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### State v. Glenn Appellant's Brief Dckt. 46578

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46578-2018
	)	
v.	)	ADA COUNTY NO. CR01-18-6973
	)	
THAD SCOTT GLENN,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
	)	

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STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Thad Glenn was found guilty of driving under the influence of alcohol (“DUI”). That conviction was enhanced to a felony based on Mr. Glenn’s admission that he had been convicted of a felony DUI within the previous fifteen years. The district court imposed a unified sentence of ten years, with three years fixed. Later, it denied Mr. Glenn’s motion for a sentence reduction.

On appeal, Mr. Glenn contends the district court erred in two regards. First, he asserts it abused by its discretion by imposing a sentence that is excessive given any reasonable view of

the evidence. Second, he argues the court abused its discretion in denying his motion for a sentence reduction.

#### Statement of the Facts and Course of Proceedings

Thad Glenn has a long history of alcohol use and abuse. (*See* PSI, p.103.)<sup>1</sup> Although he has been able to maintain his sobriety for long periods, he has also “fallen off the wagon” many times. (*See, e.g.*, PSI, pp.103-04, 105, 107, 190.) The time period around February 9, 2018, was one such occasion.

Mr. Glenn had been having some problems in his personal life, such that he had to move out of his residence and planned to live out of his car for a few days, and he made the fateful decision to drink. (*See* Tr., p.205, L.23 – p.206, L.19.) After gathering his things from his residence, he stopped for beer, and then headed to the Cooper Court/Rhodes Skate Park area of downtown Boise. (Tr., p.206, L.7 – p.207, L.19.) After parking his car near Rhodes Skate Park, Mr. Glenn spent the day visiting with friends at the park and drinking in his parked car. (Tr., p.207, L.16 – p.208, L.19.) Mr. Glenn readily admits that he got drunk. (Tr., p.207, Ls.14-15.)

At some point that night, Mr. Glenn laid down in the back seat of his car to take a nap. (Tr., p.208, L.23 – p.209, L.2.) A few hours later though, he was awakened by a noisy generator. (Tr., p.209, Ls.1-11.) He contends that at that point he crawled into his front seat and started looking for his belongings—his cigarettes and his keys—but could not find them. (Tr., p.209,

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<sup>1</sup> All of the confidential exhibits, including the pre-sentence investigation report (“PSI”), are contained in the electronic (.pdf) file “GlennConDocsRec.” That electronic document is cited herein as “PSI,” and all page references correspond with the page numbers of the 328-page electronic document.

Ls.17-24.) According to Mr. Glenn, he never found his keys, so he could not have started, much less moved, his car. (Tr., p.209, L.23 – p.210, L.9.)

However, two Boise police officers patrolling the area, who indicated their attention was drawn to Mr. Glenn's car because it had no visible license plate,<sup>2</sup> claimed that they saw the car move a few feet. (Tr., p.102, Ls.19-25, p.107, Ls.8-13, p.110, L.14 – p.111, L.8, p.125, L.9 – p.126, L.11, p.138, L.24 – p.139, L.2, p.142, Ls.3-12.) Upon approaching Mr. Glenn's car, one of the officers opened the door and immediately came to suspect that Mr. Glenn was intoxicated. (See Tr., p.113, L.17 – p.114, L.9, p.120, Ls.12-16.)

A third officer was called to the scene to conduct field sobriety tests. (See Tr., p.113, L.24 – p.114, L.9, p.123, Ls.1-3, p.139, Ls.9-11, p.142, Ls.1-2; *see generally* Ex. 2 (video recording of Officer Byron Grover's interactions with Mr. Glenn).) That officer believed that Mr. Glenn's performance on various tests—the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test—was indicative of impairment. (Tr., p.172, Ls.17-22, p.174, Ls.14-20, p.180, Ls.16-21, p.182, L.22 – p.183, L.7.) In addition, that officer administered two breath tests, which yielded results of .202 and .205—far in excess of the legal driving limit of .08. (Tr., p.192, Ls.1-6.)

