

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	Supreme Court Nos. 20210342, 20210350
)	
vs.)	
)	District Court Nos. 02-2021-CR-00166
Gina Marie Aalgaard Kelly,)	02-2021-CR-00409
)	
Defendant-Appellant.)	

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM CRIMINAL JUDGMENTS DATED 11/30/2021

BARNES COUNTY DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
HONORABLE JAY SCHMITZ, PRESIDING

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TABLE OF CONTENTS

Table of Contents.....pg. 2

Table of Authorities.....pg. 3

Statement of the Issues.....¶ 1-3

Statement of the Case.....¶ 4-8

Statement of the Facts.....¶ 9-24

Argument.....¶ 25-43

Conclusion.....¶ 44-47

TABLE OF AUTHORITIES

Case Law

Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).....¶ 25

State v. Raulston, 2005 ND 212, ¶ 11, 707 N.W.2d 464.....¶ 25

McMorrow v. State, 2003 ND 134, ¶ 5, 667 N.W.2d 577¶ 25

Eaton v. State, 2001 ND 97, ¶ 6, 626 N.W.2d 676).....¶ 25

State v. Bates, 2007 ND 15, ¶ 13, 726 N.W.2d 595.....¶ 25, 31

State v. Yineman, 2002 ND 145, ¶ 21, 651 N.W.2d 648.....¶ 32

State v. Abdullahi, 2000 ND 39, ¶ 7, 607 N.W.2d 561.....¶ 31

State v. Yineman, 2002 ND 145, ¶ 21, 651 N.W.2d 648¶ 32

State v. Johnson, 2001 ND 184, ¶ 12, 636 N.W.2d 391¶ 32

State v. Bingaman, 2002 ND 202, ¶ 9, 655 N.W.2d 51, 53¶ 32

State v. Clark, 2012 ND 135, ¶ 18, 818 N.W.2d 739, 745.....¶ 37

Statutes

North Dakota Century Code 39-08-01.....¶ 4, 6, 38

North Dakota Century Code 39-06-42.....¶ 4, 6

North Dakota Century Code 12.1-11-03.....¶ 4

North Dakota Century Code 12.1-08-02.....¶ 6

North Dakota Century Code 19-03.1-23(7)(a).....¶ 6

North Dakota Rules

N.D.R.Crim.P. 52(b).....¶¶ 21, 32, 33

N.D.R.Crim.P.11.....¶¶ 25, 26, 28, 30

Transcript References

PH1 refers to the first preliminary hearing held on CR-166 on June 9, 2021.

PH2 refers to the second preliminary hearing held on CR-166 on June 29, 2021.

BH1 refers to the first bond hearing held in CR-166 on June 10, 2021.

BH2 refers to the second bond hearing held in CR-166 on June 16, 2021.

MH refers to the motion hearing held August 3, 2021.

BH3/CoP refers to the third bond hearing and change of plea hearing held in CR-166 on October 12, 2021.

BH4 refers to the fourth bond review hearing held in CR-166 on October 20, 2021.

IA/409 refers to the initial appearance held on CR-409 November 12, 2021.

S/PH refers to the sentencing on CR-166 and preliminary hearing/arraignment on CR-409 that was held on November 30, 2021.

STATEMENT OF THE ISSUES

[¶ 1] Whether Ms. Kelly's guilty pleas were entered knowingly, intelligently, and voluntarily.

[¶ 2] Whether Ms. Kelly's due process rights were violated and if so, whether a manifest injustice requires a withdrawal of her pleas.

[¶ 3] Whether Ms. Kelly's sentence was imposed in violation of the laws of North Dakota.

STATEMENT OF THE CASE

[¶ 4] Appellant, Gina Marie Aalgaard Kelly (“Kelly”) was charged in 02-2021-CR-00166 with one count of Driving under the Influence, 4th or greater offense, in violation of N.D.C.C. § 39-08-01, a class C Felony, one count of False Information to Law Enforcement, in violation of N.D.C.C. § 12.1-11-03, a class A Misdemeanor, and one count of Driving under Revocation, , in violation of N.D.C.C. § 39-06-42 a Class A Misdemeanor, by a Criminal Information dated April 29, 2021.

