

64136-1

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NO. 64136-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ALSETH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

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DIVISION ONE
SEATTLE, WA

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A. ASSIGNMENT OF ERROR.

The trial court improperly denied William Alseth a Drug Offender Sentence Alternative (DOSA) by considering nonstatutory factors to determine his eligibility.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

A sentencing court must consider a request for a DOSA sentence and may not deny such a request based on a misunderstanding of the law or by failing to consider mandatory statutory criteria. Here, although Mr. Alseth met the statutory eligibility requirements, the trial court refused to impose a DOSA. Did the court deny Mr. Alseth a DOSA on an impermissible basis?

C. STATEMENT OF THE CASE.

Mr. Alseth was convicted following guilty pleas to several counts of theft of a motor vehicle. CP Because of his drug addiction, Mr. Alseth requested the court impose a DOSA. Although Mr. Alseth met the statutory eligibility requirements, the trial court denied his request for a DOSA. 9/4/09 RP 17

D. ARGUMENT.

BY RELYING ON NONSTATUTORY FACTORS TO DENY MR. ALSETH'S REQUEST FOR A DOSA THE COURT ABUSED ITS DISCRETION AND A NEW SENTENCING HEARING IS REQUIRED.

1. The court must consider the mandatory sentencing criteria when determining whether to impose a DOSA. "A trial court only possesses the power to impose sentences provided by law." In re the Personal Restraint Petition of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Consistent with this general limitation on a court's sentencing authority, the DOSA statute structures a court's authority when considering a DOSA. State v. Grayson, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005). The program authorizes trial judges to give eligible nonviolent drug offenders a reduced sentence, treatment, and increased supervision in an attempt to help them recover from their addictions. See generally RCW 9.94A.660; Department of Corrections, Drug Offender Sentencing Alternative Fact Sheet.¹

If the court determines a DOSA is appropriate, the court shall waive a standard range sentence and impose a sentence

¹ Available at:
<http://www.doc.wa.gov/aboutdoc/docs/p351ddosafactsheetsinglesheet.pdf>
(explaining DOSA program administered by DOC).

which is one-half the midpoint of the standard range sentence in prison receiving chemical dependency treatment. RCW 9.94A.660(5)(a). Once the defendant has completed the custodial part of the sentence, he is released into closely monitored community supervision and treatment for the balance of the sentence. RCW 9.94A.660(2). The defendant has a significant incentive to comply with the conditions of a DOSA, since failure may result in serving the remainder of the sentence in prison. RCW 9.94A.660(8)(c); Grayson, 154 Wn.2d at 338.

The statute provides the court with mandatory criteria to evaluate in determining eligibility. RCW 9.94A.660.

An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under

chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense

Mr. Alseth satisfied these eligibility requirements. The State never argued Mr. Alseth failed to meet these statutory criteria. Instead, the State initially argued the court should deny Mr. Alseth's request because the State contended he did not have any prior drug convictions, which the State at least implied was necessary to establish a drug problem. 9/4/09 RP 6. After the trial court pointed out to the deputy prosecutor that Mr. Alseth had at least one prior drug conviction, as indicated in the State's presentence report, the State altered its argument to contend the trial court was required to find a DOSA would benefit the community and Mr. Alseth. 9/4/09 RP 6-7. This finding, the State opined, required the court to find "in other words, there would be some reduction in crime because of the granting of the DOSA." Id at 7. The court concluded A DoSA

as not appropriate for Mr. Alseth . Yet, each of the State's contentions is incorrect.

First, RCW 9.94A.660 is silent as to a limitation of DOSA to drug offenses which requires some minimum prior history of drug offenses. Indeed, 1999 amendments of the DOSA statute were intended specifically to expand the alternative beyond drug crimes. See Laws 1999, ch 197, §4. Second, 2005 amendments of RCW 9.94A.660 eliminated the requirement that a court conclude a DOSA will benefit the community and offender. See Former RCW 9.94A.660(2) amended by Laws 2005, ch. 460 § 1. Every legislative act is presumed to serve a material purpose. State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002). Thus, because the Legislature eliminated the community-benefit criteria it must be that is no longer a requirement of a DOSA. Third, there is no explicit requirement in RCW 9.94A.660 that a drug addiction is prerequisite to a DOSA.

Mr. Alseth met the statutory eligibility requirements. The decision to deny his request resting upon the nonstatutory considerations was an abuse of the trial court's discretion.

2. Because the trial court abused its discretion this Court should reverse Mr. Alseth's sentence. Generally, a trial court's decision to deny a DOSA is not reviewable. Grayson, 154 Wn.2d at 338. But every defendant is entitled to ask the trial court for meaningful consideration of a DOSA request. Id. at 342. A party may challenge a trial court's failure to exercise discretion where the trial court categorically or unreasonably denies a DOSA sentence. Id.; State v. White, 123 Wn.App. 106, 114, 97 P.3d 34 (2004).

A court abuses its discretion by using the wrong legal standard or by resting its decision upon facts unsupported by the record. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (quoting Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993)); see also State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993) (failure to follow statutory procedure is legal error reviewable on appeal). “[T]rial judges have considerable discretion under the SRA, [but] they are still required to act within its strictures and principles of due process of law.” Grayson, 154 Wn.2d at 338.

In this case, court did not find Mr. Alseth failed to satisfy the statutory criteria for a DOSA. Instead, the court relied upon an undefined standard of appropriateness to deny him a DOSA. The

court's failure to limit its consideration of a DOSA to the statutory criteria requires of reversal Mr. Alseth's sentence. Mr. Alseth is entitled to resentencing at which a court gives proper consideration to the guidelines for imposing a DOSA sentence.

E. CONCLUSION.

For the foregoing reasons, Mr. Alseth respectfully requests this Court remand his case for a new sentencing hearing.

Respectfully submitted this 5th day of March 2010.



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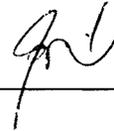
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