

COURT OF APPEALS  
DIVISION II

No. 39136-8-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON  
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DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

OSCAR CHURCHILL,

Appellant.

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

The Honorable Carol Murphy, Judge  
Cause No. 06-1-00838-7

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BRIEF OF RESPONDENT

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Carol La Verne  
Attorney for Respondent

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court abused its discretion in revoking Churchill's SSOSA where Churchill knew of the consequences of violating his SSOSA, was found to have prior violations, where he was found to have violated it again by contacting M.Y., and where he was making poor progress in the SSOSA program.

2. Whether the revocation of Churchill's SSOSA should be reversed because of the state's untimely filing of written Findings of Fact and Conclusions of Law following Churchill's revocation hearing.

B. STATEMENT OF THE CASE.

The State accepts Appellant's statement of the case.

C. ARGUMENT.

1. The trial court's revocation of Churchill's SSOSA was not an abuse of discretion where Churchill knew of the consequences of violating his SSOSA, was found to have prior violations, where he was found to have violated it again by contacting M.Y., and where he was making poor progress in the SSOSA program.

In this case, the trial court properly revoked Churchill's Special Sex Offender Sentencing Alternative (SSOSA). RCW 9.94A.670 provides for a sentencing alternative for sex offenders fitting certain criteria. The statute also allows the court to "revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) the offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory

progress in treatment.” RCW 9.94A.670(11). “An offender’s SSOSA may be revoked at any time if a court is reasonably satisfied that an offender has violated a condition of his suspended sentence or failed to make satisfactory progress in treatment.” State v. Dahl, 139 Wn.2d 678, 683; 990 P.2d 396 (1999).

Revocation of a SSOSA is reviewed for abuse of discretion. State v. Ramirez, 140 Wn. App. 278, 290; 165 P.3d 61 (2007). A reviewing court will find an abuse of discretion when the trial court’s decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. State v. Dixon, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006), citing State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A decision is based “on untenable grounds” or made “for untenable reasons” if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. Id. A decision is “manifestly unreasonable” if the court, despite applying the correct legal standard to the supported facts, adopts a view that “no reasonable person would take,” and arrives at a decision “outside the range of acceptable choices.” Id.

The trial court did not abuse its discretion by revoking Churchill’s SSOSA. The court based its decision to revoke the SSOSA on a number of factors. One such factor was the violation

that it found at the revocation hearing, which was contact with a minor on or about September 28, 2008. [RP 221-22]. The court's finding of a violation was supported by record, and particularly by the testimonies of M.Y., Michael Boone, and others. [RP 221]. The other factors supporting the court's decision to revoke included Churchill's knowledge that any deviation from his SSOSA requirements is "a big deal," his prior violations of his SSOSA, and his less than stellar progress in the SSOSA program. The trial court's decision cannot be said to be "manifestly unreasonable" because a reasonable person could have found a basis to revoke the SSOSA under these concerning circumstances.

2. The revocation of Churchill's SSOSA should not be reversed despite the State's untimely filing of written Findings of Fact and Conclusions of Law following Churchill's revocation hearing.

The appellant maintains that written findings of fact and conclusions of law are required by the Washington Supreme Court when a trial court revokes a SSOSA and imposes the original sentence. He cites to State v. Abd-Rahmaan, 154 Wn.2d 280, 111 P.3d 1157 (2005), and State v. Dahl, 139 Wn.2d 678, 990 P.2d 396 (1999). Neither of those cases requires the trial court to enter written findings of fact and conclusions of law.

State v. Abd-Rahmaan is a case which the defendant challenged hearsay statements used to support a finding that he violated the conditions of his community placement. In discussing the lack of a record to justify admitting the hearsay evidence, the court said:

Although written findings are useful, trial courts are not required to make written findings establishing good cause to admit hearsay evidence in sentence modification hearings; however, appellate courts require some record explaining the evidence on which the trial court relied and the reasons for the admission of the hearsay evidence. These requirements are necessary in order for an appellate court to ascertain whether there is substantial evidence to support the trial court's decision to modify a sentence.

Abd-Rahmaan, 154 Wn.2d at 290.

