

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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No. 96822-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 35483-1-III

Chelan County Superior Court
Cause No. 16-1-00490-4

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

DEBRA JEAN SHOEMAKER,
Defendant/Petitioner.

ANSWER TO PETITION FOR REVIEW

Douglas J. Shae
Chelan County Prosecuting Attorney

Andrew B. Van Winkle WSBA #45219
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I. Identity of Respondent and Decision Below

The State of Washington, respondent, by and through its attorney, Andrew B. Van Winkle, Deputy Prosecutor for Chelan County, asks this Court to deny review of the opinion of the Court of Appeals in *State v. Shoemaker*, No. 35483-1-III, (Unpublished) (filed January 8, 2019).

II. Counter-Statement of Issues Presented for Review

1. Has Ms. Shoemaker met her burden of showing that this case is not moot?
2. Did Ms. Shoemaker or her lawyer contest any facts during sentencing, which would have required the sentencing court to conduct an evidentiary hearing pursuant to RCW 9.94A.530(2)?

III. Statement of the Case

Ms. Debra Shoemaker pleaded guilty to burglary in the second degree and theft in the third degree. CP 37-46. The plea was based on a burglary she and a co-defendant committed against an 86 year old gentleman. CP 1-2; RP 9.

At sentencing, the State and the defendant both recommended a residential drug offender sentencing alternative (residential DOSA), based in part on Ms. Shoemaker's mental health history and the shared view that she was less culpable than her co-defendant. RP 5-6, 18-19.

However, the victim's family recommended a prison sentence. RP 15. In the end, the superior court imposed 22 months in prison, which was the high end of the standard range. CP 71.

During sentencing, Steve Myers, an attorney and family friend of the victim, addressed the court to provide the victim impact statement. RP 6-15, 22-24. Mr. Myers was intimately involved with the case throughout its 18-month saga. RP 7.

As stated by the Court, some of those facts he presented were not in the police reports acknowledged by the defendant. RP 28-29. However, he only provided facts within his personal knowledge from investigating this case with the victim's Washington lawyer, Tyler Hotchkiss, including from interviews he personally conducted with the defendant. RP 10-11.

The court did not swear Mr. Myers in as a witness, nor did any party ask to have him sworn in or to examine/cross-examine him. On appeal, the only real questions were whether the court was required—on its own initiative—to have sworn him in and conducted an evidentiary hearing pursuant to RCW 9.94A.530(2) and/or whether her lawyer committed ineffective assistance for failing to request an evidentiary hearing. Majority slip op. at 1.

Ultimately, the Court of Appeals affirmed because “[a]t no point when Mr. Myers was recounting this information did Ms. Shoemaker object or contend that some different evidentiary hearing was required.” Majority slip op. at 7. Judge Fearing dissented on the grounds that Ms. Shoemaker and her attorney did dispute some of the facts presented by Mr. Myers, thus triggering the court’s duty under RCW 9.94A.530(2). Dissenting slip op. at 10. Thus, the sole issue in front of this Court is a factual one—did the majority correctly read the report of proceedings or did the dissent correctly read the report of proceedings?

IV. Argument

Ms. Shoemaker seeks review of her sentencing (specifically denial of a DOSA sentence) under RAP 13.4(b)(3), and (4). Under RAP 13.4(b)(3) she argues that she was denied adequate due process at her sentencing hearing and thus this case presents a significant constitutional question. Under RAP 13.4(b)(4) she argues there is an issue of substantial public interest concerning how facts are decided at sentencing. The State addresses each of these grounds in the order presented after first explaining why this case is moot.

A. This Court should decline to accept review because the case is moot.

“An issue is moot if it is not possible for this court to provide effective relief. Mootness is a jurisdictional concern and may be raised at any time. When an appeal is moot, it should be dismissed.” *State v. Deskins*, 180 Wn.2d 68, 80, 322 P.3d 780 (2014).

In the present case, Ms. Shoemaker and the State both requested she receive a residential DOSA. RP 5-6, 18-19. Instead, the court sided with the victims and imposed 22 months in prison. RP 35. On appeal, Ms. Shoemaker’s sole request for relief was resentencing in front of another judge so she could make another

DOSA request. App. Br. at 33. Due to the passage of time, this Court can no longer provide that requested relief.

Ms. Shoemaker was sentenced on July 17, 2017. CP 67. She was sentenced to 22 months in prison. CP 71. This would give a maximum potential release date of May 17, 2019. But, under RCW 9.94A.729(3)(e), Ms. Shoemaker was eligible to receive up to a third of that time off in earned early release credit. As evidenced by the attached notice of infraction pertaining to Ms. Shoemaker, it is clear that she was long-ago released from prison with credit for that full 22 months. *See* Apx. A. Because Ms. Shoemaker has already served her entire sentence, this Court cannot provide her with effective relief.

