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

KRISTINA L. PHILLIPS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1102-CR-37
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Tornatta, Judge
Cause No. 82D02-1007-FD-715

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Kristina L. Phillips appeals following her conviction for Class D felony Neglect of a Dependent,[1] arguing that the sentence imposed by the trial court is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

Phillips is the mother of B.L., who was born on January 2, 1993. Phillips married Jacob Phillips ("Phillips's husband") when B.L. was approximately eleven years old. Between approximately February 1, 2006, and October 31, 2007, Phillips's husband engaged in sexual conduct and intercourse with B.L. on a number of occasions. On at least one such occasion, Phillips was present and participated in sexual activities with her husband while he was penetrating her minor daughter.

On July 16, 2010, the State charged Phillips with Class D felony neglect of a dependent, and she pled guilty as charged. Pursuant to the terms of the plea agreement, sentencing was left to the discretion of the trial court. On January 5, 2011, the trial court sentenced Phillips to thirty months in the Indiana Department of Correction. This appeal follows.

DISCUSSION AND DECISION

Phillips contends that her thirty-month sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we "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." The defendant bears the

[1] Ind. Code § 35-46-1-4(a)(1) (2005).

burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

Phillips committed a Class D felony, the statutorily allowed sentence for which ranges from six months to three years. *See* Ind. Code § 35-50-2-7 (2005). Phillips received thirty months, which is less than the maximum allowed by statute. In sentencing Phillips, the trial court found Phillips's criminal history to be mitigating because Phillips had no prior felony convictions, and had only one prior misdemeanor conviction for check deception. The trial court also found the fact that Phillips pled guilty and appeared to be remorseful to be mitigating.

With respect to the nature of Phillips's offense, the record indicates that Phillips "allowed her husband to have sex with her minor daughter while she was in the bed watching that occur." Tr. p. 6. More specifically, B.L. reported that Phillips "was in bed next to them and was kissing [her husband] while he was penetrating [B.L.'s] vagina with his penis." Appellant's App. p. 8. Phillips's acts are truly deplorable. We can hardly imagine a mother knowingly allowing her husband to engage in sexual intercourse with her minor daughter, much less participating in such sexual activity.

With respect to Phillips's character, our review reveals that while Phillips claims to be a largely law-abiding person, her actions associated with the instant charge demonstrate poor character. In addition, Phillips admitted to prior drug use. To the extent that certain factors, including Phillips's lack of criminal history and guilty plea, reflect favorably upon her character, these factors have been incorporated into her sentence. Notably, Phillips's desire

to care for her other children is not a particularly persuasive factor under the instant circumstances. We cannot say that Phillips's thirty-month sentence is inappropriate.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.