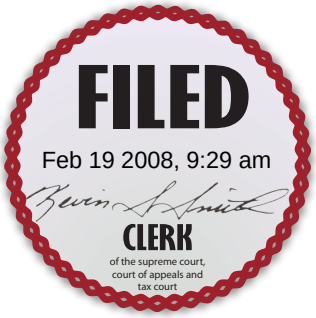

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IN THE COURT OF APPEALS OF INDIANA

ROBERT LOUIS RAMSEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0705-CR-295
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0601-FA-2

February 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Robert Louis Ramsey appeals his ten-year presumptive sentence for dealing in cocaine as a Class B felony. He maintains that his sentence is inappropriate. Finding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

On March 20, 2005, Ramsey was arrested for possessing cocaine that was divided into small amounts and wrapped in individual baggies. At the time of his arrest, Ramsey was carrying a handgun without a license. On January 17, 2006, the State charged Ramsey with Count I, dealing in cocaine as a Class A felony (possession with the intent to deliver),[1] and Count II, carrying a handgun without a license as a Class A misdemeanor.[2] The State later amended the felony charge to possession of cocaine with the intent to deliver as a Class B felony.[3] In September 2006, the State filed an additional count charging Ramsey with Count III, possession of marijuana as a Class A misdemeanor.[4] A jury trial was scheduled for February 6, 2007. However, one day before trial, Ramsey and the State entered into a plea agreement. Pursuant to the plea agreement, Ramsey pled guilty to Counts I and II, and the State dismissed Count III. The plea agreement left sentencing to the discretion of the trial court but provided that Ramsey would receive concurrent terms on Counts I and II.

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[1] Ind. Code § 35-48-4-1.

[2] Ind. Code §§ 35-47-2-1, 35-47-2-23(c).

[3] I.C. § 35-48-4-1(a)(2)(C).

[4] Ind. Code § 35-48-4-11.

The trial court accepted Ramsey's guilty plea. Thereafter, the trial court entered judgments of conviction for dealing in cocaine as a Class B felony and carrying a handgun without a license as a Class A misdemeanor and sentenced Ramsey to a presumptive term of ten years for the Class B felony and one year for the Class A misdemeanor, to be served concurrently. Ramsey now appeals.

Discussion and Decision[5]

On appeal, Ramsey challenges only his sentence for dealing in cocaine. At the time Ramsey committed this offense, Indiana Code § 35-50-2-5 provided in relevant part: "A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances."[6] The trial court sentenced Ramsey to the presumptive term of ten years. Although Ramsey frames his appellate issue as whether "[t]he trial court erred in inappropriately sentencing [him] to ten (10) years in light of the nature of the offense and the character of the offender," Appellant's

[5] Ramsey's appellate brief does not include a "Summary of Argument" section. We remind counsel that Indiana Appellate Rule 46(A)(7) specifically requires that an appellant's brief contain a "Summary of Argument" section that has "a succinct, clear, and accurate statement of the arguments made in the body of the brief."

[6] Between the date of Ramsey's offense, March 20, 2005, and the date of sentencing, March 9, 2007, the General Assembly replaced the former presumptive sentencing scheme with the current advisory sentencing scheme. *See* P.L. 71-2005 (eff. Apr. 25, 2005). Nonetheless, because "the sentencing statute in effect at the time a crime is committed governs the sentence for that crime," *Gutermuth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007), we address Ramsey's sentence under the former presumptive sentencing scheme.

Br. p. 5, he additionally mentions that the trial court abused its discretion by failing to identify certain mitigators.[7]

We initially note that the trial court sentenced Ramsey to a ten-year presumptive term. As such, the trial court was not required to designate aggravating and mitigating circumstances. *Morgan v. State*, 675 N.E.2d 1067, 1073 (Ind. 1996) ("[W]hen a trial court imposes the presumptive sentence, it has no obligation to explain its reasons for doing so."). Although the trial court did discuss several matters when it pronounced Ramsey's sentence, it did not identify any mitigating or aggravating factors. It likely believed it was unnecessary to do so since it imposed the presumptive sentence. Because the trial court was not obligated to designate aggravating and mitigating circumstances, we analyze his arguments in the context of Indiana Rule of Appellate Procedure 7(B).

Indiana Rule of Appellate Procedure 7(B) states: "The 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." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations and quotations omitted), *trans. denied*, *cert.*

[7] Ramsey additionally relies on *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007), for the proposition that "[t]he sentencing statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Appellant's Br. p. 6. *Anglemyer* is inapplicable to this case because it deals with the current advisory sentencing scheme, and this case is decided under the former presumptive sentencing scheme.

denied. The defendant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Ramsey's sentence is inappropriate.

The presumptive sentence is the starting point the legislature selected as an appropriate sentence for the crime committed. *Id*. at 1081. Therefore, when the trial court imposes the presumptive sentence, the defendant bears a heavy burden in persuading us that his or her sentence is inappropriate. *McKinney v. State*, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007).

As to the nature of the offense, the record does not reveal much because of the guilty plea. Nonetheless, we know Ramsey was a drug dealer who admitted to possessing cocaine with the intent to deliver it while carrying a handgun without a license. This is particularly disturbing considering the inherent danger associated with such actions.

As to his character, Ramsey has been convicted of one previous felony conviction, which is drug related, and four misdemeanor convictions. Nonetheless, he says that he should receive a reduced sentence because he is addicted to cocaine, he pled guilty, and additional incarceration would result in hardship to his children. We disagree.

Regarding his drug use, this may not only not be considered as a mitigating factor but could be considered as an aggravating circumstance. *See Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (holding that substance abuse could be considered as an aggravating circumstance.). As to his guilty plea, Ramsey did plead guilty to the

offenses but we note that he did so one day before his scheduled jury trial resulting in little or no benefit to the State. Furthermore, the State dismissed a Class A misdemeanor charge and agreed to have the sentences for the remaining two counts run concurrently. As such, Ramsey derived a significant benefit from the plea. *See Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999) ("[Defendant] received benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor."). Finally, hardship to dependents can be considered a mitigating factor in sentencing, but it is not a mandatory mitigator. *Comer v. State*, 839 N.E.2d 721, 730 (Ind. Ct. App. 2005). Prison is always a hardship on dependents, and Ramsey fails to explain how his presumptive sentence is more of a hardship on his family than would be a reduced sentence. This is especially so given his prior criminal record. The minimum sentence he could have received was six years as opposed to the ten-year sentence he did receive. *See Vasquez v. State*, 839 N.E.2d 1229, 1234 (Ind. Ct. App. 2005), *trans. denied*. Given the nature of the offense and his prior criminal record, we cannot say that the presumptive sentence was inappropriate.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.