NO. 43448-2

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSEPH LEIF WOLF, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Elizabeth Martin, Presiding Judge

No. 08-1-02972-9

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Were defendant's due process rights violated where defendant did not object to notice or hearsay and was prepared to present a defense at his SSOSA revocation hearing?

2. Did defendant receive effective assistance where defense counsel knew about the violations, was prepared to proceed in light of the violations and where asking the trial court to proceed was a tactical decision?

3. Did the trial court abuse its discretion in revoking defendant's SSOSA and denying defendant's motion to reconsider where both decisions were reasonable, appropriate and based on the information presented?

B. STATEMENT OF THE CASE.

On June 23, 2008, the State charged defendant, Joseph Wolf, with five counts of rape of a child in the first degree. CP 1-3. The victims were two children in foster care. CP 4-5. Defendant had been placed in the same foster home as the two victims and raped them more than once. CP 4-5.

On October 8, 2008, the State filed an amended information which reduced the counts to two and included a third victim. CP 6-7. The State filed the amended information as part of defendant's plea agreement. 10/9/08RP 3-4. The plea colloquy was held before the Honorable Lisa Worswick. 10/9/08RP. The State noted that this was a significant amendment, and it involved a third victim not originally charged, but that the State had taken into account that defendant was still a juvenile and had been in foster care when the incidents occurred. 10/9/08RP 3-4. The Prosecutor's Statement on Amended Information also indicates that the State took into account the past history of defendant, the significant amount of time that would be imposed if he violated the conditions of the SSOSA, that he disclosed the third victim, as well as the fact that multiple victims would not have to testify. CP 8. During the plea colloquy, the trial court emphasized that while on Community Custody, defendant would have to comply with all conditions especially if he was sentenced to a SSOSA. 10/9/08RP 8. The trial court also made sure that defendant had read the paragraph relating to SSOSA's in the plea agreement. 10/9/08RP 10. Defendant entered the guilty plea, the court accepted it after the plea colloquy and sentencing was set over. 10/9/08RP 4-13.

Sentencing was held on November 14, 2008. 11/14/08RP 15. The State and defense presented an agreed recommendation for a SSOSA. 11/14/08RP 16. One of defendant's primary concerns was how the conviction was going to effect his education. 11/14/08RP 18. The trial

court granted the SSOSA and went over the conditions with defendant. 11/14/08RP 22-24.

On July 24, 2009, a violation hearing was held. 7/24/09RP 2. Defendant had violated the no contact with minors provision. 7/24/09RP 8-9. The trial court found a violation and imposed seven days. 7/24/09RP 9. The trial court noted to defendant that it almost did not grant the SSOSA given the facts of the case, and that defendant should be grateful that he was given a SSOSA. 7/24/09RP 15.

On November 13, 2009, defendant was back before the court for another violation hearing. 11/13/09RP 3. Defendant has engaged in some disturbing behavior. 11/13/09RP 3-4, *see* CP 86-88. The State did not seek revocation at the time but did express its concern over defendant's behavior as well as his tendency to be manipulative and "pushing the envelope for a SSOSA." 11/13/09RP 4. The State put defendant on notice that it would be seeking revocation in the future. 11/13/09RP 5. The trial court found a violation but did not sanction defendant. 11/13/09RP 10.

On February 12, 2010, a review hearing was held and defendant was in compliance. 2/12/10RP 3. However, on February 24, 2010, there was an allegation that defendant had viewed pornography. 2/24/10RP 4. On March 12, 1010, defendant stipulated to the violation of watching pornography. 3/12/10RP 4. Due to a change in case law, the State did not ask for revocation but indicated that was the only reason they were not asking for revocation and they would be asking to revoke at the time of

any future violations. 3/12/10RP 5-6. The State also noted that per the statute, probation would be obligated to ask for revocation for any further violations. 3/12/10RP 65-6. The trial court warned defendant that he had used up all of his chances. 3/12/10RP 8.

A review hearing was held on June 11, 2010, and at that time the Honorable Elizabeth Martin took over the case. 6/11/10RP 3. Defendant was in compliance at the June 11, 2010, September 10, 2010, and March 11, 2011 review hearings. 6/11/10RP 3, 9/10/10RP 7, 3/11/11RP 3. However, by April 28, 2011, he was out of compliance and in custody for SSOSA revocation. 4/28/11RP 3.