In fact, resentencing Ms. Shoemaker to a DOSA at this point would only be to her detriment. That is because a residential DOSA for Ms. Shoemaker would require 2 years of supervision, meaning she would have to serve an additional 2 months of confinement¹ in the form of community custody. RCW 9.94A.664(1). Furthermore, a person is only allowed two DOSA sentences within a ten year

¹ the balance of 24 months less 22 months already served

period. RCW 9.94A.660(1)(g). Using a DOSA sentence when a person has already completed their standard range of confinement is, strategically, a waste of a sentencing alternative in the event Ms. Shoemaker commits additional felonies within the next ten years.

B. The Court of Appeals's decision does not merit review under RAP 13.4(b)(3) because the dispute in this case is factual, not constitutional.

Ms. Shoemaker seeks review of her sentence under the guise that it presents a significant question of law under either the State or Federal Constitutions. This argument for review fails because RAP 13.4(b)(3) is limited to questions requiring interpretation of specific constitutional provisions or application of specific constitutional provisions to facts or other laws. *E.g. State v. Halstien*, 122 Wn.2d 109, 115, 857 P.2d 270 (1993) (granting review under RAP 13.4(b)(3) to address constitutional vagueness and overbreadth challenges); *Spokane v. Douglass*, 115 Wn.2d 171, 176, 795 P.2d 693 (1990) (granting review to address constitutional validity of municipal ordinance).

In this case, the only true dispute is whether Ms. Shoemaker contested any facts, which would have triggered the sentencing

court's duty to conduct an evidentiary hearing under RCW 9.94A.530. Although Ms. Shoemaker made an argument in her Appellant's Brief under the heading of "due process," the true thrust of the argument under that section was the claimed statutory violation. App. Br. at 21-23.

C. The Court of Appeals's decision does not merit review under RAP 13.4(b)(4) because the fact-specific nature of this case is not a matter of substantial public interest.

Ms. Shoemaker's other reason for review is that this case "involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). She argues that this case presents an issue of substantial public interest because "To uphold procedurally defective sentencing hearings would send the wrong message to trial courts, criminal defendants, and the public.'" Pet. For Rev'w at 9-10 (quoting *State v. Ford*, 137 Wn.2d 472, 973 P.2d 452 (1999)). But, whether or not the sentence was "procedurally defective" turns on whether or not Judge Fearing was right in his dissent where he found that Ms. Shoemaker disputed facts (thus triggering the requirement for an evidentiary hearing). See Pet. for Rev'w at 8. Whether or not Ms. Shoemaker did in fact

dispute facts is not a matter of substantial public interest because all parties agree that if she did, then the sentencing court had a duty to conduct an evidentiary hearing under RCW 9.94A.530(2). Because the parties agree on the law, further resolution of this factual quibble will not have an impact on any future cases.

V. Conclusion

Based on the foregoing arguments and authorities, the State respectfully requests this Court deny review of the issues raised by Ms. Shoemaker.

DATED this 26th day of February, 2019.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney



By: Andrew B. Van Winkle, WSBA #45219
Deputy Prosecuting Attorney

Appendix

A

IN THE DISTRICT MUNICIPAL COURT OF **DOUGLAS DISTRICT COURT**
 STATE OF WASHINGTON COUNTY OF **DOUGLAS** CITY/TOWN OF _____, PLAINTIFF VS. NAMED DEFENDANT

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. (SCANNED) **SHOEMDJ384L6** STATE: **WA** EXPIRES **06-26-23** PHOTO ID MATCHED YES NO NAME: LAST **SHOEMAKER** FIRST **DEBRA** MIDDLE **JEAN** SFX _____ CDL/CLP YES NO

ADDRESS **1332 9TH ST** IF NEW ADDRESS PASSENGER CITY **WENATCHEE** STATE **WA** ZIP CODE **988011670**

EMPLOYER _____ EMP LOCATION _____ DATE OF BIRTH **06-26-62** RACE **W** SEX **F** HEIGHT **5'04"** WEIGHT **130** EYES **HAZ** HAIR **BRO** RESIDENTIAL PHONE NO. _____ CELL/PAGER PHONE NO. _____ WORK PHONE NO. _____

VIOLATION DATE ON OR ABOUT **11/04/2018 08:07** INTERPRETER NEEDED LANG: _____ AT LOCATION **SR 28** REF. TRAFFICWAY **S MARY AVE** M.P. BLOCK # _____ CITY/COUNTY OF **DOUGLAS**

DID OPERATE/PARK THE FOLLOWING VEHICLE ON A PUBLIC HIGHWAY/PROPERTY AND

VEH LIC NO **BGW5488** STATE **WA** EXPIRES **08-07-19** VEH YR **2017** MAKE **HONDA** MODEL **CR-V** STYLE **UTILITY** COLOR **WHITE**

TR #1 LIC NO _____ STATE _____ EXPIRES _____ TR #2 LIC NO _____ STATE _____ EXPIRES _____ TR YR _____

OWNER/COMPANY IF OTHER THAN DRIVER **LEWIS V MONTGOMERY** ADDRESS **2005 NE 154TH AVE MONTGOMERY, JOANN E. LSE** CITY **VANCOUVER** STATE **WA** ZIP CODE **98684**