[¶ 5] Kelly obtained a sufficient demonstration of driving privileges for the Court and an amended Criminal Information was filed on August 3, 2021, dismissing the Driving under Revocation charge. In 02-2021-CR-00166, Kelly plead guilty to Count 1, Driving under the Influence of Alcohol, 4th or greater offense, on October 12, 2021. After that guilty plea, the State dismissed Count 2 of the Criminal Information, False Information to Law Enforcement. Sentencing was deferred to a later date so that the defendant could be screened for admission into drug court.

[¶ 6] Kelly was charged in 02-2021-CR-00409 with one count of Driving under the Influence, 4th or greater offense, in violation of N.D.C.C. § 39-08-01, a class C Felony, one count of Preventing Arrest, in violation of N.D.C.C. § 12.1-08-02, a class C Felony, one count of Unlawful Possession of a Controlled Substance, in violation of N.D.C.C. §19-03.1-23(7)(a), a class A Misdemeanor, and one count of Driving under Suspension, , in violation of N.D.C.C. § 39-06-42, a Class A Misdemeanor, by a Criminal Information dated October 21, 2021.

[¶ 7] In 02-2021-CR-00409, Kelly plead guilty to Count 1, Driving under the Influence of Alcohol, 4th or greater offense, Count 2, Preventing Arrest, and Count 4, Driving under

Suspension, on November 30, 2021. After those guilty pleas, the State dismissed Count 3 of the Criminal Information, Unlawful Possession of a Controlled Substance.

[¶ 8] Sentencing was held for both 02-2021-CR-00166 and 02-2021-CR-00409 on November 30, 2021. A notice of appeal and order for transcripts was filed on December 7, 2021.

STATEMENT OF THE FACTS

[¶ 9] The CR-166 case began on April 27, 2021 with Trooper Nathan Boll and Deputy Nathan Morten. (PH2 – pg. 5) The trooper and deputy received information that Kelly was driving under revocation. (PH2 – pg. 5) The two officers were in the area where Kelly resides and observed a vehicle matching the type of vehicle she drives pass by their location. (PH2 – pgs. 5-6) Deputy Morten was unable to see who was driving the vehicle and was following Trooper Boll’s vehicle. (PH2 – pg. 6) Trooper Boll initiated a traffic stop after Kelly crossed the center line two separate times. (PH2 – pg. 6) Once Kelly was stopped, Trooper Boll turned the investigation over to Deputy Morten to address the traffic violation. (PH2 – pg. 6) Deputy Morten approached Kelly’s vehicle and later conducted field sobriety testing with Kelly. (PH2 – pgs. 8-12) Kelly was eventually placed under arrest and submitted to an Intoxilyzer test that showed she was above the legal limit. (PH2 – pg. 13)

[¶ 10] An initial appearance for CR-166 was completed on May 11, 2021. Kelly was placed on bond conditions while CR-166 was pending. (CR-166 Odyssey Index #9) The first bond order was dated May 11, 2021. (CR-166 Odyssey Index #9) This order included standard conditions of bond including participation in the 24/7 sobriety program. (CR-166 Odyssey Index #9)

[¶ 11] Kelly had a preliminary hearing for CR-166 on June 9, 2021. (PH1 – pg. 3) Jayme Tenneson, special assistant State’s Attorney, appeared for the State during this hearing. Kelly stated she wanted to waive this hearing. (PH1 – pg. 4) Kelly entered not guilty pleas to the charges during this hearing. (PH1 – pg. 10)

[¶ 12] Kelly had a bond hearing on for CR-166 on June 10, 2021. (BH1 – pg. 3) The hearing was held to address 24.7 violations of Kelly’s, including registering a .112%BAC at the conclusion of her preliminary hearing on June 9, 2021. (BH1 – pgs. 4-5) Bond was amended at the conclusion of this hearing. (BH1 – pg. 8) Kelly also applied for an attorney during this hearing. (BH1 – pg. 6)