On July 20, 2011, a SSOSA revocation hearing was held. 7/20/11RP 20. An evidentiary hearing was held where the State called defendant's treatment provider and the defense called a different treatment provider. 7/20/11RP 3, 17, 85. Defendant did stipulate to some of the violations, including that he was terminated from sex offender deviancy treatment group, that he had unauthorized romantic relations, that he had unauthorized internet access, that he used the synthetic drug "Spice," that he used marijuana, and that he was untruthful to his treatment provider. 7/20/11RP 3-4. Defendant denied that he had not made satisfactory progress in treatment. 7/20/11RP 4. The State laid out a complete history of the case and detailed how the State had made great considerations in this case in regards to agreeing to the SSOSA. 7/20/11RP 6-10. Defendant's treatment provider told the court that defendant cannot follow

the rules. 7/20/11RP 36. The attorney from Team Child was also allowed to address the court on defendant's behalf. 7/20/11RP 129. The trial court told defendant that it knew Judge Worswick had told defendant that he did not get unlimited chances. 7/20/11RP 137. However, the trial court decided to give defendant one last chance. 7/20/11RP 137. The trial court found violations and imposed 120 days. 7/20/11RP 120. The trial court indicated that it wanted defendant to get back in school so it shortened the time it was going to give defendant because the court's goal was for defendant to be in school in the Fall. 7/20/11RP 138, 149. The trial court noted that it was keeping defendant on the SSOSA against its better judgment. 7/20/11RP 144.

On October 28, 2011, a SSOSA review hearing was held and defendant was in compliance. 10/28/11RP 3. Defendant was still trying to get into school. 10/28/11RP 6. The trial court warned defendant that he was still on a short leash. 10/28/11RP 7. On January 27, 2012, defendant was in compliance and was enrolled in school. 1/27/11RP 3, 6.

On February 24, 2012, a SSOSA revocation hearing was held. 2/24/12RP 3. The State had filed the violation report but had not filed the written petition for revocation. 2/24/12RP 3-4. The State indicated it would file a written petition as soon as possible but that the violations were agreed upon. 2/24/12RP 3. Defendant stipulated that he consumed methamphetamine and that he consumed Spice. 2/24/12RP 4. Defendant stipulated to the fact pattern surrounding the third violation which was that

he was dishonest to his treatment provider. 2/24/12RP 4, 5-6. Defendant indicated that time was of the essence and so he wanted to proceed with the revocation hearing even though the official petition for revocation had not been filed. 2/24/12RP 5, 12. Defendant hoped he would be out of custody and be able to start school on Monday. 2/24/12RP 6, 9. The State was clear that is was recommending revocation, and indicated that it would be willing to set over the revocation hearing, but defendant chose to proceed. 2/24/12RP 6-9. After confirming again that defendant wanted to proceed, the trial court indicated that it was ready to proceed. 2/24/12RP 11-12. The trial court heard from the State, defendant's Community Custody Officer, the attorney from Team Child, and defendant. 2/24/12RP 12-28. Defendant admitted to violating the trial court's trust. 2/24/12RP 21. After hearing from all parties, the trial court found that it just could not give defendant any more chances and revoked defendant's SSOSA. 2/24/12RP 30-31, CP 482- 484.

Defendant filed a motion to reconsider. CP 491-515. On April 27, 2012, the trial court heard the motion to reconsider. 4/27/12RP 3. Defendant was represented by a new attorney. 4/27/12RP3. The new attorney did not believe the trial court had abused its discretion and did not believe either side could appeal the trial court's decision to revoke. 4/27/12RP 10-11, 14. However, defendant urged the court to reconsider claiming that there was new info in the report she obtained from defendant's treatment provider. 4/27/12RP 11, 17. The Team Child

attorney also addressed the court. 4/27/12RP 29-31. Defendant's Community Custody Office indicated that defendant was hard to supervise. 4/27/12RP 32. The trial court made it clear that it had been defendant's choice not to pursue an evidentiary hearing in February. 4/27/12RP 9-10. The trial court also made it clear that it knew defendant was in custody in February and knew that revocation would be sought by the State. 4/27/12RP 29. After hearing all of the arguments and extensively reading all of the documentation, the trial court denied the motion to reconsider. 4/27/12RP 50-53.

