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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46078-2018
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR-2016-20308
v.)	
)	
TAYLOR R. DOBSON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Ms. Dobson appeals from the district court’s Order of Probation on Withheld Judgment. She asserts the district court abused its discretion when it withheld judgment and placed her on probation but suspended her driver’s license for five years after she pleaded guilty to one felony count of operating a motor vehicle while under the influence of alcohol.

Statement of the Facts & Course of Proceedings

In October of 2016, Canyon County Sheriff’s Deputy Roberts responded after a caller reported there was a vehicle sitting in an intersection with a turn signal activated, which was not

moving. (Presentence Report (PSI), pp.2-3.)¹ When Deputy Roberts arrived on the scene, he saw a car parked on the shoulder and noted that the license plates matched those the caller had reported. (PSI, p.3.) When he approached the car, Deputy Roberts saw a woman “slouched over the middle console, laying across the car, resting her head on the passenger seat.” (PSI, p.3.) When he knocked on the window, the woman did not respond but asked for help after Deputy Roberts attempted to wake her again. (PSI, p.3.) When he opened the door, he could smell alcohol. (PSI, p.3.) The woman was wearing a hospital wrist band, and Deputy Roberts saw that her name was Taylor Dobson. (PSI, p.3.) When he asked her if she needed help, she said she did because she had hit her head. (PSI, p.3.) Deputy Roberts said Ms. Dobson explained she had brain surgery three months prior, but she had hit her head again recently due to a fall, so she had to go back to the hospital. (PSI, p.3.) He said Ms. Dobson did not know where she was or how she got there. (PSI, p.3.)

Subsequently, medical personnel arrived and transported Ms. Dobson to a hospital. (PSI, p.3.) Another officer on scene saw a half-empty bottle of alcohol on the passenger side floorboard. (PSI, p.3.) After Ms. Dobson was treated, Deputy Roberts asked Ms. Dobson if she had been drinking, and she said she had been. (PSI, p.3.) A blood draw showed Ms. Dobson’s blood alcohol level was .2865. (PSI, p.3.) Ms. Dobson said she had an alcohol problem and needed help. (PSI, p.3.) In her statement for the PSI, she acknowledged she was driving under the influence, and she had two prior DUIs. (PSI, p.4.) In regard to this incident, she stated she was having car trouble, which made it difficult to change gears. (PSI, p.4.) Therefore, she

¹ All citations to the PSI refer to the 77-page electronic document, which in addition to the PSI, contains other relevant sealed documents.

pulled to the side of the road but hit her head when she did so.² (PSI, p.4.) She said her cell phone battery was dead, so she decided to wait until morning, and she then drank from a bottle of alcohol she had in the car and ultimately fell asleep. (PSI, p.4.)

Ms. Dobson was charged with one felony count of operating a motor vehicle while under the influence of alcohol. (R., pp.24-25.) An Information Part II was also filed alleging that the instant offense was Ms. Dobson's third driving under the influence charge within ten years. (R., pp.26-27.) Ms. Dobson pleaded guilty pursuant to a plea agreement. (3/27/18 Tr., p.9, L.25 – p.12, L.8; R., pp.38-55.)

At the sentencing hearing, the State recommended that the district court impose a sentence of six years, with two years fixed, but retain jurisdiction. (6/4/18 Tr., p.5, L.19 – p.11, L.14.) Defense counsel noted this was an unusual case in that Ms. Dobson was not aware a complaint had been filed, or an arrest warrant had issued, for approximately one year after the incident. (6/4/18 Tr., p.11, L.18 – p.12, L.3.) In light of the fact that, among other things, Ms. Dobson told her misdemeanor probation officer³ about this incident right away and sought treatment independently, counsel requested that the district court backdate the statutorily mandated one-year license suspension, place Ms. Dobson on probation for three years, withhold judgment, and allow Ms. Dobson to drive with an "interlock device."⁴ (6/4/18 Tr., p.14, L.10 – p.20, L.11.)

The district court said it was not aware of authority that would allow it to backdate a license suspension, and it asked the State whether it was aware of any. (6/4/18 Tr., p.20, L.21 –

² At the change of plea hearing, Ms. Dobson said she hit her head on the steering wheel when her car hit a pothole. (3/27/18 Tr., p.12, L.20 – p.13, L.9.)

