Supreme Court No. 91177-1

(Court of Appeals No. 70714-1-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent

v.

DEREK CARTMELL,
Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Derek Cartmell, appellant below, seeks review of the Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Cartmell appealed from his Island County Superior Court convictions for bail jumping. This motion is based upon RAP 13.3(e) and 13.5A.

C. ISSUES PRESENTED FOR REVIEW

1. Under the Sentencing Reform Act of 1981, a sentencing court must consider a defendant's eligibility for a DOSA and then use its discretion in imposing or not imposing a DOSA. In the instant case, Mr. Cartmell was eligible for a DOSA, but the sentencing court denied his request without a hearing or inquiry, based upon the court's mistaken understanding that Mr. Cartmell was ineligible, and thus, that the court lacked the authority to impose the DOSA. Did the court fail to exercise its discretion, thus, erroneously and categorically denying the DOSA, and was the Court of Appeals decision thus in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1).

2. The accused has the constitutional right to be informed of the charges against him, and all essential elements of a crime must therefore be set forth in the information. Among the elements of bail jumping is

that a person "knowingly failed to appear." Where the amended information did not allege the hearing to which Mr. Cartmell knowingly failed to appear, was the information constitutionally deficient, and was the Court of Appeals decision thus in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1).

3. This Court must consider each of the issues raised in Mr. Cartmell's Statement of Additional Grounds, as specifically itemized and preserved in that document, as each requires review under RAP 13.4(b)(1), (2), (3), or (4).

D. STATEMENT OF THE CASE

Derek Cartmell was charged with a series of felonies arising from an incident on November 1, 2012. RP 100-02 (hereinafter "eluding case").[1]

Mr. Cartmell was arraigned on November 20, 2012, and pled not guilty to the charges, indicating his intention to go to trial. RP 93-95. Bail was set, and Mr. Cartmell was eventually released on bond. Id. He received a scheduling order with dates and received conditions of release, including the condition to appear at future proceedings as ordered. Id.; Ex. 2.

[1] The verbatim report of proceedings is referred to as "RP." Motions in limine and sentencing proceedings are not consecutively paginated, and are referred to specifically by date.

The case was next scheduled for a hearing on January 14, 2013; Mr. Cartmell attended that court appearance, as ordered. RP 174-76, 179.

The trial date for the eluding case was set for January 29, 2012. RP 97. Mr. Cartmell appeared at the courthouse at 1:30 PM – the time his attorney had told him that his trial was set to begin. RP 183-84, 192-93. Since the scheduling order had actually indicated an 8:30 AM start time on January 29th, a bench warrant had already been issued for Mr. Cartmell's arrest by the time he appeared at the courthouse. RP 106-07, 123-25; Ex. 4. Accordingly, the Island County Prosecutor charged Mr. Cartmell with bail jumping. CP 146-47.

At trial, as proof of the bail jumping charge, the State called the Island County Superior Court Clerk as a witness. RP 88. Through the Clerk, the State introduced certified copies of the order for conditions on release and the scheduling order, which included the dates and times of all court dates. RP 93-97; Ex. 1, Ex. 2. The State also called Detective Rick Felici, a witness on the eluding trial, who had appeared to testify on January 29th at 8:30 AM, and had waited for Mr. Cartmell to appear for trial. RP 105. The detective also stated that he had received information that Mr. Cartmell had appeared in the courthouse later in the day, but that Mr. Cartmell had not cleared the warrant, nor had he been arrested on it for several weeks. RP 106-07.

Testimony from a number of other witnesses, including the security officer who manned the courthouse metal detector, verified that Mr. Cartmell had appeared for his eluding trial at approximately 1:30 PM on January 29th, as he had been instructed by his attorney. RP 117-18, 179-82, 197-99.

Representing himself at trial, Mr. Cartmell was convicted as charged. CP 92. At his sentencing hearing, Mr. Cartmell requested the Drug Offender Sentencing Alternative (DOSA). 7/1/13 RP 9. The sentencing court denied the DOSA without a hearing. Id. at 11.

