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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48348-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-41053
v.)	
)	
ANNA MARIE MIHELICH,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Anna Marie Mihelich pled guilty to two counts of aggravated DUI. She received an aggregated unified sentence of thirty years, with seven years fixed. On appeal, Ms. Mihelich contends that this sentence represents an abuse of the district court’s discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On July 2, 2019, a car driven by Ms. Mihelich crossed into the oncoming lane of traffic and struck a van. (Presentence Investigation Report (*hereinafter*, PSI),¹ pp.2-3.) The van was driven by a woman, and her three children were riding in the van as passengers, the youngest of whom later passed away due to her injuries.² (PSI, pp.2, 145.) Ms. Mihelich admitted to using methamphetamine a few hours before the accident.³ (PSI, pp.2, 139.) She blacked out and woke up too late to swerve to avoid the van. (PSI, p.2.)

Based on these facts, Ms. Mihelich was charged by Information with four counts of aggravated DUI. (R., pp.87-89.) Pursuant to a plea agreement, Ms. Mihelich pled guilty to Counts I and III. (Tr., p.5, Ls.18-24; p.16, Ls.3-14; R., pp.117-28.) In exchange, the State agreed to dismiss the remaining counts and to recommend a sentence of at least five years fixed. (Tr., p.5, Ls.18-24.)

At the sentencing hearing, the State asked the district court to sentence Ms. Mihelich consecutively. (Tr., p.52, Ls.11-14.) Ms. Mihelich's counsel asked the district court to consider retaining jurisdiction. (Tr., p.58, Ls.10-18.) However, Ms. Mihelich was sentenced to fifteen years, with five years fixed, on Count I, and fifteen years, with two years fixed, on Count III, to be served consecutively to the sentence in Count I. (Tr., p.65, Ls.10-22; R., pp.133-37.)

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² The driver and the front-seat passenger were seriously injured, in part due to the failure of the van's driver and passenger airbags to deploy during the crash. (PSI, p.95.) The van was purchased as a salvage vehicle, and the front airbags had been unplugged. (PSI, p.95.)

³ An analysis of Ms. Mihelich's blood was positive for other substances, such as caffeine, amphetamine, Phenylpropanolamine (an over the counter decongestant), THC, Carboxy THC, Topiramate (prescription anticonvulsant), and Duloxetine (the prescription drug Cymbalta—used for the treatment of depression). (PSI, pp.139-42.)

Ms. Mihelich filed a notice of appeal timely from the judgment of conviction.
(R., pp.141-43.)

ISSUE

Did the district court abuse its discretion when it imposed an aggregate unified sentence of thirty years, with seven years fixed, upon Ms. Mihelich following her plea of guilty to two counts of aggravated DUI?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Aggregate Unified Sentence Of Thirty Years, With Seven Years Fixed, Upon Ms. Mihelich Following Her Plea Of Guilty To Two Counts Of Aggravated DUI

Ms. Mihelich asserts that, given any view of the facts, her aggregate unified sentence of thirty years, with seven years fixed, is excessive. 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 consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Ms. Mihelich does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Ms. Mihelich must show that in light of the governing criteria, the sentences were 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.*

In light of the mitigating factors present in this case, Ms. Mihelich's sentence is excessive considering any view of the facts.

Ms. Mihelich contracted bacterial meningitis while incarcerated on these charges. (PSI, p.3; Tr., p.55, L.15 – p.56, L.22.) She nearly died, but recovered after being placed in a medically induced coma for eleven days, and continues to suffer from serious long-term disabilities. (PSI, p.3; Tr., p.18, L.17 – p.19, L.15; p.55, L.16 – p.56, L.22.) Ms. Mihelich uses a wheelchair, leg brace, and a back brace. (PSI, p.3; Tr., p.19, L.11; Tr., p.56, Ls.10-22.) She takes multiple medications for her physical health conditions, and has been diagnosed with MRSA, spinal meningitis, and Parkinson's Disease. (PSI, pp.3-4, 11, 14, 19; Tr., p.19, Ls.1-15; p.56, Ls.17-20.)

Ms. Mihelich has been diagnosed with major depressive disorder and anxiety. (PSI, pp.4, 7, 11-12, 19.) Since the accident, she thinks about suicide every day. (PSI, pp.4, 32.) The Idaho Supreme Court has held that the trial court must consider a defendant's mental illness as a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999).

Ms. Mihelich wants to stay clean from controlled substances. (PSI, pp.9, 16.) Her current goal is "to live a clean life and get back into doing what [she] was doing with the church." (PSI, p.9.) Ms. Mihelich has never attended substance abuse disorder treatment, but the GAIN evaluator recommended Level I Outpatient Treatment. (PSI, pp.11, 13.) The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Ms. Mihelich has no prior felony criminal history. (Tr., p.19, Ls.18-19; PSI, pp.3, 8.) She was convicted of a misdemeanor disturbing the peace seventeen years ago, but otherwise has been a law-abiding citizen her entire life. (PSI, pp.3, 8.) The Idaho Supreme Court has “recognized that the first offender should be accorded more lenient treatment than the habitual criminal.” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227 (1971)); *see also State v. Nice*, 103 Idaho 89, 91 (1982).

Ms. Mihelich has a supportive family to assist her in her rehabilitation. She has a good relationship with her sister, brother-in-law, children and grandchildren, and she received letters of support from her sister and brother-in-law. (PSI, pp.3-5; Tr., p.52, L.20 – p.53, L.14.) She also has support within the community. (PSI, pp.3, 26.) One community member who knows Ms. Mihelich from church, described her as “a very sweet, friendly woman.” (PSI, pp.3, 26.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Further, Ms. Mihelich expressed considerable remorse and accepted responsibility for her actions. (Tr., p.14, L.15 – p.16, L.14; p.54, L.12 – p.55, L.13; PSI, pp.2, 4.) Ms. Mihelich said, during the presentence interview, “I tried to swerve and couldn’t swerve fast enough. I’m not a bad person. I wish I could take it back.” (PSI, p.2.) She wrote to the district court:

I would like to say how sorry I am for this terrible crime. I am [a] 54 yr old woman that has never been in trouble before[.] I know I made a bad choice when I got high and drove that night[;] I wish I could take away all the pain that I caused not only the victims family b[ut] my family as well. I know all I can do now is try to do my best so I’m asking the court to please look at my health and give me probation and credit for days I have been in custody[;] there is not much I can do but say I[‘]m sorry[.] I will go to classes and try to make my life better. Thank you.

(PSI, p.9.) When Ms. Mihelich entered her guilty plea, she told the court, “I tried to swerve but it was too late and we collided, and it was a horrible, horrible accident and people got hurt. And it’s a heavy, heavy burden that I have to live with and the family has to live with, but I have to live with that, and I have terrible nightmares, that my family has to live with that pain, and I am so, so sorry. I wish I could go back and repeat that night.” (Tr., p.15, Ls.1-8.) At her sentencing hearing, Ms. Mihelich expressed considerable remorse and told the court and the victims how sorry she was for her actions. (Tr., p.59, Ls.2-11.) She told the court:

I would just like to tell [the] family that I’m so, so sorry. I never meant for any of this to happen, and every night I beg for their forgiveness, I pray to God that they forgive me, and if there’s anything I can do to make it right, I know there’s nothing that I can do, but I just pray to God every night that they would forgive me. And I am so truly sorry. I just -- I’m so sorry. I wish I could take their pain away. I’m so sorry. I just beg for them to forgive me. I truly do.

(Tr., p.59, Ls.2-11.) Idaho recognizes that some leniency is required when a defendant expresses remorse for her conduct and accepts responsibility for her acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Ms. Mihelich asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court properly considered her considerable remorse, mental and physical health conditions, and her family and community support, it would have imposed a less severe sentence.

CONCLUSION

Ms. Mihelich respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 14th day of January, 2021.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2021, 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

SJC/eas