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IN THE
COURT OF APPEALS OF INDIANA

GERARDO BENSEZ,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 49A02-0905-CR-473
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael S. Jensen, Magistrate
Cause No. 49G20-0803-FA-66621

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

In this belated appeal, Appellant/Defendant Gerardo Bensez appeals following his conviction, pursuant to a guilty plea, for Dealing in Cocaine as a Class B felony.[1] Upon appeal, Bensez claims that his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the February 9, 2009 plea hearing, on March 25, 2008, Bensez knowingly possessed cocaine with the intent to deliver. On March 27, 2008, the State charged Bensez with one count of dealing in cocaine, as a Class A felony, and one count of possession of cocaine, as a Class C felony. On February 9, 2009 Bensez pled guilty to one count of dealing in cocaine, as a Class B felony. In exchange for Bensez's guilty plea, the State agreed to drop the remaining Class C felony possession of cocaine charge. Pursuant to Bensez's plea agreement, Bensez was to receive a sixteen-year sentence with eleven years executed in the Department of Correction ("DOC") with the placement of the remaining five years left to the discretion of the trial court. The trial court accepted Bensez's plea agreement and entered a judgment of conviction against Bensez for Class B felony dealing in cocaine. At sentencing, the trial court noted Bensez's status as an illegal alien and sentenced Bensez to sixteen years, all executed in the DOC.[2] On April 30, 2009, Bensez filed a verified motion to file a belated notice of appeal, which the trial court granted

[1] Ind. Code § 35-48-4-1 (2007).

[2] The trial court instructed Bensez that the court would consider modifying his sentence to placement other than the DOC for the last five years of his sentence if he "gain[ed] some type of status" to "where you can be here [in the U.S.] legally." Tr. p. 57.

on May 11, 2009. This appeal follows.

DISCUSSION AND DECISION

Bensez contends that the trial court's order that he serve the last five years of his sixteen-year sentence in the DOC is inappropriate in light of the nature of his offense and his character. We disagree. Indiana Appellate Rule 7(B) provides that "The 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 of the offense and the character of the offender." The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of Bensez's offense, the record reveals that on March 25, 2008, Bensez knowingly possessed 499.642 grams of cocaine with the intent to deliver said cocaine to others. While we acknowledge that no violence or weapons were involved in the commission of the instant offense, we believe that one could reasonably infer from the extraordinary amount of cocaine possessed by Bensez that he was a major cocaine dealer.

With respect to Bensez's character, the record reveals that Bensez, who was twenty-nine years old at the time he committed the instant offense, has a history of drug possession and substance abuse. Bensez's criminal record includes a prior felony conviction for cocaine possession, a prior misdemeanor conviction for operating a vehicle while intoxicated, and multiple probation violations. Notably, at the time of trial, there was an open warrant for Bensez's arrest in Columbus, Indiana, stemming from an unrelated Class A felony drug dealing charge, which again suggests that Bensez is a major cocaine dealer. In addition, we

believe that Bensez's status as an illegal alien further indicates Bensez's disregard for the laws of this country.[3] While we applaud Bensez for his apparent efforts to support his minor child and to improve himself by completing a substance abuse program, we are unable to say that his sentence is inappropriate in light of the nature of his offense and his character.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

[3] It is well-established that one's status as an illegal alien may properly be considered at sentencing. *See Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008); *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 806 (Ind. Ct. App. 2005).