On appeal, Mr. Cartmell argued the trial court abused its discretion when it categorically denied him a prison-based Drug Offender Sentencing Alternative (DOSA) sentence. Mr. Cartmell also argued the bail jumping information was constitutionally deficient. He also raised a number of additional issues in a Statement of Additional Grounds, including the denial of access to research materials and an investigator; the request for a continuance; prosecutorial misconduct; and the request for mental health and chemical dependency evaluations, among others.

On November 17, 2014, the Court of Appeals affirmed Mr. Cartmell's conviction. Appendix.

Mr. Cartmell seeks review in this Court. RAP 13.4(b)(1),(2), (3), and (4).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THIS COURT SHOULD GRANT REVIEW, AS THE COURT OF APPEALS DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT. RAP 13.4(b)(1).

a. The sentencing court failed to exercise its discretion by categorically denying Mr. Cartmell access to the Drug Offender Sentencing Alternative (DOSA) program.

At sentencing, Mr. Cartmell requested a DOSA. 7/1/13 RP 9. Mr. Cartmell met the criteria and was eligible for this sentencing alternative. Id.; RCW 9.94A.505(2)(a)(vi); RCW 9.94A.660.[2] Mr. Cartmell told the court that he wanted "to get help for my mental health problems and my drug addiction so I can be a productive member of society." Id.

The State agreed that Mr. Cartmell was statutorily eligible for the program. "I don't think he's statutorily excluded from a DOSA, because if the last one that he got was sentenced in 2000, then that would be outside the 10 year range, and he would be statutorily eligible." Id. at 10. However, the prosecutor inaccurately told the court that due to the pending 57-month sentence on the eluding case, Cartmell was ineligible for the DOSA on the bail jumping case. Id.

[2] The statutory eligibility requirements for the DOSA have been discussed in previous briefing; see also State v. Conners, 90 Wn. App. 48, 53, 950 P.2d 519, rev. denied, 136 Wn.2d 1004 (1998).

Due to this mistaken information, the trial court denied Mr. Cartmell's request for a DOSA on the instant case without a hearing. Id. at 11. The court stated:

> I wish you had been eligible for drug court. I think you could have done well there. But for one reason or another you weren't eligible for drug court. There's not much I can do about the lack of services in prison. Thank you.

Id. at 11 (emphasis added).

The sentencing court's statements clearly evince a misapprehension about Mr. Cartmell's eligibility for the DOSA, which raises a legitimate question about the court's use of its discretion. State v. Garcia-Martinez, 88 Wn. App. at 330 (abuse of discretion for a court to refuse to exercise discretion or to rely on an impermissible basis for sentencing decisions).

b. The sentencing court's decision to deny the DOSA was based on a mistake, rather than a sound exercise of its judicial discretion; therefore, it was an abuse of discretion that should be reviewed by this Court.

Sentencing errors may be raised for the first time on appeal. In re Personal Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Permitting defendants to challenge an illegal sentence on appeal helps ensure that sentences are in compliance with the sentencing statues and avoids sentences based only upon trial counsel's failure to pose a proper objection. State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009); State v. Ross, 152 Wn.2d 220, 95 P.3d 1225 (2004). Moreover, the rule

inspires confidence in the criminal justice system and is consistent with the Sentencing Reform Act's goal of uniform and proportional sentencing. Mendoza, 165 Wn.2d at 920; State v. Ford, 137 Wn.2d 472, 478-79, 484, 973 P.2d 452 (1999); RCW 9.94A.010(1)-(3).

A defendant may appeal a standard range sentence if the sentencing court failed to follow a procedure required by the Sentencing Reform Act. State v. J.W., 84 Wn. App. 808, 811, 929 P.2d 1197 (1997) (citing State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993)). This Court may reverse a sentencing court's decision if it finds a clear abuse of discretion or misapplication of the law. State v. Porter, 133 Wn.2d 177, 181, 942 P.2d 974 (1997) (citing State v. Elliott, 144 Wn.2d 6, 17, 785 P.2d 440 (1990)). A defendant is not barred from appealing a standard range sentence when the appeal raises a challenge to the sentencing court's determination of eligibility for a sentencing alternative. See State v. Mail, 121 Wn.2d at 712; State v. McNeair, 88 Wn. App. 331, 336-37, 944 P.2d 1099 (1997); State v. Garcia-Martinez, 88 Wn. App. 322, 328-30, 944 P.2d 1104 (1997).