Mr. Glenn was arrested (Tr., p.192, Ls.7-11), and charged with one count of DUI, elevated to a felony for his having had a felony DUI in the previous fifteen years, and one count of misdemeanor possession of an open container of alcohol in a motor vehicle (R., pp.7-8). Thereafter, he waived his preliminary hearing and was bound over to district court. (R., pp.18, 19-20; *see also* R., pp.21-22 (information).)

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<sup>2</sup> As it turned out, Mr. Glenn's vehicle had a temporary registration displayed in the window. (See Tr., p.107, Ls.14-17.)

Mr. Glenn exercised his constitutional right to a jury trial. (*See generally* R., pp.35-45; Tr., pp.7-279.) At trial, the only seriously-disputed question was whether Mr. Glenn had driven his car a few feet, as the officers claimed, or whether the vehicle had remained stationary, with the engine off, as testified to by Mr. Glenn. (*See, e.g.*, Tr., p.244, L.20 – p.245, L.21 (prosecutor describing “the crux of this case” as whether Mr. Glenn drove, and arguing that the officers should be believed on this point).) Ultimately, the jury apparently believed the officers, as it found Mr. Glenn guilty of DUI. (R., p.73; Tr., p.270, L.1 – p.271, L.3.) However, the jury acquitted Mr. Glenn on the open container charge. (R., p.73; Tr., p.271, Ls.4-7.) Thereafter, Mr. Glenn pled guilty to the enhancement for having been convicted of a felony DUI within the past fifteen years. (Tr., p.274, L.4 – p.277, L.8.)

At sentencing, the State recommended a sentence of ten years, with three years fixed, and a five-year driver’s license suspension (Sent. Tr., p.8, Ls.20-23, p.9, Ls.7-9), while the defense recommended half the determinate time and made no particular recommendation as to the indeterminate portion of the sentence or the license suspension (Sent. Tr., p.12, Ls.4-10).<sup>3</sup> The district court followed the State’s recommendation to the letter, imposing a prison sentence of ten years, with three years fixed, and a five-year absolute driver’s license suspension. (Sent. Tr., p.16, Ls.14-21, p.17, Ls.18-20; R., pp.77, 79.)<sup>4</sup> The district court entered its judgment of conviction on October 23, 2018. (R., pp.78-80.)

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<sup>3</sup> Although the sentencing hearing transcript is contained within the same electronic document as the trial transcript (“Appeal Transcript Record”), its pagination starts over at page one. Thus, the sentencing hearing transcript is cited herein as “Sent. Tr.” in order to differentiate it from the trial transcript.

<sup>4</sup> The district court made the sentence in this case concurrent with that in Ada County Case No. CR-FE-2009-589 (R., p.79), Mr. Glenn’s previous felony DUI case (*see* PSI, pp.70-72). Mr. Glenn was on probation in that case when the present case arose, and his probation in that case has since been revoked and his sentence ordered into execution. *See* iCourt Portal (available at <<https://mycourts.idaho.gov/odysseyportal/>>).

On February 15, 2019, Mr. Glenn filed a timely motion seeking a sentence reduction pursuant to Idaho Criminal Rule 35. (Augmentation, pp.1-2.) That motion was supported by a letter from Mr. Glenn to the district court requesting that his sentence be modified to five years, all fixed. (Augmentation, p.2.) However, the district court denied that motion without a hearing. (Augmentation, pp.3-5.)

In the meantime, on December 3, 2018, Mr. Glenn had filed a notice of appeal that was timely from the judgment of conviction, and the subsequently-entered order denying his Rule 35 motion. (R., pp.82-83.)

### ISSUES

- I. Did the district court abuse its discretion by imposing a sentence that is excessive given any reasonable view of the evidence?
- II. Did the district court abuse its discretion in denying Mr. Glenn’s motion for a sentence reduction?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion By Imposing A Sentence That Is Excessive Given Any Reasonable View Of The Evidence

Thad Glenn has a long history of alcohol use and abuse. He began drinking at the age of fifteen, and was drinking regularly by eighteen. (PSI, p.103.)<sup>5</sup> Over time, his alcohol use spiraled out of control and “caused him to lose ‘everything, including family.’” (PSI, p.103 (quoting Mr. Glenn).) Since his mother passed, he has not had much of a relationship with his

