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### State v. Wrigley Appellant's Brief Dckt. 45869

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                              |
|-----------------------|---|------------------------------|
| STATE OF IDAHO,       | ) |                              |
|                       | ) |                              |
| Plaintiff-Respondent, | ) | NO. 45869                    |
|                       | ) |                              |
| v.                    | ) | ADA COUNTY NO. CR01-17-32421 |
|                       | ) |                              |
| JACK ALLEN WRIGLEY,   | ) |                              |
|                       | ) | APPELLANT’S BRIEF            |
| Defendant-Appellant.  | ) |                              |
| _____                 | ) |                              |

STATEMENT OF THE CASE

Nature of the Case

Jack Allen Wrigley pled guilty to abuse, exploitation, or neglect of a vulnerable adult and intimidating, impeding, influencing, or preventing the attendance of witness, and was sentenced on the first count to a unified term of ten years, with two years fixed, and on the second count to five years indeterminate, to be served concurrently. He appeals from his judgment of conviction, arguing the district court abused its discretion when it imposed this sentence on him considering the mitigating factors that exist in this case.

## Statement of Facts and Course of Proceedings

Mr. Wrigley was involved in a physical altercation with his mother, Judith Bunn, on August 14, 2017. (R., p.82.) A bystander transported Ms. Bunn to the local police station, and Mr. Wrigley parked his mother's car nearby. (R., p.82.) Mr. Wrigley was arrested, and told the officers at the time of his arrest that his mother was having an episode related to her dementia that led to the altercation. (Prelim. Tr., p.42, L.7 – p.43, L.1.) While in jail, Mr. Wrigley spoke to his mother on the telephone, in violation of a no contact order, and said, "You can't come to court." (Presentence Investigation Report ("PSI"), pp.5, 98-100.) The medical records produced during discovery reflect that Mr. Wrigley's mother suffers from "moderate to severe dementia." (PSI, p.164.)

Mr. Wrigley was charged by Information with robbery; abuse, exploitation, or neglect of a vulnerable adult; intimidating, impeding, influencing, or preventing the attendance of witness; and violation of a no contact order. (R., pp.40-42.) Just prior to trial, Mr. Wrigley entered into an agreement with the State pursuant to which he agreed to plead guilty to Counts II and III and the State agreed to recommend a unified sentence of eight years, with two years fixed, on Count II; and five years, with two years fixed, on Count III, to be served concurrently, with a period of retained jurisdiction. (Tr., p.3, Ls.11-24, p.29, Ls.4-6; R., pp.165-71.) The district court accepted Mr. Wrigley's guilty plea. (Tr., p.16, Ls.18-24.)

The district court sentenced Mr. Wrigley to a unified term of ten years, with two years fixed, on Count II; and five years indeterminate on Count III, to be served concurrently. (Tr., p.46, L.21 – p.47, L.3.) The district court did not retain jurisdiction. (*See id.*) The district court entered a no contact order prohibiting Mr. Wrigley from having any contact with his mother for a period of ten years. (R., pp.178-79.) The judgment of conviction was entered on

March 7, 2018, and Mr. Wrigley filed a timely notice of appeal on March 8, 2018.<sup>1</sup> (R., pp.180-86.)

### ISSUE

Did the district court abuse its discretion at sentencing considering the mitigating factors that exist in this case?

### ARGUMENT

#### Considering The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion At Sentencing

Mr. Wrigley asserts that, given any view of the facts, his unified sentence of ten years, with two years fixed, for abuse, exploitation, or neglect of a vulnerable adult, and five years indeterminate for intimidating, impeding, influencing, or preventing the attendance of witness, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “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.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the offense, the character

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<sup>1</sup> Mr. Wrigley filed a motion pursuant to Idaho Criminal Rule 35 for a reduction of sentence on April 12, 2018. (R., pp.189-90.) The district court denied the motion without a hearing in an order dated May 23, 2018. (Motion to Augment, Ex. A.) Mr. Wrigley does not challenge the district court’s denial of his Rule 35 motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2006).

of the offender and the protection of the public interest.” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence the district court imposed upon Mr. Wrigley was not reasonable considering the nature of his offense, his character, and the protection of the public interest. Most importantly, the nature of Mr. Wrigley’s offense did not warrant an imposed prison sentence. While Mr. Wrigley acknowledges engaging in an altercation with his mother, and accepts responsibility for his actions, the circumstances surrounding the altercation are unclear. After being advised by the police of why he was being detained, Mr. Wrigley “immediately began asking if his mother was ok” and “told the officer his mother had dementia and/or Alzheimer’s.” (PSI, pp.4-5.) He told the officer his mother had become upset and was screaming at him, and he was trying to get back into the car to take her home. (PSI, p.5.) At the change of plea hearing, Mr. Wrigley told the district court his mother was having “an episode” related to her Alzheimer’s; she got out of the car and started running; and he “was trying to drag her back to the car” when a bystander intervened. (Tr., p.14, Ls.5-21.) The medical records contained in the presentence materials reflect Mr. Wrigley’s mother has been diagnosed with “moderate to severe dementia” and it is thus unclear what is remembered, and what is misremembered, from her perspective. (PSI, p.164.) What is clear is that this offense resulted from a domestic dispute that posed no risk of harm to anyone other than Mr. Wrigley and his mother, and most likely has some connection to Mr. Wrigley’s mother’s declining mental condition.

The sentence the district court imposed upon Mr. Wrigley was also not reasonable considering his character. Mr. Wrigley was 45 years old at the time of sentencing, and had no prior felony convictions. (PSI, pp.7-10, 21.) He is a high school graduate, who has had periods of gainful employment. (PSI, p.16.) He moved from Iowa to Idaho in August 2017 to help take

care of his mother. (Tr., p.7, Ls.2-3; PSI, p.22) Though he has struggled with substance abuse, he has many positive character traits. He reported to the presentence investigator that he is “an avid sports fan, plays softball and attends the LDS Church.” (PSI, p.13.)

Mr. Wrigley apologized for his conduct at sentencing, stating, “I . . . want to apologize to my family and most of all my mother, who is very ill and needs all the support she can get right now.” (Tr., p.39, Ls.23-25.) He said, “I love my mother with all my heart. She is my shining light.” (Tr., p.40, Ls.1-2.) Mr. Wrigley acknowledged a need for grief counseling and a 12-step alcohol program. (Tr., p.40, Ls.6-8.) He said, “I want my mom to be proud of me, and my kids to love me, and be proud of me again and know they can all count on me. I love my family . . . and I want to love myself to earn everything back.” (Tr., p.40, Ls.15-19.) He begged the district court for probation. (Tr., p.41, Ls.1-2.) The district court abused its discretion when it imposed a sentence upon Mr. Wrigley, and did not retain jurisdiction or give him a chance at probation. A lengthy term of incarceration was not necessary to protect the public interest, and, as argued by counsel, probation would have provided Mr. Wrigley with the skills necessary to come to terms with his mother’s illness. (Tr., p.35, Ls.14-23.)

In light of the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it sentenced Mr. Wrigley to ten years, with two years fixed, for abuse, exploitation, or neglect of a vulnerable adult, and five years indeterminate for intimidating, impeding, influencing, or preventing the attendance of witness. This sentence was excessive and unreasonable.

CONCLUSION

Mr. Wrigley respectfully requests that the Court reduce his sentence as it deems appropriate. Alternatively, he requests that the Court remand this case to the district court for a new sentencing hearing.

DATED this 27<sup>th</sup> day of July, 2018.

/s/ Andrea W. Reynolds  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of July, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
Delivered via e-mail to: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

AWR/eas