

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED
FIRST JUDICIAL
DISTRICT COURT

2018 APR 13 AM 9:46

STATE OF NEW MEXICO,

Plaintiff,

vs.

DOMINIC FRIEDLEIN,

Defendant.

No. D-0101-CR-2017-00354

Judge T. Glenn Ellington

STATE OF NEW MEXICO'S SENTENCING MEMORANDUM

COMES NOW the State of New Mexico, by and through its Deputy District Attorney, John Osborn, and respectfully submits the State of New Mexico's Sentencing Memorandum. The State requests this Court to accept the plea as entered by the parties on January 2, 2018, and to sentence the Defendant in the best interest of justice.

FACTUAL BACKGROUND

On April 9, 2017, the Defendant, along with Stefan Seigmann and Defendant's fiancé, Hanna Young, went to Santa Fe Brewing Company to celebrate Stefan's upcoming move to Flagstaff, Arizona. They arrived at Santa Fe Brewing Company at approximately 4:06 pm and closed their tab at approximately 6:10 pm. Video evidence shows that they were present at Santa Fe Brewing until at least 6:30. Discovery shows that Defendant consumed three (3) beers while at Santa Fe Brewing Company.

Departing Santa Fe Brewing, Defendant drove Hannah's 1999 Toyota 4Runner, Stefan Seigmann rode in the front passenger seat, and Hanna Young was in the backseat. At approximately 7:52 p.m., at the corner of San Mateo and St. Francis, Defendant was involved in a motor vehicle

crash with a 2009 Chevrolet Cobalt driven by Ms. Pamela Reyes. Defendant was driving northbound on Saint Francis, and Ms. Reyes was driving southbound. Defendant turned left (westbound) on San Mateo in front of Ms. Reyes, and they collided in the intersection. The crash resulted in the 4Runner rolling over, coming to a stop against the light pole at the southwest corner of the intersection. Stefan perished at the scene. Ms. Pamela Reyes suffered two (2) broken wrists and Ms. Reyes' son, a minor in the backseat who was not in a child seat, suffered an orbital fracture.

Santa Fe Police Department (SFPD) conducted a crash analysis, which measured velocity and analyzed the speed of both vehicles, and, with a few caveats, was confirmed in large part by a Crash Data Recorder recovered from Ms. Pamela Reyes' Cobalt. There was no crash data recorder in the Toyota Four Runner driven by Defendants. SFPD's speed analysis showed that the pre-impact velocity - at 1 second before the crash - of the Toyota Four Runner to be 11.57 mph, and the Chevrolet Cobalt calculated to be 47.55 mph.

The Chevy Cobalt's Crash Data Recorder records a "speed analysis," which logged the speed of the Cobalt just prior to the crash. Crash data from Ms. Reyes' Cobalt shows that two (2) seconds before the impact she was driving 64 mph with no braking, but at one (1) second before impact she braked, reducing her speed at impact to 45 mph. The speed limit in both directions is 45 mph.

At the scene, Defendant initially denied drinking, but quickly admitted to drinking two (2) alcoholic beverages before driving. He submitted to standardized field sobriety tests and a Portable Breath Test, both of which showed signs of alcohol consumption and impairment. Defendant submitted to two (2) blood draws, which showed results of a blood alcohol concentration (BAC) of .12 - above the legal limit - and is consistent with Defendant drinking three (3) beers prior to driving.

While at the hospital submitting to the blood draw, Defendant admitted that he actually had three (3) beers and said to an Officer, "I had three beers on an empty stomach, someone else should've drove, I ruined my life today...How do you not blame yourself for something like this, I killed someone today."

STEFAN ANDREW SEIGMANN

Born in Salzburg, Austria, on August 2, 1987, to Lisa and Hubert Seigmann, Stefan's life was miraculous from the start. Stefan's mother, Lisa, is from West Texas, and his father, Hubert, is from the Austrian Alps. After marrying, the Seigmanns settled in Ruidoso, New Mexico, to be close to mountains for Hubert, who grew up skiing on the Austrian Alps. When they married, the Seigmanns were unsure whether they were going to have children, but Stefan miraculously came into this world as their only child. For twenty-nine years he was the light of his parent's lives and their best friend, and had an incredible impact on everyone who knew him.

Not only was Stefan an integral part of his immediate family, he was a central figure in his extended family as well. He loved to plan "Cousins Weekend" and family get-togethers and was lovingly known as "Muffin" to the younger kids in the family. He was a fantastic storyteller who reached all ages with his entertaining tales. Additionally, he constantly called family members to check in and see how they were doing. He was a thoughtful, caring, selfless, loving, and jovial person who brought joy to his family and friends. His absence is a tremendous loss to them as well.