In general, a reviewing court will not reverse a trial court's decision not to grant a DOSA sentence. State v. Grayson, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005) (citing RCW 9.94A.585(1); State v. Bramme, 115 Wn.2d 844, 850, 64 P.3d 60 (2003)). Nevertheless, a defendant may

challenge the procedure by which the sentence was imposed, as every defendant is entitled to request the trial court to properly consider such a sentence and give the request meaningful consideration. 154 Wn.2d at 342 ("every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered"). Moreover, a defendant is entitled to a review of the denial of a DOSA request in order to correct a legal error or the trial court's abuse of discretion. State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003); State v. White, 123 Wn. App. 106, 114, 97 P.3d 34 (2004).

A sentencing court abuses its discretion by refusing to exercise its discretion or by relying on an impermissible basis for its sentencing decisions. State v. Garcia-Martinez, 88 Wn. App. at 330. Here, the sentencing court erred by refusing to consider the defense request for a DOSA sentence based on its erroneous determination that treatment was not available due to the fact that Mr. Cartmell had been sentenced on another matter.

Mr. Cartmell consequently requested that the Court of Appeals review the trial court's denial of a DOSA below. RAP 2.4; Garcia-Martinez, 88 Wn. App. at 330 (appellate review appropriate "where a defendant has requested an exceptional sentence below the standard range" and the trial court "has refused to exercise discretion at all or has

relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range."); see also State v. McGill, 112 Wn. App. 95, 100, 47 P.3d 173 (2002) (remand granted where trial court refuses to exercise its discretion to consider an exceptional sentence because it erroneously believed it lacked the authority to do so). Since the Court of Appeals affirmed the trial court's denial of the DOSA, the Court's decision is in conflict with this Court's decisions, requiring review. RAP 13.4(b)(1).

c. Because Mr. Cartmell was statutorily eligible for the DOSA, the sentencing court had a duty to exercise its discretion and either grant or deny the request under the criteria set forth by the Legislature; because the court failed to do so, review should be granted by this Court.

The legislature enacted RCW 9.94A.660 to address the substance abuse problems of offenders. RCW 9.94A.660(1) provides only that the person requesting a DOSA have a felony conviction that is not a violent or sex offense and demonstrate he or she has a chemical dependency problem such that he or she would likely benefit from the sentencing alternative. In fact, under RCW 9.94A.660(2), the statute provides during incarceration, the offender:

> shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse

> of the department of social and health services, in cooperation with the department of corrections.

Following the period of incarceration, the statute contemplates the offender be released on community custody with the provision that the terms of release include "appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services." RCW 9.94A.660(2)(a).

Instead of properly considering Mr. Cartmell's eligibility for a DOSA and exercising its discretion, the sentencing court summarily decided the DOSA program was not an option, due to Mr. Cartmell's other sentence. 7/1/13 RP 11. The sentencing court did no balancing test, refusing to consider a DOSA because of the court's mistaken belief that the DOSA was not an option. Id. The court's misapprehension is clear from the court's own words, mistakenly referring to the DOSA as "drug court" twice during sentencing. Id. ("for one reason or another you weren't eligible for drug court"). The court also improperly based its denial of the DOSA on its lack of knowledge of available treatment programs: "There's not much I can do about the lack of services in prison." 7/1/13 RP 11.

Lastly, because Mr. Cartmell proceeded pro se, the court should have liberally construed his request for the DOSA at sentencing, at least granting a hearing to determine his eligibility. Federal Exp. Corp. v. Holowecki, 552 U.S. 389, 128 S.Ct. 1147, 170 L.Ed.2d 10 (2008) ("Even in the formal litigation context, pro se litigants are held to a lesser pleading standard than other parties") (citing Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (Pro se pleadings are to be "liberally construed")); Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007). Documents filed pro se are "to be liberally construed, [and] ...however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). The Ninth Circuit has long protected the rights of pro se litigants by affording pro se pleadings liberal construction. Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir. 1984) ("The rights of pro se litigants require careful protection where highly technical requirements are involved").

