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IN THE
COURT OF APPEALS OF INDIANA

ISIDRO LOPEZ-RUIZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A04-0912-CR-707
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0810-FA-46

August 17, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Isidro Lopez-Ruiz (Lopez-Ruiz), appeals his forty-eight year sentence following a jury trial to two Counts of dealing in cocaine, Class A felonies, Ind. Code § 35-48-4-1.

We affirm.

ISSUE

Lopez-Ruiz raises one issue on appeal which we restate as follows: Whether his sentence was inappropriate when the nature of his offense and character are considered.

FACTS AND PROCEDURAL HISTORY

On October 14, 2008, officers assigned to the Elkhart County Intervention and Covert Enforcement (ICE) Unit, a group of officers that investigate large organized crime drug cases, were preparing to serve a warrant on Lopez-Ruiz's residence. An undercover officer designed a plan for a confidential source to meet Lopez-Ruiz at a car wash to carry out a controlled drug purchase. While doing surveillance, officers observed Lopez-Ruiz leave his residence on a red scooter. An undercover officer followed Lopez-Ruiz and pulled him over after noticing him driving erratically. Lopez-Ruiz stepped off the scooter and the officers identified themselves and then asked him for identification. When asked for identification, Lopez-Ruiz presented the officers with a Mexican identification card. He did not possess a valid driver's license. During this stop, the undercover officer noticed bulges in Lopez-Ruiz's waist area and pockets. When the undercover officer patted down Lopez-Ruiz, two

cell phones and some baggies containing two ounces of cocaine were found. Lopez-Ruiz was arrested for possessing cocaine.

After the arrest, Lopez-Ruiz was transported back to his residence where the ICE Unit served a search warrant. Lopez-Ruiz's wife and two children were present in the home when the officers arrived. At his residence, Lopez-Ruiz told the officers that he had cocaine in the garage which he usually kept locked. He told the officers that he had purchased twelve ounces of cocaine in Chicago, Illinois. Lopez-Ruiz stated that "he kept the cocaine locked in the garage to keep it away from his family." (Transcript pp. 142-43). Upon entering the garage, the officers found digital scales and several baggies of what appeared to be powder cocaine on a table. One baggie contained two smaller baggies of cocaine weighing respectively 13.9 and 40.15 grams. Other baggies of cocaine weighed .89 grams and 119.59 grams. The officers also found currency in the amount of $2,700 in the master bedroom.

On October 20, 2008, the State filed an Information charging Lopez-Ruiz with two Counts of Class A felonies dealing in cocaine, I.C. § 35-48-4-1(a)(2)(C) & (b)(1). On November 2-3, 2009, a jury trial was held and Lopez-Ruiz was found guilty on both Counts. On November 25, 2009, the trial court sentenced Lopez-Ruiz to forty-eight years on each Count, with sentences to run concurrently. During the hearings, the trial court found the following aggravating factors: (1) Lopez-Ruiz's prior criminal history; (2) his illegal alien status; (3) the presence of substantial amounts of drugs at the home; (4) the presence of children in the residence where drugs were being used and sold; (5) Lopez-Ruiz's use of cocaine; and (6) driving a motor vehicle without a license. As mitigating factors, the trial

court noted: (1) the fact that Lopez-Ruiz was only 27 years old and (2) all statements made by Lopez-Ruiz and his counsel in mitigation during the sentencing hearing.

Lopez-Ruiz now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Lopez-Ruiz contends that his forty-eight year executed sentence is inappropriate in light of the nature of the offense and the character of the offender. Regardless of whether the trial court has sentenced the defendant within its discretion, we have the authority to independently review the appropriateness of a sentence authorized by statute through Indiana Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). "Ultimately the length of the aggregate sentence and how it is to be served are issues that matter." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). "The principal role of the appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived correct result in each case." *Id.* at 1225. The defendant carries the burden to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Lopez-Ruiz was found guilty of two Class A felonies of dealing in cocaine, for which the sentence range is twenty to fifty years, with the advisory sentence being thirty years. I.C.

§ 35-50-2-4. The trial court sentenced Lopez-Ruiz to forty-eight years executed in the Department of Correction. Lopez-Ruiz argues that the forty-eight year sentence imposed by the trial court was excessive. Specifically, Lopez-Ruiz contends that his sentence was only two years shy of the maximum sentence and that the maximum sentence should be reserved for the very worst offenses and offenders. We disagree.

As for the nature of the offenses, Lopez-Ruiz was found by law enforcement authorities with approximately two hundred grams of cocaine in his possession. This amount far exceeds the three grams required of the Class A felony charges. Lopez-Ruiz also admitted that he has addiction issues and routinely purchases and sells drugs. Furthermore, Lopez-Ruiz had large amounts of cash in $100.00 denominations in his possession at the time of his arrest. Considering the large quantity of cocaine and the large amounts of cash seized at Lopez-Ruiz's residence, evidence indicates that Lopez-Ruiz was a major cocaine dealer. Therefore, Lopez-Ruiz's sentence is not inappropriate in light of the nature of the offense.

As to his character, Lopez-Ruiz entered the United States illegally. *See Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008) (a defendant's illegal alien status is a valid aggravator). He obtained and worked a job illegally. The pre-sentence investigation report reflects that he was convicted of driving while intoxicated without an operator's license in 2006. He then continued to drive illegally and was cited for having no valid license. While on probation, he disobeyed the law by fleeing to another state to avoid a hearing and was arrested in Texas. More significantly and specifically emphasized by the trial court, Lopez-Ruiz conducted his drug operation from a residence where two young children lived. Despite

Lopez-Ruiz's contention that he is a law abiding citizen, his actions speak otherwise. Given Lopez-Ruiz's illegal entry into this country, his failure to abide by the laws once here, and the fact that he jeopardized his family by dealing cocaine, we conclude that he has failed to persuade us that his sentence is inappropriate. Therefore, we find that the trial court's sentence is not inappropriate in light of the character of Lopez-Ruiz.

CONCLUSION

Based on the foregoing, we conclude that Lopez-Ruiz's forty-eight year sentence was not inappropriate when considering the nature of his offense and his character.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.