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### State v. Wilson Appellant's Brief Dckt. 46282

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46282-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-39226
v.	)	
	)	
SHELLY WILSON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Shelly Wilson pleaded guilty to felony vehicular manslaughter. The district court imposed a unified sentence of fifteen years, with five years fixed, and also suspended Ms. Wilson's driver's license for life. On appeal, Ms. Wilson asserts the district court abused its discretion when it imposed her sentence.

## Statement of the Facts & Course of Proceedings

One day in September of 2017, Meridian Police Department officers responded to a traffic accident involving four vehicles. (*See Presentence Report (hereinafter, PSI), p.1148.*)<sup>1</sup> At the scene, officers learned Ms. Wilson had crashed her vehicle into the rear of Patricia Shannon's vehicle. (*See PSI, p.1148.*) Ms. Shannon's vehicle then crashed into the rear of another vehicle, which crashed into the rear of a fourth vehicle. (*See PSI, p.1148.*)

An officer noted that Ms. Wilson's eyes were glossy, her eyelids were droopy, and her facial expression was tired. (*See PSI, p.1148.*) Ms. Wilson also had no recollection of the crash. (*See PSI, p.1148.*) Inside her vehicle, the officer found four cans of Dust-Off dust cleaner. (*See PSI, p.1148.*) One of the cans appeared to have been used, because the seal was broken and the can was cold to the touch. (*See PSI, p.1148.*) The officer told Ms. Wilson he had found the open can, and asked her how long she had been huffing canned air. (*See PSI, p.1148.*) Ms. Wilson began to tear up, stated she did not have a problem with canned air, denied the use of any drugs, and asked to speak with an attorney. (*See PSI, p.1148.*) Officers arrested Ms. Wilson for driving under the influence and took a blood sample from her at the scene. (*See PSI, p.1148.*) She was taken to a hospital for her hand and chest injuries. (*See PSI, p.1148.*)

Ms. Shannon was semi-responsive at the scene, but unable to answer any questions. (*See PSI, p.1148.*) Paramedics assessed her and determined her condition was deteriorating. (*See PSI, p.1148.*) Ms. Shannon was taken to a hospital, but died forty-six minutes after the accident. (*See PSI, p.1148.*) A forensic pathologist with the Ada County Coroner's Office later conducted the autopsy of Ms. Shannon, and concluded the cause of death was exsanguination (loss of

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<sup>1</sup> All citations to "PSI" refer to the 2227-page PDF version of the Confidential Exhibits, which includes the Presentence Report and its attachments. Please note the PDF does not contain sequential pagination.

blood), secondary to severe blunt trauma. (*See* PSI, p.1149.) The forensic pathologist determined the manner of death was the accident. (*See* PSI, p.1149.) After further investigation, officers learned Ms. Wilson had bought the Dust-Off cans just before the accident. (*See* PSI, p.1149.)

The State charged Ms. Wilson with vehicular manslaughter, felony, I.C. § 18-4006(3)(b). (R., pp.69-70.) Ms. Wilson initially entered a not guilty plea. (*See* R., p.77.) After the district court denied Ms. Wilson's motion to suppress (*see* R., p.122), Ms. Wilson and the State entered into a plea agreement (*see* R., pp.128-32; Tr. Apr. 16, 2018, p.5, L.16 – p.11, L.10). Under the plea agreement, the State agreed to recommend the district court impose a unified sentence of fifteen years, with five years fixed, and Ms. Wilson would be free to recommend a lesser sentence. (*See* R., p.131.) The State could also recommend any "driver's license suspension . . . it determines to be appropriate." (R., p.131.) The district court accepted Ms. Wilson's guilty plea. (Tr. Apr. 16, 2018, p.17, Ls.11-14.)

At the sentencing hearing, the State recommended the district court impose a unified sentence of fifteen years, with five years fixed. (Tr. July 30, 2018, p.26, Ls.3-9.) The State also asked that Ms. Wilson's "driver's license be suspended for the rest of her life." (Tr. July 30, 2018, p.26, Ls.10-11.) Ms. Wilson's counsel recommended the district court "impose a sentence that gives her some hope to make a better future for herself, for her community, and maybe in some small way create something positive out of this so even though Patricia Shannon is no longer here as a result of what Shelly did that day, that maybe something good can come of it." (Tr. July 30, 2018, p.45, Ls.16-22.) Defense counsel did not make a specific sentencing recommendation. (*See* Tr. July 30, 2018, p.44, Ls.12-15.)

