

IN THE COUNTY COURT IN AND FOR
SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

ERIC WILLIAM SMALLRIDGE,

Defendant.

_____ / Case No.:02-0574-CFA

ORDER GRANTING MOTION FOR REDUCTION OF SENTENCE

THIS MATTER came to be heard upon the Defendant's Motion for Reduction of Sentence and the Court having heard testimony; argument of counsel; and being otherwise fully advised in the premises, makes the following findings of facts and conclusions of law:

FACTS

A jury convicted the Defendant of two counts of DUI manslaughter. Defendant was sentenced in count one to eleven years in prison followed by four years of probation to run consecutive with count two for a prison term of eleven years followed by four years of probation. On direct appeal, the First District affirmed Defendant's judgment and sentence. *See Smallridge v. State*, 904 So.2d 601 (Fla. 1st DCA 2005). Defendant filed a petition with the Florida Supreme Court for discretionary review, which was denied on December 2, 2005. *See Smallridge v. State*, 918 So.2d 293 (Fla. 2005)(Table). Defendant subsequently filed a petition for certiorari with the United States Supreme Court, which was denied on June 12, 2006. *See Smallridge v. State*, 126 S.Ct. 2871 (2006).

This Court has jurisdiction to address the Motion for Reduction of Sentence pursuant to Florida Rule of Criminal Procedure 3.800(c). Rule 3.800(c) provides in pertinent part that a

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court may reduce or modify a defendant's sentence within 60 days after the highest state or federal court in which a petition for certiorari has been timely filed has entered an order denying certiorari.

APPLICABLE LAW

The Florida Supreme Court has held that the statute permitting downward departure applies to felony DUI. *See State v. VanBebber*, 848 So.2d 1046, 1050 (Fla. 2003). The decision to depart from the guidelines is a two-step process for the trial court. *See Banks v. State*, 732 So.2d 1065, 1067 (Fla.1999). First, the trial court must determine whether there is a valid legal ground for departure as set forth in case law and statutes, and whether there is adequate factual support for that ground in this case. *Id.* The second step requires the trial court to exercise discretion as to whether departure is truly the best sentencing option for the defendant. *Banks*, 732 So.2d at 1068.

Section 921.0026(2), Florida Statutes sets forth a nonexclusive list of mitigating circumstances for the court to consider regarding whether a downward departure sentence should be granted. *See State v. Owens*, 848 So.2d 1199(Fla.1st DCA 2003)(noting the mitigating circumstances listed in section 921.0026(2), Florida Statutes are not exclusive of other valid legal grounds).

CONCLUSION

In taking into careful consideration both statutory and nonstatutory mitigators, the Court finds valid legal grounds for departure have been established through the testimony and evidence presented.¹

Notably, the statutory list of mitigating circumstances does not include input from the

¹ At the hearing on the Motion for Reduction of Sentence, a total of eleven of the victims' family members testified. Most of the testimony heard was regarding Defendant's remorse, their ability to forgive him, and their pleas for a reduction in his sentence.

victims' family; however, their testimony in support of a departure sentence was relevant. *See State v. Kasten*, 775 So.2d 992 (Fla. 3d DCA 2000); *See State v. McLaren*, 763 So.2d 1171 (Fla. 4th DCA 2000); *Banks v. State*, 732 So.2d 1065, 1069 (Fla.1999). Furthermore, Defendant represented to this Court that he will join the victims' families in publicly speaking on the dangers of drinking and driving in order to deter other possible youthful offenders. More importantly, Defendant has shown remorse for this isolated incident of DUI manslaughter which was committed in an unsophisticated manner. *See Fla. Stat 921.0026(2)(j)*.

Therefore, the Clerk of Court is directed to prepare an amended judgment and sentence in the above case reflecting that count one of Defendant's sentence is to run concurrent with count two rather than the previously imposed consecutive sentence. All other terms and conditions of the sentence remain the same.

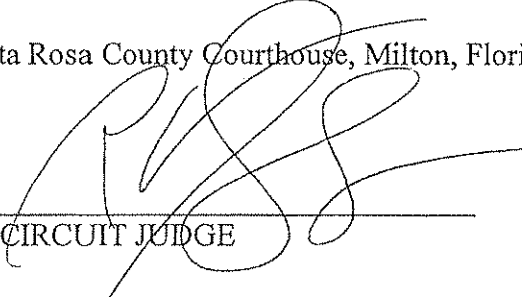
Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion for Reduction of Sentence is granted.

IT IS FURTHER ORDERED AND ADJUDGED the Clerk of Court shall prepare an amended judgment and sentence in case number 02-0574 as provided for herein.

DONE AND ORDERED in Chambers, Santa Rosa County Courthouse, Milton, Florida

this 23 day of Aug 2006.



CIRCUIT JUDGE

Copies:

Michael Ufferman, Esq., 660 East Jefferson Street, Tallahassee, FL 32301

John A. Molchan, Assistant State Attorney

Holmes Correctional Institution, Bonifay, Florida