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## State v. O'Neal Appellant's Brief Dckt. 45172

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45172
	)	
v.	)	GOODING COUNTY NO. CR 2016-2143
	)	
JIMMIE O'NEAL,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Sixty-two-year-old Jimmie O'Neal pled guilty to voluntary manslaughter after shooting his son-in-law. This was Mr. O'Neal's first and only crime. The district court imposed a prison sentence of twelve years, with six years fixed. On appeal, Mr. O'Neal asserts that the district court abused its discretion by imposing a term that is excessive in light of the mitigating circumstances of his case, and by declining to consider probation or retained jurisdiction.

Statement of the Facts and Course of Proceedings

Mr. O'Neal and his wife of forty-four years had recently moved to Idaho to be near their children and grandchildren. They lived two blocks from their youngest daughter, Stacie, and her

husband, Steven Lawrence, and their three children. (PSI, p.11.)<sup>1</sup> Mr. O’Neal had a very good relationship Steven and thought of him as a son. (Tr., p.34, Ls.4-6.)<sup>2</sup> The two families saw each other multiple times a week and spent time together hunting, fishing and shooting. (PSI, p.12.) Their families spent the 2016 Thanksgiving and Christmas holidays together, with everyone getting along. (Tr., p.14, L.6 – p.15, L.8.)

A few days after Christmas, on December 28, 2016, Mr. O’Neal’s daughter came over, upset and hurting, and told her parents she’d had an argument with her husband, Steven, and been thrown to the ground. (PSI, p.6.) Mr. O’Neal became angry; he knew his daughter had been physically and emotionally abused over the past five months and he set out to confront Steven and “beat his ass,” so that Steven would learn what it was like to be abused. (PSI, p.7; Tr., p.35, L.2.) Mr. O’Neal also knew that Steven carried a firearm, and he brought his handgun with him. (PSI, pp.7, 8.) When he arrived at his daughter’s house, two-blocks away, he found that Steven had barricaded himself in the upstairs bedroom (PSI, p.5), with a chair shoved up against the door. (PSI, 8; Exhibits, p.7.) The two men argued and yelled from either side of the door. (PSI, p.8.) Mr. O’Neal pushed his way through the door, and saw Steven standing with a gun held between two hands, pointed at him. (Tr., p.39, Ls.14-15.) Mr. O’Neal stepped back and pulled out his own gun, showing that he had one too. Mr. O’Neal is adamant that he never meant for the gun to fire, and he is not quite sure how it happened, but he shot Steven. (PSI, p.6; Tr., p.29, L.19 – p.31, L.17.) Steven fell to the bed but got up and went downstairs to the couch.

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<sup>1</sup> Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 124-page electronic file containing those documents. Citations to the Exhibits admitted at the May 2, 2017 sentencing hearing will be referred to as “Exhibits” will include the page numbers associated with the 13-page electronic file containing those documents.

<sup>2</sup> Citations to the transcript refer to the transcript of the sentencing hearing held on May 2, 2017, unless a different date is given.

Mr. O'Neal followed him and tried to save Steven's life (Tr., p.32, Ls.2-3); he applied a cloth to Steven's wound to try to stop the bleeding, sent his teenage grandson to fetch his mother and grandmother, and took Steven's phone from his back pocket and called 911. (PSI, p.6; Tr., p.29, L.19 – p.31, L.17.) He told the dispatch operator that he'd just shot Steven and to send an ambulance. (PSI, p.6; Tr., p.29, L.19 – p.31, L.17.) After the emergency medical help arrived Mr. O'Neal experienced chest pains and he was also taken to the hospital in a separate ambulance. (PSI, p.8.) Steven died that day from the gunshot wound and Mr. O'Neal was charged with second degree murder. (PSI, p.8; R., p.7.)

The State later amended its complaint to allege first degree murder, with a deadly weapon enhancement, and burglary (R., pp.17, 19.) Mr. O'Neal waived his preliminary hearing (R., p.30), and pursuant to a written agreement with the State (R., p.49), he entered an *Alford* plea to an amended Information that charged him with voluntary manslaughter (Tr., p.19, Ls.6-8; R., p.51). Pursuant to the plea agreement, the State recommended that Mr. O'Neal be sentenced to prison for no more than ten years, with three years fixed. (R., p.49; Tr. p.50, Ls.4-7.) Mr. O'Neal asked the district court to grant probation in light of his advanced age and his serious heart condition, and the fact that imprisonment would result in the loss of disability income that his wife depends upon to live; alternatively, he asked the court to retain jurisdiction, or to impose a fixed term of no more than six months' incarceration. (Tr., p.71, L.19 – p.72, L.12.) The district court declined to follow either party's recommendation, and imposed a unified sentence of twelve years, with six years fixed, without probation and without retaining jurisdiction. (R., p.57.) Mr. O'Neal filed a timely notice of appeal. (R., p.57.)

