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### State v. Donica Appellant's Brief Dckt. 47198

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47198-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-50542
v.	)	
	)	
SAMANTHA LEE DONICA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Samantha Lee Donica was found guilty of one felony count of driving under the influence of alcohol. The district court imposed a sentence of ten years, with three and one-half years fixed. On appeal, Ms. Donica asserts the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In October of 2018, Meridian Police Officer Hall responded to a caller who reported a possible drunk driver. (Presentence Report (PSI), p.3.) The caller, Anna Moore, was

Ms. Donica's roommate. (PSI, p.3.) Ms. Moore told dispatch that she thought Ms. Donica had been "drinking all day," and had left their house to go by more liquor. (PSI, p.3.) She also said Ms. Donica may have gone to a particular liquor store. (PSI, p.3.) Officer Hall went to that store and found Ms. Donica sitting in her car in the parking lot. (PSI, p.3.) The officer said he could smell alcohol when speaking with Ms. Donica, and she admitted to driving to the liquor store. (PSI, p.3.) Ms. Donica consented to field sobriety tests but failed the tests. (PSI, p.3.) As a result, Officer Hall arrested Ms. Donica, and she later submitted to breath testing, which showed a BrAC of .325. (PSI, p.3.)

Subsequently, the State charged Ms. Donica with one count of operating a motor vehicle while under the influence of alcohol (one felony conviction within fifteen years). (R., pp.35-36.) Ms. Donica proceeded to trial and was found guilty. (R., p.134.) At the sentencing hearing, the State recommended that the district court impose a sentence of ten years, with three years fixed. (6/20/19 Tr., p.10, Ls.16-17.) Defense counsel requested that the district court impose an underlying sentence of ten years, with two years fixed, and retain jurisdiction. (6/20/19 Tr., p.12. Ls.21-23.) The district court later imposed a sentence of ten years, with three and one-half years fixed.<sup>1</sup> (R., p.140.) Ms. Donica filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.144-45.)

#### ISSUE

Did the district court abuse its discretion when it imposed a sentence of ten years, with three and one-half years fixed, following Ms. Donica's conviction for driving under the influence?

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<sup>1</sup> At the time Ms. Donica was arrested for this offense, she was on probation for a prior DUI conviction in Valley County (CR-2013-3051). (PSI, p.6.) The district court ordered that her sentence in this case run concurrently to the sentence in that case. (R., p.140.)

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Sentence Of Ten Years, With Three And One-Half Years Fixed, Following Ms. Donica’s Conviction For Driving Under The Influence

Given the facts of this case, Ms. Donica’s sentence of ten years, with three and one-half years fixed, 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).

“When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). Unless it appears that the length of 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. *Id.* 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. Donica's sentence is excessive under any reasonable view of the facts. First, Ms. Donica suffers with severe health problems for which she takes multiple medications to help alleviate her pain. (PSI, pp.12-14.) Perhaps most notably, she has fibromyalgia as well as problems with bulging and degenerating discs in her back. (PSI, pp.13-14.) The health problems of a defendant have long been recognized as a mitigating sentencing factor. *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986) (holding that the health problems of the defendant are a factor for the district court to consider in evaluating a motion for a sentence reduction).

Additionally, contrary to the presentence investigator's findings (PSI, p.18), Ms. Donica is clearly willing to engage in treatment for her alcoholism. At the sentencing hearing, defense counsel made it clear that Ms. Donica admitted she was an alcoholic, and she wanted to pursue substance abuse treatment, and engage in a 12-step program. (6/20/19 Tr., p.11, L.19 – p.12, L.6.) Ms. Donica also told the court that she needed treatment, and wanted to go back to Alcoholics Anonymous. (6/20/19 Tr., p.14, Ls.2-4.) A defendant's amenability to treatment is another recognized mitigating factor. *See e.g., State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

Ms. Donica's willingness to engage in treatment and improve herself was also demonstrated by the fact that, while she was in the county jail, she reached out to multiple organizations regarding treatment and sober housing opportunities. (PSI, pp.43-46.) She also completed several courses on varied subjects such as employment, healthy relationships, substance abuse, domestic violence, thinking skills, and anger management. (PSI, pp.47-52.)

Ms. Donica also accepted responsibility and expressed her remorse over this offense. Such statements should also be considered by the court as mitigating information. *State v.*

*Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant’s sentence, in part, because “the defendant has accepted responsibility for his acts”); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding that some leniency was required, in part, because the defendant expressed “remorse for his conduct”). In this case, Ms. Donica told the court, “I want to apologize for the mistakes I’ve made and the people I’ve hurt and the mess I’ve made of my own life and the damage I’ve caused others with my bad choices and just kind of giving up on myself during the trials I was going through.” (6/20/19 Tr., p.13, Ls.15-19.) Similarly, in her comments to the court for the PSI, she stated that she wanted to apologize to everyone she had affected in a negative way because of her actions and reckless choices. (PSI, p.16.) She said she had done very well after her rider in the prior case, but she lost everything in a divorce and had been “struggling with this disease ever since.” (PSI, p.16.)

Finally, it is clear that this offense took place during a very difficult, emotional, and exhausting period for Ms. Donica. She explained that her roommate had demanded that she move out of her home immediately, and she was told she could no longer see her granddaughter whom she had been caring for. (PSI, p.4.) Additionally, she said her temporary job had ended, and her boyfriend had beaten her a few nights before the day of the offense. (PSI, p.4.) She stated that she was in tremendous pain and could not sleep or bath, due to the fact that the ongoing stress of her situation had aggravated her fibromyalgia. (PSI, p.4.) Nevertheless, she also acknowledged that, “This was still my choice.” (PSI, p.4.)

In light of the facts and mitigating information in this case, Ms. Donica’s sentence was excessive because it was not necessary to accomplish the goals of sentencing. A shorter fixed sentence would still serve the goal of protecting society as it would allow for a prolonged period of sobriety followed more quickly by targeted rehabilitation. Warehousing Ms. Donica in prison

will not solve her issues and will likely only aggravate her health problems. Also, Ms. Donica is not a violent offender. In fact, her prior convictions are for alcohol-related offenses only, so putting her in prison for years, where she will spend time with people with significant, and potentially violent, criminal records will likely only result in negative consequences for her. (PSI, pp.4-5.) A shorter fixed sentence would also serve as a strong deterrent. Other than the time she spent on her previous rider, Ms. Donica has never been to prison before. (PSI, pp.4-5.) As such, for an otherwise law-abiding citizen in her fifties with serious physical health issues, spending time any time at all in a penitentiary is bound to have very strong deterrent effects. (PSI, p.1.) Finally, in a case such as this, rehabilitation should be the priority. Ms. Donica had no legal issues whatsoever until she [REDACTED] (PSI, pp.1, 4.) Therefore, it is clear that some event, or combination of events, resulted in her developing a drinking problem later in life. Rehabilitation to address these underlying issues would help her to move past her problems and return to a balanced, healthy lifestyle. Spending multiple years in prison will not. Indeed, given the facts of this case, Ms. Donica's extended sentence was not necessary and was therefore unreasonable and an abuse of the district court's sentencing discretion.

#### CONCLUSION

Ms. Donica respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 26<sup>th</sup> day of March, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of March, 2020, 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](mailto:ecf@ag.idaho.gov)

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

RPA/eas