ACCIDENT **NO** COMMERCIAL VEHICLE YES NO 16+ PASS YES NO HAZMAT YES NO EXEMPT VEHICLE FIRE LEA

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

| VEH SPEED | IN A | ZONE | <input checked="" type="checkbox"/> SMD | PACE | AIRCRAFT | VIOLATION/STATUTE CODE | DESCRIPTION | PENALTY \$ |
|-----------|------|------|---|------|----------|------------------------|--------------------------------------|------------|
| 75 | 60 | | <input checked="" type="checkbox"/> | | | 46.61.400 | SPEEDING 15 MPH OVER LIMIT (OVER 40) | 156.00 |
| | | | | | | 46.30.020 | OP MOT VEH W/OUT INSURANCE | 550.00 |
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RELATED # _____ DATE ISSUED **11-04-18** TOTAL PENALTY \$ **706.00**

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, AND I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE DESCRIBED PERSON/VEHICLE COMMITTED THE ABOVE OFFENSE(S), AND I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT.

OFFICER **TRAVIS MORLEY** # **DO25** OFFICER # _____

TICKET SERVED ON VIOLATOR TICKET REFERRED TO PROSECUTOR
 TICKET SENT TO COURT FOR MAILING

NOTICE OF INFRACTION
 This is a non-criminal offense for which you cannot go to jail.
YOU MUST RESPOND WITHIN FIFTEEN (15) DAYS FROM THE DATE ISSUED.
 Your response must be postmarked by midnight of the day it is due at the court.
 If you do not respond or appear for court hearings:

The court will find that you committed the infraction; your penalty may be increased; failure to pay may result in a referral of your case to a collection agency; AND if
TRAFFIC (see front of Notice of Infraction) You may lose your driver's license/privilege.
NON-TRAFFIC (see front of Notice of Infraction) It is a crime and will be treated accordingly.
PARKING (see front of Notice of Infraction) May result in the refusal of DOL to renew the vehicle registration.

Check one of the 3 boxes to the right, sign, date, and mail this form to:
 Court contact information:
 Phone 1: (509)884-3536
 Website: <http://www.douglascountywa.net>
 Deferred Infraction Info, see website. Fax 509.884.5973.
 Credit card: www.douglascountywa.net or 800.701.8560 + 7% fee
DOUGLAS DISTRICT COURT
110 2ND STREET NE STE 100
EAST WENATCHEE WA 98802

I have enclosed a check or money order, in U.S. funds, for the amount listed. I understand this will go on my driving record if "traffic" is checked. DO NOT SEND CASH. NSF checks will be treated as failure to respond.
 Mitigation Hearing. I agree I have committed the infraction(s), but I want a hearing to explain the circumstances. Please send me a court date, and I promise to appear on that date. I know I can ask witnesses to appear but they are not required to appear. I understand this will go on my driving record if "traffic" is checked. The court may allow time payments or reduce the penalty where allowed by law.
 Contested Hearing. I want to contest (challenge) this infraction. I did not commit the infraction. Please send me a court date, and I promise to appear on that date. The state must prove by a preponderance of the evidence that I committed the infraction. I know I can require (subpoena) witnesses, including the officer who wrote the ticket to attend the hearing. The court will tell me how to request a witness's appearance. I understand this will go on my driving record if I lose and "traffic" is checked.
NOTICE: You may be able to enter into a payment plan with the court under RCW 46.63.110.

My mailing address is: (PLEASE PRINT)
 Name: _____
 Street or PO Box _____ Apt: _____
 City: _____ State: _____ Zip Code: _____
 Telephone: _____ Email: _____
 Is interpreter needed? Language: _____
 X: _____ (SIGNATURE): **8Z1057642**

INFRACTION # 8Z1057642 DCSS IT
 SHOEMAKER, DEBRA J 062662

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DEBRA JEAN SHOEMAKER,

Petitioner.

) No. 96822-5

) Court of Appeals No. 35483-1-III

) DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 26th day of February, 2019, I caused the original ANSWER TO PETITION FOR REVIEW to be filed via electronic transmission with the Supreme Court of the State of Washington, and a true and correct copy of the same to be served on the following in the manner indicated below:

Jennifer J. Sweigert
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1908 E. Madison Street
Seattle, WA 98122-2842
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- U.S. Mail
- Hand Delivery
- E-Service Via Appellate Courts' Portal

Debra Jean Shoemaker #823888
c/o Eleanor Chase House
427 W. 7th Avenue
Spokane, WA 99204

- U.S. Mail
- Hand Delivery
- E-Service Via Appellate Courts' Portal

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Signed at Wenatchee, Washington, this 26th day of February, 2019.



Cindy Dietz
Legal Administrative Supervisor
Chelan County Prosecuting Attorney's Office

CHELAN COUNTY PROSECUTING ATTORNEY

February 26, 2019 - 11:26 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96822-5
Appellate Court Case Title: State of Washington v. Debra Jean Shoemaker
Superior Court Case Number: 16-1-00490-4

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