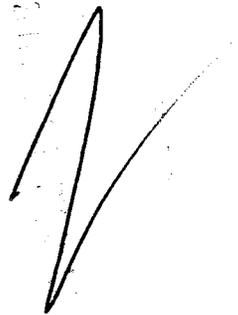


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IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON Respondent,  
  
v.  
CHRISTOPHER MAZDRA Appellant,

NO. 65969-3-I

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, Christopher Mazdra, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in the brief. I understand the court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

SEE ATTACHED

Additional Grounds 2

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SEE ATTACHED

If there are additional grounds, a brief summary is attached to this statement

Date: April 25, 2011

Signature: 

#### ADDITIONAL GROUND #1

The Trial Court failed to hold a treatment termination hearing prior to the anticipated treatment completion date. Pursuant to RCW 9.94A.670(6) (2002) a treatment termination hearing was supposed to have been scheduled during the sentencing hearing, in May, 2006 for three months prior to the anticipated treatment completion date. As referenced in the Sex Offender Treatment Provider's Progress report the treatment termination completion date was to have been December 11, 2009. Therefore, a treatment termination hearing should have been scheduled for September 2009 by the trial court.

#### ADDITIONAL GROUND #2

The trial court erred in not considering other possible probation violation sanctions as an alternative to revocation of the SSOSA. I do realize that the trial court has the power to revoke the SSOSA at any time, reinstating the original sentence. However, pursuant to RCW 9.94A.737- If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit spent in community custody or in detention awaiting disposition of an alleged violation, and "subject to the limitations of subsection (2) of this section. RCW 9.94A.737(2)- For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days confinement in a local correctional facility for each violation. Originally DOC wanted to sanction me to sixty days, but then reversed its decision asking for revocation, in which the Trial Court agreed, without considering other possible sanctions as an alternative to revocation of the SSOSA.

### ADDITIONAL GROUND #3

The Trial Court, relied on the notice of violation reports, from the Department of Corrections, at the SSOSA Revocation hearing, without testimony from any witnesses to provide corroborating evidence that the violations occurred. The reporting parties that reported the alleged violations, were "anonymous." Therefore, both my Washington State, and U.S. Constitutional right to confront witnesses, were violated, according to Crawford v. Washington 124 S.Ct. 1345<sup>5400</sup> (2004) 541 U.S. 36, 158 L.ed.2d 177, Melendez-Diaz v. Massachusetts 129 S.Ct. 2527 (2009), State v. Rohrich 82 Wn.App.674, 918 p.2d 512, 132 Wn.2d 472, 939 p.2d 697, State v. Parris 98 Wn.2d 140, 654 p.2d 77, State v. Clark 139 Wn.2d 152, 985 p.2d 377, and Washington Constitution Article 1 (22).

### ADDITIONAL GROUND #4

The Violations that resulted in the revocation of the SSOSA were "treatment issues" that could have been addressed in treatment. They are unenforceable, and vague as they were not crime related prohibitions, according to State v. Bahl 164 Wn.2d 782 739, State v. Riles 135 Wn.2d 326, 347-51, 957, p.2d 655, and State v. Valencia 169 Wn.2d 782.

When the violations came to light in May 2010, both the Sex Offender Treatment Provider and myself, agreed to put me back into group to address the violations. When the 5th violation was addressed by DOC in August 2010, the Sex Offender Treatment Provider and I, revised and rewrote my treatment contract, along with also adding an addendum that would have intensified therapy along with other conditions, and that would also keep me in treatment for the duration of my DOC supervision.

#### ADDITIONAL GROUND #5

August 19, 2010 my SSOSA revocation hearing was held in Island County Superior Court, and I have noted the following errors here: Deputy Prosecuting Attorney Eric Ohme stated that I forced trial, and forced the victim to testify. (Pg. 3 Line 19-21 SSOSA REVOCATION TRANSCRIPT) How could I force trial, if I never wanted to even go to trial, and wanted a plea agreement? He also mentioned, that it was part of my DOC conditions to report my relationship with my girlfriend to my CCO (Pg. 5 Line 18-22 SSOSA REVOCATION TRANSCRIPT) It was part of my Sex Offender Therapy Treatment Contract that I report the relationship to my Sex Offender Treatment Provider, but not to my CCO. My judgement and sentence required that I do not date women, or form relationships with families who have minor children. My girlfriend's daughter turned 18 in March, and the relationship started in May. Eric Ohme also spoke about my "alleged mental deficiencies." (Pg. 19 Line 23 through Pg. 20 Line 2 SSOSA REVOCATION TRANSCRIPT) I have suffered learning defecits and other mental impairments my entire life which is why the SOTP thought that I had gotten all I could from group but I was unfortunately unable to apply it to my everyday life, due to my defecits. I attended weekly individual group sessions, with monthly individual sessions, never missing a single one, finishing group in December 2009. I then started meeting with my SOTP in January, 2010 once every two weeks, as a "follow up" to see how things were going in my life. Upon learning of the viciations, my SOTP and I agreed to bring me back into group to address the issues. When the 5th viciation came to light, we agreed that these were "treatment viciations" that could be addressed in group, as the group I had been attending was a "special needs" group" that fit me because of my mental impairments.

