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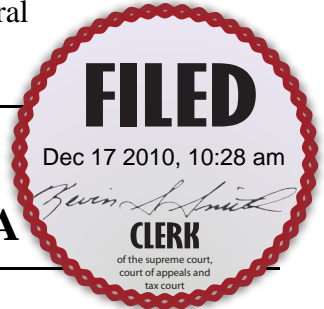
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**IN THE
COURT OF APPEALS OF INDIANA**



SAUL R. CRUZ,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 03A01-1004-CR-175

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0910-FA-2423

December 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Saul R. Cruz appeals his twenty-five year sentence for Class A felony dealing in cocaine.¹ Cruz claims the court should have suspended a portion of his sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

Cruz twice sold cocaine to an undercover police officer. The State charged him with two counts of Class A felony dealing in cocaine. Cruz pled guilty to one count in exchange for dismissal of the second count. The court entered the conviction and imposed a twenty-five year sentence with no time suspended.

DISCUSSION AND DECISION

We begin by noting it has been particularly difficult to discern the legal basis for Cruz’s argument. In his Statement of the Issues and Summary of the Argument, Cruz claims the trial court “abused its discretion” by ordering a twenty-five year sentence without any time suspended. (Br. of Appellant at 1, 5.) But his Standard of Review addresses only our authority to review sentences for inappropriateness when there has been no abuse of discretion. (*Id.* at 6.) Then, in his Argument, Cruz states: “Given the nature and circumstances of the crime and character of the offender the trial court abused its discretion without fully considering sentencing alternatives as opposed to a fully executed twenty five (25) year sentence to the Indiana Department of Correction.” (*Id.* at 7.)

Whether a trial court ‘abused its discretion’ or imposed ‘an inappropriate sentence based on the nature of the offense and character of the offender’ are separate grounds for challenging a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on*

¹ Ind. Code § 35-48-4-1.

reh'g, 875 N.E.2d 218 (Ind. 2007). Accordingly, “an inappropriate sentence analysis does not involve an argument that the trial court abused its discretion in sentencing the defendant.” *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Cruz has intermingled these concepts to such an extent that it cannot be determined which he intended to argue. Thus, Cruz failed to provide the cogent argument required by our appellate rules and has waived any error for appellate review. *See* Ind. Appellate Rule 46(A)(8) (requiring “cogent argument” supported by citation to authorities and the record on appeal).

Waiver notwithstanding, we cannot find error in the sentence imposed. The advisory sentence for a Class A felony is 30 years, with a range of 20 to 50 years. Ind. Code § 35-50-2-4. The court found as a mitigator that Cruz’s criminal history includes only two Class C misdemeanors and found an aggravator in the amount of cocaine Cruz dealt. It found the mitigator outweighed the aggravator and imposed a sentence five years less than the advisory.

Cruz does not challenge the length of the sentence; rather he asserts his “sentence above the minimum of twenty (20) years should have been suspended.”² (Appellant’s Br. at 8.) “A decision not to suspend a sentence is reviewable only for an abuse of discretion.” *Turner v. State*, 878 N.E.2d 286, 296 (Ind. Ct. App. 2007), *trans. denied*. During the sentencing hearing, Cruz, his counsel, and the trial court all acknowledged that Cruz would be deported when he completed his sentence because he is an illegal immigrant. (*See, e.g.,*

² At the sentencing hearing, Cruz did not request suspension of part of his sentence or complain after the court announced his sentence.

Tr. at 36, 41, 44-45, and 64.) In a pre-trial motion, the State moved for Cruz’s bond to be set higher than normal because Cruz posed “a greater than usual risk of non-appearance.” (*Id.* at 3.) As the record suggests Cruz is likely to leave this country, either voluntarily or involuntarily, before he could serve a suspended sentence on probation, we cannot say the court erred by ordering Cruz’s sentence include only executed time.

Neither can we say the twenty-five year sentence was inappropriate just because none of it was suspended.³ We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. *Williams v. State*, 891 N.E. 2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied*. The appellant bears the burden of demonstrating his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

³ This year, our Indiana Supreme Court clarified that the scope of our review under Appellate Rule 7(B) includes consideration of whether the trial court suspended a portion of the sentence:

We decline to narrowly interpret the word “sentence” in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge. This does not preclude a reviewing court from determining a sentence to be inappropriate due to its overall sentence length despite the suspension of a substantial portion thereof. A defendant on probation is subject to the revocation of probation and may be required to serve up to the full original sentence.

* * * * *

Upon the review of sentence appropriateness under Appellate Rule 7, appellate courts may consider all aspects of the penal consequences imposed by the trial judge in sentencing the defendant.

Davidson v. State, 926 N.E.2d 1023, 1025 (Ind. 2010).

The crime underlying Cruz's conviction, dealing in cocaine, becomes a Class A felony if the person delivers three grams or more of cocaine. Ind. Code § 35-48-4-1. Cruz delivered nearly five times that amount in the delivery for which he pled guilty. At the sentencing hearing, a Columbus Police Department Narcotics Detective testified he purchased fourteen grams of cocaine from Cruz on three separate occasions and Cruz had offered to sell even larger amounts, as much as one thousand grams, to that officer. The officer was aware of two sales that Cruz made to other officers. Cruz is in this country illegally, he was unsuccessfully terminated from probation in 2008, and his experiences with our legal system after his prior misdemeanors did not deter him from committing future crimes. All of those reflect poorly on his character. In light of Cruz's character and the nature of his offense, we cannot find inappropriate a twenty-five year sentence with no time suspended.

Accordingly, we affirm the trial court's order that Cruz serve his entire sentence in the Department of Correction.

Affirmed.

ROBB, J., and VAIDIK, J., concur.