Defendant filed this timely appeal from the denial of the motion to reconsider. CP 606-633.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT VIOLATE DEFENDANT'S DUE PROCESS RIGHTS BY REVOKING DEFENDANT'S SSOSA WHEN DEFENDANT DID NOT OBJECT TO NOTICE OR HEARSAY AND HAD THE OPPORTUNITY TO PREPARE A DEFENSE.

The revocation of a suspended sentence is not a criminal proceeding, and the defendant is entitled to only minimal due process rights. ***State v. Dahl***, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). Among these due process rights is a right to proper notice. *Id.* Proper notice sets forth the alleged parole violations of defendant's suspended sentence, and

allows defendant an "opportunity to marshal the facts in his defense." *Id.* at 684. "These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts. *Id.* at 683, quoting ***Morrissey v. Brewer***, 408 U.S. 471, 484, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972).

In ***Dahl***, the State alleged that defendant had failed to make reasonable progress in treatment. 139 Wn.2d at 684. The court based much of its decision to revoke defendant's SSOSA on two individual incidents, one where Dahl had exposed himself to two young girls, and one where he had sent a note to a young bank teller detailing his fantasies and obsession with the JonBenet Ramsey case. *Id.* at 681, 684. The court found that sufficient notice had been provided because defendant was informed of the State's contention that he had failed to make reasonable progress, and had been provided with his therapist's treatment reported. *Id.* at 685-86.

In ***State v. Robinson***, 120 Wn. App. 294, 85 P.3d 376 (2004), the defendant alleged that he did not receive proper notice of the violations. ***Robinson***, 120 Wn. App. at 299. Robinson also claimed that the trial court violated his due process rights when it relied on hearsay evidence. *Id.* at 300. The Court of Appeals found that when the defendant failed to object to improper notice at the hearing, he waived the notice requirements and could not appeal the issue. *Id.* at 299-300. Further, the court also found that the defendant could not sit by and not object to the use of

hearsay evidence. *Id.* at 300. Robinson's due process rights were not violated. *Id.*

A defendant who invites error -- even constitutional error -- may not claim on appeal that he is entitled to a new trial on account of the error. ***State v. Studd***, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999); ***State v. Aho***, 137 Wn.2d 736, 744-45, 975 P.2d 512 (1999); ***State v. Smith***, 122 Wn. App. 294, 299, 93 P.3d 206 (2004). The doctrine of invited error applies regardless of whether counsel intentionally or inadvertently encouraged the error. ***Seattle v. Patu***, 147 Wn.2d 717, 720, 58 P.3d 273 (2002). The invited error rule recognizes that "[t]o hold otherwise [i.e. to entertain an error that was invited] would put a premium on defendants misleading trial courts." ***State v. Henderson***, 114 Wn.2d 867, 868, 792 P.2d 514 (1990).

In the instant case, defendant alleges that his due process rights were violated by both the trial court and his attorney. Specifically, defendant alleges that he did not receive proper written notice of the violations, that he was not able to cross-examine witnesses and that the decision to revoke was based on hearsay. Defendant's claims are without merit.

First, defendant did not object that the violations were not in writing. Defendant was aware of what the violations were as defense counsel and the State had a conversation outside of court as to the nature of the violations and how the hearing was going to proceed. 2/24/12RP 3-

4, 7. The violations were recited in open court and were contained in the violation report from the department of corrections. 2/24/12RP 3-7. The State listed out the violations and it was agreed that the State would reduce the violations to writing that day or the following business day. 2/24/12RP 3-5, 11. The State did file the written violations very soon after the hearing, and the written violation mirrored what was presented in court. CP 485-487. There was no dispute as to what the violations were, and defendant even stipulated to two of the violations and stipulated to the facts surrounding the third violation. 2/24/12RP 3-6. As the defendant had notice of the violations, did not dispute what the violations were, stipulated to two of them and the facts surrounding the third, and affirmatively waived the written notice requirement prior to the hearing, defendant cannot show that his due process rights were violated.