But there was more to Stefan than family and friends. Stefan showed extraordinary skill as a skier from an early age. As a child, Stefan spent years on the Sierra Blanca Ruidoso Ski Team with his father, Hubert, who was his coach. Nevertheless, though he was a brilliant skier in his own

right, Stefan did not stop at that. In true Stefan fashion, he wanted to give back and teach others what his father had taught him. After he moved to Santa Fe, he joined his father as a coach of the Santa Fe Ski Team. From 2012 through 2017, Stefan and his father guided the Santa Fe Ski Team to national recognition. They competed in skiing competitions throughout the world and were remarkably successful.

Stefan was not only concerned with teaching world-class skiers: Stefan was devoted to helping children of all skill levels, believing that the more children believed in their abilities on and off of the ski slope, the more likely those children would succeed in life. Nonetheless, whenever his pupils competed on the slopes, they were amongst the best in the country. And, most importantly, no matter the result of the races, his pupils respected and loved Stefan. They were all family.

Just prior to his death, Stefan had decided to move to Flagstaff, Arizona, to complete his education in Nursing. Thanks in large part to his personality and love for others, Stefan excelled in his work as a Surgical Tech at Christus St. Vincent Hospital. He was well liked by his colleagues, superiors, and, most importantly, his patients. But Stefan's life was not consumed by work. As evidenced by his love of skiing, Stefan loved the outdoors and all the beauty that is displayed when one spends any time in nature. To that end, Stefan loved to hike, bike, camp, and had recently picked up fly fishing, reasons why he desired to move to Flagstaff. And he was an amazing artist, having an eye for photography that few have.

In short, while the world lost a special person who died before his time, there are many who fail to accomplish what Stefan was able to accomplish in his short 29 years on this earth. He loved everyone and was loved by all and had a special connection with most he came into contact with,

including the Defendant, Dominic Friedlein.

PLEA AGREEMENT

On January 2, 2018, Defendant pleaded guilty to Homicide by Vehicle by Driving Under the Influence of an Intoxicating Liquor or Drug, in violation of N.M. Stat. Ann. § 66-8-101 and § 66-8-102. After consultation with the victims and their representatives, the parties agreed to a CAP of incarceration of three (3) years at initial sentencing, and, subsequent to any incarceration, a statutory period of probation in accordance with NMSA § 31-20-5. The Defendant shall not be eligible for a Conditional Discharge, and Defendant is not be eligible for the Technical Violations Program (TVP) as part of probation. In addition, Defendant's driver's license was revoked, and Defendant shall make restitution in accordance with NMSA § 31-17-1.

PURPOSE OF SENTENCING

The purpose of sentencing is rehabilitation, deterrence, incapacitation, or retribution. *See State ex rel. Schwartz v. Kennedy*, 1995-NMSC-069, ¶ 40, 120 N.M. 619, 634, 904 P.2d 1044, 1059 (citing Mary M. Cheh, Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal–Civil Law Distinction, 42 Hastings L.J. 1325, 1378–79 (1991) (footnotes omitted)); *see also State v. Woods*, 2010-NMCA-017, ¶ 28, 148 N.M. 89, 96, 230 P.3d 836, 843; *see also Ira v. Janecka*, No. S-1-SC-35657, 2018 WL 1247219, at 6 (N.M. Mar. 9, 2018).¹

¹ *Ira v. Janecka*, No. S-1-SC-35657, 2018 WL 1247219, at 6 (N.M. Mar. 9, 2018). “Third, no penological theory—retribution, deterrence, incapacitation, and rehabilitation—justifies imposing a sentence of life without parole on a juvenile convicted of a non-homicide crime because juveniles are less culpable and more amenable to reformation.” (citing *Graham*, 560 U.S. at 71-75, 130 S.Ct. 2011).

Rehabilitation.

Rehabilitation is a personal experience to every defendant who enters the justice system. The Defendant has no criminal record aside from the instant offense. Nonetheless, after this Court imposes whatever incarceration is just, the State fully expects this Court to impose the statutorily maximum level of probation allowable under law.² The confidential Pre-Sentence Diagnostic Evaluation received from the New Mexico Department of Corrections outlines some recommendations regarding Defendant's rehabilitation. To that end, as rehabilitative goals are best achieved through liberal application as mandated probation under §31-21-4³, the State requests this Court to order any and all conditions of probation that are reasonably related to the rehabilitation of the Defendant.

Deterrence.

