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### State v. Hunnicutt Appellant's Brief Dckt. 48038

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48038-2020
	)	
v.	)	ADA COUNTY NO. CR01-19-32918
	)	
CYNTHIA ANN HUNNICUTT,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Cynthia Ann Hunnicutt was convicted by a jury of DUI and subsequently admitted to being a persistent violator of the law. The district court judge, who was different from the judge that presided over her trial, imposed a unified prison sentence of eighteen years, with five years fixed, without any opportunity for probation. The court also denied Ms. Hunnicutt's subsequent Rule 35 motion for reduction of sentence. On appeal, Ms. Hunnicutt claims that her sentence is excessive under any reasonable view of the facts, including those presented with her Rule 35 motion, and represents an abuse of the district court's sentencing discretion. She respectfully

asks this Court reverse the order denying her Rule 35 motion, vacate her sentence, and remand her case for resentencing.

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

On a rainy night in August of 2019, Boise Police Officers Sierrna Berg and Cory Turner were dispatched to the parking lot of Q's Billiards, in response to a caller's report of a swerving vehicle travelling eastbound on Fairview Avenue. (1/15/2020 Tr., p.29, L.4 – p.34, L.9.) When the officers arrived, they identified a vehicle matching the caller's description, and observed a female – later identified as Ms. Hunnicutt – sitting in the driver's seat while the vehicle's engine was running. (1/15/2020 Tr., p.33, L.8 – p.34, L.14, p.36, Ls.9-13.) The officers walked up to the vehicle and tapped on the driver's window, and asked Ms. Hunnicutt if she had been drinking; Ms. Hunnicutt answered "yes." (1/15/2020 Tr., p.35, Ls.7-19.) The officers noticed a box of unopened beer cans in the backseat, and a single open container in the front seat. (1/15/2020 Tr., p.39, L.9 – p.41, L.17; Ex.3, 4.) They also noticed that Ms. Hunnicutt's parked vehicle was touching another parked vehicle, though there was no evidence of damage from the contact. (1/15/2020 Tr., p.72, Ls.1-18; Ex.5, 6.) The officers had Ms. Hunnicutt step out of the car and move to an awning-covered patio near the building, out of the rain, for a third officer, Daniel Forbes, to conduct a DUI investigation. (1/15/2020 Tr., p.134, L.3 – p.140, L.14.)

Officer Forbes heard Ms. Hunnicutt slur her words and he detected the odor of alcohol; he also obtained her admission to having had "a few beers." (1/15/2020 Tr., p.139, L.8 – p.140, L.17.) Officer Forbes administered three standard field sobriety tests, the results of which indicated that Ms. Hunnicutt was intoxicated. (1/15/2020 Tr., p.141, L.13 – p.158, L.22.) The officer requested a breath sample from Ms. Hunnicutt for alcohol content testing purposes, but

ultimately no breath sample was obtained. (1/15/2020 Tr., p.144, L.21 – p.145, L.24.) Officer Forbes arrested Ms. Hunnicutt and placed her in his patrol car. (1/15/2020 Tr., p.146, Ls.1-11.)

Ms. Hunnicutt, who suffers from PTSD, bipolar disorder, borderline personality disorder, and anxiety (PSI, p.20), had grown increasingly agitated and unstable as the DUI investigation progressed. Upon being placed inside the patrol car, Ms. Hunnicutt started yelling and banging her head against the window between passenger cabin and front seat. (1/15/2020 Tr., p.146, L.25 – p.147, L.2; *see* Ex.2 (Forbes video).) The officers tried to calm Ms. Hunnicutt but wound up putting her in a “wrap” before transporting her to the Ada County Jail. (1/15/2020 Tr., p.148, Ls.1-10.) No blood testing was conducted, purportedly due to Ms. Hunnicutt’s combativeness and related safety concerns. (1/15/2020 Tr., p.148, Ls.9-18.) A records check indicated that Ms. Hunnicutt’s driver’s license was on suspended status. (R., p.12.)

The State filed an Information charging Ms. Hunnicutt with felony DUI and misdemeanor driving without privileges. (R., p.42.) The State filed an Information Part II additionally alleging Ms. Hunnicutt was a persistent violator of the law subject to enhanced penalties. (R., p.47.) Ms. Hunnicutt denied the charges and exercised her right to trial. (Tr., p.45.)