#### ADDITIONAL GROUND #6

This ground, addresses credit for all time spent on community custody from May 2006 until August 2010, under RCW 9.94A.737, RCW 9.94A.670, or equal protection guarantees as found in State v. Gartrell 138 Wn.App.787,158 P.3d 636. Here, my community custody time was not properly awarded on my SSOSA revocation. The time that I served under DOC's jurisdiction and control, (since the DOC operates as a quasi-judicial entity) wherever and however while subject to DOC's control and restraint on my free movement and liberty, was time successfully served on the court's imposed judgement and sentence, no matter what, the sentence equates to time served toward the overall and total sentence.

As an analogy, a DOSA and SSOSA sentence, are both suspended sentences that require a period of total confinement, followed by a period of community custody for treatment within the community. However, if a DOSA sentence is revoked for an alleged violation of community custody they receive full credit for all time spent on community custody, whereas in a SSOSA revocation, the courts deny credit for all time served on community custody.

#### ADDITIONAL GROUND #7

A hearing before an impartial DOC board to determine guilt or innocence of the community custody violations was never held prior to the SSOSA revocation hearing in August 2010. Therefore, due process was statutorily violated, by both the State and DOC centered on RCW 9.94A.205, RCW 9.94A.207, and the 9th Circuit case, Valdivia v. Schwarzenegger 548 F.Supp.2d 852, 603 F.Supp.2d 1275. In the 9th Circuit case, the court established the necessity of the two-part hearing process. The issue of due process, two-step revocation process and the right to confront complaining/reporting witnesses is

referenced in L.H. v. Schwarzenegger 519 F. Supp 2.d 1072, as well as Valdivia v. Davis 206 F.Supp.2d 206. In my SSOSA case, I did not have the two step hearing process before an impartial DOC Board, and then the Court. I received the notice of violation report dated August 10, 2010 and the revocation hearing was held on August 19, 2010.

#### ADDITIONAL GROUND #8

The Trial Court forced the case to go to trial, even though the defense was not ready to proceed. The court informed the defense on February 8, 2006 that the case was going to trial, despite the defense's request for extension of time to gather more evidence or documentation. I had been very persistent from August 2005, till May 2006 that I did not want to go to trial, and I even repeatedly instructed my attorney that I did not. A plea bargain was never offered, and the trial proceeded February 9, 2006.

#### ADDITIONAL GROUND #9

The Trial Court denied the defense's request at trial, my parents wanting to testify about my disabilities. (Pg. 39 Line 1-8, Pg. 39 Line 6-11 VERBATIM REPORT OF PROCEEDINGS VOL I) as my parents were "not medical experts."

#### ADDITIONAL GROUND #10

A psychosexual deviancy evaluation, written by Dr. Michael Comte in April 2006, stated "prison programs are not designed to assist a person like Chris." "That there would be no long term gain from Chris going to prison." (Pg. 16 Line 16-18 SSOSA REVOCATION TRANSCRIPT). Dr. Comte wondered why the case was not referred for a SSOSA prior to trial, or why it even went to trial in the first place.

### Additional Ground #11

Here, I would just like to mention the numerous problems that I had with both of my assigned Community Corrections Officers (CCO) Helen Desmond, and Lisa Lee while I was on supervision from May 2006, until August 2010. At the Sex offender notification meeting upon my release in May 2006, CCO Desmond informed both my parents, and aunt and uncle that she would help me in any way she could, and even approve them as approved chaperones. She never followed through stating later that she doesn't normally have parents as chaperones. In February 2007, she telephoned a prospective treatment provider, Paul Douhan, informing him that I had violated the conditions of my SSOSA. Mr. Douhan informed CCO Desmond that he was declining me into his private practice, stating that I would not successfully complete the SSOSA program in a letter dated February 28, 2007 (Exhibit 1) In October 2008, CCO Desmond inquired as to if I had attended a high school football game, informing me that she had a written statement saying that I had been seen there. I was asked to submit to a polygraph, and I asked if I could have the name of the person who had written the statement. CCO Desmond said that I could if I passed. Two days later, I took the polygraph at the Oak Harbor DOC office and passed. When I asked CCO Desmond if I could have the name, she said No even though I had passed the polygraph.

CCO Desmond, also told my mother to take my monthly SSI payment and put them into an account, separate from my checking account as where SSI could not find or keep track of it. SSI requires receipts of all purchases, and allows a maximum balance of \$2000.00 in the account.

