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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 09-1-04552-2 SEA
)	
Plaintiff,)	
)	
vs.)	
)	STATE'S MEMORANDUM IN
CHRISTOPHER WISE,)	SUPPORT OF EXCEPTIONAL
)	SENTENCE
)	
Defendant.)	
)	
)	
)	

1. INTRODUCTION

On May 11, 2010, the Defendant, Christopher Wise, was convicted following jury trial of manslaughter in the second degree for neglecting his mother, Ruby Wise, and thereby causing her death. The jury also found, by special verdict, that the Defendant knew of Ruby's particular vulnerability and incapability of resistance due to her advanced age and ill health, and that her vulnerability was a substantial factor in the commission of the murder.

For the reasons discussed below, the State respectfully asks this Court to impose an exceptional sentence of 72 months of incarceration for this crime.

1 2. STATEMENT OF LAW

2 The Defendant faces a standard range sentence of 21 to 27 months in prison for this
3 offense. However, the jury's special verdict renders the Defendant eligible for an exceptional
4 sentence above that standard term, because a victim's particular vulnerability due to her advanced
5 age and ill health is an aggravating factor expressly recognized by the legislature in RCW
6 9.94A.535(3)(b). In order for this Court to order an exceptional sentence, it must find that the
7 aggravating fact proved to the jury constitutes a compelling reason, considering the purposes of
8 the Sentencing Reform Act (SRA), to depart from the standard range. RCW 9.94A.537(6).
9 Those purposes include ensuring that the punishment for the crime is proportionate to its
10 seriousness, promoting respect for the law by providing just retribution, protecting public safety,
11 and reducing risk of reoffense.

12 3. STATE'S POSITION

- 13 a. The jury's special verdict constitutes a compelling reason to depart from
14 the standard range.

15 This Court has had more than ample opportunity to become familiar with the facts
16 surrounding the Defendant's neglect of Ruby Wise. The State's purpose in submitting this
17 memorandum is not to repeat all of those facts, but to identify those particular aspects of the
18 offense that call for something beyond a standard-range sentence. As the Washington Supreme
19 Court has observed, an exceptional sentence "is appropriate when the circumstances of [the]
20 particular crime distinguish it from other crimes within the same statutory definition." State v.
21 Fisher, 108 Wn.2d 419, 424, 739 P.2d 683 (1987).

22 The Washington Court of Appeals has noted that the critical inquiry regarding victim
23 vulnerability centers on:
24

1 whether or not the victim was more vulnerable to the offense than
2 other victims due to extreme youth, advanced age, disability, or ill
3 health and whether the Defendant knew of that vulnerability.
4 Accordingly, the mens rea element of the crime with which the
5 Defendant is charged has no relevance; instead, what is critical is
6 whether the Defendant knew or should have known of the victim's
7 vulnerability, and whether the particular vulnerability was a
8 substantial factor in accomplishment of the crime.

9 State v. Jones, 59 Wn. App. 744, 753, 801 P.2d 263 (1990), rev. denied, 116 Wn.2d 1021 (1991).

10 It is difficult to conceive of an adult more vulnerable than Ruby Wise in the last month
11 of her life. Ruby was bedbound by that time, unable to seek medical attention, get her own food
12 and water, bathe herself, or even get herself to the bathroom. She was dehydrated and
13 emaciated, weak, and suffering from confusion and dementia. As the days passed, she watched
14 as deep pressure sores opened up on multiple surfaces of her body, ultimately becoming large,
15 open, gangrenous wounds which were, by all accounts, excruciatingly painful. By the time she
16 died, she was literally skin and bones, weighing just 72 pounds. Ruby was made even more
17 vulnerable because she had no one to turn to for help or assistance besides the Defendant. She
18 had no phone to call anyone, no friends or family visiting her, no nurses or hospice workers
19 coming in to her home. Her calls for help the last two weeks of her life, though occasionally
20 heard, were disregarded.

21 There can be no doubt that the Defendant was well aware of Ruby's vulnerability. He
22 alone was with her. He admitted to law enforcement that he put in earplugs to block out her cries
23 of pain. He testified that he saw her pressure sores, her weight loss, her confusion and dementia,
24 and her suffering. He admitted that he changed her diapers, therefore he also witnessed the
degree of her emaciation, and the severity of her pressure sores. He also smelled them—every
police officer who entered the victim's bedroom testified about the overwhelming odor of rotten

1 flesh in Ruby's room. Further, the defendant admitted that Ruby was completely dependent on
2 him for every aspect of her care.

3 This was not an "ordinary" case of neglect. The Defendant callously disregarded his
4 mother's suffering and, despite countless offers of help from friends and professionals, allowed
5 her to die in what were—by all accounts but the Defendant's—appalling conditions. The many
6 express purposes of the SRA -- treating the special nature of *this* crime with the seriousness it
7 particularly demands, protecting the safety of other vulnerable members of the public, providing
8 well-considered justice -- justify expansion of the sentencing range, predicated on the jury's
9 special verdict.

10 b. A sentence of 72 months is warranted, appropriate, and consistent with the
11 purposes of the SRA and the criminal justice system.

12 Should this Court determine that the jury's special verdict justifies a departure from the
13 standard range, then the Defendant is eligible for a sentence of up to ten years in prison, the
14 statutory maximum for this Class B felony. See RCW 9.94A.537(6); RCW 9A.20.021(1)(b).
15 The determination of the *length* of a Defendant's exceptional sentence is distinct from the
16 determination of *whether* to impose one in the first place. Well-established case law holds that
17 while a court may not rely upon a fact unrecognized as an aggravator under RCW 9.94A.535 in
18 making its decision to depart from the standard range, it is not precluded from using such
19 considerations in deciding how long the sentence should be. See State v. Ross, 71 Wn. App.
20 556, 568, 883 P.2d 329 (1993), rev. denied, 123 Wn.2d 1019 (1994); State v. Hillman, 66 Wn.
21 App. 770, 777-78, 832 P.2d 1369, rev. denied, 120 Wn.2d 1011 (1992). The length of a
22 Defendant's exceptional sentence is a matter within the trial court's discretion. See State v.
23 Ritchie, 126 Wn.2d 388, 392-93, 894 P.2d 1308 (1995).

1 The Defendant's neglect of his mother justifies a far greater sentence than the high end of
2 the standard range. The Defendant's inaction in response to Ruby Wise's physical and cognitive
3 decline deprived Ruby of an old age and a death without unnecessary pain, in comfortable
4 circumstances, and with dignity. His inaction cut her life short, and caused her to suffer
5 unnecessarily. Ruby Wise was completely at the Defendant's mercy. Despite knowing that
6 hospice or in-home care would be paid for by Medicare, despite the living will his mother had
7 given him in which she requested pain relief and comfort care, despite the nursing and adult
8 family home options that were available to him, and despite his mother's pleas for help the last
9 weeks of her life, the Defendant chose to do absolutely nothing to reduce her suffering. Ruby
10 Wise was clearly not someone who made significant demands of others in her life. However, her
11 journals written the last years of her life are filled with pleas for help—requests to see a doctor,
12 statements about the degree of pain she was suffering, her need for new glasses, and her constant
13 concern about her health conditions. As she declined cognitively and physically, these needs
14 increased. Yet the Defendant—used to simply doing basic grocery shopping and cooking for his
15 mother—took no additional action in response to his mother's increased needs. He chose instead
16 to continue his lifestyle of playing on-line poker, going to bars, going fishing, and hanging out
17 with his friends. At the same time, he also chose to continue to take responsibility for Ruby,
18 turning down offer after offer for assistance. And as Ruby further declined, he failed to provide
19 her with the most basic care—care that is the minimum of what any of us would demand be
20 provided to an ailing person in a civilized society: clean bedding, proper hygiene, bandages for
21 open wounds, pain relief, bathing, good nutrition, and comfort. It would be a grave injustice to
22 treat this crime as being no different from any other second-degree manslaughter case.
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1 The State acknowledges the genuine feelings behind the juror who took the time to write
2 the Court and ask for a minimal prison term for the Defendant on this charge. However, the
3 State disagrees with that juror’s perception that this crime is somehow more benign than a
4 “typical” homicide. Unlike the fairly instantaneous time period over which a murder by gunshot
5 or by stabbing is committed, this crime took weeks to commit. Day after day, the Defendant
6 chose to neglect Ruby and ignore her suffering, pain and obvious need for professional care.
7 Because homicide by neglect involves inaction rather than action, it is easily misperceived as
8 being less egregious than other types of homicide. Yet the impact of this type of homicide on the
9 victim--the degree and length of time he or she suffers as a result of the defendant’s actions--is
10 often much more egregious.

11 The defense also argues that an exceptional sentence should not be granted because the
12 vulnerability of the victim is already incorporated in the underlying charge of which the
13 Defendant was convicted. The State disagrees. The Defendant was convicted of Manslaughter
14 in the Second Degree—negligently causing the death of another person. That charge does not
15 require that the victim be a dependent adult. Because the elements of that crime do not
16 contemplate a vulnerable victim, the exceptional sentence is appropriate.

17 A sentence of 72 months would acknowledge the uniquely reprehensible nature of the
18 Defendant's crime, account for the extended and acute suffering that the Defendant inflicted on
19 Ruby Wise, and provide just retribution for an offense of this severity. We ask this Court to take
20 these factors into account in determining the Defendant’s sentence.

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DATED this ____ day of July, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
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