

**STATE OF VERMONT
BENNINGTON COUNTY, SS.**

STATE OF VERMONT	)	VERMONT SUPERIOR COURT
	)	BENNINGTON UNIT
vs.	)	CRIMINAL DIVISION
	)	
XXXXXXXXXXXXXXXXXX	)	DOCKET NO. XXXXXXXX
Defendant.	)	

SENTENCING MEMORANDUM
ON BEHALF OF XXXXXXXXXX XXXXX

COMES NOW Defendant, XXXXXXXXXX, by counsel Chris Montgomery, Esq. and submits the following Sentencing Memorandum setting forth all the factors the Court should consider in determining the type and length of sentence, in accordance with 13 V.S.A §7030:

In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime, the history and character of the defendant, the need for treatment, and the risk to self, others, and the community at large presented by the defendant.

Defendant argues for a sentence of four to eight years all suspended but eighteen months and six months home confinement.¹ The sentence reflects the serious nature of the crime, the need for punishment and deterrence, but also the need for rehabilitation and because Defendant can be rehabilitated and sanctioned in the community. As set forth in detail below, Mr. XXXXX's personal sense of responsibility, his dedication to his strict conditions of release and sobriety, his continuing counseling, and his work ethic and commitment to his family demonstrate that a minimum- incarcerative sentence combined with a period of probationary supervision is warranted and appropriate in his case.

Nature and Circumstances of the Crime

On September XXXX, XXXXXXXXXX XXXXX completed his shift as a desk agent at the XXXXXXXX Hotel and then met his then fiancée and several co-workers for karaoke night at XXXXXXXX. ² After consuming what was reported by staff at XXXXXXXX and

¹ The Department of Corrections reports in its Pre-Sentence Investigation Report that Mr. XXXXX is ineligible for a home confinement investigation due to the delay of at least 18 months before such confinement could begin.

² Mr. XXXXX has no memory of the day of the incident other than he remembers working as the XXXXX Hotel in Manchester Vermont. Due to the serious nature of his injuries Mr. XXXXX was in a coma for approximately three days following the crash. The following time-line is derived from interviews with co-workers and staff at XXXXX.

receipts were four shots of Tequila and two beers, Mr. XXXXX left Mulligans at approximately 2:00 a.m. However, it is clear from witness interviews that Mr. XXXXX went to XXXXXXXX after work and did not leave until moments before the accident. It is clear from his BAC level that he was likely served far more alcohol and no efforts were made to ensure he did not drive home. At approximately 2:13 a.m. XXXXXXXX Police Department received a report of a crash involving two motor vehicles on Route 7a just south of XXXXXXXX Village. Mr. XXXXX transported to SVMC and subsequently to Albany for life threatening injuries. The driver of the other vehicle was pronounced dead at the scene.

Subsequent testing conducted upon both Mr. XXXXX and Mr. XXXXXXXX revealed that at the time of the collision Mr. XXXXX had a B.A.C. of .239 and Mr. XXXXXXXX .183. 3 The road conditions at the time of the accident were dark, with no street lighting and possibly fogbound. Due to the amount of damage to the two vehicles and broad debris field it took several days to conduct and complete a full accident reconstruction. The results of the accident reconstruction indicated that Mr. XXXXX' vehicle crossed the center yellow line striking Mr. XXXXXXXX' vehicle. At the time of impact, Mr. XXXXXXXX' vehicle was estimated at either stopped or driving at 1-2 miles per hour. Much of the accident reconstruction report derived from data obtained from Mr. XXXXX' vehicle data recorder. Mr. XXXXXXXX'S vehicle did not include a data recorder that could be downloaded.

The History and Character of XXXXXXXXXXXX XXXXX

XXXXXXXXXXXX XXXXX is 27 years old and a Native American. He was raised by his mother, XXXXXXXX and adopted by his step-father XXXXXXXX. Both his parents own a house and reside part time in XXXXXXXX Village, Vermont. Mr. XXXXX has no prior convictions nor any negative history with regard to employment, family or social issues.

XXXXXXXXXXXX XXXXX has worked full time when he was not pursuing higher education. He worked both at Champions in XXXXXXXX and the XXXXX Hotel where he is currently employed.