The sentencing court abused its discretion when it categorically denied Mr. Cartmell a DOSA sentence without exercising its discretion to consider it. Williams, 149 Wn.2d at 148. As this Court stated in McGill, "Remand for resentencing is often necessary where a sentence is based on

a trial court's erroneous interpretation of or belief about the governing law." 112 Wn. App. at 100.

Accordingly, the Court of Appeals decision upholding the sentence was in conflict with decisions of this Court and review should be granted, so that this matter may ultimately be remanded and Mr. Cartmell may be properly considered for eligibility for the DOSA. RAP 13.4(b)(1).

d. The information did not adequately notify Mr. Cartmell of the essential elements of bail jumping; therefore, the Court of Appeals decision was in conflict with decisions of this Court, requiring review pursuant to RAP 13.4(b)(1).

A defendant has the constitutional right to be informed of the nature and cause of the charges against him.[3] U.S. Const. amends. VI, XIV; Const. art. I § 22. Accordingly, the charging document must set forth the essential elements of the alleged crime in order to permit the accused to prepare his defense. State v. McCarty, 140 Wn.2d 420, 424-25, 998 P.2d 296 (2000); State v. Green, 101 Wn. App. 885, 889, 6 P.3d 53 (2000), rev. denied, 142 Wn.2d 1018 (2001). In order to satisfy this constitutional requirement, Washington's "essential elements rule" requires the charging document to clearly set forth every material element of the crime along with essential supporting facts. McCarty, 140 Wn.2d at

[3] The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation." Article I, section 22 similarly provides in part, "In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him."

425: State v. Leach, 113 Wn.2d 679, 686-89, 782 P.2d 552 (1989); CrR 2.1(a)(1).

Although Mr. Cartmell did not challenge the information in the trial court, a challenge to the constitutional sufficiency of a charging document may be raised for the first time on appeal. Leach, 113 Wn.2d at 690-91, 697; RAP 2.5(a). A charging document challenged after the State rests will be found valid only if (1) the necessary facts appear in some form or if they can be found by fair construction on the face of the document, and, if so, (2) if the defendant was not actually prejudiced by the inartful language. State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991). If, however, the information does not include all the essential elements of the offense, the insufficiency alone is enough to warrant dismissal; the defendant need not show prejudice. Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992); State v. Franks, 105 Wn. App. 950, 22 P.3d 269 (2001).

A conviction for bail jumping requires proof that the accused failed to appear, having been released by a court order "with knowledge of the requirement of a subsequent personal appearance." RCW 9A.76.170(1). This knowledge element is the only mental state required for conviction. The statute requires that the defendant have knowledge of his subsequent court date, and assuming knowledge is established at the time of release,

the defendant is strictly liable for a failure to appear; nonappearance is not excused by poor memory or mistake. State v. Carver, 122 Wn. App. 300, 93 P.3d 947 (2004).

The information in this case is constitutionally deficient because it failed to specify the essential element of knowledge. Here, as Mr. Cartmell argued on appeal, the amended information charged:

> Comes now GREGORY M. BANKS, Prosecuting Attorney of Island County, State of Washington, or his deputy, and by this Information accuses the above-named defendant of violating the criminal laws of the State of Washington as follows:
>
> COUNT I – Bail Jumping:
>
> On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state ... did fail to appear.

CP 146-47.

To charge bail jumping, the information must allege that the defendant had "knowledge of the requirement of a subsequent personal appearance before any court of the state." RCW 9A.76.170(1) (emphasis added). It is not sufficient to simply state that the defendant was admitted to bail and failed to appear on a particular date; it must be specified that he had notice of his obligation to appear on that date. RCW 9A.76.170(1);

State v. Fredrick, 123 Wn. App. 347, 353, 97 P.3d 47 (2004); Carver, 122 Wn. App. 300.

This information merely informed Mr. Cartmell that he was released by court order or admitted to bail with knowledge of the requirement to appear, without specifying at what date or time he was required to be in court. The information neglects to state how Mr. Cartmell had been notified to appear, when he had been notified to appear, or that he had either actual or constructive knowledge that his trial date was scheduled to begin at precisely 8:30 AM on January 29, 2013. Because the information fails to allege that Mr. Cartmell received either personal or written notice of his subsequent appearance dates or times, it is constitutionally deficient.