## ISSUE

Given the mitigating circumstances in this case, did the district court abuse its discretion by sentencing Mr. O’Neal to an excessive term and by declining to grant probation or to retain jurisdiction?

## ARGUMENT

### The District Court Abused Its Discretion By Sentencing Mr. O’Neal To An Excessive Term, And By Declining To Grant Probation Or To Retain Jurisdiction, In Light Of The Mitigating Circumstances Of This Case

#### A. Introduction

The district court abused its discretion in this case by imposing an unreasonably harsh sentence. The six-year fixed portion, which is double that recommended by the State, is excessive, and the district court’s decision to send him to prison with no opportunity for probation was particularly severe, especially given Mr. O’Neal’s lack of any prior crimes, his age, and his serious heart condition.

#### B. Standard Of Review

Where a defendant challenges his sentence as excessively harsh, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834. The

sentencing court's decision to impose a period of incarceration rather than probation is reviewed under these same criteria. I.C. § 19-2521; *State v. Hayes*, 138 Idaho 761, 767 (Ct. App. 2003).

When the district court imposes a prison sentence, it has the discretion to retain jurisdiction. *See* I.C. § 19-2601(4). The primary purpose of retaining jurisdiction is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). The sentencing court's refusal to retain jurisdiction is not an abuse of discretion if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.*

C. Mr. O'Neal's Sentence Is Unreasonably Harsh In Light Of The Mitigating Factors In This Case

At the age of sixty-two, Mr. O'Neal had devoted his life to family. He married when he was eighteen, and he and his wife of forty-four years raised a son and two daughters, and now have seventeen grandchildren and great-grandchildren. (PSI, p.10.) As demonstrated by the letter from his middle child, Chrystal, Mr. O'Neal valued and respected his daughters, and he wanted the best for them. (Exhibits, p.4.) He was protective of his family, and lived believing that family members take care of each other. (Exhibits, p.5.) His own parents were married fifty years when his father died in 2003, and Mr. O'Neal then took care of his mother and stayed with her until she passed in 2014. (PSI, pp.10; 13.)

Mr. O'Neal worked to support his family, holding the same job for fifteen years at a bakery until he was injured; then he learned accounting and worked as an auditor until further injuries and medical issues related to his heart rendered him disabled even from that line of work. (PSI, p.13.) Mr. O'Neal was receiving disability income before he went to prison, and his

wife depended on that income source as well. They had accumulated very few assets (PSI, pp.16, 17), and the loss of his disability income resulting from imprisonment will be financially devastating to his wife, who has no other income source. (PSI, p.15.)

Mr. O'Neal is a suitable candidate for probation. Although his crime was serious, he presents very little risk of re-offending, as reflected by his low LSI score of 12. (PSI, p.30.) He had no trouble with the law before this incident (PSI, pp.4, 9), and as a consequence of this conviction he will no longer carry or have access to firearms. *See* I.C. § 18-3316. At the time of sentencing, Mr. O'Neal was sixty-two and in very poor health. (PSI, p.12.) He has serious heart problems; in 2015 he underwent triple by-pass surgery (PSI, p.12), and his current medical records reveal he has coronary artery disease and should be on medication (PSI, p.15). These are mitigating facts that should be taken into account in deciding an appropriate sentence for Mr. O'Neal. *See State v. Nice*, 103 Idaho 89, 91 (1982).

Additionally, Mr. O'Neal has strong support from several family members, particularly his wife, who continues to stand by and be strong for him. (Exhibits, p.4.) She acknowledges their marriage has had its ups and downs, but nothing as wrenching as this, and she remains supportive. (*See* Tr., p.10, L.18 – p.21, L.10.) He also has strong support from his middle daughter who resides out of state, but who loves her dad and has stayed connected despite what has happened to the family. (*See* Exhibits, pp.4-5.) This support will help Mr. O'Neal when he is back in the community, and should be considered as mitigation in his case. *See State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991).

Finally, Mr. O'Neal's remorse and responsibility should be considered as mitigation. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). His grief was immediate and evident at the hospital, when he first learned he had killed Steven; he covered his face with his hands and wept

for a long time. (PSI, p.18; Tr., p.66, Ls.15-24.) Mr. O'Neal loved Steven and thought of him as a son. (Tr., p.34, Ls.4-6; p.72, Ls.6-12.) At sentencing he told the court he was ashamed of having put his family through this tragedy, and he apologized especially to Steven's mother and recognized her great loss. (Tr., p.72, Ls.6-12.)

Mr. O'Neal never intended to shoot Steven Lawrence, and his mistake has devastated his family. But imprisoning him for a lengthy six-year fixed term, at his age and in his medical condition, and without the potential for probation, is unreasonably harsh under the circumstances, and represents an abuse of the district court's sentencing discretion.

#### CONCLUSION

Mr. O'Neal respectfully requests that this Court reduce the fixed portion of his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing, with instructions that probation be considered.

DATED this 1<sup>st</sup> day of December, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas