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# State v. Keyes Respondent's Brief Dckt. 48871

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO<br><br>Plaintiff-Respondent,<br><br>v.<br><br>ELIZABETH BRITIANY KEYES<br><br>Defendant-Appellant. | ) | NO. 48871-2021<br><br>Kootenai County<br>Case No. CR28-20-5762<br><br>RESPONDENT'S BRIEF |

Has Elizabeth Britiany Keyes failed to show that the district court abused its sentencing discretion when it imposed aggregate sentence totaling 25 years with 10 years determinate upon her convictions for murder in the second degree and alteration or concealment of evidence?

## ARGUMENT

### Keyes Has Failed to Show that the District Court Abused Its Discretion

### A. Introduction

No one, including Elizabeth Britiany Keyes, knew she was pregnant until she delivered a full term baby boy in the bathroom of her boyfriend's family home. (PSI, pp. 92, 179, 182-83, 187, 334-37, 366; Confidential Exhibits, pp. 66-67, 91.) For reasons which remain unfathomable, Keyes strangled the newborn to death, made superficial cuts along his lower abdomen, and used a

utility knife to slice his body open from the midline of his chest to his abdomen, exposing loops of the small bowel and slicing his liver. (PSI, pp. 8, 10-13, 92-96, 109-11; Confidential Exhibits, pp. 37, 39-42, 44-45, 68, 70-72, 75-77, 88-89, 97-104.) Keyes then attempted to clean the bathroom, placing the bloody utility knife in a bathroom drawer, placing bloody debris and the corpse of the dead baby into a garbage bag, and placing the garbage bag on the front porch. (PSI, pp. 92-96, 107, 335, 367; Confidential Exhibits, pp. 46-60, 72-74, 94, 114-16.) Keyes told her boyfriend's mother that she believed she had just had a miscarriage and went to bed. (PSI, pp. 179, 367; Confidential Exhibits, p. 90.)

The following morning, the sister of Keyes' boyfriend became concerned when she found blood in the bathroom and ultimately found the baby inside the trash bag. (PSI, pp. 47, 92, 334-35.) The sister wrapped the baby and the placenta in a towel and drove Keyes and the baby to the hospital. (PSI, pp. 2, 47, 96, 335-36) There, hospital staff found the dead baby in the backseat of the car and a bloody Keyes who "appeared to be in emotional shock" and had a "kind of flat affect … just expressionless." (PSI, pp. 132, 368, 384.)

Upon viewing the abdominal wound, hospital staff called the police. (PSI, p. 184.) A detective interviewed Keyes in the hospital, questioning her about her pregnancy, delivery, and the cause of death of her baby. (PSI, pp. 368-375; Confidential Exhibits, pp. 61-93.) Throughout questioning, Keyes claimed she was unaware she was pregnant and could recall neither the delivery nor strangulation of the baby. (PSI, p. 93, 369-74; Confidential Exhibits, pp. 68-69, 71-73, 75-77, 87-89, 91.) Keyes recalled some details of cutting her baby and was able to tell the detective what type of knife she used, but seemed unable to explain why she cut the baby. (PSI, pp. 93, 372; Confidential Exhibits, 70-72.)

Admitted to the Kootenai Health behavioral health unit, Keyes' psychiatric evaluator noted she presented as "exhibiting an unexpected and inappropriately bland affect for the circumstances, and seemed very detached or even experiencing dissociation." (PSI, p 132.) He noted her affect "[r]anged from blunted to smiling, with occasional nervous laughter that was incongruent with her mood and circumstances. She appeared anxious at times … but she did not appear to cry or shed any tears during the visit." (PSI, p. 136.)

The state charged Keyes with murder in the first degree and alteration or concealment of evidence. (R., pp. 165-66, 204-05.) Keyes pleaded guilty pursuant to a plea agreement in which the state agreed to amend the first degree murder charge to second degree murder and Keyes agreed to plead guilty under Alford. (R., pp. 549-51, 553-55). The district court imposed a sentence of 25 years, ten fixed for murder in the second degree and five years, zero fixed for alteration or concealment of evidence, to be served concurrently. (R., pp. 671-72.)

Keyes filed a timely notice of appeal. (R., pp. 673-76.)

