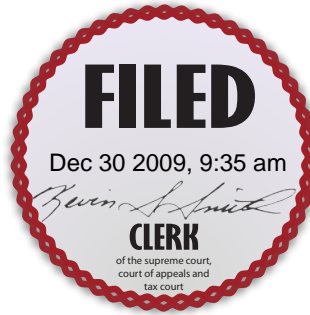


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MONICA HICKS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 64A03-0902-CR-79

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-0801-MR-494

December 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Monica Hicks challenges her eight-year sentence for class C felony assisting a criminal, claiming that it is inappropriate in light of the nature of the offense and her character. We affirm.

In 2005, Hicks lived in a house with her boyfriend Jesus Sanchez, her ten-year-old son T.P., T.P.'s father Tim Pettis, and Pettis's girlfriend Ingrid Van Eck. All adult members of the household were heavy drug users at the time. When Pettis was arrested on drug charges in April 2005, Van Eck started selling household goods to raise money for his bond. On April 24, 2005, an argument ensued between Van Eck, Sanchez, and Hicks due to Van Eck's expressed desire to sell Pettis's 1956 Chevy, which he had purchased to restore for T.P. Around 2:00 a.m., while T.P. slept in an adjacent room and with Hicks present, Sanchez bludgeoned Van Eck in the head six or seven times with a hammer and/or socket wrench. As Van Eck lay bleeding and lifeless on the sofa, Hicks retrieved gloves and a garbage bag, which Sanchez placed over Van Eck's head and secured with a belt to contain the blood. Hicks and Sanchez dragged Van Eck's body from the sofa to the floor, wrapped her in a blanket and plastic, tied belts and cables around her feet, waist, and head, dragged her to the garage, and placed her inside a large suitcase, which they secured with ropes and cords. The two then went to bed and slept until 11:30 a.m.

When Hicks and Sanchez awoke, they sent T.P. to a relative's house and began driving around Lake and Porter Counties in search of a place to dump Van Eck's body. Hicks suggested that they dump the body in the river by her cousin's Lake County home. That day, Hicks and Sanchez drove to the property to survey its prospects as a dumping site.

When they returned the next morning, Hicks drove Van Eck's vehicle, with the body in the trunk, and Sanchez followed in his vehicle. They left the vehicle containing the body on an access road by the river and went home to clean up the crime scene. They cleaned the blood-stained carpet and dismantled and disposed of the sofa.

At nightfall, Hicks and Sanchez donned black clothing and returned to the river. Together, they dragged the suitcase containing Van Eck's body down to the river. To keep the suitcase from floating, both Hicks and Sanchez retrieved concrete pieces to attach to it. The two placed the submerged suitcase under a fallen tree branch. They left and returned the next day to retrieve Van Eck's vehicle and park it at home. Shortly thereafter, they dumped the remaining bloody physical evidence in a dumpster outside Hicks's place of employment.

During the days immediately following Van Eck's death, her mother repeatedly called the house in search of her. Hicks told Van Eck's parents that Van Eck had gone to California to pick up a car, but that she did not know when or with whom.¹ On April 27, 2005, at the request of Van Eck's father, Hicks filed a missing person's report. When detectives questioned Hicks pursuant to the missing person's investigation, Hicks told them the same fabricated story that she had told the concerned parents.

On May 7, 2005, a fisherman found Van Eck's body in the river. The body was so decomposed that experts had to resort to dental records to make a positive identification. The next day, Sanchez and Hicks disposed of the murder weapon by throwing it in a ditch south of Portage. During police interviews that ensued during the days and months that followed,

¹ Van Eck's parents were California residents.

Hicks alleged that a man named Ricky Jacobs had murdered Van Eck. Finally, on August 9, 2007, Hicks admitted to police that Sanchez had committed the murder² and that she had played a role in disposing of the body.

On January 16, 2008, the State charged Hicks with murder, class A felony conspiracy to commit murder, and class C felony assisting a criminal. On December 1, 2008, a jury found her not guilty on the murder and conspiracy counts and guilty of class C felony assisting a criminal. On February 2, 2009, the trial court sentenced her to an eight-year executed term, specifically finding no mitigating factors and citing as aggravating factors Hicks's lengthy criminal history and failure to report the crime. This appeal ensued.