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<sup>5</sup> All of the confidential exhibits, including the pre-sentence investigation report (“PSI”), are contained in the electronic (.pdf) file “GlennConDocsRec.” That electronic document is cited herein as “PSI,” and all page references correspond with the page numbers of the 328-page electronic document.

father. (*See* PSI, pp.98, 308, 311.) In addition, although Mr. Glenn has a young son, his ex-girlfriend and her family have not allowed him to see the boy, as they are apparently done giving Mr. Glenn chances. (*See* PSI, pp.100, 308, 311.) Even his aunt has explained that although she and her husband still love and support Mr. Glenn, because of his drinking, he is not welcome to live with them. (*See* PSI, pp.179, 189-90, 311.)

Mr. Glenn's drinking has also impacted his ability to work and earn a living. As one former employer explained, Mr. Glenn is a "good worker when he's dried up, but he has a problem with going on benders." (PSI, p.102.) That particular employer would be willing to re-hire Mr. Glenn, but only if he is sober. (PSI, p.102.)

And, of course, Mr. Glenn's alcohol abuse has caused him significant legal problems. In addition to this case, he had misdemeanor DUI convictions in 1994, 1996, 1998 (x2), 2003, and 2006, and a felony DUI conviction in 2009; he had multiple driving without privileges and failure to purchase a driver's license convictions, which so often follow DUI convictions; and he's had a handful of other alcohol-related misdemeanors, such as minor in possession of alcohol and open container. (PSI, pp.93-97, 185-88, 302-07.)

Even though alcohol has been a dark cloud hanging over Mr. Glenn's adult life, he has not given up the fight. With a lot of hard work and focus on his faith, he has been able to enjoy fairly long periods of sobriety. For example, after completing a period of retained jurisdiction (a "rider") after his first felony DUI in 2009, Mr. Glenn was able to stay sober for up to seven years. (*See* PSI, pp.103-04, 105, 301.) As he explained it, Alcoholics Anonymous ("AA") and Church are the keys to his remaining alcohol free. (PSI, p.103; *accord* PSI, p.105.) In the past, he says, complacency has been his undoing. (PSI, p.103.)

At this point, Mr. Glenn has a desire to stop drinking. (PSI, p.103.) He recognizes his problem now, and he is committed to making a change. As he explained at sentencing, “I understand that I need to get a handle on it [the drinking]. And when I go to prison and everything, I am going to submit for treatment . . . .” (Sent. Tr., p.13, Ls.15-18.)

In light of his long battle against alcoholism and his desire to overcome his addiction, Mr. Glenn submits that the district court failed to exercise reason insofar as it imposed a lengthy prison sentence in this case.

## II.

### The District Court Abused Its Discretion By Denying Mr. Glenn’s Motion For A Sentence Reduction

Even if the his sentence was not excessive as originally imposed, Mr. Glenn contends that it is excessive in light of the information submitted in conjunction with his Rule 35 motion. In a letter accompanying his motion, Mr. Glenn requested that the aggregate length of his sentence be reduced from ten years to five years (all fixed). (Augmentation, p.2.) In that letter, he also explained that the only family he has left is in Washington and Oregon, and so he would like to move to Oregon upon his release from prison to continue his recovery in a place where he has family support. (Augmentation, p.2.) If he has to serve time on parole, he would likely be stuck in Idaho, where he lacks the support to be successful in his rehabilitation (*see* Augmentation, p.2), which would be unhelpful to him and his recovery and, therefore, society as a whole. Society’s interests would be far better served by allowing him to top his sentence out after a few years and move to Oregon to be with his extended family.

In light of Mr. Glenn’s recognition of his alcoholism and desire to overcome his addiction (as discussed in Section I), as well as the added fact that he needs family support in

order to be successful in his recovery, he submits that the district court failed to exercise reason in denying his Rule 35 motion.

CONCLUSION

For the foregoing reasons, Mr. Glenn respectfully requests that this Court either reduce his sentence as it sees fit, or that it remand his case to the district court for imposition of a lesser sentence.

DATED this 1<sup>st</sup> day of August, 2019.

/s/ Erik R. Lehtinen  
ERIK R. LEHTINEN  
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of August, 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

ERL/eas