The district court imposed a unified sentence of fifteen years, with five years fixed. (R., pp.154-57.) The district court also suspended Ms. Wilson's driver's license for life: "Pursuant to Idaho Code § 18-4007(3)(e), the Defendant's driver's license is hereby suspended permanently. This is an absolute suspension. Defendant shall have no driving privileges of any kind." (R., p.155.)

Ms. Wilson filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.161-63.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with five years fixed, upon Ms. Wilson following her plea of guilty to vehicular manslaughter?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Five Years Fixed, Upon Ms. Wilson Following Her Plea Of Guilty To Vehicular Manslaughter

Ms. Wilson asserts the district court abused its discretion when it imposed her sentence. The district court should have instead imposed a lesser sentence, and should have also allowed Ms. Wilson to earn back her driving privileges at some time in the future, thereby following her counsel's recommendation to impose a sentence that would give her some hope to make a better future for herself and her community. (*See* Tr. July 30, 2018, p.45, Ls.16-22.)

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Ms. Wilson does not assert that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Wilson must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Ms. Wilson asserts her sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Ms. Wilson’s substance abuse problems. The Idaho Supreme Court has recognized substance abuse as a mitigating factor in cases where it found a sentence to be excessive. *See, e.g., State v. Nice*, 103 Idaho 89, 91 (1982). During the presentence investigation, Ms. Wilson reported that she became addicted to pain pills after being severely injured in a car accident when she was a senior in high school. (*See* PSI, p.1155.) Her drug of choice was opiate pills such as hydrocodone, Vicodin, or Norco. (*See* PSI, p.1163.) Ms. Wilson abused hydrocodone from 2001 until November 2006, when she went to a treatment facility. (*See* PSI, p.1163.) Ms. Wilson went to the treatment facility after being caught stealing medication from her job at a veterinary clinic. (*See* PSI, p.1157.) Later, she had been using

prescription methadone for pain management, from at least 2012. (*See* PSI, p.1163.) At the sentencing hearing, Ms. Wilson told the district court, “I have been on pain medication since going to rehab over 11 years ago.” (Tr. July 30, 2018, p.48, Ls.10-11.)

Ms. Wilson stated she had not abused substances between 2007 and 2017 (*see* PSI, p.1163; Tr. July 30, 2018, p.48, Ls.9-18), but about two-and-a-half weeks before the accident, she found herself in a bad place emotionally and started inhaling Dust-Off dust cleaner (*see* PSI, p.1163). During the presentence investigation, Ms. Wilson reported that she thought she could handle it and would not become addicted. (*See* PSI, p.1163.) However, she began pulling away from everyone to stay in her bedroom and use Dust-Off. (*See* PSI, p.1163.) At the sentencing hearing, Ms. Wilson told the district court: “As to the Dust-Off, I still don’t understand my motivations or actions with it. It is so stupid, that I have no words. It is embarrassing that someone of my intelligence thought that I could be smarter than it.” (Tr. July 30, 2018, p.48, Ls.19-23.) She also stated, “Losing consciousness was not something I had ever experienced before, and I don’t know why it happened this time, not that that makes my behavior any better or justified.” (Tr. July 30, 2018, p.48, L.24 – p.49, L.2.)

The district court also did not adequately consider Ms. Wilson’s mental health issues. A district court must consider evidence of a defendant’s mental condition offered at the time of sentencing. *See* I.C. § 19-2523(1). During the presentence investigation, Ms. Wilson described her mental health as normal, with situational depression. (*See* PSI, p.1162.) She did not report receiving any past or current mental health counseling, but was taking an antidepressant at the time. (*See* PSI, p.1162.) Her medical records indicated she had medical visits regarding her depression from 2010 to 2013, when she was undergoing significant family and financial stresses. (*See* PSI, pp.1252, 1264-66, 1269-70.) Ms. Wilson also stated that, while in the

hospital following the accident, after learning of Ms. Shannon's death she attempted to commit suicide by overdosing on methadone. (*See* PSI, p.1162.)

Ms. Wilson further related that she had gone through a "series of cascading failures" after she went to rehab in 2006. (*See* PSI, p.1165.) She stated that she lost her family and irreparably damaged her second marriage because of her addiction to pills. (*See* PSI, pp.1157, 1165.) Ms. Wilson then entered into a third marriage with someone she had met in the treatment program, but they divorced after her third husband began abusing drugs again. (*See* PSI, pp.1157, 1165.) Meanwhile, although she had once made a good income, Ms. Wilson found herself struggling to financially support herself and her family, and a misdemeanor DUI conviction in 2010 made it more difficult for her to find employment. (*See* PSI, pp.1153, 1164-65.) At the time of the accident, she had been studying to become a nurse. (*See* PSI, pp.1159-60.) Ms. Wilson wrote: "The last 3 years I have felt completely trapped in a place I didn't want to be and several years before I could 'get out.' On top of that I've been so lonely that it was almost crushing. There was a constant narrative running in my head telling me I was useless, worthless, inadequate, and unlovable." (PSI, p.1166.)