[¶ 13] A bond review hearing was conducted on June 16, 2021 for CR-166. (BH2 – pg. 3) Bond was amended to reduce the amount of cash required and an amended bond order was subsequently issued. (BH2 – pg. 16) The preliminary hearing was also scheduled to be reset based on the likelihood that Kelly was under the influence during the hearing held June 9, 2021. (BH2 – pg. 18)

[¶ 14] A second preliminary hearing was conducted on June 29, 2021. (PH2 – pg. 3) The Court found probable cause for the felony Driving under the Influence count and Kelly entered not guilty pleas to the charges in the information. (PH2 – pg. 30)

[¶ 15] Motions to suppress were filed in CR-166. (MH – 3) A hearing on that motion was held on August 3, 2021. (MH – pg. 3) The Court denied Kelly’s motion to suppress. (MH – pg. 51) Kelly requested modifications to her bond conditions at the conclusion of this hearing. (MH – pg. 52) The Court addressed Kelly’s 24/7 violations and expressed the Court’s expectations of compliance with the program moving forward. (MH – pg. 58)

[¶ 16] Further violations of the 24/7 program were filed and Kelly was taken into custody. (BH3/CoP – pg. 3) A bond hearing was held on this issue on October 12, 2021. (BH3/CoP – pg. 3) A change of plea was also completed during the same hearing, in which Kelly plead guilty to Driving Under the Influence, 4th or greater offense. (BH3/CoP – pg. 18) Kelly was expected to be entering the Stutsman/Barnes Adult Drug Court for resolution of

her case but was informed that regardless of whether she was admitted or not, she still had a right to have a trial the following day. (BH3/CoP – pg. 20) Kelly was asked a series of questions by the Court to ensure that she was entering this plea as a result of her own choice, not being forced, and without any promises, outside of a dismissal of the one misdemeanor charge she was facing. (BH3/CoP – pgs. 18-22) Kelly acknowledged that she was pleading guilty of her own free will, was not being forced to enter a plea of guilty, and wished to proceed accordingly. (BH3/CoP – pgs. 20-21) The Court accepted Kelly’s guilty plea and her misdemeanor charge was subsequently dismissed. (BH3/CoP – pgs. 23, 27) Kelly’s bond conditions remained in place while her drug court application was processed. (BH3/CoP – pg. 25)

[¶ 17] On October 19, 2021 Kelly was arrested for a new Driving Under the Influence, 4th or greater offense, as well as Preventing Arrest, Unlawful Possession of a Controlled Substance, and Driving under Suspension. (BH4 – pg. 3) At the conclusion of this hearing, based on the extreme danger to the community, the Court revoked Kelly’s bond and ordered she be held without bond. (BH4 – pg. 9)

[¶ 18] Kelly had an initial appearance on CR-409 on November 12, 2021. (IA/409 – pg. 4) During this hearing, the State explained to the Court that subsequent to Kelly’s application to the Barnes/Stutsman County Adult Drug Court program, the judge for that Court stated she had a conflict with Kelly and that Kelly would not be able to participate in that drug court. (IA/409 – pg. 10) Kelly qualified for acceptance into the program but because of the conflict, was not accepted. (IA/409 – pg. 10) As a result, in an effort to salvage Kelly’s ability to still do drug court, the State and the probation officer worked tirelessly to get Kelly into a neighboring drug court, with Wahpeton and Fargo being the

only available options. (IA/409 – pg. 10) Kelly was informed of several requirements she would need to do in order to get into Cass County’s drug court; the main requirement being a residency in the Fargo Metro and that she have no 24/7 violations while her approval is pending. (IA/409 – pgs. 10-11) The State submitted to the Court that in order to acquire residency, she would need to be released from jail to get those items in order. (IA/409 – pg. 11) The State recommended, without objection from defense counsel, that she be released in order to pursue that acceptance and be subject to daily downloads of her bracelet to make sure she is compliant with the 24/7 requirement. (IA/409 – pg. 12) The Court had very serious concerns about Kelly’s ability to stay sober and Kelly’s risk to the community. (IA/409 – pgs. 13, 15) Kelly assured the Court she was going to remain sober and wanted into drug court. (IA/409 – pg. 17) The Court again asked the State if releasing Kelly was worth the risk. (IA/409 – pg. 18) The State informed the Court of their own reservations, and explained those reservations as follows:

“I have the same concerns. I’ve lost a lot of sleep over this matter... I’ve had a lot of people tell me that I’m a moron for letting her to even have the chance at drug court because a lot of people have said the same thing the court says... How are you going to live with yourself if she kills a kid? What are you going to do if she wipes out a family? She drives drunk. She will not stop driving... The reality is if she chooses to drink, she chooses to drink. The only thing that needs to stop happening is the driving. If she chooses to drink, that’s her choice, but the driving aspect is – I lose a lot of sleep over it too, but if we don’t fix the addiction, we don’t fix anything. So we can certainly send her to prison. And the court doesn’t obviously have to even agree to drug court... but if we don’t fix the addiction, we don’t fix the problem.... I didn’t expect this to happen. I didn’t expect to be here explaining this and arguing it.... but here we are.” (IA/409 – pgs. 17-18)

[¶ 19] At the conclusion of this appearance, the parties agreed that Kelly would be released on a bond order with several conditions, including strict compliance with the 24/7 program. (CR-409 Odyssey Index #18)

[¶ 20] An affidavit of 24/7 violations was filed on November 22, 2021, along with a proposed warrant for Kelly’s arrest, which was issued the same day. (CR-409 Odyssey Index # 20, 21, 22) Cass County subsequently filed a denial of admission to their drug court stating the following reasons: “Has not made any progress on securing a residence in Cass County” and “Received a 24/7 violation/warrant while pending drug court application for failing to comply with court order to download scam daily.” (CR-409 Odyssey Index #23)

[¶ 21] Another affidavit of 24/7 violations was filed on November 24, 2021. (CR-409 Odyssey Index # 26) An order revoking bond was issued subsequent to the affidavit being filed, noting “the defendant had a BAC of .26 at the time of booking.” (CR-409 Odyssey Index #19)

[¶ 22] On November 30, 2021, a sentencing hearing was held for CR-166, as well as a preliminary hearing/arraignment for CR-409. (S/PH – pgs. 3-4) Kelly waived her right to the preliminary hearing in CR-409. (S/PH – pg. 5) Kelly plead guilty to Counts 1, 2, and 4 during this hearing. (S/PH – pgs. 11-12) Kelly was asked a series of questions by the Court to ensure that she was entering this plea as a result of her own choice, not being forced, and without any promises, outside of a dismissal of the one misdemeanor charge she was facing. (S/PH – pgs. 12-15) Kelly acknowledged that she was pleading guilty of her own free will, was not being forced to enter a plea of guilty and wished to proceed accordingly. (S/PH – pgs. 14-15) The Court accepted Kelly’s guilty pleas and her misdemeanor charge was subsequently dismissed. (S/PH – pgs. 19) The State provided a factual basis for the three charges. (S/PH – pgs. 15-19)

[¶ 23] Kelly was subsequently sentenced for both the CR-166 and CR-409 files. (S/PH – pg. 19) During Ms. Bredahl’s argument to the Court on sentencing she submitted “Ms.

Kelly is taking responsibility for her actions, your Honor. This is the first time that the court has seen this happen. She is learning from her mistakes, your Honor. She's the one who said she wants to plead guilty and wants to wrap these up and wants to get into treatment. She said enough of this, your Honor.” (S/PH – pg. 16)

[¶ 24] The Court talked at length to Kelly during her sentencing and explained the reasons behind the Court's decisions in its sentence. (S/PH – pgs. 30-35) The Court acknowledged the issue of enabling Kelly and the issues that have come from such activity. (S/PH – pgs. 30-31) The Court talked about the purposes of sentencing, including rehabilitation but also deterrence and punishment. (S/PH – pg. 31) The Court sentenced Kelly in CR-166 to 18 months with the Department of Corrections along with the minimum mandatory penalties that were applicable to that case. (S/PH – pg. 32) The Court sentenced Kelly in CR-409 to 3 years with the Department of Corrections, to run consecutive to the CR-166 case, again with the minimum mandatory penalties that were applicable to that case. (S/PH – pg. 32) The Court explained their rationale behind the consecutive sentences and noted “I feel like I'm being as lenient as possible, but at the same time I cannot be any more lenient, and I may be erring on the low side right now, but I feel it's an appropriate sentence.” (S/PH – pgs. 33-34)