Because the proper remedy would have been reversal of the conviction and dismissal of the charge without prejudice, the Court of Appeals decision affirming the conviction is in conflict with decisions of this Court. Kjorsvik, 117 Wn.2d at 105-06; State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (Washington courts "have repeatedly and recently held that the remedy for an insufficient charging document is reversal and dismissal of charges without prejudice to the State's ability to re-file charges"); McCarty, 140 Wn.2d at 428; Green, 101 Wn. App. at 891. Review should be granted. RAP 13.4(b)(1).

2. EACH ASSIGNMENT OF ERROR RAISED IN MR. CARTMELL'S STATEMENT OF ADDITIONAL GROUNDS REQUIRES REVIEW UNDER RAP 13.4(b).

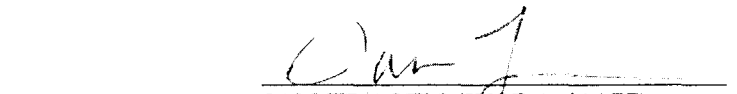
Mr. Cartmell specifically preserves for review each and every issue raised in his Statement of Additional Grounds, and respectfully requests this Court review the Court of Appeals decision, as it is in conflict with decisions of this Court and with other decisions of the Court of Appeals. Mr. Cartmell also asserts that a significant question of constitutional law is involved, under the Washington and United States Constitutions, and that this petition involves issues of substantial public interest, pursuant to RAP 13.4(b)(1),(2),(3), and (4).

F. CONCLUSION

For the above reasons, Mr. Cartmell respectfully requests this Court to grant review. RAP 13.4(b)(1),(2),(3),(4).

DATED this 17th day of December, 2014.

Respectfully submitted,



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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DEREK CARTMELL, Appellant.	)	NO. 70714-1-I DIVISION ONE UNPUBLISHED OPINION FILED: November 17, 2014

LAU, J. — Derek Cartmell appeals his conviction for bail jumping. He contends that the information was constitutionally defective because it failed to inform him of an essential element of bail jumping. He also alleges that the trial court failed to exercise its discretion when it imposed a standard range sentence following his request for the drug offender sentencing alternative (DOSA). Finally, he raises a number of issues in a statement of additional grounds. Because the information included all the essential elements, the trial court properly exercised its discretion, and Cartmell established no error in his statement of additional grounds, we affirm.

FACTS

Derek Cartmell was charged with possession of a stolen vehicle, attempting to elude a pursuing police vehicle, possession of methamphetamine, and hit and run

(property damage) based on a 2012 incident. A month later, Cartmell signed a scheduling order notifying him of his obligation to appear for a jury trial on January 29, 2013 at 8:30 A.M. He failed to appear for trial. The State charged Cartmell by information with one count of bail jumping for his failure to appear for his jury trial on the 2012 case. The jury convicted Cartmell on this charge.[1]

At sentencing, the State recommended a high end standard range sentence of 60 months. The State also recommended that this sentence run consecutively to the prior 57-month sentence imposed on the 2012 case. The State argued that Cartmell's 12 prior felony convictions and the facts of the bail jumping case warranted a consecutive sentence. The State also argued that a concurrent sentence on the bail jumping conviction would only add three months to Cartmell's total term of confinement. It noted Cartmell's offender score of 12 meant 3 points would go unpunished.

Cartmell requested a DOSA based on his drug addiction and lack of other treatment options. The State acknowledged Cartmell's DOSA eligibility, but it opposed the request based on similar reasons that supported its high end, consecutive sentence recommendation. The State further voiced concern that Cartmell's 57-month non-DOSA sentence in the 2012 case may render a DOSA impractical.

The court agreed with the State's recommendation. It imposed a 60-month term of confinement and ordered this sentence to run consecutive to the prior 57-month sentence on the 2012 case. The court explained its reasons to Cartmell:

> However, you have quite an extensive felony history record and your point system already takes you up to nine. But I mean—excuse me, the schedule doesn't go past nine, and your point system is up to 12. So I think that's the

[1] Cartmell represented himself at trial and the sentencing hearing.

aggravating factor, because the standard sentence range does not fully consider your complete offender score.