Addressing the district court at the sentencing hearing, Ms. Wilson stated, "I do realize I was not dealing with my depression properly." (Tr. July 30, 2018, p.49, Ls.14-15.) She continued: "Like I have said many times, I don't know why I chose to numb my feelings in this way. I wish I could understand or give an explanation that makes sense, but there just isn't one." (Tr. July 30, 2018, p.49, Ls.15-19.)

Further, the district court did not adequately consider Ms. Wilson's support from her family and friends. Ms. Wilson's parents stated in a letter of support that Ms. Wilson "has always been a kind, caring, loving person. She has struggled with relationships over the years,

but has never caused anyone any harm. She has two children, which she adores, and had strived to be a good mother.” (PSI, p.1143.) The letter from Ms. Wilson’s parents also discussed how Ms. Wilson always wanted to help others and work in the medical field, “with the Doctors without Borders program or in a nursing home.” (See PSI, p.1143.) Her parents described her as a “bright, compassionate, loving person, and for this we ask that you consider the person that we know and love and have told you about in this letter when considering the sentence you are about to give her. She is a good person who deserves a chance to go back into society and do the good that she is more than capable of doing.” (PSI, p.1143.) Ms. Wilson’s brother, Bryce Wilson, also wrote a letter of support, stating that he prayed “that Shelly can get the help she needs to recover emotionally, physically, and get back on her own where she can follow whatever path God has for her from this point forward.” (PSI, p.1144.)

One of Ms. Wilson’s friends, Sheri Hildebrand, wrote in a letter of support: “I am committed to support her through this event in her life. I will help her with housing and job opportunities when she is released.” (PSI, p.1136.) Another friend, Julie Miller, wrote in a letter of support that she had been staying in contact with Ms. Wilson through letters and an Instagram prayer team with other friends and supporters. (See PSI, p.1141.) The Reverend Ed Brandt, a retired Lutheran pastor who had been providing spiritual counsel to Ms. Wilson while she was in jail, stated in a letter of support: “I appeal for any mercy or favorable consideration that can be given to Shelly in this regrettable circumstances. I pledge to continue offering the spiritual and emotional support that will sustain her in what lies ahead.” (See PSI, p.1139.)

Additionally, the district court did not give adequate consideration to Ms. Wilson’s remorse and acceptance of responsibility. In the presentence investigation, when asked how she felt about the crime, Ms. Wilson wrote: “There is a range of emotions that I felt and continue to

feel every single day. Mostly, I am ashamed and angry at myself. I am saddened beyond words for the family of Patricia Shannon.” (See PSI, p.1152.) She also stated: “I wish that I could [do] something to change what happened but it is not possible. I wish that I could take Ms. Shannon’s place and give her back to her family.” (See PSI, p.1152.) Moreover, Ms. Wilson wanted to make it clear to the district court “that none of my explanations included in this document are excuses for what I have done, for there is no excuse.” (See PSI, p.1165.) She stated: “I killed somebody. You have to know how devastating that is for me and how terribly sorry I am. I know I was wrong.” (See PSI, p.1166.)

At the sentencing hearing, Ms. Wilson told the district court: “This has been a nightmare without end for me from the moment I woke up at the scene and realized that I took Patricia Shannon’s life. There are no words that can adequately express my deep and profound regret and sorrow that my actions have caused such pain to both the Shannon family and my own.” (Tr. July 30, 2018, p.47, Ls.16-22.) She was “so, unbelievably sorry. And I’ve wanted to tell the family that from the day this happened, and I have never been given the opportunity to do that.” (Tr. July 30, 2018, p.49, Ls.5-8.) Ms. Wilson further stated: “I am capable of good things, and I’m capable of being a positive force in the community. I hope that I can be of value again to someone or something.” (Tr. July 30, 2018, p.49, Ls.21-24.)

Because the district court did not adequately consider the above mitigating factors, Ms. Wilson’s sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed Ms. Wilson’s sentence. The district court should have instead imposed a lesser sentence, and should have also allowed Ms. Wilson to earn back her driving privileges at some time in the future.

CONCLUSION

For the above reasons, Ms. Wilson respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 28<sup>th</sup> day of January, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> 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  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

BPM/eas