ARGUMENT

I. **KELLY'S PLEAS IN BOTH CASES WERE ENTERED KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY.**

i. **Standard of Review**

[¶ 25] Guilty pleas must be knowingly, intelligently, and voluntarily entered to be valid. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); State v. Raulston, 2005 ND 212, ¶ 11, 707 N.W.2d 464; N.D.R.Crim.P. 11. “Defendants who

voluntarily plead guilty waive the right to challenge nonjurisdictional defects occurring before entry of the guilty plea.” McMorrow v. State, 2003 ND 134, ¶ 5, 667 N.W.2d 577 (citing Eaton v. State, 2001 ND 97, ¶ 6, 626 N.W.2d 676). State v. Bates, 2007 ND 15, ¶ 13, 726 N.W.2d 595.

[¶ 26] Rule 11, N.D.R.Crim.P., provides an analytical framework for assessing whether the plea is entered into voluntarily and knowingly. Rule 11(b) requires the court to address the defendant personally to inform him of his rights and determine that he understands those rights. Id. Rule 11(b) also requires the courts to inform the defendant of the rights he is waiving by pleading guilty, the maximum possible penalty, any minimum mandatory penalties, and the court's authority to order restitution. Id. The court must “address the defendant personally in open court ... and determine that the plea is voluntary and did not result from force, threats, or promises other than promises in a plea agreement. The court must also inquire whether the defendant's willingness to plead guilty results from discussion between the prosecuting attorney and the defendant or the defendant's attorney.” Id. at 11(b)(2).

ii. Argument

[¶ 27] Here, the Court addressed Kelly personally in CR-166 on October 12, 2021. During that hearing, the Court informed Kelly of her rights and determined that she understood those rights. (BH3/CoP – pg. 3) The Court informed Kelly of the maximum possible penalty, as well as the minimum mandatory penalties applicable to her case. (BH3/CoP – pgs. 15-16) The Court also asked Kelly a series of questions to determine whether she was entering her pleas voluntarily. (BH3/CoP – pgs. 19-23)

[¶ 28] The Court complied with the requirements in Rule 11(b) and Kelly entered her pleas

knowingly, intelligently, and voluntarily in her CR-166 case.

[¶ 29] Next, the Court addressed Kelly personally in CR-409 on November 30, 2021. During that hearing, the Court informed Kelly of her rights and determined that she understood those rights. (BH3/CoP – pg. 4) The Court informed Kelly of the maximum possible penalty, as well as the minimum mandatory penalties applicable to her case. (BH3/CoP – pgs. 8-9) The Court also asked Kelly a series of questions to determine whether she was entering her pleas voluntarily. (BH3/CoP – pgs. 12-15)

[¶ 30] The Court complied with the requirements in Rule 11(b) and Kelly entered her pleas knowingly, intelligently, and voluntarily in her CR-409 case.

II. THERE WAS NOT A VIOLATION OF KELLY’S DUE PROCESS RIGHTS, AND AS SUCH, THERE IS NOT A MANIFEST INJUSTICE REQUIRING WITHDRAWAL OF HER PLEAS. FURTHER, THIS ISSUE HAS NOT BEEN PROPERLY PRESERVED FOR APPEAL AND AS SUCH, SHOULD NOT BE ADDRESSED.

i. Standard of Review

[¶ 31] When a court has accepted a plea and imposed sentence, the defendant cannot withdraw the plea unless withdrawal is necessary to correct a manifest injustice. State v. Bates, 2007 ND 15, ¶ 6, 726 N.W.2d 595. The decision whether a manifest injustice exists for withdrawal of a guilty plea lies within the trial court's discretion and will not be reversed on appeal except for an abuse of discretion. State v. Abdullahi, 2000 ND 39, ¶ 7, 607 N.W.2d 561.