A jury trial was conducted before the Hon. Cheri Copsy on January 14-15, 2020. On the morning of the first day, Ms. Hunnicutt was found curled up in ball on the floor of her jail cell, crying. (1/14/2020 Tr., p.6, Ls.1-12.) After Ms. Hunnicutt was brought to the courtroom, the district court judge tried engaging her to calm her, and delayed the trial for an hour to allow Ms. Hunnicutt to compose herself. (Tr., p.6, L.13 – p.12, L.24.) At the trial, the State presented evidence which included testimony from the each of the officers and video recordings from their body cameras. (*See generally* 1/15/2020 Tr., p.29, L.3 – p.198; Exhibits.) Ms. Hunnicutt elected

not to testify. (1/15/2020 Tr., p.198, L.15 – p.201, L.11.) The jury returned a verdict finding Ms. Hunnicutt guilty of driving under the influence. (R., pp.45, 114; 1/15/2020 Tr., p.276, Ls.19-24.) Following the verdict and in accordance with the parties' agreement, Ms. Hunnicutt admitted to having a previous DUI conviction and being a persistent violator, and in exchange the misdemeanor charge was dismissed. (1/15/2020 Tr., p.270, L.3 – p.288, L.6.)

On that same day, Judge Copsey stated the court wanted Ms. Hunnicutt assessed for mental health court, based on Ms. Hunnicutt's prior mental health hospitalizations, and her prior mental health diagnoses.<sup>1</sup> (1/15/2020 Tr., p.287, Ls.8-25.) The court stated, "in my view, having watched the video and listened to the testimony, it seems to be that it may very well be an appropriate resolution." (1/15/2020 Tr., p.292, Ls.16-22.) The court set the sentencing hearing for April 9, 2020, and ordered a psychological evaluation in addition to the presentence report. (4/9/2020 Tr., p.287, Ls.21-22; R., pp.84, 115.) Ms. Hunnicutt was not accepted into Mental Health court, purportedly due to the fact she was on parole at the time of the offense. (4/9/2020 Tr., p.20, Ls.3-7.)

On March 26, 2020, two weeks before sentencing, Ms. Hunnicutt's case was re-assigned to a new district court judge, Hon. Lynn Norton, in response the administrative judge's request, citing Criminal Rule 34(b)(2)(c) and finding the existence of "extraordinary circumstances" due to COVID-19. (R., pp.118, 119.) On April 9, 2020, Ms. Hunnicutt appeared before the new judge via telephone from the jail; her trial counsel and the prosecutor appeared for the hearing via videoconferencing. (4/9/2020 Tr., p.4, L.6-9.) The district court outlined certain recent orders from the jail and the Supreme Court related to COVID-19 and raised the question of whether the sentencing hearing should still go forward on that day. (4/9/2020 Tr., p.4, L.10 –

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<sup>1</sup> Judge Copsey had been the presiding judge in Ms. Hunnicutt's two previous cases. (See R., p.48.)

p.5, L.4.) The court advised that with a continuance, it might be possible to have Ms. Hunnicutt transported to an in-person hearing in May. (4/9/2020 Tr., p.5, L.24 – 6, L.12.) Ms. Hunnicutt indicated she wanted to go forward with sentencing. (4/9/2020 Tr., p.5, L.16 – p.6, L.21.)

The court stated it had “reviewed the entire record in this particular case,” confirmed with counsel the convictions that had been entered in the case, and stated it had reviewed the presentence report, the psychological evaluation performed by Dr. Sombke, and the State’s additional PSI, documents. (4/9/2020 Tr., p.7, L.17 – p.8, L.14.) The State recommended a sentence of ten years, with three and one-half years fixed (4/9/2020 Tr., p.16, Ls.17-19), and Ms. Hunnicutt asked the court to impose an indeterminate term, to run consecutive to the sentence in her 2011 DUI case for which she had been on parole (4/9/2020 Tr. p.24, Ls.7-11). She told the court she had a letter, “but I don’t think I can read it right now,” and did not provide any statement to the court. (4/9/2020 Tr., p.26, L.20 – p.27, L.2.)

The district court exceeded the recommendations of both parties, and instead imposed a sentence of eighteen years, with five years fixed, without probation or retained jurisdiction. (4/9/2020 Tr., p.27, L.7 – p.29, L.25; R., p.122.)

Ms. Hunnicutt filed a Rule 35 motion accompanied by additional information. (R., pp.147 – 166.) The motion explained that due to her anxiety and her counsel’s limited ability to assist her at sentencing, Ms. Hunnicutt was unable to make a personal statement to the court, and she requested an opportunity to make such statement. (R., pp.149, 152.) Additionally, Ms. Hunnicutt appended numerous letters from family and friends detailing her lifelong personal challenges and efforts to overcome those challenges, a list of classes she had taken while in the Ada County Jail, and a letter showing she had been accepted into transitional

housing. (R., pp.147 – 166.) The district court subsequently entered an order denying Ms. Hunnicutt’s request for a hearing and her request for a reduction of sentence. (R., p.172.)

