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## State v. Padilla Respondent's Brief Dckt. 44632

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44632
Plaintiff-Respondent,	)	
	)	Nez Perce County Case No.
v.	)	CR-2016-4022
	)	
TAMARA O. PADILLA,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Padilla failed to establish that the district court abused its discretion by declining to retain jurisdiction, upon her guilty plea to felony DUI?

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

Padilla pled guilty to felony DUI and the district court imposed a unified sentence of 10 years, with five years fixed. (R., pp.63-66.) Padilla filed a notice of appeal timely from the judgment of conviction. (R., pp.67-70.)

Padilla asserts that the district court abused its discretion by declining to retain jurisdiction in light of her difficult childhood, completion of multiple rider programs, and family support. (Appellant's brief, pp.3-6.) The record supports the sentence imposed.

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

At sentencing, the district court addressed the seriousness of the offense, Padilla's excessive alcohol content, her failure to rehabilitate, and the risk she poses to the public. (10/19/16 Tr., p.31, L.16 – p.35, L.16.) The state submits that Padilla has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Padilla's conviction and sentence.

DATED this 10th day of April, 2017.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of April, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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

# APPENDIX A

1 even though if I am sent to prison or to retained  
2 jurisdiction, I have started my recovery. I can be  
3 free on the inside even though I'm locked up. I  
4 have been doing AA every day in the jail and, you  
5 know, reaching out to others and helping myself, and  
6 I'm sharing my experience, strength and hope, and  
7 that's all I can do from now on.

8 And I apologize to you because I know you  
9 gave me a chance on probation, and I let you down,  
10 and I let the community down, and myself and my  
11 family. Thank you.

12 THE COURT: Well, thank you, Ms. Padilla.  
13 I find myself in agreement with pretty much  
14 everything that's been said by you, by Mr. Hurn, by  
15 Ms. Kelleher.

16 I look back at what I have gone through  
17 with you on the prior DUI offense and couple of  
18 probation opportunities that I had given you in that  
19 case, and I mean I have been talking to you since  
20 the outset of that case about the need to totally  
21 eliminate alcohol. And you have had some positive  
22 times during those probation opportunities; but as  
23 you have seen, I'll deal with relapse with alcohol  
24 use a little differently than I'll deal with someone  
25 who goes further than just consuming alcohol and

1 gets back behind the wheel of a car after having  
2 done so. That substantially increases the risk that  
3 I have to consider as part of an appropriate  
4 sentence in this case.

5 Because you have not been able to  
6 eliminate alcohol from your life, you do continue to  
7 present a risk, and that's proven out by the  
8 decisions that you made in this case, not just to  
9 drink when it was offered to you evidently by a  
10 family member who should certainly know what your  
11 situation is, and that they should not be offering  
12 you alcohol.

13 There's a reference in some of the letters  
14 that it was one or two drinks. Well, it was more  
15 than that to get to a blood alcohol content in  
16 excess of point two. And that did carry a pretty  
17 substantial risk with it. Fortunately you were  
18 stopped here for speeding, there was no accident  
19 that resulted of any kind, so no one was hurt, but  
20 potential was still, nevertheless, there.

21 You have -- this is actually the third  
22 felony DUI offense. The first was back in 2002,  
23 then you had the one with me in 2011, and now this  
24 offense from 2016.

25 In evaluating what an appropriate sentence

1 is, my first consideration is always the protection  
2 of society, and I think that is a serious  
3 consideration here because of the decisions that you  
4 continue to make. Mr. Hurn has ably argued for a  
5 sentence that more is geared toward rehabilitation,  
6 and I'm unfortunately at this point in time really  
7 not willing to consider that. That's what I have  
8 been trying to do with you in the past was provide  
9 you with that rehabilitation opportunity.

10 There are always going to be triggers that  
11 arise. There are always going to be reasons that if  
12 somebody wants to drink, they can find a reason to  
13 do so. The challenge for someone in your situation  
14 is to develop the ability not to do that, and that's  
15 obviously not been successful to this point in time.  
16 So I think that rehabilitation as a sentencing goal  
17 really has to take a secondary position at this  
18 point.

19 I think also that trying once again the  
20 retained jurisdiction program would depreciate the  
21 seriousness of this, your third felony DUI offense,  
22 given the two times that I have already tried that.  
23 I had you out in the community; and as you have  
24 talked about, you have let me down by committing  
25 another offense.



1           Looking back over the letters, I'm struck  
2 by how helpful you can be to other people, and you  
3 have been, and I think you will continue to be; but  
4 I also tend to agree with Mr. Hurn that I think you  
5 kind of lost focus on yourself and keeping yourself  
6 primary and helping yourself. And as a consequence,  
7 you are here facing a serious situation, a driving  
8 under the influence offence with a very substantial  
9 blood alcohol content, and it's unfortunate that you  
10 put yourself in this situation.

11           Just using alcohol would have been bad  
12 enough, but then to get behind the wheel of a car,  
13 driving that car with other people in it including  
14 your grandchildren that you had continually taken  
15 responsibility for, you have through the course of  
16 that proven your risk to make poor decisions and  
17 expose other people to the risk of harm. That's why  
18 it's real important when given chances at probation,  
19 even potentially multiple chances at probation as  
20 you were, that you really make that work and truly  
21 make some meaningful long-term changes in your life.

22           Some of the people that have written on  
23 your behalf have asked for a chance for you, and I  
24 can only believe that those people were not aware of  
25 all the chances that I had already given you.

1           And so I find that anything less than a  
2 sentence of incarceration in this matter would be  
3 inappropriate. Based upon the parties' agreement  
4 and recommended sentence in this matter, I find that  
5 you are guilty of the felony offense of Operating a  
6 Motor Vehicle While Under the Influence. You are  
7 hereby sentenced to custody of Idaho State Board of  
8 Corrections for a period of not less than five and  
9 not more than ten years, consisting of a minimum  
10 period of confinement of five years during which you  
11 would not be eligible for credit, discharge or other  
12 reduction of sentence for good conduct. Subsequent  
13 indeterminate period of five years for a total of  
14 ten. You are going to be given credit for the time  
15 that you have served in custody since your arrest on  
16 May 29.

17           In addition to that, I'm going to impose a  
18 two-year license suspension and a five-year  
19 interlock requirement following your release from  
20 custody in this case, and remand you to the custody  
21 of the Nez Perce County Sheriff's Office for  
22 transfer to the Department of Corrections.

23           I have the State's motions to dismiss  
24 Counts II, III and IV, Case No. 4022, that motion is  
25 granted. I have signed the order to dismiss those