



## **STATEMENT OF THE CASE**

Homero Contreras-Batrez appeals from his sentence after he pleaded guilty to Dealing in Cocaine, as a Class A felony. Contreras-Batrez raises the following two issues for our review:

1. Whether the trial court abused its discretion when it sentenced him.
2. Whether his twenty-year sentence, with ten years suspended, is inappropriate under Indiana Appellate Rule 7(B).

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On February 7, 2008, Indianapolis Metropolitan Police Department officers, in the course of a narcotics investigation, seized from Contreras-Batrez's home 640.57 grams of cocaine, \$14,000 in cash, and various paraphernalia. On February 11, 2008, the State charged Contreras-Batrez with dealing in cocaine, as a Class A felony, and possession of cocaine, as a Class C felony. On August 8, five days before his trial was scheduled to begin, Contreras-Batrez pleaded guilty without a plea agreement. After accepting Contreras-Batrez's plea, the trial court merged the possession count into the Class A felony conviction.

The court held a sentencing hearing on October 27. At that hearing, the court stated in relevant part as follows:

Sir, you stand before the Court having pled guilty to dealing in cocaine, a Class A Felony. The maximum years for that charge is fifty years. The minimum is twenty. In consideration of your sentence I note that you have a family to support, and that you do not have any significant criminal history and no prior felonies. I also note that, as the State points out, you have lived in this country illegally and not taken steps to obtain citizenship. Considering those factors, the Court will impose the minimum sentence[.]

which is twenty years. You have asked that that be served on probation . . . . I don't think that is appropriate for you, sir. Based upon the evidence and testimony and statements, you were running a major cocaine dealing ring, and the only thing that stopped it was that you got caught. Now that you have been caught, you have decided to try to turn your life around, probably in an effort so that you wouldn't go to prison. Had you not been caught, I'm not sure what you would be doing.

Transcript at 30-31. The court then ordered Contreras-Batrez to serve twenty years with ten years suspended. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Abuse of Discretion**

Contreras-Batrez first argues that the trial court abused its discretion in sentencing him because the court did not consider his guilty plea as a mitigating circumstance. As our Supreme Court has held:

a defendant who pleads guilty deserves “some” mitigating weight be given to the plea in return. McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007) (citing Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005)). But an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. See Anglemyer, 868 N.E.2d at 490-91. And the significance of a guilty plea as a mitigating factor varies from case to case. Francis, 817 N.E.2d at 238 n.3. For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility, id., or when the defendant receives a substantial benefit in return for the plea. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999).

Anglemyer v. State, 875 N.E.2d 218, 220-21 (Ind. 2007). We review the trial court's failure to mention a guilty plea under our abuse of discretion standard of review. Id. at 220. One of the ways in which a trial court may abuse its discretion is by entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration. Id.

Contreras-Batrez's guilty plea was not a significant mitigator. While Contreras-Batrez pleaded guilty without the benefit of a plea agreement, he did so just five days before trial and in the face of overwhelming evidence of his guilt. Thus, his guilty plea "was more likely the result of pragmatism than acceptance of responsibility and remorse." Davies v. State, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), trans. denied. Accordingly, the trial court did not abuse its discretion in not addressing this issue.

### **Issue Two: Appellate Rule 7(B)**

Contreras-Batrez next contends that his sentence is inappropriate under Indiana Appellate Rule 7(B). Revision of a sentence under Appellate Rule 7(B) requires the defendant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). In reviewing a defendant's sentence under Appellate Rule 7(B), we give due consideration to the trial court's decision. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade this court that his sentence is inappropriate. Id.

Again, the trial court ordered Contreras-Batrez to serve the minimum sentence for a Class A felony, twenty years. See Ind. Code § 35-50-2-4. The court then suspended half of that minimum sentence. The court found three aggravators: Contreras-Batrez was in the United States illegally and not taking steps to obtain citizenship; he was running a major cocaine dealing operation; and the only reason he stopped that operation was because he was arrested. And the court identified the following mitigators: Contreras-

Batrez has a family to support; he has no significant criminal history; and after he was arrested he took steps to turn his life around. Contreras-Batrez also pleaded guilty.

Contreras-Batrez's sentence is not inappropriate in light of the nature of his offense. One of the circumstances that elevates dealing in cocaine to a Class A felony is if the amount of cocaine possessed by the defendant is in excess of three grams. See I.C. § 35-48-4-1(b)(1). Here, Contreras-Batrez possessed more than two-hundred times that amount, indicating that the scope of Contreras-Batrez's dealing operation was particularly egregious.

Nor is Contreras-Batrez's sentence inappropriate in light of his character. In support of this position, Contreras-Batrez argues that he successfully participated in a rehabilitation program, that he has an excellent support system and work history, that he is only twenty-five years old, that he has a family to support, and that he accepted responsibility for his crime by pleading guilty. But Contreras-Batrez ignores the fact that he is in the United States illegally and that he only ceased his drug-dealing operation because he was arrested. Further, even though he had a family to support, he was willing to put his ability to provide support for his family at risk by committing these crimes. And given the weight of the State's evidence against Contreras-Batrez, we are unpersuaded that his guilty plea entitles him to a more lenient sentence than the one he received.

### **Conclusion**

Contreras-Batrez received the minimum sentence for his Class A felony, and the trial court suspended half of that sentence. We hold that the trial court did not abuse its

discretion when it sentenced Contreras-Batrez and he has not met his burden on appeal of demonstrating that his sentence is inappropriate. Hence, we affirm his sentence.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.