So I agree with the prosecutor to that extent, that 60 months in custody, consecutively to the Island County Superior Court Case No. 12-1-00250-0, with all of the standard fines, fees, assessments.

. . .

So I will make that as the sentence here, sir. I wish you had been eligible for drug court. I think you could have done well there. But for one reason or another you weren't eligible for drug court. There's not much I can do about the lack of services in prison. Thank you.

RP at 11 (emphasis added).

ANALYSIS

Information—Essential Elements

Cartmell argues, "[T]he information is constitutionally deficient because it failed to specify the essential element of knowledge."[2] Appellant's Br. at 14. He contends the information must specify "at what date or time he was required to be in court." Appellant's Br. at 15.

The information states:

COUNT I—Bail Jumping

On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Island County Superior Court Cause No. Island County Superior Court No. 12-1-00250-0; contrary to Revised Code of Washington 9A.76.170.

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[2] We note that Cartmell's brief quotes only portions of the information in support of his essential elements claim:

COUNT I – Bail Jumping:

On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirements of a subsequent personal appearance before a court of this state . . . did fail to appear.

Appellant's Br. at 15.

(Maximum Penalty (Failure to appear in Class B or Class C felony case)—Five (5) years imprisonment and/or a $10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)

A charging document must allege facts that support every element of the offense charged and must adequately identify the crime charged. State v. Williams, 162 Wn.2d 177, 183, 170 P.3d 30 (2007). The purpose of this rule is to give the accused proper notice of the nature of the crime so that the accused can prepare an adequate defense. Williams, 162 Wn.2d at 183 (citing State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991)). A charging document satisfies these requirements when it states all the essential elements of the crime charged. Kjorsvik, 117 Wn.2d at 97. A challenge to the sufficiency of the charging document is reviewed de novo. State v. Campbell, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995). Where, as here, the defendant challenges the sufficiency of the information for the first time on appeal, the test for sufficiency is a liberal one: "(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the [u]nartful language which caused a lack of notice?" Kjorsvik, 117 Wn.2d at 105-06.

A person commits bail jumping when, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court, he fails to appear. RCW 9A.76.170(1). Thus, the three essential elements of bail jumping include (1) the defendant was held for, charged with, or convicted of a particular crime; (2) the defendant was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and (3) the defendant knowingly failed to appear as required. Williams, 162 Wn.2d at 183-84.

Cartmell acknowledges that the information "informed Mr. Cartmell that he was released by a court order or admitted to bail with knowledge of the requirement to appear . . . ." Appellant's Br. at 15. Contrary to Cartmell's argument, the information expressly includes the knowledge element. He also contends, with no citation to authority, that the information must also specify the hearing date and time, how and when he had been notified of the requirement to appear, and "that he had either actual or constructive knowledge that his trial date was scheduled to begin at precisely 8:30 A.M. on January 29, 2013." Appellant's Br. at 16. Cartmell cites no authority for this unique assertion. "'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.'" See State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

To the contrary, our case law indicates that the information satisfies the essential elements requirement because it mirrors the language of the bail jumping statute. It is sufficient to charge in the language of the statute if the statute defines the offense with certainty. Kjorsvik, 117 Wn.2d at 99.

When a charging document contains the essential elements, the conviction must be upheld unless the defendant shows prejudice. Kjorsvik, 117 Wn.2d at 105-06. Cartmell fails to address prejudice, and we perceive none. Cartmell fails to establish an essential elements violation or prejudice.

Drug Offender Sentencing Alternative (DOSA)

Generally, a reviewing court will not reverse a trial court's decision not to grant a DOSA sentence. State v. Grayson, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005) (citing RCW 9.94A.585(1)). Every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative considered. Grayson, 154 Wn.2d at 342. A defendant is entitled to a review of the denial of a DOSA request in order to correct a legal error or the trial court's abuse of discretion. State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003). A trial court abuses its discretion by refusing to exercise its discretion or by relying on an impermissible basis for its sentencing decision. State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997).

But while the eligibility requirements are statutorily defined, a court's determination of the appropriateness of an alternative sentence is discretionary and not reviewable. State v. Conners, 90 Wn. App. 48, 53-54, 950 P.2d 519 (1998).