Similar to the defendant in ***Robinson***, defendant was prepared to address the violations and even stipulated to the majority of what was before the court. Defendant never objected to the lack of notice, and in fact acknowledged the lack of written notice, but also acknowledged notice of the violations and readiness to address the violations. Defendant cannot invite error, if there was error, and then complain about it on appeal. Defendant did not even allege any error with the notice requirement in his motion to reconsider. *See* CP 491-515. The issue of notice is not properly before this Court and defendant's due process rights were not violated.

Second, defendant was not prevented from presenting testimony or contesting the allegations. The State and the trial court both offered the option of setting over the hearing if defendant wanted more time. 2/24/12RP 6-7, 9-11. Defendant declined and wanted to proceed. 2/24/12RP 5-6, 10-12. At one point, defense counsel made clear that there was nothing more defense counsel could provide in terms of evidence about the violations, everything he could get he had and he was presenting that to the court today. 2/24/12RP 11-12. Defendant affirmatively chose not to exercise his right to call witnesses, and by stipulating to the violations, he also gave up his right to cross-examine witnesses as the State was no longer obligated to bring witnesses to prove the violations. Defendant has stipulated before in past violation hearings so he knew what that would mean in terms of how the hearing would proceed. 3/12/10RP 4, 7/20/11RP 3-4. Defendant had been through many prior review and revocation hearings, and had even had an evidentiary hearing on revocation on July 20, 2011. This was a choice defendant made which he cannot now claim was error on appeal. Further, defendant did not object to any hearsay evidence below, in fact, defendant stipulated to the evidence. Defendant himself presented hearsay evidence, so for defendant to complain about it now on appeal is both disingenuous and improper. In

fact, defendant's motion to reconsider does not provide any new evidence in terms of the violations. Defendant cannot show any due process violations.

Finally, any error on the Order Revoking Sentence is a scrivener's error and nothing more. The case was set for a review hearing but the parties clearly contemplated that revocation could be an option. 2/24/12RP 3-12. The trial court noted initial confusion as to the nature of the hearing but was familiar with the case, not surprised that revocation was being sought and was willing to proceed. 2/24/12RP 7, 9-10, 11-12. The petition was not filed until after the hearing, but that was on agreement of the parties and the written petition reflected exactly what was before the trial court at the hearing. 2/24/12RP 3-11, CP 485-487. Scrivener's errors are clerical errors that are the result of mistake or inadvertence, especially in writing or copying something on the record. They are not errors of judicial reasoning or determination. *See* BLACK'S LAW DICTIONARY 582, 1375 (8th ed. 1999). CrR 7.8(a) provides that clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party. A plea generally is not rendered invalid by an obvious scrivener's error in an information, such as a statutory citation error. *See* ***In re Mayer***, 128 Wn. App. 694, 117 P.3d 353 (2005). In ***Mayer***, the court found that there was a scrivener's error in the plea and judgment rendering these documents facially invalid. *Id.* at 700-01. Despite this

facial invalidity, Mayer was only entitled to a remand for a correction of the scrivener's error; the court did not invalidate the conviction. The remedy for a scrivener's error is to remand to the trial court for correction of the error. *Id.* at 701. In that instant case, the trial court's order still accurately reflects the nature of the hearing and what happened at the proceeding. The record is clear as to how the hearing came about. Defendant did not object to the proceeding, and in fact affirmatively asked for the hearing to proceed. Defendant also never objected to the wording of the court order, either at the revocation hearing or at the motion to reconsider. Defendant cannot show any due process error based on the court order.

2. DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR ASKING THE COURT TO PROCEED WITH REVOCATION WHERE COUNSEL WAS PREPARED TO MAKE ARGUMENT TO THE COURT AND PROCEEDING WAS A TACTICAL DECISION.

