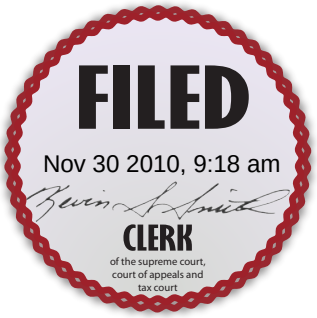

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IN THE
COURT OF APPEALS OF INDIANA

MARIA CHAVARRIA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-1007-CR-381
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0607-FA-57

November 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Maria Chavarria appeals the sentence imposed by the trial court after Chavarria pleaded guilty to Dealing in Cocaine Weighing Over Three Grams,[1] a class A felony. Chavarria argues that the trial court abused its discretion in sentencing her and that the thirty-five-year sentence is inappropriate in light of the nature of the offense and her character. Finding no sentencing errors, we affirm.

FACTS

On July 12, 2006, a cooperating source (CS) contacted the Elkhart County Interdiction and Covert Enforcement (ICE) Unit and stated that he or she could purchase cocaine from Chavarria. The ICE Unit set up a controlled buy, and the CS called Chavarria's home, spoke to her brother, and arranged to purchase thirteen grams of cocaine for $300. The CS and an undercover officer went to Chavarria's home and completed the purchase as planned. As they exited the apartment, Chavarria told the CS to feel free to return later to buy more cocaine.

Later that evening, the CS and the undercover officer returned to Chavarria's home to purchase more cocaine. Chavarria called her brother and arranged for him to meet the CS and the officer at a grocery store to complete the sale. At the grocery store, Chavarria's brother sold them an additional fifteen grams of cocaine for $300. Police followed Chavarria's brother as he left, conducted a traffic stop, and arrested him.

After arresting Chavarria's brother, police officers returned to her apartment. When they arrived, they observed Chavarria exit her apartment and hide two baggies

[1] Ind. Code §§ 35-48-4-1(a)(2)(C), -1(b)(1).

inside an outdoor grill. Officers later discovered that one baggie contained over $5000 in cash, including $100 of the currency used in the CS's first controlled buy. The other baggie contained slightly over 175 grams of cocaine, packaged in seven smaller bags, and an electronic scale.

On July 17, 2006, the State charged Chavarria with class A felony dealing in cocaine weighing over three grams. On March 8, 2007, Chavarria pleaded guilty as charged pursuant to a plea agreement that capped her potential sentence at forty years imprisonment. On April 5, 2007, the trial court imposed a thirty-five-year sentence. Chavarria now appeals.

DISCUSSION AND DECISION

Chavarria contends that the trial court abused its discretion in sentencing her. In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. 868 N.E.2d at 490-91.

Chavarria's argument that the trial court abused its discretion essentially amounts to an argument that the trial court erred in weighing aggravators and mitigators, which we no longer review on appeal. Id. at 491. To the extent that Chavarria seems to contend that the trial court abused its discretion by finding her status as an illegal alien to be an

aggravator, we note that while courts may not treat a defendant more harshly because of her national origin, a court need not "close its eyes" to a defendant's "disregard for the laws, including immigration laws." Samaniego-Hernandez v. State, 839 N.E.2d 798, 806 (Ind. Ct. App. 2005), abrogated on other grounds by Anglemyer, 868 N.E.2d 482. The record reveals that Chavarria has been living illegally in this country since 1992, and living illegally in Indiana since 1996—for well over a decade. Under these circumstances, we do not find that the trial court abused its discretion in finding her status as an illegal alien to be an aggravator.

Chavarria also argues that the thirty-five-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and her character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Pursuant to Chavarria's guilty plea agreement, she faced a maximum term of forty years imprisonment. Had she been convicted following a trial, she would have faced a maximum term of fifty years. Ind. Code § 35-50-2-4 (providing that a class A felony conviction results in a sentence of twenty to fifty years imprisonment, with an advisory term of thirty years).

As for the nature of the offense, Chavarria participated in two controlled buys of twenty-eight grams of cocaine—nearly ten times the amount required to elevate her

conviction to a class A felony. After the first buy, Chavarria encouraged the CS to return later for another drug transaction. When police officers came to arrest Chavarria, they observed her hiding two baggies in an outdoor grill. The baggies contained over $5000 in cash, 175 grams of cocaine, and an electronic scale. In other words, Chavarria possessed more than fifty times the amount of cocaine necessary to elevate her conviction to a class A felony.

As for Chavarria's character, although this is her first criminal conviction, she has not led a law-abiding life. As noted above, she entered this country illegally nearly two decades ago, in 1992, and has been living illegally in Indiana since 1996. This conduct evinces an ongoing disregard for the rule of law. Furthermore, although Chavarria pleaded guilty, she waited nearly seven months to do so, and reaped a substantial benefit by lowering the maximum possible sentence she faced by ten years. Under these circumstances, we do not find the thirty-five-year sentence to be inappropriate in light of the nature of the offense and her character.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.