Cartmell contends that the trial court "abused its discretion by relying on an improper and erroneous basis in denying a DOSA and imposing a standard range sentence." Appellant's Br. at 12. He claims that the court relied on the State's incorrect assertion that his 57-month non-DOSA sentence disqualified him from a DOSA. Appellant's Br. at 5. This contention is not supported by the record.

The court considered Cartmell's request but declined to order a DOSA given Cartmell's well documented, extensive felony criminal history and offender score of 12. The court referred to this fact as the "aggravating factor" because it yields a standard range that fails to account for Cartmell's offender score of 12.

Cartmell also argues that the court's reference to "drug court" reveals that it misunderstood the DOSA requirements. But viewed in the context of Cartmell's remarks, the court's "drug court" remarks merely respond to Cartmell's complaints about the lack of treatment options available to him:

> I did not get convicted for another felony for over eight years after that. My next felonies were for methamphetamine and stolen property. Both times I pleaded for treatment to no avail.
>
> . . . .
>
> I am a drug addict that needs help with the underlying problems that lead me to make the decisions that I make. Like I said previously, the last two times I went to prison there was no treatment offered to me. I want to get help for my mental health problems and my drug addiction so I can be a productive member of society.
>
> The only way to get into the programs that the Department of Corrections offers for sure is to be sentenced to DOSA. I ask the Court to consider sentencing under a concurrent DOSA sentence with my other charge. I feel that is just punishment and I will be able to get the help I desperately need.

RP (July 1, 2013) at 7-9.

The record fails to establish either the court's categorical refusal to exercise its discretion or an impermissible basis for the refusal to impose a DOSA. Cartmell's sentencing challenge fails.

Statement of Additional Grounds for Review

Cartmell raises additional arguments in a pro se statement of additional grounds.

Cartmell argues the trial court erred when it denied him access to a secure telephone line, access to a computer for legal research, and funds for a personal investigator. The Washington Constitution affords a pretrial detainee who has exercised his constitutional right to represent himself a right of reasonable access to resources that will enable him to prepare a meaningful pro se defense. State v. Silva, 107 Wn. App. 605, 622, 27 P.3d 663 (2001). However, deciding which specific measures are

necessary or appropriate lies within the sound discretion of the trial court. Silva, 107 Wn. App. at 622. Where constitutionally adequate means of access are provided, a defendant may not reject the method provided "'and insist on an avenue of his or her choosing.'" State v. Nicholas, 55 Wn. App. 261, 269, 776 P.2d 1385 (1989) (quoting United States v. Wilson, 690 F.2d 1267, 1271 (9th Cir. 1982). Cartmell was provided the same access under the same circumstances as all other pro se inmates held in Island County awaiting trial. He establishes no prejudice.

Cartmell argues that the trial court erred by denying his request for a continuance. We review a trial court's decision to grant a continuance for an abuse of discretion. Silva, 107 Wn. App. at 611. The trial court properly denied his continuance request.

Cartmell argues the prosecutor intentionally tried to mislead him by submitting a final copy of jury instructions to the court two days after providing him with a preliminary copy. This unsupported claim fails.

Cartmell argues the arresting officer lacked personal knowledge about his failure to appear for trial on January 29, 2013. This claim lacks merit because the officer testified from personal knowledge about arresting Cartmell on the bench warrant issued for his failure to appear at trial.

Cartmell argues that the court erred by denying his request for chemical dependency and mental health evaluations. Under RCW 9.94A.660, "a trial court need not order or consider any report in deciding whether an offender is an appropriate candidate for an alternative sentence." State v. Guerrero, 163 Wn. App. 773, 778, 261

P.3d 197 (2011). Cartmell also fails to show that he met the criteria for presentencing chemical dependency screening under RCW 9.94A.500.

Cartmell argues that the court erred by not imposing a DOSA sentence. His argument is duplicative of the argument made by counsel, so we do not address it here.

CONCLUSION

For the reasons discussed above, we affirm Cartmell's bail jumping conviction.

Jan, J.

WE CONCUR:

Leach, J.

Cox, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 70714-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent David Carman
Island County Prosecutor's Office

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: December 17, 2014

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Court of Appeals Case Number: 70714-1

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