Ms. Hunnicutt filed a Notice of Appeal that is timely from her judgment of conviction and sentence and the motion denying her Rule 35 request. I.A.R.17(e)(3)(C). (R., p.133.)

### ISSUE

Did the district court abuse its discretion by imposing an excessive sentence and by declining to grant Ms. Hunnicutt’s motion for reduction of sentence?

### ARGUMENT

#### The District Court Abused Its Discretion By Imposing An Excessive Sentence And By Declining To Grant Ms. Hunnicutt’s Motion For Reduction Of Sentence

##### A. Introduction

Ms. Hunnicutt asserts that in light of the mitigating facts presented in her case, her unified sentence of eighteen years, with five fixed, is excessive, and that the district court abused its discretion by declining her request for a sentence reduction. She asks this Court to reverse the district court’s order denying her motion for reduction of sentence and remand her case for resentencing.

##### B. Standard Of Review

The district court’s sentencing decisions are generally reviewed under the multi-tiered abuse of discretion standard. *State v. Miller*, 151 Idaho 826, 834 (2011). Under this standard, the appellate court engages in a multi-tier inquiry to determine “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.” *State v. Le Veque*, 164 Idaho 110, 113 (2018).

When a defendant challenges her sentence as excessively harsh, the appellate court will conduct “an independent review of the record,” giving consideration to governing criteria, *i.e.*, the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Miller*, 151 Idaho 828, 834 (2011). The appellate court will deem the sentence to be excessive if the sentence is unreasonably harsh “under any reasonable view of the facts.” *See State v. Strand*, 137 Idaho at 460; *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). These same criteria apply on review of the district court’s denial of a defendant’s Rule 35 motion for reduction of sentence. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994).

Ms. Hunnicutt asserts that, in view of the mitigating facts of her case, including those facts presented by with her Rule 35 motion, her sentence is objectively unreasonable, representing an abuse of discretion under the fourth prong of the abuse-of-discretion standard.

C. Ms. Hunnicutt’s Sentence Was Excessive And Objectively Unreasonable, In Light Of The Mitigating Facts Of Her Case

Ms. Hunnicutt was ■-years old at the time of her sentencing. (PSI, p.2.) She was adopted as very young child and raised in Boise with her adopted parents and six older brothers; two of those brothers started molesting her when she was just 10. (PSI, pp.135, 81.) Ms. Hunnicutt began running away from home when she was in high school, and by her junior year had missed too many school days and dropped out. (PSI, p.81.) However, Ms. Hunnicutt quickly earned her GED. (PSI, p.81.) Over the years, Ms. Hunnicutt has maintained relatively steady employment, working a variety of jobs including at the Albertson’s corporate office and its bakery, at a Money Tree, as a cocktail waitress in Las Vegas, and as a massage therapist for a

chiropractor. (PSI, p.75.) As evidenced by the letters included with her Rule 35 motion, Ms. Hunnicutt will have employment upon her release. (R., p.154.)

Ms. Hunnicutt's alcohol abuse began the age of ■■■, coinciding with the onset of the abuse by her brothers. (PSI, p.135.) Though she has used illegal substances in the past, she does not any longer; alcohol abuse is her problem. (PSI, pp.75, 135.) Ms. Hunnicutt acknowledges she is likely an alcoholic, and that her success in treatment has thus far not been long-lasting; she had been successful on supervision for five years, remaining sober from the time of her release on parole in 2014 until her relapse in January 2019, following a relationship breakup. (PSI, p.11.) She knows that getting her mental health under control is necessary to her continued recovery and her ability to remain sober. (PSI, p.82.)

Ms. Hunnicutt's struggle with severe mental health conditions also mitigates against a lengthy sentence of incarceration. Ms. Hunnicutt has diagnoses including severe alcohol abuse disorder, borderline personality disorder, bipolar disorder, and posttraumatic stress disorder (PTSD), and anxiety. (PSI, pp.2, 79.) She has been hospitalized multiple times for psychiatric reasons, often following drinking and becoming suicidal. (PSI, p.75.) Her last hospitalization was in 2009. (PSI, p.75.) In the psychological evaluation, Dr. Sombke commented on Ms. Hunnicutt's PTSD, noting she had experienced serious trauma in her life and still has anxiety, depression, and flashbacks, and engages in reckless and self-destructive behavior. (PSI, p.80.) Dr. Sombke concluded, "It is likely that her psychiatric issues are contributing to her [alcohol] use, so helping her control her psychiatric symptoms would in turn help her maintain her sobriety and decrease her risk to the community at large." (PSI, pp.80-81.) He also noted that Ms. Hunnicutt "wants to maintain her sobriety and she thinks having her psychiatric issues controlled with help with that." (PSI, p.80.)

