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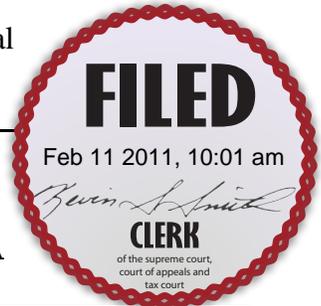
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**IN THE
COURT OF APPEALS OF INDIANA**



DAVID MARTINEZ ZARATE,)

Appellant-Defendant,)

vs.)

No. 54A01-1007-CR-356)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0907-FA-00094

FEBRUARY 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant David Martinez Zarate appeals the sentence the trial court imposed for his conviction of dealing in cocaine, a Class B felony. Ind. Code § 35-48-4-1 (2006). We affirm.

ISSUE

Zarate raises one issue, which we restate as whether Zarate's sentence is inappropriate in light of the nature of the offense and the character of the offender.

FACTS AND PROCEDURAL HISTORY

On May 14, 2009, a confidential informant purchased cocaine from Zarate in a controlled buy in Crawfordsville, Indiana. The informant gave Zarate \$200 and received 11.97 grams of cocaine. Zarate also sold cocaine to informants in several other transactions over a period of several weeks following May 14, 2009.

The State charged Zarate with six counts of dealing in cocaine as Class A felonies. Subsequently, the parties executed a plea agreement. Pursuant to the agreement, Zarate pleaded guilty to dealing in cocaine as a Class B felony, and the State dismissed the remaining drug dealing charges as well as a charge that was pending in another case. The trial court accepted Zarate's guilty plea and sentenced him to twenty years.

DISCUSSION AND DECISION

Zarate's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "[t]he 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.”¹ To assess the appropriateness of the sentence, we look first to the statutory range established for the class of the offense. Here the offense is a Class B felony, for which the advisory sentence is ten years, the shortest sentence is six years, and the longest sentence is twenty years. Ind. Code § 35-50-2-5 (2005). Zarate received the maximum sentence for his crime.

We then look to the nature of the offense and the character of the offender. The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant’s participation in it. *See Gauvin v. State*, 883 N.E.2d 99, 105 (Ind. 2008) (noting that the defendant’s crimes were “heinous and cruel”). The character of the offender is found in what we learn of the offender’s life and conduct. *See generally Houser v. State*, 823 N.E.2d 693 (Ind. 2005) (reviewing the defendant’s childhood, history of drug abuse, diagnosis of mental illness, and extensive criminal history).

An inappropriate sentence is not an erroneous sentence. It is a sentence authorized by statute, but one we find inappropriate and revise in light of the offense and the character of the offender. In reviewing a sentence, we give due consideration to the trial court’s decision and its more direct knowledge of the offense and the offender. *See Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009) (stating, “[a]s in all sentencing, . . . we

¹ Zarate asserts that his sentence is subject to review for an abuse of discretion. We disagree. Our Supreme Court has stated, “subject to the review and revise power . . . , sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). However, where, as here, an appellant asks an appellate court to review and revise a sentence pursuant to Indiana Appellate Rule 7(B), we apply the standard set forth above.

give considerable deference to the ruling of the trial court”). The burden is on the defendant to persuade us that the sentence of the trial court is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review here of the nature of the offense shows that Zarate sold almost twelve grams of cocaine to an informant. This amount of cocaine would have been well above the minimum necessary to prove the crime of dealing in cocaine as a Class A felony. The amount of cocaine Zarate sold could have done a great deal of harm in Crawfordsville. Furthermore, this crime was the first in a series of drug transactions that Zarate engaged in over a span of several weeks.

Our review here of the character of the offender shows that Zarate has a lengthy criminal history beginning in 1997 in Mexico. In the United States, Zarate has been found guilty of possession of marijuana, multiple charges of driving without a license and operating while intoxicated, multiple charges of domestic battery, and multiple charges of theft. He also has a history of failing to appear for court hearings, which has resulted in warrants being issued for his arrest in multiple jurisdictions. Finally, Zarate is in the United States illegally and has committed crimes using many different aliases. His criminal history demonstrates absolute disrespect for the law and the rights of others.

Zarate asserts that he pleaded guilty, but we conclude that his guilty plea is not a basis for reducing his sentence. Zarate received a substantial benefit from his plea. Specifically, the State dismissed five Class A felony drug dealing charges and a charge in another case. Thus, Zarate’s guilty plea does not reflect as favorably on his character as an unconditional plea might. *See Fields v. State*, 852 N.E.2d 1030, 1034 (Ind. Ct. App.

2006), *trans. denied* (determining that the defendant's guilty plea did not necessarily reflect positively on his character because the defendant received a benefit from the plea).

Zarate also notes that his incarceration will work a hardship on his five children and their mother, his girlfriend. This factor does not justify a reduction in Zarate's sentence because he has a lengthy criminal history and chose to support his family by dealing cocaine. Zarate has no right to provide for his family by way of criminal activity. *See Vasquez v. State*, 839 N.E.2d 1229, 1235 (Ind. Ct. App. 2005), *trans. denied* (determining that the defendant's sentence was not inappropriate because the defendant was selling drugs to support his six children).

We conclude that Zarate has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.