In State v. Dahl, the defendant challenged the revocation of his SSOSA, also on the grounds that impermissible hearsay evidence had been admitted and relied upon by the trial court. The Supreme Court first reviewed the principles behind a hearing to revoke a suspended sentence: It is not a criminal proceeding, the defendant has only minimal due process rights, unlike at trial, and sex offenders facing a SSOSA revocation have the same minimal due process rights as other offenders facing revocation of probation or parole. Dahl, 139 Wn.2d at 683. After finding that the trial court

had not made an adequate record of the basis for its decision, the court said:

Due process requires that judges articulate the factual basis of the decision. . . . Where the trial judge fails to do so, the decision is not amenable to judicial review. . . . Although oral rulings are permitted, we strongly encourage judges to explain their reasoning in written findings.

Id., at 689.

It is clear from these cases that while written findings and conclusions are preferable because they ensure an adequate record for review, they are not required. Where written findings and conclusions are not required, the lack of them should not justify reversal of a conviction. What is required is a record in the court below of the reasons for that court's decision, and such a record exists in this case. Churchill was able from the trial record to file his opening brief, citing to the transcript of the revocation hearing to support his argument that the revocation was based on untenable reasons. See Churchill's opening brief 6-7.

Churchill cites to several other cases as authority for various propositions to support his argument, but those holdings are taken out of context. For example, he cites to State v. Portomene, 79 Wn. App. 863, 905 P.2d 1234 (1995), for the proposition that the

State, as the prevailing party, has the obligation to present findings and conclusions, although the court shares the responsibility for making a complete record. Appellant's Brief 9. However, Portomene is a decision concerning a bench trial, where written findings and conclusions are required by a court rule, CrR 6.1(d). Similarly, State v. Reynolds, 80 Wn. App. 851, 912 P.2d 494 (1996), which Churchill cites for the proposition that error cannot be predicated on the oral decision of the trial court, is a case involving an exceptional sentence. In that event, written findings and conclusions are required by statute, RCW 9.94A.535. In State v. Witherspoon, 60 Wn. App. 569, 805 P.2d 248 (1991), which he cites for the statement that a court cannot ignore the absence of findings and conclusions, the decision being reviewed was a juvenile fact finding and adjudication. There also a court rule, JuCR 7.11(d), requires findings and conclusions when the adjudication is appealed.

There is no statute, court rule, or case authority that requires written findings of fact and conclusions of law to be entered when a SSOSA is revoked. Churchill was not prejudiced by the absence of written findings and conclusions; he was able to identify and argue his issues in his opening brief. Even though they are not required,

the State did arrange for such findings and conclusions to be entered. [CP 103-05] Untimely written findings will not require reversal as long as the defendant is not prejudiced and the State does not tailor the findings to meet the issues raised in the appellant's brief. State v. Lopez, 105 Wn. App. 688, 693, 20 P.3d 987, *review denied*, 144 Wn.2d 1016 (2001). A review of the findings and conclusions in this instance shows that they mirror the oral findings and conclusions of the trial court.

D. CONCLUSION.

The trial court did not abuse its discretion in revoking Churchill's SSOSA. The revocation should not be reversed due to the State's untimely filing of Findings of Fact and Conclusions of Law. Therefore, the State respectfully requests this court to affirm the revocation of Churchill's SSOSA.

Respectfully submitted this 24<sup>th</sup> day of November, 2009.



\_\_\_\_\_  
Carol La Verne, WSBA# 19229  
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent, on all parties or their counsel of record on the date below as follows:

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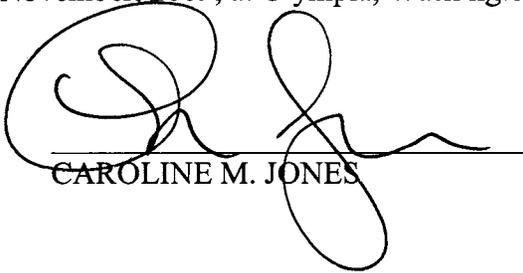
AND

PATRICIA ANNE PETHICK  
ATTORNEY AT LAW  
PO BOX 7269  
TACOMA WA 98417

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II  
BY: *em*  
DATE: \_\_\_\_\_

I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 24 day of November, 2009, at Olympia, Washington.

  
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CAROLINE M. JONES