When contemplating a sentence, Courts address the deterrent effect in imposing the sentence, both specific to the defendant, and generally to the public.⁴ While the two ideas are intertwined,

² N.M. Stat. Ann. § 31-20-5. "Placing defendant on probation."

³ N.M. Stat. Ann. § 31-21-4. "Construction and purpose of act." "The Probation and Parole Act shall be liberally construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs and potentialities as revealed by case study, and that such persons shall be dealt with in the community by a uniformly organized system of constructive rehabilitation under probation supervision instead of in an institution, or under parole supervision when a period of institutional treatment is deemed essential in the light of the needs of public safety and their own welfare."

⁴"Deterrence" is defined as "[t]he act or process of discouraging certain behavior, particularly by fear." Moreover, as an objective of criminal law, deterrence connotes "the prevention of criminal behavior by fear of punishment." Black's Law Dictionary 460. Deterrence is a way of using the punishment of a defendant as an example to others who might be tempted to commit the same crime. It is an announcement to the world of the consequences for those who are caught committing the prohibited act. See Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law*

they are nonetheless separate and distinct, and the Court should take into consideration both in order to achieve a just sentence.

Specific deterrence applies to the individual defendant. The instant offense is the only arrest and criminal conviction on Defendant's record. Defendant's Pre-Sentence Diagnostic Evaluation indicated that Defendant has engaged with treatment by undergoing a substance abuse assessment through Santa Fe Recovery shortly after the crash. According to Defendant's assessment, substance abuse does not appear to be a significant problem for Defendant. Nonetheless, this Court should take measures to deter future criminal behavior of this Defendant.

General community deterrence, while mostly the province of the legislature, should also be taken into consideration when sentencing. General deterrence asks what impact an individual sentence would have on the actions of the rest of the population. Though it is an amorphous question, this Court should take into consideration both specific and general deterrence when sentencing this Defendant.

Incapacitation.

The third prong of sentencing is incapacitation, also known as incarceration, but with a focus on crime prevention. In other words, incapacitation is largely the justification for those certain

Distinction, 42 Hastings L.J. 1325, 1355 n. 166 (1991) [hereinafter Cheh, Constitutional]. "In order for a deterrent to be effective, the potential costs to that individual, discounted by the probability that the individual will incur such costs, must be sufficiently high to dissuade her [or him] from taking that action. Thus, the strength of the deterrent depends on the size of the penalty." Leading Case, *supra*, at 212. Sanctions that deter are different from those that remedy. A deterrent "must amount to more than recompense or restitution. The theory is that humans, as rational weighers of the risks and benefits of their actions, will risk being penalized if the worst they face is having to pay market value for their illicit gains." Cheh, Constitutional, *supra*, at 1355 (1991) (footnote omitted). *State v. Nunez*, 2000-NMSC-013, ¶ 85, 129 N.M. 63, 85, 2 P.3d 264, 286.

defendants who cannot or will not be rehabilitated through probation.

The State does not feel that this Defendant must be incarcerated solely due to incapacitation. Defendant's criminal and personal history indicate that Defendant is not a career offender and that Defendant can - and wants - to be rehabilitated. However, given the facts of this case, some incarceration is necessary, and any imposed incarceration should be focused under the prongs of general community deterrence and retribution.

Retribution.

Black's law dictionary defines retribution as, "[p]unishment imposed as repayment or revenge for the offense committed; requital; [s]omething justly deserved; repayment." Black's Law Dictionary 1343 (8th ed. 1999). While retribution could, in theory, be premised on restitution, retribution is largely related to incarceration. In other words, even though the Defendant does not have a criminal history, Defendant should pay - at some level greater than restitution - for driving a vehicle while under the influence of alcohol and causing the death of his friend, Stefan Seigmann.

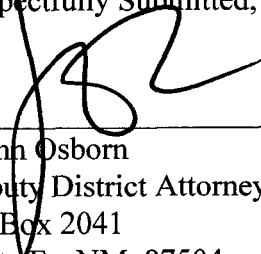
However, because the desire for retribution is personal to the victims, the State has taken into consideration the wishes of Stefan's family regarding the ultimate sentence. It is the understanding by the State, at the filing of this memorandum, that Stefan's family feels it would be just for Defendant to serve an additional year in custody not counting statutorily imposed pre-sentence confinement.

Conclusion.

WHEREFORE the State of New Mexico, by and through its Deputy District Attorney, Johnn Osborn, respectfully requests this Court to accept the plea as entered by the parties on January 2,

2018, and sentence the Defendant in the best interest of justice.

Respectfully Submitted,



John Osborn
Deputy District Attorney
PO Box 2041
Santa Fe, NM 87504
505-827-5000

SF 17-0838