XXXXXXXXXXXX was one of three children and was brought up in a Catholic family with a strong religious and moral background. He was first a student at the XXXXX Grammar School, followed by the XXXXXXXXXXXX XXXXX Academy in XXXXX, New Jersey. His parents describe XXXXXXXXXXXX as:

“always the most sensitive of our three boys, always quick to be driven to tears with a tremendous sense of empathy. This served him well in making friends however also doubled as an albatross as he generally felt the pain of those around him. There was one instance we remember when XXXXXXXXXXXX was at a friend's house and a group of them got into trouble for something that one of the other boys had done. XXXXXXXXXXXX, even though he was not guilty for doing anything wrong, felt

3The BAC record for Mr. XXXXX was derived from blood drawn at the hospital. The BAC record for XXXXXXXX was derived from his autopsy toxicology report.

compelled to take responsibility along with the rest of the group simply for being a witness. He felt he had failed in his duty to stop the wrongdoing and therefore he was just as guilty. He was 14.”

XXXXXXXXXX is described by his pastor as “a bright, insightful, articulate young man” who is extremely remorseful for his actions and has sought professional help and to remain sober since the tragic accident.

XXXXXXXXXX XXXXX has strong family ties in the community and in New Jersey where his parents reside part time. His aunt XXXXXXXXXXXX has known him since he was three years old and describes XXXXXXXXXXXX as originally shy, but became very helpful on his aunt’s farm and was a loving and attentive older brother to his younger siblings.

XXXXXXXXXX’s grandfather, XXXXXXXX, M.D., knew XXXXXXXXXXXX as a child and watched him “steadily mature into a fine young man with a good moral character and sense of responsibility.” Dr. XXXXXXXX continues, “Knowing XXXXXXXXXXXX as well as I do, I believe he will dedicate himself to learn from this terrible accident. I know he regrets the terrible choices that he made and does understand the consequences of his actions.”

XXXXXXXXXX’s maternal grandmother, XXXXXXXX, writes of XXXXXXXXXXXX:

“[H]e is a caring, kindhearted, and considerate person who made a terrible mistake. XXXXXXXXXXXX asked me to write this letter of reference which I gladly accepted as I have known him since birth and know him to be responsible and the kind of individual who places others before himself, a very selfless man. XXXXXXXXXXXX is a faith driven individual who takes the feeling of others into consideration before his own. ... I have had the chance to speak with my grandson since this incident and can attest he is extremely remorseful and heartbroken over what has occurred. This incident has forever changed him as it has others and I know he deeply regrets all actions of that night. The incident at hand is well out of character for XXXXXXXXXXXX and the possibility of him acting in this manner in the future is not likely.”

XXXXXXXXXX’s aunt XXXXXXXX also describes XXXXXXXXXXXX as a caring and responsible young man affected and remorseful for his actions:

“I understand the situation and I am deeply saddened for both families involved. I can tell you from personal witness that XXXXXXXXXXXX was raised in a loving home, with boundaries and rules and that he grew into a law abiding, productive citizen because of that family support. He made a very bad decision that night but I can assure you that he has learned from this and you can feel confident he will not make the same mistakes again.

...

I have seen XXXXXXXXXXXX work hard with his studies in a rigorous high school and carry that work ethic into his college courses and various jobs he has held as an adult. He has career and life goals he is working towards. I am rooting for him to get back

on track and build a great life. I am proud to be his aunt.”

XXXXXXXXXX, Ph.D., a counselor at XXXXXXXX College knew XXXXXXXXX since he was a boy and wished to share on XXXXXXXXX’s behalf the following anecdote to describe the person before this Court:

“I have known XXXXXXXXX XXXXX since he was a boy. Upon meeting him, I was impressed with his gentle nature. Over the years, I have noticed a reoccurring trait in XXXXXXXXX. He consistently is aware of others’ emotions and does his best to buoy others when he sees something is wrong. Of all of the anecdotes I could share, there is one that best conveys my esteem for XXXXXXXXX. A few years ago, my family was visiting his family. XXXXXXXXX’s parents, my wife, and I wanted to go out to dinner. There was a question of what to do with my pre-teen children. When the idea came up that XXXXXXXXX could stay with them, my wife and I did not hesitate. My young, but astute girls had no reservations. In short, XXXXXXXXX [XXXXXX] is the type of person with whom I trust my own children.”

XXXXXXXXXXXXXX, a long time friend of XXXXXXXXX and his parents describes XXXXXXXXX as a person who contributes to the community and is always available to those that need a hand. He is devoted to his family and works hard at school and in his employment.

A lifelong friend of his stepfather who also resides in Manchester, XXXXXXXXX, DMD describes XXXXXXXXX follows:

“We have always known XXXXXXXXX to be a responsible, intelligent, and caring young man, and truly believe his poor judgement that evening to be totally out of character. I am positive that not a day will go by, without XXXXXXXXX replaying the events of that evening, wishing he had not chosen to drive intoxicated, knowing that his costly mistake resulted in the death of another man.”

These letters and others are attached for the Court’s review.

The Need for Treatment

XXXXXXXXXX XXXXX currently is being seen for depression and to remain sober, through counseling with XXX. He began counseling shortly after he was released from the hospital and completed his physical rehabilitation. He has checked in each morning without failure to the XXXXXXXX Police Department since his arraignment and passed each breath test, confirming his commitment to sobriety.

XXXXXXXXXX XXXXX has struggled to deal with the pain his actions have caused in the loss of Mr. XXXXXX’ life. Any sentence imposed should provide Mr. XXXXX the ability to continue counseling and treatment with as minimal disruption as possible. It is in the best interests of the community that Mr. XXXXX not only maintain his sobriety but

address the emotional impact of his actions so that he can once again be a positive contributing member of society and to his family.

The Risk to Self, Others, and the Community at Large

XXXXXXXXXX XXXXX has never been in trouble with the law either as an adult or a juvenile. He has worked hard all his life to better himself through employment, education, community work and commitment to his family and friends. He is pro-active in seeking whatever help he has ever needed and actively committed to pursuing the right course in his life. His ORAS score reflects a person in the low risk level to reoffend.

Sentencing Alternatives

Prison

The State is capped at 5-10 years to serve, and that is one option the Court has in sentencing. A prison sentence of such length will:

- 1) Remove XXXXXXXXXXX from his family and friends who provide a support network that is often critical in assisting someone to become a contributing and law abiding member of society.
- 2) Interrupt for an extensive period of time XXXXXXXXXXX's current treatment and counseling.
- 3) Result in years of incarceration, without access to counseling or treatment of any kind until within under a year of his minim sentence. Such dead time would set back any efforts currently designed to reintegrate XXXXXXXXXXX into society.

Home Confinement

Home confinement is not an option as the incarcerative sentence XXXXXXXXXXX advocates for is too long to conduct a home confinement study.

Probation with Split Sentence

A split sentence with probation would best serve the needs of the public, the ends of justice, and the punishment and rehabilitation of XXXXXXXXXXX XXXXX. A sentence to serve of 18 months recognizes that though this was a tragic accident and XXXXXXXXXXX has no prior criminal history, this is a very serious offense which resulted in a loss of life.

Eighteen months to serve acts both as necessary punishment for the offense, but also a message to the community of the severe consequences of operating a motor vehicle while intoxicated.

The split portion of 4-8 years suspended provides an additional incentive to XXXXXXXXXX XXXXX that failure to abide by his conditions of probation would result in an additional two and a half to six and a half years behind bars. Probation, unlike a sentence to serve, would allow the court to specifically tailor the conditions to best serve the needs of society and the rehabilitation of Mr. XXXXX. This can include community or reparative service where he may be able to educate others on the dangers of alcohol and driving. Further, an indefinite period of probation would allow the court to determine when it believes Mr. XXXXX has been sufficiently rehabilitated and paid his debt to society; as opposed to a sentence to serve which would have a fixed end date.

Conclusion

XXXXXXXXXX XXXXX has accepted responsibility for his actions and pled guilty to one count of DUI-Fatal. This is a felony conviction which, aside from any punishment ordered by this Court, carries its own consequences. Mr. XXXXX will have a permanent felony record which will prevent him from obtaining many jobs, grants, or services that may otherwise be available to those without criminal records.

Finally, we ask the Court to recognize that the knowledge that Mr. XXXXX caused the death of another person through his mistake of drinking and getting behind the wheel of a car is something he can never really erase or a debt he can fully repay. Mr. XXXXX fully understands and grieves with the family of Mr. XXXXX for their loss. That is something that will be with Mr. XXXXX for the rest of his life.

Mr. XXXXX is a good person who one night made a very grave mistake. A term of incarceration is warranted for general deterrence and punishment, but not because Mr. XXXXX is in need of specific deterrence. His life has always been one of hard work, support and lawful behavior.

The imposition of a restorative justice sentence is encouraged by 28 V.S.A. Sec. 2a. Because Mr. XXXXX has fully accepted responsibility and is both mentally and socially able to participate in any conditions imposed by this Court a disposition that focuses primarily on a rehabilitative sentence is encouraged.

Dated: XXXXXXXXXXXXXXXX

BARR, STERNBERG, MOSS,
SILVER & MUNSON, P.C.

By: _____
Chris Montgomery, Esq.
for Defendant, XXXXXXXXXX XXXXX

cc: XXXXXXXX

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