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State v. Savage Respondent's Brief Dckt. 43474

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. MELVIN JEREMY SAVAGE, Defendant-Appellant.	)	NO. 43474 Bonneville County Case No. CR-2014-16735 RESPONDENT'S BRIEF

Issue

Has Savage failed to establish that the district court abused its discretion, either by imposing a unified sentence of 19 years, with four years fixed (later reduced to 18 years, with four years fixed), upon his guilty plea to first degree arson, or by declining to further reduce his sentence pursuant to his Rule 35 motion for a reduction of sentence?

Savage Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Savage pled guilty to first degree arson and the district court imposed a unified sentence of 19 years, with four years fixed. (R., pp.89-91.) Nine days after judgment, Savage filed a Rule 35 motion for a reduction of sentence. (R., pp.94-95.) The district

court granted the motion in part and reduced Savage's sentence to a unified sentence of 18 years, with four years fixed. (R., pp.106-10.) Savage filed a timely notice of appeal. (R., pp.99-102.)

Savage asserts his sentence is excessive in light of the psychological evaluator's conclusion that Savage presents a low risk of recidivism and recommendation for community-based treatment. (Appellant's brief, pp.7-10.) The record supports the sentence imposed.

Appellate courts review a criminal sentence under an abuse of discretion standard. State v. Calley, 140 Idaho 663, 665-666, 99 P.3d 616, 618-619 (2004). Sentences fixed within the statutory limits will ordinarily not be considered an abuse of discretion. State v. Sheahan, 139 Idaho 267, 284, 77 P.3d 956, 973 (2003). When a sentence is challenged as being excessively harsh, appellate courts independently review the record on appeal, having due regard for the nature of the offense, the character of the offender, and the protection of the public interest. Calley, 140 Idaho at 666, 99 P.3d at 619. In order to prevail, a defendant must demonstrate that the sentence "in light of the governing criteria, is excessive under any reasonable view of the facts." Id. Sentences are reasonable if "it appears at the time of sentencing that confinement is necessary 'to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.'" Sheahan, 139 Idaho at 284, 77 P.3d at 973. A sentence need not serve all sentencing goals; one may be sufficient. Id. at 285, 77 P.3d at 974 (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App.1991)).

The maximum prison sentence for first degree arson is 25 years. I.C. § 18-802. The district court imposed a unified sentence of 19 years, with four years fixed (later reduced to 18 years, with four years fixed), which falls well within the statutory guidelines. (R., pp.89-91, 106-08.) At sentencing, the state addressed the perilous and premeditated nature of the offense, the harm done to the victims, Savage's minimization of his criminal conduct, and the fact that Savage stalked the victim and repeatedly violated no contact orders before he committed the instant offense. (5/7/15 Tr., p.39, L.21 – p.49, L.5 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Savage's sentence. (5/7/15 Tr., p.77, L.4 – p.82, L.18 (Appendix B).) The state submits that Savage has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Savage next asserts that the district court abused its discretion by declining to further reduce his sentence pursuant to his Rule 35 motion for sentence reduction because, he claims, there are "minimal" rehabilitative programs available to him until he is nearer to his parole eligibility date. (Appellant's brief, pp.11-12.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Savage must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Savage has failed to satisfy his burden.

The only information Savage provided in support of his Rule 35 motion was his complaint that he was still being housed in the county jail and was not yet receiving the treatment he desired. (Appellant's brief, pp.11-12; see generally 8/10/15 Tr.) This was not "new" information before the district court, as the court was aware, at the time of sentencing, of Savage's willingness to participate in programming (PSI, p.17), and it is not "new" information that prisoners are most often placed in treatment nearer to their date of parole eligibility. Further, "alleged deprivation of rehabilitative treatment is an issue more properly framed for review either through a writ of habeas corpus or under the Uniform Post-Conviction Procedure Act." State v. Sommerfeld, 116 Idaho 518, 520, 777 P.2d 740, 742 (Ct. App. 1989) (affirming district court's denial of defendant's I.C.R. 35 motion). Because Savage presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's decision not to further reduce his sentence pursuant to his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm Savage's conviction and sentence and the district court's decision not to further reduce Savage's sentence pursuant to his Rule 35 motion for sentence reduction.