"The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the [proceeding] was rendered unfair and the verdict rendered suspect." ***Kimmelman v. Morrison***, 477 U.S. 365, 374, 91 L.Ed.2d 305, 106 S. Ct. 2574, 2582 (1986). A defendant who raises a claim of ineffective assistance of counsel must demonstrate that: (1) his or

her attorney's performance was deficient, and (2) the deficiency was prejudicial. ***Strickland v. Washington***, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); ***State v. Hendrickson***, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Under the first prong, matters that go to strategy or tactics do not show deficient performance. ***State v. Garrett***, 124 Wn.2d 504, 520, 881 P.2d 185 (1994). Under the second prong, defendant must show that a reasonable probability exists that the result would have been different, but for counsel's errors. ***State v. Thomas***, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

The standard of review for effective assistance of counsel is whether the court can conclude, after examining the record as a whole, that defendant received effective representation and a fair trial. ***State v. Ciskie***, 110 Wn.2d 263, 751 P.2d 1165 (1988), *see also* ***State v. White***, 81 Wn.2d 223, 225, 500 P.2d 964 (1993), *review denied*, 123 Wn.2d 1004 (1994). "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." ***Premo v. Moore***, 562 U.S. ____, 131 S. Ct. 733, 740, 178 L.Ed.2d. 649 (2011), quoting ***Strickland***, 466 U.S. at 690, *see also* ***Harrington v. Richter***, 562 U.S. ____ , 131 S. Ct. 770, 778, 178 L.Ed.2d 624 (2011). Judicial scrutiny of an attorney's performance must be "highly deferential in order to eliminate

the distorting effects of hindsight." ***Strickland***, 466 U.S. at 689. The reviewing court must judge the reasonableness of counsel's actions "on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; ***State v. Benn***, 120 Wn.2d 631, 633, 845 P.2d 289 (1993). A presumption of counsel's competence can be overcome by showing counsel failed to conduct appropriate investigations, adequately prepare for trial, or subpoena necessary witnesses. *Id.* An appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake. ***State v. Carpenter***, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

In the instant case, defense counsel was a true advocate for his client. A review of the entire record, as dictated by case law, show defense counsel worked hard to coordinate all of the resources defendant was utilizing and make sure they could present to the court at the various hearings. Defense counsel worked hard to support defendant getting into school. 10/28/11 6. Defense counsel also disputed violations when necessary and stipulated when necessary. *See* 7/24/09RP, 11/13/09RP, 3/12/10RP, and 7/20/11RP. At the revocation hearing on February 24, 2012, defense counsel chose to proceed by stipulating to the violations and emphasizing that defendant needed to get out to get into school. This was a reasonable tactical decision. Defendant had already been warned by two different judges that he was out of chances. 7/24/09RP 15, 3/12/10RP 8,

7/20/11RP 137. Yet, defendant stood before the court with more violations. The most prudent course of action would be to admit to the violations and then plead for mercy. It was a tactical decision by defense counsel. Also, the trial court had been concerned in the past with defendant getting into school. 7/20/11RP 138, 149. Emphasizing that the reason defendant wanted to proceed was so he had the hope of starting school on time was clearly trying to play to the trial court's focus on that aspect of defendant's life, and hoping that he would win one last chance to stay on his SSOSA. The fact that decision did not turn out the way defendant hoped does not render defense counsel ineffective. Defense counsel tried to present the violations in the best possible light and also to present defendant as apologetic and ready to comply. It was a prudent tactical decision. Defendant cannot show that defense counsel was deficient.

Further, defendant cannot show prejudice as defendant got another chance, with a new defense attorney, to argue for the trial court to reconsider its previous decision to revoke his SSOSA. *See* 4/27/12RP. Defendant did not present any new evidence but urged the trial court to review its decision and placed emphasis on certain aspects it wanted the trial court to focus on. 4/2712RP 4-29, 45-49. The trial court reviewed the case for an extended period of time and denied the motion to

reconsider. 4/27/12RP 53. Even with a different attorney and a new hearing, the trial court came to the same conclusion: that defendant's SSOSA should be revoked. Defendant cannot show prejudice. Defendant cannot meet his burden of showing that his counsel was ineffective.

3. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REVOKING DEFENDANT'S SSOSA OR IN DENYING THE MOTION TO RECONSIDER WHERE BOTH WERE REASONABLE, APPROPRIATE AND BASED ON THE INFORMATION PRESENTED.