CCO Lisa Lee, in January 2010, telephoned the Island County Superior Court, to inquire about the completion of my sex offender treatment. The court never returned with the information regarding the completion of treatment, and she never followed up. CCO Lee discussed with my mother on getting me tested for Bipolar, Asperger's Syndrome, or Autism and never followed up on that as well.. In August 2010, she interrupted me, as I was trying to explain a part of something that was related to the investigation of the violations, telling me to "shut your mouth, and put your listening ears on."

Also during the investigation into one of the violations, CCO Lee went to the apartment complex of my now ex-girlfriend, to speak to her. When she was unable to speak with her, CCO Lee spoke to the apartment complex manager, informing the manager of my status as a Sex Offender. The manager made it so where I could not set foot on the property again.

I found this out, through my friend that lives there, who had told me that the police had been at the apartment complex looking to speak with my girlfriend, and he informed me that the manager had told him that I was not allowed to be on the property again. When I called my girlfriend, she informed me that it wasn't the police that had been to her apartment, but my CCO. I brought it up the next day to CCO Lee, and when I told her about the information that I had found out, she told me "You think that I just might have had a hand in that." in a very rude and disrespectful manner.

CONCLUSION

For the reasons presented in Counsel's opening, and supplemental brief's and pleading, this Court should vacate the trial court's order that revokes the SSOSA.

However, in the alternative, this Court should consider the forgoing Statement of Additional Grounds for Review and individually or collectively determine that there was a procedural error, and that the sentence does not satisfy the doctrine of proportionality for the facts presented, that due process requires vacation of the sentence, so the Court can not have a reasonable assurance that justice has been done in this case. Therefore, this Court, should vacate the underline Judgement and Sentence order of August 19, 2010 in Island County Superior Court, that revokes the Special Sex Offender Sentencing Alternative.

DATED this 25<sup>th</sup> day of April, 2011

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Christopher Mazdra", written over a horizontal line.

Christopher Mazdra, Appellant

# Paul Douhan, M.S.W.

Certified Sex Offender Treatment Provider and Licensed Independent Clinical Social Worker

\*\*\*\*\*

Office: 117 N. 1<sup>st</sup> Street, Suite 46, Mt. Vernon WA 98273

Tel/Fax: (360) 336-2626 \* Email – [pauldouhanmsw@telus.net](mailto:pauldouhanmsw@telus.net)

\*\*\*\*\*

Individual, Group, and Family Therapy \* Specialized Evaluations, Staff Training, Program Consultation

February 28, 2007

Helen Desmond  
Community Corrections Officer 2  
499 NE Midway Blvd. #1  
Oak Harbor, WA 98277

RECEIVED

MAR 5 2007

DEPARTMENT OF CORRECTIONS  
OAK HARBOR OFFICE

Re: Chris Mazdra  
DOC#:891924

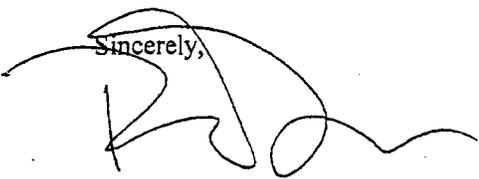
Ms. Desmond,

I am writing to officially inform you that I have declined to accept Chris Mazdra into my private practice under his SSOSA sentence. I met with Chris and his father on February 22, 2007 and discussed the possibility of my providing SSOSA treatment to him. We discussed some of his legal history and difficulty finding a SSOSA treatment provider. Chris and his father both explained that transportation and paying for treatment may be a problem given that Chris could be in SSOSA treatment for several years. Based on our conversation I told them that I was willing to provide treatment to Chris on a trial basis for the next four to six weeks and if I did not find out any new information which might sway my decision or if they failed to attend and pay for each scheduled session then I would consider petitioning the court to allow me to provide Chris' court ordered SSOSA treatment.

On the Friday following my meeting with Chris and his father, you telephoned me and brought to my attention the fact that in December 2006, Chris had violated his probation sentence by attending church and sitting with several teenage girls. As you informed me, Chris did this repeatedly despite his knowing that this was against his probation conditions. In my opinion, this kind of flagrant violation of probation conditions along with his frequent blaming others for his problems and behaviors and his failure to secure SSOSA treatment over the last number of months suggests that Chris would probably not successfully complete the SSOSA program.

For these reasons, I will **not** provide SSOSA treatment to Mr. Chris Mazdra at this time and I do not feel he is an appropriate candidate for the SSOSA program. Please let me know if you have any questions.

Sincerely,

  
Paul Douhan, M.S.W.  
Certified Sex Offender Treatment Provider

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 65969-3-1
	)	
CHRISTOPHER MAZDRA,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 26<sup>TH</sup> DAY OF APRIL, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **STATEMENT OF ADDITIONAL GROUND FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ISLAND COUNTY PROSECUTING ATTORNEY  
P.O. BOX 5000  
COUPEVILLE, WA 98239

**SIGNED** IN SEATTLE WASHINGTON, THIS 26<sup>TH</sup> DAY OF APRIL, 2011.

x *Patrick Mayovsky*