DATED this 5th day of April, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

my vehicle, on 911 with my gun in my lap, afraid to pull out of my own house because Mel's out there and I can't see my husband. And I don't know if Mel has my husband, if he shot at my husband. I don't know that.

I hope the Court doesn't consider giving Mr. Savage any credit for the fact that our family lived through this. Our family lived through this because Eric and I moved fast because we knew he was coming, because he told us he was coming, and because we were ready for him. Don't give him any credit for us surviving this fire. He doesn't deserve it. He wanted us to die and he failed. But he's not done yet because he is a determined SOB. He is not done yet and he has told me that I will pay.

I want Your Honor to remember -- or if the Court doesn't know, I want you to know -- that even after he was arrested and even after his crime was brought to light in the Post Register, Mr. Savage continues to write belligerent letters about me and he wants me muzzled. He tells the Post Register, "Muzzle her. She should be muzzled." Mr. Savage has written me letters.

He has addressed envelopes to me where he refuses to use my name, which is Laurie Baird Gaffney. He calls me "Mrs. Andersen" derisively. "Mrs. Eric Andersen" comes to me on pleadings and letters. I'm not supposed to be using the name that I use. He would prefer that I use a different one, and so

he has changed that for me. He wants me to know that I don't get to pick my own name.

I would like answers to questions including why was he using his girlfriend Tenille Madsen's car in my home. Was she there? Do we have a co-accomplice here, an accomplice that hasn't been held accountable? Do we have some reason to know how he found out who my husband was, how he found out where I live? He spent a lot of time finding out information about me, and he hasn't really given the presentence investigator or anybody information about the trouble he went to to find out about my life and my husband's life. I would like to know when he got that gun and how long he had been carrying it, and I want the Court to remember that there were NCO's and CPO's in place for me and Debbie Savage and he's walking around with a gun. He doesn't care.

I want the Court to know that he was sending things to Judge Gardner. He was filing actual pleadings with the Court to Judge Gardner. He was calling him "Judge Wapner." This is what he files with the Court, pleadings. He says, "Fuck off. Try again, Mrs. Gaffney. Not even close." And he sends all this to Judge Gardner. He calls him "Judge Wapner." He likes to sign the clerk of the court's name "Bull Shannon" because that's super funny to file that with the Court. He calls me and his ex-wife double-dipping fuckers in pleadings. I'll take it all. And it goes on and on and on with vulgarity and disrespect to the Court.

This is what he does when he's sober. This will continue whether he's out or in prison. There isn't anybody that holds Mel accountable that isn't going to pay a price, and I hope you remember that and give him the sentence he deserves. I have every trust and respect in the system.

And the final thing I would like to say is how much I love and respect and appreciate all of law enforcement and everything they did for us that night and every night since then. I'm pretty humbled by it.

THE COURT: Thank you. Mr. Clark, any additional evidence?

MR. CLARK: That's all the evidence we have, Your Honor.

THE COURT: Okay. Then, how we will proceed is, I'll invite Mr. Clark to make his recommendation and argument and then turn to Mr. Grant. If there is any rebuttal argument that needs to be made, then Mr. Clark will have that opportunity. And then, Mr. Savage, you'll have an opportunity to speak if you choose to.

Mr. Clark.

MR. CLARK: Thank you, Your Honor. I'd like the Court to consider a couple of things, I guess, somewhat in the abstract to begin with. First of all, this Court sees many different cases that come with all different varieties, all different circumstances, and this Court will oftentimes sentence

based on cause and sometimes based on effect -- in other words, intent or consequence or intent or result. And I'd like the Court to consider both of those things at sentencing because the intent element of this case perhaps far surpasses the end result.

I'd like the Court to consider a second thing; and that is, the legislature, the law-making body of this state, indicated that an Arson 1 is punishable by up to 25 years. I would like the Court to question, what does a 25-year arson look like? Is that lighting a shed? Is that lighting a garage? Is it lighting a house? Business building? Is it lighting a house in the middle of the day, knowing that the occupants are gone? Is it lighting a house in the middle of the night with the occupants at home -- the wife, husband, and children in the house? It's the reason why the legislature gives enormous latitude to this Court is because of all those different factors that present themselves when a case like this comes before the Court.