On appeal, the revocation of a SSOSA sentence is reviewed for abuse of discretion. ***State v. Partee***, 141 Wn. App. 355, 361, 170 P.3d 60 (2007). A court abuses its discretion if its decision is manifestly unreasonable or arbitrary, or is based on untenable grounds. ***State v. Miller***, 159 Wn. App. 911, 918, 247 P.3d 457 (2011) *citing* ***State ex rel. Carroll v. Junker***, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). "A court may revoke an offender's SSOSA at any time if it is reasonably satisfied the offender violated a condition of the suspended sentence." ***Partee***, 141 Wn. App. at 361, *citing* ***State v. Dahl***, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

In the instant case, defense alleges that the trial court abused its discretion in proceeding with the revocation hearing, in revoking his

SSOSA based on hearsay, and in denying his motion to reconsider. However, since the trial court's decisions were clearly reasonable and appropriate under case law, at the instance of defendant in at least one instance, and based on the information presented the decision cannot be said to be an abuse of discretion.

First, the trial court did not abuse its discretion in proceeding with the revocation hearing. The trial court was initially confused as to whether the case was set for revocation or review. 2/24/12RP 5. The trial court thought that the case would be set for a revocation hearing sometime in the future. 2/24/12RP 9. However, the trial court did find that the only reason it did not know for sure if revocation was being sought was because it had not been noted as such and the State had not filed the petition. 2/24/12RP 12. However, the trial court did have the violation report and was prepared to proceed, a fact the court reiterated at the motion to reconsider. 2/24/12RP 11-12, 4/27/12RP 29. This was not the first time defendant had been in front of the trial court and the trial court was familiar with the case. *See* 6/11/10RP, 9/10/10RP, 3/11/11RP, 7/20/11RP, 10/28/11RP, and 1/27/12RP. In fact, a full evidentiary hearing had been held on July 20, 2011, and an extensive history of the case has been presented. 7/20/11RP 6-10. The trial court was prepared to proceed with the revocation hearing.

Defendant affirmatively asked the trial court to proceed with the revocation hearing on February 24, 2012, several times. 2/24/12RP 4-12. The trial court gave defendant the opportunity to set the case over but defendant declined. 2/24/12RP 7-12. As the hearing on February 24, 2012, proceeded at the request of defendant, as defendant had stipulated to the violations so that there was no need for an evidentiary hearing and as the trial court had knowledge of the history of the case as well as the current violation report, the trial court did not abuse its discretion in proceeding with the revocation hearing.

Second, the trial court did not abuse its discretion in basing the decision to revoke based on defendant's stipulations. Defendant stipulated to two of the three violations. 2/24/12RP 4-6. Defendant made the choice to forgo an evidentiary hearing. The trial court was entitled to rely on defendant's stipulation. Any hearsay evidence that the trial court used in its decision, specifically the facts surrounding the third violation, were admitted to by defendant. Further, defendant encouraged the trial court to rely on the information in making the determination of whether or not he committed a violation. As noted above, defendant did not object to any hearsay and in fact relied on hearsay statements himself. Defendant cannot create error, if any was created, and then complain of such error on appeal. The trial court was entitled to rely on defendant's stipulations and

any information presented by either party, including hearsay, which was not only not objected to, but was also relied upon by defendant. The trial court did not abuse its discretion in considering the stipulations and information presented.

Finally, the trial court did not abuse its discretion in denying defendant's motion for reconsideration. The trial court took the time to listen to extensive argument from defendant's new attorney. 4/27/12RP 2-29, 45-48. It was also clear from the record that the trial court had reviewed the pleadings and the appendices and had considered the case very carefully. 4/27/12RP 50-53. The trial court was also very clear that it was basing its decision based on its own observations and history with the case, as well as what the SSOSA law was designed to address. 4/27/12RP 50-56. The trial court took an extended period of time to make sure all of the arguments were addressed. The trial court's ruling clearly showed that it had extensively reviewed defendant's case. The trial court noted that despite all the support that he had lined up to help, more than most SSOSA defendants, defendant continued to violate the conditions of his SSOSA. 4/27/12RP 53-54. The trial court found that revocation was the right decision and did not reverse its ruling. The trial court's decision was reasonable, based on facts in the record and made after an extensive period of contemplation and argument. There was no abuse of discretion.

D. CONCLUSION.

For the aforementioned reasons, the State respectfully requests that this Court affirm the trial court's revocation of defendant's SSOSA sentence.

DATED: February 21, 2013.

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The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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