Keyes challenges the district court's decision to sentence her to an aggregate 25 years with ten years fixed. Keyes has failed to show an abuse of discretion.

B. Standard of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part

inquiry, which asks "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. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Keyes Has Shown No Abuse of the Court's Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. A sentence is reasonable "'if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.'" Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court's factual finding and reasoning for its sentence show no abuse of discretion. Second-degree murder is punishable by ten years to life. I.C. § 18-4004. At the

sentencing hearing, the district court considered the Toohill[1] factors and heard arguments from the state and Keyes regarding relevant factors, but ultimately determined the most important factor in this case is deterrence to the public, followed by punishment. (Tr., p. 123, Ls, 10-24.) "This sentence is to punish you," the district court stated, "but primarily it's a sentence that is put in place to try to maintain an organized society." (Tr., p. 124, Ls. 1-3.) The district court carefully considered the evidence presented by the state and Keyes. It reviewed the photographs submitted by the state of the crime scene and the autopsy photos of Baby Boy Keyes. (Tr., p. 122, L. 24 – p. 123, L. 3.) The district court considered the arguments presented by Keyes which showed her good character and the strong support she received from family and friends. (Tr., p. 128, L. 10 – p. 129, L. 6.) The district court crafted a sentence with a reduced fixed amount that met the four criteria in sentencing and honored the goal of being "able to live in an organized and … law-abiding society." (Tr., p. 129, Ls. 6-10.)

Keyes acknowledges that "her actions required the district court to impose a prison sentence" yet argues her "mental state," "support of family and friends, and remorse" should have lead the district court to a less-severe sentence. (Appellant's brief, p. 6). Keyes' claims are unpersuasive. In regards to her mental state, the district court determined that neither argument presented by the state nor Keys mattered, ultimately. (Tr., p. 125, Ls. 2-6; p. 129, L. 22 – p.130, L. 1.) Whether Keyes was in a "dream-like," dissociative event, as she argued, or trying to cover up a pregnancy, as the state argued, did not factor into the district court's sentencing. (PSI, p. 339; Tr., p. 107, L. 7 – p. 108, L. 9; p. 112, Ls. 9-21; p. 123, Ls. 3-9.) "It doesn't matter," the district court said repeatedly. (Tr., p. 124, Ls. 7-10; p. 125, Ls. 2-6, 15-22; p. 125, L. 23 – p. 126, L. 4; p. 126, Ls. 19-20.) In a case with such rare and unusual circumstances, the district court determined

[1] State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

"deterrence of the public is the most important." (Tr., p. 124, L. 16 – p. 125, L. 1; p. 128, Ls. 8-9.) The court carefully considered what sentence would give Keyes the "minimum amount" of prison time but "would still be a deterrent to those in the future." (Tr., p. 126, Ls., 21-24.)

"I think you are a good person," the district court informed Keyes. (Tr., p. 128, Ls. 13-14.) "You are a kind and caring person." (Tr., p. 128, Ls. 22-23.) The district court considered Keyes' support from family and friends carefully and accepted as true the good things her family said about her. (Tr., p. 128, Ls. 21-22.) The court recognized Keyes as, for the most part, a "very law-abiding person." (Tr., p. 129, Ls. 5-6.) Though her motivations for the murder may never be known, the district court recognized Keyes *did* intend to strangle, cut, and dispose of her baby. (Tr., p. 130, Ls. 3-10.) Considering the four factors in sentencing, the district court could not "give [Keyes her] freedom today," but imposed the least amount of prison time appropriate under the four sentencing criteria factors. (Tr., p, 129, Ls. 11-12; p. 130, Ls. 20-22.)

The district court considered all mitigating and aggravating factors and crafted a sentence that demonstrated a balance of compassion for Elizabeth Keyes, the serious and tragic nature of her crime, while imposing a sentence meant to "maintain an organized society." (Tr., p. 124, Ls. 2-3.) The concurrent sentences of 25 years with ten years determinate for second-degree murder and five years, zero fixed for alteration or concealment of evidence were reasonable given the gravity of the crimes and in light of the applicable criteria for sentencing and were within the district court's discretion. Keyes has failed to show error.

## CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 20th day of December, 2021

/s/ Kenneth K. Jorgensen
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of December, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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