Hicks now challenges the appropriateness of her eight-year sentence. On appeal, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We do not look to see whether the defendant’s sentence is appropriate or if another sentence might be *more* appropriate; rather the test is whether the sentence is “inappropriate.” *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). A defendant bears the burden of persuading this Court that her sentence meets the inappropriateness standard. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218; *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

² The State charged Sanchez with murder, conspiracy to commit murder, and assisting a criminal. Sanchez pled guilty via plea agreement to class A felony conspiracy to commit murder. He maintained, however, that Hicks, not he, delivered the fatal blow. He is not the subject of this appeal.

First, we address the nature of the offense. Hicks was convicted of class C felony assisting a criminal. *See* Ind. Code § 35-44-3-2 (prohibiting a person from assisting an unrelated person who has committed a crime, with intent to hinder the apprehension or punishment of that person, by harboring, concealing, or otherwise assisting that person). In addressing the nature of a defendant's offense, "the advisory sentence is the starting point the Legislature has selected as an appropriate sentence." *Anglemyer*, 868 N.E.2d at 494. Here, Hicks received the maximum eight-year sentence for her crime. *See* Ind. Code § 35-50-2-6 (providing a sentencing range of two-to-eight years for a class C felony conviction, with a four-year advisory term).

Hicks admits that Sanchez's underlying crime, bludgeoning an unarmed woman to death, was heinous and vicious in nature. Appellant's Br. at 8, 10. Nevertheless, she claims that *her* acts were limited to assisting Sanchez in disposing of Van Eck's body and concealing the facts surrounding the crime. Thus, she claims her conduct does not merit an eight-year maximum sentence. We disagree. Hicks's assistance and concealment were active and continuous for over two years. First, she watched Sanchez as he repeatedly struck Van Eck. Next, she actively assisted in dragging, wrapping, and stuffing Van Eck's lifeless body into a suitcase. Furthermore, she took the initiative in suggesting and locating a remote dumping place and then actively assisted in retrieving the concrete pieces necessary to ensure that the suitcase would sink and not float. She also helped clear the crime scene of its bloody remnants and even provided the dumpster for their disposal. Thus, the active nature of her assistance goes well beyond a situation in which the assistor merely provides transportation

or lodging for a fugitive.

Moreover, her concealment was active in nature and protracted in time. She concealed the body, the bloody remnants from the crime scene, and the murder weapon. Furthermore, she committed the equally despicable act of concealing the truth by misleading Van Eck's parents and continuing to provide false reports to police for a period lasting more than two years. She even helped Van Eck's parents file what she secretly knew to be a false missing person's report. As such, she has failed to demonstrate that the nature of her offense renders her eight-year sentence inappropriate.

Likewise, Hicks's current actions and her criminal history reflect her poor character. She asserts that she acted out of fear of her boyfriend Sanchez. However, instead of attempting to extract herself from the situation when Sanchez began to bludgeon one of her housemates to death, she stood by and did nothing, even though her ten-year-old child was sleeping nearby. Thereafter, she helped Sanchez drag, wrap, stuff, and sink the corpse of this housemate, rendering her remains unidentifiable absent the aid of dental records. Equally compelling is the fact that Hicks intentionally and repeatedly misled both police and Van Eck's parents, causing the murder to remain unresolved and the parental agony to be exacerbated and prolonged. *See Ricci v. State*, 894 N.E.2d 1089, 1094 (Ind. Ct. App. 2008) (finding enhanced sentence not inappropriate where defendant convicted of OWI causing death lied about the identity of the driver for two months thereby increasing suffering of victims' families), *trans. denied*. To the extent she offers character reference letters stating that she is generous and puts the needs of others before her own, we find that her actions in

this case indicate the contrary.

Finally, Hicks's criminal history and probation failures indicate that she has not responded favorably to less stringent sentences. Her eight misdemeanor convictions include various drug and alcohol-related offenses as well as convictions for disorderly conduct, failure to stop at the scene of an accident, and conversion. She also has a 1986 class D felony theft conviction. While on probation for a 2001 drug possession conviction, she committed offenses resulting in two new misdemeanor convictions. Moreover, she committed the instant offense while on probation, and she had two pending felony charges at the time of the pre-sentence investigation report. Appellant's App. at 65-66. Finally, her record indicates numerous "unsatisfactory" releases from probation. *Id.* at 65. In sum, Hicks has failed to demonstrate that her sentence is inappropriate in light of the nature of the offense and her character. Accordingly, we affirm.

Affirmed.

DARDEN, J., and MAY, J., concur.