And ironically, this case is unique. I think everyone would agree that this Defendant presents a bit of an anomaly. In other words, on one hand you've got somebody -- he's got some minor interactions with the law prior to the last 12 months; but generally speaking, he's maintained a job. He's educated. He's not suffering from any cognitive or personality issues that have a mitigating bearing on this case, as we often see. And yet the crime itself is so horrific that this Court has

to consider that component when it pronounces sentence.

Your Honor, the plea agreement was designed to do a couple of things. First of all, the arson charge was, from our perspective, not negotiable because of the horrific nature of it. It was important from the State's perspective that the stalking charge be pled to. Whether it was the felony variety or the misdemeanor variety was not particularly relevant. What I wanted this Court to have was repeated course of conduct leading up to this final act.

We've talked a lot about -- and I want this Court to know, you know, we've got these other crimes this Court is also sentencing on today; and I'll speak to those a little bit. But we've got this arson that is -- that's kind of the big elephant in the room. That certainly is what's on everybody's mind. But I want the Court to remember that the arson was the final act, the final course of conduct, that led up to that horrific crime. The stalking on Ms. Gaffney and no-contact-order violation against his ex-wife, that's what the Court is sentencing on today.

The -- as Ms. Gaffney stated, there were no-contact orders in place at the time this crime occurred. And perhaps she said it best and most graphic. That piece of paper's not going to stop a bullet or a flame. I don't know the extent of what Mr. Savage is capable of from today going forward. I don't know that anybody knows. I can tell you this: I'm

concerned. I'm concerned because of the behavior that occurred. And that's what I've gone into with Dr. Landers is, the last thing he did before being placed in custody was to light their house on fire and take off to Colorado.

I realize we're removed from that now. We're pushing six months, you know, five months away from that. But that's the last thing this Defendant gave this Court as a -- as an indicator of his conduct, and there isn't anything that's gotten any better. I think there's some removal from those stressors. I think there's some time to contemplate. I'll certainly give him that. But the animus with regard to the ex-wife and the job situation, all those things are still present.

Dr. Landers, I wanted to point out a couple of things from his testimony. You know, there was a little bit of good-natured ribbing going on there because psychologists always deal with just this narrow lens; and that is the therapeutic intervention component to a defendant. And I appreciate the fact that that's where they're coming from. But this Court needs to recognize that that testimony is through that lens. He does not consider what our society expects of a certain crime. He does not consider incarceration anything other than a punitive measure. And this Court must consider those things.

What he did say -- and I think that's the most prevalent thing for this Court -- and that is, there isn't

anything going on upstairs with this Defendant that mitigates the offense. Adjustment disorder is, by definition, a short-term thing. You can find any disorder in the DSM-5. We all know that at this point. But the reality is, he does not have any severe psychosis or cognitive limitations that mitigate this offense; and that's one of the things this Court needs to consider. There is -- those things are not present.

Let me give you a couple of different examples. I gave Dr. Landers one. One of those is, theoretically, you could have a homicide case where he presents in the same therapeutic model as Mr. Savage. In other words, you could take the most severe of crimes, and Dr. Landers' answers could be the same. Yet is anyone here suggesting that probation would be appropriate on that charge? But yet Dr. Landers' findings are still sound.

Let me give you another example. Child molesters, oftentimes the worst ones, are defendants who are very old. They perpetrate on the very young, oftentimes their children. In those situations those defendants will always come back as a lower risk under the scales that they use, therefore treatable in the community. This Court's seen that many times. The most horrific child abuse cases are often the lowest risk from a clinical psychologist standpoint; and yet that crime is worse than the 20-, 17-year-old stat rape case.

And so while I appreciate where Dr. Landers is coming from, I want the Court to understand, that's through the

lens that he's looking at. He is not taking into consideration the gravity of a certain offense.

Let's talk about the Defendant's version. Much has been made of it. And I'll certainly do some, but I want the Court to at least appreciate a few things that I noted. The Court's well-aware, every time we come to a sentencing, I will always take into consideration the Defendant's version. Sometimes it's very therapeutic for everybody, it's very refreshing. Sometimes it's not. The Court needs to understand that or needs to consider that in terms of pronouncing sentence.

He starts off with, "I found myself on the concrete walkway of Mrs. Gaffney's home." He writes that in such a way as if it's some sort of an acid trip off Alice in Wonderland. Finds himself there. He just happens to find himself with two cans of gas and a lighter in the middle of the night on her walkway as if to minimize or excuse how this came about. And, by the way, he does that stone sober according to his version, okay.

"My intent was to light and leave the container on the walkway to harass and scare Mrs. Gaffney. As I squatted down, fumes ignited the container and ignited and literally blew up in my face, spewing gas and flames all over." Well, gas doesn't spew all over when this happens; but we'll deal with that in a minute.

I gave the Court five different photographs, and

I'm going to reference the photographs. I believe there's 2 and 3, close-ups of the window well. I want the Court to take note of a couple of things. From the fire investigator's report, he indicates that the fire was not in the window well and then climbed up to the wall of the house. If that were the case, the underside of the window well, the upstairs window that protruded out from the house, that underside would have been burnt. But it was not. You see the burn marks all over this; and all of them suggest that this fire burned down, not up.

Take a look -- I believe it's Pictures 4 and 5, maybe a little bit in Picture Number 1. If the Defendant's version suggests that he -- on the sidewalk he lights this Molotov cocktail on steroids and then it blows up and he kicks the can all over or whatever and that's what ended up lighting the house on fire, here's the problem with that version: If you'll look at the photographs, there's snow all over. If you burn a house in the middle of winter, fire is going to affect that scene because the snow is going to be disturbed. If the Court looks at these photographs, there is no flame travel from the gas can to the house and then up on the house. That would be present if his version was accurate.

Now, maybe we're -- you know, it's possible we're making a mountain out of a molehill because from an intent standpoint it's irrelevant. But the Court needs to understand the accurate facts because that explains -- you know, just

because it's not a specific intent crime doesn't mean this Court isn't -- doesn't need to consider what's in his mind at the time this happened.

The evidence suggests gas poured on the wall, cans set down. And I'll give him some pointers because every time I burn some weeds in my backyard, I put a little gas on there. I shouldn't. I realize that. I put gas on there; and then I walk the gas can clear across the yard, come back, and light it on fire because it's the fumes that light on fire, not the gas. He pours the gas on the wall, sets the can down, lights it, and he's still got a vapor trail from the can to the wall. Boom. That's what the evidence supports. That's what the fire investigator finds.

And yet I realize defendants always want to, you know, control a little bit of the conversation regarding what happened. I can appreciate that. We see it all the time. But to minimize it such that to negate what he did here is not appropriate, and this Court should not give him credit for this version of the events.

Going back to his first statement where he says, "I found myself on the concrete walkway," he's got gas cans. He's got a lighter. He immediately drives to Colorado. I got the impression that was some sort of a planned -- well, I think he told the investigators there there was some planned trip. And he got burned with a barbecue in Colorado, I think, was his

version that he gave them. All of those things took some foresight that he's not wanting to acknowledge here, and all of those things are aggravating things this Court ought to consider.

I'll speak briefly to the mitigating facts because certainly the Court should consider those. We've mentioned some. He's 44 years old. Little to no record. I don't believe there's any convictions prior to these events leading up to today. He's got a history of employment. He has pled guilty. He deserves some credit for that but not to the extent that he's put to rest his conduct.

And I think that Ms. Gaffney said it best, and it's also found in the PSI writer's comments. I believe the PSI writer said, "But for the grace of God, his charges are not homicide charges." It's also interesting, the PSI writer just has a -- nothing more than just these reports; and she called BS on his version of the events as well, indicating he minimizes his conduct. Dr. Landers indicates he minimizes his conduct. And his version certainly suggests the same thing.

Going back to my point when I said this was the final act, the arson charge was the final act of a series of acts; and Ms. Gaffney has spoken to those. The fact that she is afraid and awake in her house is the reason -- he shouldn't be given credit for the fact that she's awake when this happened. This is at 1:00 o'clock in the morning. They're all home, generally speaking, asleep. 1:00 o'clock in the morning, I think

it's not a stretch to say -- I don't believe it's an illogical jump to suggest that's bedtime.