³ Ms. Dobson was on misdemeanor probation for petit theft, and she successfully completed probation in March of 2017. (6/4/18 Tr., p.14, Ls.8-20.)

⁴ See I.C. § 18-8005(6)(e).

p.21, L.6.) The State said it was not, but it would not object to the court doing so as it thought that absolute license suspensions can make it harder for probationers to succeed. (6/4/18 Tr., p.20, L.24 – p.21, L.11.) Ultimately, however, the district court withheld judgment, placed Ms. Dobson on probation for five years, and suspended her driver’s license for five years. (6/4/18 Tr., p.20, L.21 – p.23, L.22 – p.28, L.25; R., pp.57-59.) Ms. Dobson filed a notice of appeal timely from the district court’s Order of Probation on Withheld Judgment. (R., pp.65-67.)

ISSUE

Did the district court abuse its discretion when it suspended Ms. Dobson’s driver’s license for five years following her plea of guilty to one count of felony driving under the influence?

ARGUMENT

The District Court Abused Its Discretion When It Suspended Ms. Dobson’s Driver’s License For Five Years Following Her Plea Of Guilty To One Count Of Felony Driving Under the Influence

Based on the facts of this case, Ms. Dobson’s five-year driver’s license suspension is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court “considers the entire length of the sentence under an abuse of discretion standard.” *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers whether the trial court “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Unless it appears that the sentence 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,” the sentence is unreasonable. *McIntosh*, 160 Idaho at 8. When a sentence is excessive “considering any view of the facts,” because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Ms. Dobson’s five-year license suspension is unreasonable. First, this was Ms. Dobson’s first felony conviction. (PSI, pp.4-5.) This is a long-recognized mitigating factor. *See e.g., State v. Nice*, 103 Idaho 89, 91 (1982). Second, Ms. Dobson accepted responsibility for this offense and recognized that alcohol is a problem for her. In her statement for the PSI, she said, “I broke the law by operating a vehicle under the influence. I have two prior DUI charges (2008, 2009) making this offense my third offense.” (PSI, p.4.) Similarly, at the sentencing hearing, she acknowledged she had prior DUI charges and told the district court she had struggled with alcohol for a long time, but she wanted to “stay healthy and get healthy,” so she could watch her son grow up and “raise him as a sober person.”⁵ (6/4/18 Tr., p.21, L.17 – p.22, L.5.) Acceptance of responsibility is also a recognized mitigating factor. *State v. Shideler*, 103 Idaho 593, 594 (1982).

Additionally, multiple letters of support were submitted to the district court that show Ms. Dobson’s family and employer support her, and that she is a hard worker who is employed full-time. (PSI, pp.29-34.) For example, her mother wrote that she loved Ms. Dobson very much and wanted her to beat her alcohol addiction. (PSI, p.31.) She also said Ms. Dobson had “always taken responsibility for her actions,” and she and Ms. Dobson’s father would “accept nothing less.” (PSI, p.31.) She noted that Ms. Dobson had always paid her own debts and kept a

⁵ Ms. Dobson has a five-year-old son, and she shares custody. (PSI, p.10.)

positive attitude. (PSI, p.31.) She went on to write that she had “seen a lot of growth” in Ms. Dobson in the year prior to her sentencing, and that Ms. Dobson had sought treatment on her own and “checked into a long term rehab” facility. (PSI, p.31.) She also said she appreciated that Ms. Dobson could wear an alcohol monitor and drive herself to work; she explained that this allowed “her to maintain her financial responsibilities,” make “it to her appointments and rehab,” and spend “time with her son.” (PSI, p.31.)

Ms. Dobson’s aunt, Heidi Reilly, also wrote a letter of support. (PSI, pp.33-34.) She stated Ms. Dobson “showed amazing organizational skills and a generous spirit” as a child, and “[a]s she matured, she combined those skills, with her strong work ethic to take on new responsibilities and she easily excels at any task or job to which she commits.” (PSI, p.33.) Ms. Reilly also stated Ms. Dobson was a loving mother and wrote, “[I]t is clear that she has a great way with children and that her son is benefitting from her supportive, fun loving and unselfish spirit.” (PSI, p.33.) She went on to write that Ms. Dobson had “always been one to own her missteps, mistakes and poor decisions and I believe she now understands that those poor decisions are a result of an alcohol addiction and that the only way to ensure she can continue to make positive decisions is through sobriety.” (PSI, p.33.) Ms. Reilly acknowledged that Ms. Dobson’s alcohol addiction caused her to make poor choices but said Ms. Dobson “has taken her strong work ethic to therapy and rehabilitation and worked on the issues that she may have been unaware were triggers in her earlier years. Now with her maturity and very clear understanding of the consequences that alcohol plays in her life and her son’s, I am confident she will continue to place the highest importance on sobriety.” (PSI, p.34.)