[¶ 32] Generally, issues not properly preserved at the trial court level will not be heard on appeal. See State v. Yineman, 2002 ND 145, ¶ 21, 651 N.W.2d 648. However, under N.D.R.Crim.P. 52(b), this Court is allowed to notice obvious errors which are revealed in

the record. See Yineman, at ¶ 21. “Obvious errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” N.D.R.Crim.P. 52(b). Our Court has stated that it will only exercise its power to notice obvious error in “exceptional circumstances where the accused has suffered serious injustice.” State v. Johnson, 2001 ND 184, ¶ 12, 636 N.W.2d 391. We exercise our power to find obvious error cautiously and have very rarely found obvious error under Rule 52(b). See Johnson, at ¶ 12. State v. Bingaman, 2002 ND 202, ¶ 9, 655 N.W.2d 51, 53.

ii. Argument

[¶ 33] Here, Kelly has not made a motion to withdraw her pleas at the district court level, in either of her cases. As such, Kelly’s argument is unable to be addressed by this Court because there is not a district court decision to analyze. This issue has not been properly preserved at the trial court level, and as such, should not be heard on appeal. The State submits this is also not an obvious error that should be addressed under N.D.R.Crim.P. 52(b). Kelly has not suffered serious injustice in these cases, as her denial to drug court was the consequence of her own actions and choices.

[¶ 34] Should the Court consider the due process argument, the State also responds. First, the State submits that Kelly’s rendition to the Court of the facts are grossly inaccurate and misleading. Kelly stated, “The county made no attempt to assign alternate personnel to address the conflict, allowing Ms. Kelly to participate in the program for which she otherwise qualified.” (Appellant’s Brief pg. 10) Subsequent to Kelly’s application to the Barnes/Stutsman County Adult Drug Court program, the judge for that Court stated she had a conflict with Kelly and that Kelly would not be able to participate in that Drug Court. (IA/409 – pg. 10) The State has no control over a Judge’s determination of their own

conflicts of interest. Further, the State submits that a drug court judge ignoring a conflict of interest simply to allow participation in drug court, would be grossly unethical.

[¶ 35] Here, the drug court judge stated that they had a conflict with Kelly and Kelly would be unable to participate in the Stutsman/Barnes County Adult Drug Court. Instead of just giving up, the State not only put in efforts for Kelly to be admitted to a neighboring drug court, but was successful in such, as long as Kelly held up her end of the agreement and complied with their requirements. Kelly did not hold up her end of the agreement to get into Cass County's drug court. Due to Kelly's 24/7 violations and her failure to obtain a residence in Cass County, she was denied admission to the Cass County Drug Court. None of this was the result of the State treating Kelly unfairly or without due process; this denial was due to Kelly failing to comply with Cass County's admission requirements.

[¶ 36] After being denied admission to Cass County's drug court, Kelly chose to plead guilty to her CR-409 case. Kelly knew she was able to proceed with a trial, persist in a not guilty plea, and instead chose to take responsibility for her crimes.

III. KELLY'S SENTENCE WAS NOT IMPOSED IN VIOLATION OF THE LAWS OF NORTH DAKOTA.

[¶ 37] A district court has discretion in sentencing, and review of a sentence is generally limited "to whether the court acted within the statutorily prescribed sentencing limits or substantially relied on an impermissible factor." State v. Clark, 2012 ND 135, ¶ 18, 818 N.W.2d 739, 745.

[¶ 38] The highest-level offense Kelly was sentenced to in each of her cases was on the Driving under the Influence, 4th or greater offense, a class C felony, in violation of N.D.C.C. § 39-08-01. The maximum penalty that may be imposed for a class C felony is

five years' imprisonment, a fine of ten thousand dollars, or both." N.D.C.C. § 12.1-32-01(4).

[¶ 39] N.D.C.C. § 12.1-32-04 provides 13 factors the court can consider in sentencing. This code also has two important notes in it. First, that "the following factors, or the converse thereof where appropriate, **while not controlling the discretion of the court**, shall be accorded weight in making determinations..." (emphasis added) Secondly, this code also notes "Nothing herein shall be deemed to require explicit reference to these factors... by the court at sentencing." Stated simply, the court doesn't have to go through each factor when sentencing a defendant. These factors are not controlling of the discretion of the court. The court is limited rather by statute to what they may sentence a defendant to.