He lights their house on fire. This fire travels up on the wall. It's interesting. The fire investigator talks about this getting up in the rafters. And I said, "Well, why is that a big deal?" And he says that once it's in the rafters, this fire is going everywhere. Once it's in the rafters, we're talking total loss. We are fighting this thing in a much different way than simply on a wall or on a gas can. And we were seconds away from this fire getting into the rafters. If Ms. Gaffney is asleep, as logically she should have been, what would have been the damage to this house? What would have been the damage to these individuals in the house?

Your Honor, the Defendant has made a statement -- I find myself somewhat enamored by certain defendants and their version or their different statements they will make. And the Defendant has stated on multiple occasions that he wants me to make an example -- or, rather, he expects me to make an example of him, that we're going to make an example of him, that he's screwed because we're going to make an example of him. I think that he's absolutely correct about that. I think that this Court ought to make an example of a defendant who shows an absolute lawlessness to the legal proceedings that he was engaged in. That's what started this. I have no problem making an example of someone who stalks and violates no-contact orders on two

different women over the course of time. I have no problem making an example of someone who lights a house on fire. I don't have a problem making an example of someone who lights a house on fire in the middle of the night with the entire family at home. I'll wear that because I think the Court needs to as well.

Your Honor, based upon all of the circumstances on the case, speaking with the victims, and discussing both the aggravating and mitigating facts, we're going to recommend a 15-year sentence to this Court. We're going to recommend five of those be fixed. On the no-contact-order violation, or the stalking charge, we're going to recommend a one-year imposed concurrent to the stalking -- I'm sorry, concurrent to the arson charge. We filed a motion for reimbursement of costs for the evaluation to the tune of $500 and also a restitution motion in the amount of $8162.79. We'd ask the Court to order those as well. Thank you.

THE COURT: When was that filed? Has that been submitted today?

MR. GRANT: Your Honor, the request for costs for the evaluation and the motion for restitution were both submitted prior to the hearing; and we have no objection.

THE COURT: All right. Thank you, Mr. Clark. Mr. Grant.

MR. GRANT: Thank you, Your Honor. Before I start my comments, I'd -- there are a lot of folks who -- here who are

supporters of Mel. I'd love to be able to call each and every one of them as a witness. I knew that that wasn't feasible, that wasn't possible. So what I would like instead is, anybody who's here as a supporter of Mel, would you please stand up?

MR. CLARK: Are you going to get this on the record?

MR. GRANT: I just wanted the Court to see that. Thank you, folks. I appreciate that. I wish I could call y'all as witnesses.

Your Honor, I can appreciate the State's recommendations. I don't agree with them. What you've heard so far between the victim impact statements and what Mr. Clark has said is concerning. There was something here that happened that shouldn't have happened, and it was bad. I think, though, you've heard a lot of hyperbole. I think you've heard a lot of speculation. I can't count how many times I heard the words "what if" or "we don't know" or "this could have happened" or "that could have happened." And I can't help but think that you're being asked to punish Mr. Savage for stuff that didn't happen, that there's no evidence that it was going to happen, that there was no evidence of an intent to make it happen, and that causes me concern.

I would ask at the outset that as the Court fashions its sentence, that it fashions its sentence on the empirical evidence, the data, what's there, not on "what ifs,"

"we don't knows," "this could have happened." I struggle with that. I don't think that is the purpose of sentencing. The purpose of sentencing, I think, is to form a sentence, a punishment, that the Court deems appropriate based upon what is actually in front of it.

Some of the struggle that I have with the presentence investigation report, Your Honor, I guess that I need to address a couple of things there before I get into the meat of my comments to the Court.

And I'll start with the investigator's comments and conclusions, and I'll start with her very last paragraph. "Given the nature and severity of the crime, combined with the fact that the defendant's actions against Ms. Gaffney escalated and continued in spite of repeated legal interventions, I believe the defendant represents a real danger to the community." I don't disagree that the nature and severity of the crime is significant here. I don't disagree that there was behavior that escalated against Ms. Gaffney throughout the proceedings of the divorce. But then she talks about in spite of repeated legal interventions. I can't find in the presentence investigation report where there were repeated legal interventions unless she's talking about what happened over a series of a few months, a couple of months, that culminated with the starting of the fire.

I look at Mel's criminal history. Mel had never been convicted of an actual crime until the Court enters a

judgment today. I looked at his criminal history. I saw a battery as a teenager that was dismissed. I think I saw a leaving the scene of the accident that was dismissed and a public intoxication charge from 2013 that was reduced to an infraction, and within a week of that Melvin was in California in an inpatient treatment program dealing with that. That was, I think, one of the big eye openers to a problem there.

She then says, "I believe the defendant represents a real danger to the community." What is she basing that conclusion off of? She doesn't state. Had she included some of the findings from Dr. Landers, she would have seen there that that isn't true. She ignores the LSI score of 12 in the presentence investigation report. She ignores the findings in the substance abuse assessment that includes some mental health follow-up in making that statement.

Then she says, "I believe he is in need of long-term treatment for his anger and other mental health issues with the kind of structure and programming that is only offered through a correctional institution." Okay. What kind of treatment is that that is so unique to the Department of Corrections that isn't out there in the community? In fact, I know of no treatment programs the Department of Corrections uses that aren't available in the community. She says that he needs treatment that can only be done through the Department of Corrections.

APPENDIX B

THE COURT: And, Counsel, is there any legal reason why the Court should not proceed to sentence?

MR. GRANT: No, sir.

THE COURT: Let me begin, ladies and gentlemen and to the parties, by just acknowledging the somber mood that is in the courtroom. I recognize the very interests that are involved today. I appreciate those that have come and attended and, frankly, on behalf of both parties. There have been tears in the courtroom today figuratively and literally on both sides of this aisle; and I want to express my appreciation to the professional manner, not just to the counsel who present sincere recommendations for the Court to consider but also those that have attended and listened very carefully.

I want to begin by setting forth those same objectives that were referenced by counsel; and that includes really this Court's obligation to consider protection of society; deterrence to you, Mr. Savage, and to others; to not overlook the need for rehabilitation; and simply punishment for the wrongdoing. And in all of the statements that the Court will make today, it will be those four objectives that guide this Court in its decision.

There are a number of things that I want to express that have influenced the Court's decision today, a number of factors. And as you have heard the two perspectives in this case, it is now time to reconcile those; and in so doing, it is

to acknowledge the aggravating circumstances and factors of this case, which I will do, but it is also to reconcile those with the mitigating facts that exist in this case and really in the life of Mr. Savage that has been lived to this point in his life. And this Court must do that. It's this Court's role to do that. As you can imagine, sitting through the arguments that have been presented, it's not an easy task; and it's one that requires significant deliberation and attention to the arguments that have been presented.

I am appreciative of the statements that were made, the testimony that was provided by Dr. Landers. They have been helpful to the Court. I want the parties to know that the Court has been diligent in reviewing all of the materials that have been submitted. I believe I have a clear understanding, or as much as I can through diligence, in assessing these facts and circumstances that bring us to where we are today.

Let me begin by the mitigating facts of this case. Mr. Savage, thank you for that statement. There were a number of terms that have been acknowledged by you that I noted. You referenced no excuse. You used the term "failed." You recognized that you have affected other people's lives. And with regards to that, it's not just those close to you; but obviously it affects those that you harmed.

I noticed and understand the reasons for your tenderness as reference was made of your children; and I

understand that you have contributed as a father, as a citizen, being employed; and while I speak of your children and do so because of what is referenced in the presentence materials, knowing that their lives have been affected by your decisions, that tenderness can be applied to the other children that were affected that in many ways and in large measure have that tenderness and that feeling as well. You express remorse. You acknowledge worry, hurt, and expressed your desire to end what has happened. And in many respects it is this Court's hope that that does end today upon the pronouncement of this sentence.

I recognize, however, that it also is the marking of a beginning. There were a number of letters that were submitted, specifically one from Darren Conant, who says that there will be a time to begin to put your life back together and, in his closing sentence, confidence that you can return to be a better man to society. And that is really the tone of a number of letters that were submitted. You will be accountable for your offense. And the question is, what is that accountability? You have been employed throughout your life. Counsel notes the low LSI score. Also in your remarks you acknowledge an almost unbearable guilt, shame, and embarrassment; and you've demonstrated that before the Court today.

You should recognize that regardless of the Court's jurisdiction in this case, there will come a time when you are returned to the community; and it's this Court's

expectation that you follow through on the prediction of Mr. Conant and others that have expressed confidence in you. And that confidence is present in the Court's mind as well to a degree as I evaluate the other objectives of criminal punishment.

It's important for the parties to understand, as was argued today, that this offense is measured by the potential punishment. There has been argument on both sides and argument that the suggestion should be that the Court should give credit for the victims of this case having survived. It's inescapable to understand that this offense should be evaluated based upon all of the factors and circumstances of this case.

There was argument regarding the "what ifs" and innuendos. But what is known to the Court is that this is an arson, an arson that carries a potential punishment of up to 25 years in prison. Where does this arson fit in relation to all offenses that relate to arson? This took place at night. It took place in a dwelling, not on a couch or clothing. It took place when the dwelling was occupied. It took place when it was occupied with children. It took place when it was occupied with subjects or individuals subject to at that time was hatred and rage. It took place at a time with escalating behavior. It occurred and resulted in damage. It took place at a time when there was an additional weapon. And it took place with what this Court believes as efficient incendiary instruments. It may not be the most, as argued by Mr. Grant; but from any lay experience

it was gasoline, one that is flammable. And these are things that the Court knows. It's not speculation. They are facts. And the Court applies these facts to the objectives of criminal punishment.

The act itself has been described as stupid. This Court believes, however, that it's more than that. It's lawlessness. It's not reckless. I would suggest that it's more than malicious. We're talking about an offense that is criminally-minded with elements of intent that would lead the risk to a loss of life. And that, I believe, from the Court's perspective, is also factual and, as such, requires pause and deliberation as the mitigating factors are balanced and weighed. It's true that there has been a prosocial life of Mr. Savage and that it will likely continue. The question is, what is the ongoing risk. That is the principle objective of this Court is to protect society.

The Court has in his own mind after reviewing all of these factors, and I believe that that ongoing threat can be diminished over the course of time. Today, based upon all of the evidence, I'm not confident that there is no threat that is present and ongoing, that there continues to be a threat. This affected a number of individuals. On Page 6 of the presentence report, children that sat in a car for several hours, that is something that will be left with those children likely for the rest of their life; and that is likely after counseling and

treatment that needs to happen. That fear is demonstrated by both statements today by the victims. I recognize that in the description of how this has affected the lives of those that were the subject of this rage withheld some personal information out of the fear that more harm could come.

The Court is convinced that this is an offense that is a very serious arson; and as such, I believe that the punishment will reflect that. I want to state at this time my encouragement to Mr. Savage that you will have opportunities to redefine yourself. It comes after you have been accountable. And there will be opportunities to be productive like you once were, contribute to your family, to the community, to your profession, and whatever else it is that you may do.

So the Court, after considering all of the objectives of criminal punishment, will sentence you as follows: For a fixed term the Court will impose four years, an indeterminate period of 15 years, for a unified sentence of 19 years. The Court will impose a $1,000 fine on the arson. The Court will waive any public defender fees in this matter. As for the misdemeanor offenses, each will be for one year fixed with no fine; and they will run concurrently with the arson.

Mr. Savage, do you have any questions for the Court?

THE DEFENDANT: I do not.

THE COURT: Let me share with you three dates to

consider that I would invite you to visit with your counsel about. It includes the right to appeal. That would expire 42 days from today. The right to file what is called a Rule 35. That is relief if you believe, after visiting with counsel, that I have sentenced you unduly harsh or sentenced you in an illegal way; and that expires 120 days from today. Lastly, there is relief called post-conviction. That expires one year after the appeal expires. I don't today expect you to understand all of those but to be aware that those dates begin to tick at this time.

Has the Court overlooked any component of the sentence?

MR. CLARK: Your Honor, I'd ask -- I failed to mention this; but I'd like the no-contact order to remain in effect while the jurisdiction is still with this Court.

THE COURT: Any objection to that?

MR. GRANT: No objection.

THE COURT: All right. Then, that will be the Court's order as well. All right. Thank you all. You may be excused.

(Proceedings concluded)