due consideration of the trial court's decision, we cannot say that the sentence of fifteen years, which was within the sentencing range agreed upon by the parties in the plea agreement, is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Torres's sentence for dealing in cocaine as a class B felony.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.