[¶ 40] Here, the maximum Kelly could get on each of her felony counts was 5 years imprisonment. In CR-166, Kelly was sentenced to 18 months imprisonment, a fine of \$2,000, and other mandatory minimum requirements. In CR-409, Kelly was sentenced to 3 years imprisonment, a fine of \$2,000, and other mandatory minimum requirements. Both of those sentences are below the maximum allowed by law, and thus, are within the sentencing limits allowed by statute.

[¶ 41] There was not a plea agreement in either of Kelly's cases. Kelly was advised of her options for a trial or her choice to plead guilty. In both cases, Kelly chose to plead guilty. An analysis regarding a plea agreement is not appropriate in this appeal because there was not a plea agreement in either case.

[¶ 42] The Court during sentencing talked extensively about the potential for people to be killed due to Kelly's behavior. Although not explicitly stated in the record, the State

submits this relates to factor 1 under N.D.C.C. § 12.1-32-04. The Court talked about the three reasons for incarceration: rehabilitation, deterrence, and punishment. The Court explained the Department of Corrections purpose in the sentence of addressing rehabilitation and also explained the Court's other purpose of deterrence and punishment. The Court covered all three of those factors in sentencing Kelly and did so within the sentencing limits of N.D.C.C. § 12.1-32-01. Finally, the Court also addressed Kelly's attitude, as the State submits relates to factors 9 and 10 of N.D.C.C. § 12.1-32-04:

“You are profoundly alcoholic, and you are profoundly – and I don't know if it's known to you how dishonest you are. I don't know if you're aware of how dishonest you are about what goes on here. I have never seen 12 violations of 24/7. I don't know if I've ever allowed it to exceed five. So you've been – we've enabled you. That's been, I think, a consistent feature of your life is enabling, that because you have a Ph.D., because of your education, because of what other factors, people try to find a reason not to say what would be said to somebody who did not have your educational level, or rather advantages, which is simply you not only have an alcohol addiction, you have a disregard for the rights of others and you are willing to say whatever you think you need to say to get your way. That I do not have a solution for, but it is a factor, I think, in what makes it a community danger to not, in addition to get you treatment, punished... That in the end the goal would be to make sure that the rehabilitation is addressed. But first comes deterrence and punishment. (S/PH – pgs. 30-31)

[¶ 43] The Court further explained the basis for the consecutive sentences was for purposes of deterrence and punishment here, not for purposes of violating the doctrine of separation of powers.

CONCLUSION

[¶ 44] Kelly's pleas in both cases were entered knowingly, intelligently, and voluntarily, and were taken in accordance with the requirements of Rule 11(b).

[¶ 45] Kelly did not properly preserve an appeal for her claim of a manifest injustice because there is not a district court decision to analyze. Should the court still address the

issue, the State submits Kelly's rights of due process were not violated, and as such, there is not a manifest injustice in this case.

[¶ 46] Kelly's sentence was imposed in accordance with the laws of the State of North Dakota.

[¶ 47] Based on the foregoing, the State respectfully asks this Court to affirm the judgments in this case.

Dated the 13th day of April, 2022.

/s/ Tonya Duffy

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Gina Marie Aalgaard Kelly,)	CERTIFICATE OF
)	COMPLIANCE
Respondent-Appellant.)	

Pursuant to North Dakota Rules of Appellant Procedure 32(e), I certify the Appellee’s Brief is not in excess of thirty-eight (38) pages. The documents consists of twenty-two (22) pages, including the cover page, table of contents, table of authorities, the written brief, the certificate of electronic service and the certificate of compliance.

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Gina Marie Aalgaard Kelly,)	CERTIFICATE OF
)	ELECTRONIC SERVICE
Respondent/Appellant.)	

I hereby certify that on April 13, 2022, I served an electronic copy of Appellee’s Brief and Certificate of Compliance, via e-mail through the Supreme Court File and Serve System upon:

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