Dr. Sombke's evaluation recognized, however, that the array of treatments specific to Ms. Hunnicutt's PTSD – medication, counseling, and Eye Movement Desensitization and Reprocessing (EMDR) – are available in the community, but in an incarceration setting, only medication would be offered. (PSI, p.80.) Importantly, Dr. Sombke concluded that by *not* treating Ms. Hunnicutt's PTSD, there was the risk she would retreat back to alcohol use as a means of coping with her psychiatric symptoms, which in turn increased the risk of danger to the community. (PSI, p.80.) Given the fact of Dr. Sombke's risk assessment, Ms. Hunnicutt's need for treatment in the community mitigates against a lengthy prison sentence.

An additional mitigating factor is Ms. Hunnicutt's personal success and support among her family. Ms. Hunnicutt has demonstrated success as a mother of twin daughters who are about to graduate from college. (PSI, p.76.) The additional information provided to the court by Ms. Hunnicutt's daughter, Keely, shows Ms. Hunnicutt's ability to come through for her family despite her struggles with mental illness:

My mom has always done everything she could to provide for my sister and I. My mom would cook us dinner every night and we would eat together as a family. She would deep clean our house almost every day. She would drive us to and from school and extracurricular activities. My mom has always given us everything we need and more. She is a great mom and has always been a great mom. ... When my mom is released from prison, she will have the support of my sister and I, as well as many friends and family members.

(R., p.156.)

Similarly, the information provided by Ms. Hunnicutt's daughter, Kendra, demonstrates Ms. Hunnicutt's strength and her potential for overcoming her addiction:

My mom has always put others before herself, especially my twin sister and I. She would do whatever it took to ensure we had what we needed and even what we wanted. ... My sister and I are at an age where we can assist her financially, arrange a better living situation for her, and have a more active approach in ensuring her well-being upon release which we lacked [as young children].

(R., p.157.)

Additionally, Ms. Hunnicutt recently found her biological family: a father who left 50 years ago to fight in Viet Nam without knowing he was about to have a daughter (R., p.158), and a grown sister who, for 40 years, believed she was an only child (R., p.155). These newly-discovered family members have embraced Ms. Hunnicutt and will give her additional support (R., pp.155, 158); they have also provided her with knowledge of a genetic basis for her mental illness, and with it, a new potential for Ms. Hunnicutt to understand and accept herself. (R., p.155.) As further testament to the fact of her good character, Ms. Hunnicutt has letters of support documenting several 30-year friendships. (*See* R., pp.160, 161.)

Finally, Ms. Hunnicutt points to the fact she undertook and completed classes while at the Ada County Jail as proof of her willingness to gain control over her life. Ms. Hunnicutt completed classes in Anger Management, Money Basics, Resume Writing, and learning about social media. (R., pp.162-64.) She was also taking courses in Contentious Relationships, and math. (R., pp.162-64.)

Ms. Hunnicutt has accepted responsibility for her action, which is also a fact relevant to her sentence. Although she did not testify at her trial or make a statement at her sentencing, Ms. Hunnicutt told the presentence investigator that she felt “devastated” by her actions, that she was angry with herself for drinking, and she admitted to being under the influence at the time of her arrest. (PSI, p.4.)

Ms. Hunnicutt acknowledges her arrest history, as well as her prior convictions for DUI and assaulting or obstructing officers. (*See* PSI, pp.5-7, 82.) However, and as concluded by Dr. Sombke, she submits that her main issues are her underlying mental health issues: Alcohol Use Disorder and Borderline Personality Disorder. (PSI, p.82.) Ms. Hunnicutt needs treatment,

not a lengthy period of incarceration. Ms. Hunnicutt submits that, in light of her severe mental health disorder, and society's interest in having her treated, along with all of the other relevant facts of her case, an eighteen-year prison sentence, with five years fixed, is objectively unreasonable and therefore excessive, representing an abuse of discretion. The order denying her motion for reduction of sentence should therefore be reversed, her sentence should be vacated, and her case should be remanded for resentencing.

#### CONCLUSION

Ms. Hunnicutt respectfully requests that this Court vacate her sentence, reverse the district court's order denying her motion for reduction of her sentence, and remand her case with instructions that the district court impose a reasonable, less severe sentence.

DATED this 11<sup>th</sup> day of January, 2021.

/s/ Kimberly A. Coster  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of January, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

KAC/eas