Additionally, the Human Resources Director at Zamzows wrote a letter on Ms. Dobson’s behalf. (PSI, p.30.) She stated that Ms. Dobson was a full-time employee of the company, and,

“despite the physical demands of” the job, Ms. Dobson had exceeded their expectations. (PSI, p.30.) She also said Ms. Dobson showed up to work on time and worked “exceptionally well with her co-workers.” (PSI, p.30.) She also wrote that Ms. Dobson had been “honest and up front” with her and the store manager about her issues, and that she would “love to continue to have [Ms. Dobson] be a long-term employee of Zamzows,” as she felt Ms. Dobson would “continue to excel and have opportunity for growth within our organization.” (PSI, p.30.) Defense counsel also told the district court that Ms. Dobson had recently been promoted at Zamzows. (6/4/18 Tr., p.15, Ls.21-23.) The support of family and employers, as well as a defendant’s positive work history should also be considered as mitigating sentencing information. *See Shideler*, 103 Idaho at 595 (reducing sentence of defendant who, *inter alia*, had the support of his family and his employer); *State v. Nice*, 103 Idaho 89, 90-91 (1982).

Ms. Dobson has also struggled with both physical and mental health issues. She experienced a “brain bleed” in 2016 and has some memory loss as a result. (PSI, p.12.) Additionally, she has a history of depression, anxiety, and ADD, for which she receives treatment and is prescribed medication. (PSI, pp.16, 19.) The mental health evaluator noted that, without some form of treatment for these issues, Ms. Dobson would “continue to struggle with symptoms,” and the “problems may increase.” (PSI, p.19.)

In light of all the mitigating information in this case, Ms. Dobson’s five-year license suspension was excessive because it was not necessary to accomplish the goals of sentencing. The district court focused on the protection of society. (6/4/18 Tr., p.24, L.2 – p.25, L.17.) It also stated that one of the terms of Ms. Dobson’s five-year period of probation would be that she not consume alcohol. (6/4/18 Tr., p.29, Ls.13-15.) In discussing Ms. Dobson’s driver’s license suspension, it said there was “no other mechanism available to me that can protect the other

people in society that you endanger by driving under the influence.” (6/4/18 Tr., p.28, L.22 – p.29, L.5.) However, it did not consider whether an ignition interlock device on her car—or a combination that device and a “SCRAM” bracelet,⁶ which would ensure she was not drinking on probation—could achieve that goal after the required one-year license suspension. If Ms. Dobson was required to use these devices, society would be protected, and she could drive to work and various appointments. She could also drive her son to school and other events, which will inevitably become more frequent as he grows up.

The district court considered the fact that Ms. Dobson shared custody of her son as a mitigating factor and said it did not want to impose a prison sentence because it wanted to help Ms. Dobson “continue to me a mom and continue to be [in her son’s] life. (6/4/18 Tr., p.26, L.25 – p.27, L.10.) But it did not adequately consider how a long-term license suspension such as this could make it very difficult for a working single mother to succeed. Indeed, even the State acknowledged that “sometimes what we do is we make it harder to for probationers to be successful when we absolutely suspend their license.” (6/4/18 Tr., p.21, Ls.8-11.) Given the facts of this case, and the reasonable alternative measures available to ensure society was protected, the district court abused its discretion when it suspended Ms. Dobson’s driver’s license for five years because it did not reach its decision to do so through an exercise of reason.

⁶ Defense counsel noted that Ms. Dobson’s probation officer required her to wear this type of alcohol monitoring device after this incident. (6/4/18 Tr., p.14, Ls.15-18.)

CONCLUSION

Ms. Dobson respectfully requests that this Court reduce the duration of her driver's license suspension as it deems appropriate.

DATED this 23rd day of January, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

RPA/eas