

Barbara Holt appeals her sentence for Assisting a Criminal,¹ as a class C felony. Specifically, Holt claims that the trial court abused its discretion in sentencing her to serve four years at the Indiana Department of Correction, in accordance with the advisory sentence for class C felonies. Holt further asserts that her sentence was inappropriate, considering the nature of the offense and the character of the offender.

We affirm.

This case arises from the murder of Jim Munday by David Hale on February 18, 2006. On the night in question, Holt, Hale, and Munday were drinking and using drugs in a hotel room in Lafayette, Indiana, when Hale stabbed Munday to death. Holt was present in the hotel room during the stabbing, but failed to aid the victim or call police. Holt subsequently lied to police about the incident and accompanied Hale when he disposed of several items from the hotel room where the murder occurred.

On March 1, 2006, Holt was charged with class C felony assisting a criminal. Holt subsequently entered into a plea agreement with the State whereby she agreed to plead guilty to assisting a criminal. In exchange, the State agreed to drop any additional charges, as well as a separate class D felony theft charge which was pending against Holt under a different cause. The State further agreed not to argue for an executed sentence, or for any specific length of sentence.

On July 25, 2006, Holt pleaded guilty pursuant to the plea agreement. At the subsequent sentencing hearing held on August 23, 2006, the trial court sentenced Holt to

¹ Ind. Code Ann. § 35-44-3-2 (West 2004).

four years executed at the Indiana Department of Correction. In sentencing Holt, the trial court made the following pertinent statements:

In a way this is reminiscent of a -- of other kinds of crimes that we have in this Court involving people out of control with alcohol or controlled substances. Generally you -- when somebody comes to [c]ourt with a problem like that and nobody else has been hurt you try to get some treatment so that the people don't get in a position where somebody gets hurt. Here we don't have that situation, you know, you've been on a -- one long course of drugs and alcohol causing you to lose your marriage, loose [sic] your job, loose [sic] your children, miss a court date, and you wound up in Lafayette with two other people who were in the same position. And one of them stabbed the other one and then you had an opportunity to do something to help somebody else and you didn't take advantage of that opportunity either because you were so messed up on drugs or because you were afraid or whatever reasons were in your mind, you didn't do what was necessary to save Mr. Munday's life. And that's why were [sic] here. . . . And I don't see in your -- in the record . . . mitigating factors to reduce your sentence. I certainly hope that you've been able to take advantage of this period of sobriety to straighten out I also don't find in this record the aggravating factors necessary to impose a -- an aggravated sentence. You don't have a juvenile history, you don't have any other prior convictions although you do have some charges pending both in Alabama and in Indiana. . . . You've been arrested twice in our community and I don't see a reason for our community resources to be involved in your rehabilitation. I'm going to sentence the defendant to four years of incarceration

Appellant's Appendix at 53-54. This appeal ensued.

Holt first claims the trial court abused its discretion in sentencing her to the advisory sentence of four years. Specifically, Holt complains that the trial court improperly weighed the aggravating and mitigating circumstances.

It is well established that sentencing decisions lie within the trial court's discretion. *Williams v. State*, 861 N.E.2d 714 (Ind. Ct. App. 2007). Those decisions are given great deference on appeal and will be reversed only for an abuse of discretion. *Golden v. State*, 862 N.E.2d 1212 (Ind. Ct. App. 2007).

As noted in *McDonald v. State*, 861 N.E.2d 1255 (Ind. Ct. App. 2007) *trans. pending*, this Court is currently divided as to whether it is to review aggravators and mitigators found by the trial court in light of recent amendments to our sentencing statutes. *See id.* Under our new advisory sentencing scheme, a court may impose any sentence authorized by statute “regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” Ind. Code Ann. § 35-38-1-7.1(d) (West, PREMISE, through 2006 Regular Session). Although our Supreme Court has not yet interpreted this statute, its plain language seems to indicate that a sentencing court is under no obligation to find, consider, or weigh either aggravating or mitigating circumstances. *McDonald v. State*, 861 N.E.2d 1255. We therefore follow *McDonald*, and conclude that a challenge to the trial court’s sentencing statement presents no issue for appellate review when the sentence is authorized by statute.

Here, Holt pleaded guilty to assisting a criminal as a class C felony. “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.” Ind. Code Ann. § 35-50-2-6(a) (West, PREMISE, through 2006 Regular Session). The trial court sentenced Holt to the advisory sentence of four years. Thus, Holt’s sentence was authorized by statute, and the trial court could not have abused its discretion by imposing such a sentence. We now turn to Holt’s inappropriateness claim.

Holt next asserts that she should have received less than the advisory sentence because she was not the “worst” type of offender and “the offense as committed is on the least culpable end of the spectrum as the [L]egislature defined it.” *Appellant’s Brief* at

16. Under article VII, section 6 of the Indiana Constitution, this court has the constitutional authority to review and revise sentences. *Smith v. State*, 839 N.E.2d 780 (Ind. Ct. App. 2005). We will not do so, however, unless the sentence “is inappropriate in light of the nature of the offense and the character of the offender.” *Martin v. State*, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003); Ind. Appellate Rule 7(B) (2007). While we must give due consideration to the trial court’s sentence because of the special expertise of the trial court in making sentencing decisions, Indiana App. R. 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. *Smith v. State*, 839 N.E.2d 780.

Regarding the nature of the offense, the advisory sentence for the class of crimes to which the offense belongs is meant to be the starting point that the Legislature has selected as an appropriate sentence for the crime committed. *Weiss v. State*, 848 N.E.2d 1070 (Ind. 2006). The nature of Holt’s crime is that she was present when Munday was stabbed and did not call the police or aid Munday while he bled to death on the hotel room floor.² In fact, the body remained undiscovered for two days after the stabbing. Holt also accompanied Hale as he disposed of incriminating evidence and gave several false statements to police during the investigation of the Munday murder.

As for the character of the offender, while Holt does not have any prior convictions, she has a pending felony drug possession in Alabama, and had a pending

² Notwithstanding Holt’s arguments to the contrary, there is no evidence suggesting she attempted to aid Munday in a meaningful way, other than her self-serving statement, made during a police interview, that she attempted to stop Munday’s bleeding. Holt, however, contradicted her own testimony in another statement she made to police where she claimed that she awoke to find Munday asleep on the floor and then left the hotel with Hale. Regardless, it is uncontroverted that she neither called police nor obtained medical help for Munday. Thus, we find no error in the trial court’s statement that Holt failed to help when she had the opportunity to do so.

felony theft charge in Indiana which was dropped as part of her plea agreement. The pre-sentence report also indicated that Holt, who was thirty-three years old at the time of sentencing, has a long history of drug and alcohol use, which began at the age of ten.

As discussed earlier, a statutorily prescribed sentence is the starting point our Legislature has selected as an appropriate sentence for the crime committed, and we exercise great restraint in revising the trial court's sentence in light of the its special expertise in making sentencing decisions. *Scott v. State*, 840 N.E.2d 376 (Ind. Ct. App. 2006), *trans. denied*. Based on the foregoing, we cannot conclude that Holt carried her burden of establishing, in light of the nature of her offense or her character, that she deserved less than the advisory sentence.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.