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JUN 24 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. ~~27829-8-III~~
40063-4-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

PAULETTE MELVILLE,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT.

After reviewing Paulette Melville's *pro se* motion to review her sentence, the court appointed an attorney to represent her. The appointed attorney never filed a notice of appearance or performed any work on the case and the court denied her resentencing request. Counsel's failure to engage in any advocacy or representation on behalf of Melville denied Melville her rights to counsel and due process of law. Furthermore, the court's denial of Melville's motion to revise her sentence is unreasonable and should be reconsidered after remand, upon the appointment of competent counsel.

B. ASSIGNMENTS OF ERROR.

1. Melville was denied her right to counsel and due process of law under the Sixth and Fourteenth Amendments, Washington Constitution, Article I, section 3 and 22, and CrR 3.1.

2. The court abused its discretion and acted without legal authority in denying a drug offender sentencing alternative (DOSAs) based on untenable grounds and contrary to the statutory criteria.

3. The court's finding of fact 6 is not supported by substantial evidence.¹

4. The court's finding of fact 7 is not supported by substantial evidence to the extent it contains findings of fact rather than conclusions of law.

5. The court's finding of fact 8 is not supported by substantial evidence.

6. The court's finding of fact 9 is not supported by substantial evidence to the extent it contains findings of fact rather than conclusions of law.

7. The court's finding of fact 10 is not supported by substantial evidence to the extent it contains findings of fact rather than conclusions of law.

8. The court's finding of fact 1 is not supported by substantial evidence.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. The appointment of counsel is meaningless unless counsel provides actual, competent assistance. Here, although the court appointed an attorney to represent Melville, the attorney never filed a notice of appearance, sought any hearings, filed any

¹ The court's findings of fact entered on December 31, 2008, are

motions, advised Melville of the proceedings, or did any apparent work on Melville's behalf. When Melville was completely denied assistance from counsel, should this Court remand the case for further proceedings with the assistance of competent counsel?

2. The trial court has discretion in whether to grant a DOSA sentence but must exercise that discretion reasonably and by following all pertinent legal criteria. Was the court's decision denying Melville an opportunity for drug treatment unreasonable and predicated on factual and legal errors?

D. STATEMENT OF THE CASE.

Paulette Melville was convicted of three counts of possession of controlled substances, Class C felonies, and one count of possession of oxycodone with intent to deliver, a Class B felony. CP 17-33 (Judgment and Sentence). The court calculated her criminal history as "10" and imposed a 120-month sentence, which is the top of the standard range and the statutory maximum for a Class B felony, with concurrent sentences for the lesser offenses. CP 17-33 (Judgment and Sentence). The court also imposed community custody of 9-12 months for all offenses. Id. at 8.

attached hereto as Appendix A.

Melville filed a *pro se* motion to revise her sentence based on the court's failure to consider a request for a DOSA or her attorney's failure to pursue a DOSA despite her eligibility. CP 43-73. After a telephonic hearing with Melville and the prosecutor, the trial court appointed an attorney to represent Melville in her post-sentencing request. 7/2/08RP 8-9.² The court entered a written order appointing attorney Paul Wesson to represent Melville and the court told Melville her attorney would discuss the case with her and would pursue her claims on her behalf. CP 86-87; 7/2/08RP 9.

Two months after the court appointed an attorney, Melville sent a letter to the court explaining that Wesson had not discussed the case with her despite her numerous letters and efforts to contact him. CP 275-76. The court directed Wesson to speak to Melville. CP 274. In the meantime, Melville filed an amended *pro se* motion and declaration, further explaining her request for a DOSA and offering additional evidence of her rehabilitation efforts while incarcerated. CP 272-73.

Two months later, Melville sent another letter to the court, complaining that Wesson spoke with her one time on the

² The verbatim report of proceedings (RP) from the post-judgment hearing and the original sentencing hearing are referred to herein by the date of proceeding followed by the page number. The sentencing transcript is also

telephone, asked her to send materials to him, and never again contacted her. CP 295-97. Melville requested another lawyer based on Wesson's lack of effort on her behalf. The court did not respond to the letter.

On December 31, 2008, the court entered a written ruling denying Melville's request for a DOSA. CP 277-81. Melville did not receive a copy of the court's order until she wrote again to the court asking about the status of her case and the court responded that it had already ruled. CP 298. Melville timely filed a pro se notice of appeal from the court's order. CP 282-88. Pertinent facts are addressed in further detail in the relevant argument section below.

contained in the record at CP 88-262.

E. ARGUMENT.

1. MELVILLE WAS DENIED HER RIGHT TO THE ASSISTANCE OF COUNSEL IN HER REQUEST FOR RELIEF FROM JUDGMENT

The trial court found that Melville timely filed a motion to revise her sentence and there was good cause to appoint counsel to represent her. CP 86, 277. Melville was in prison some distance from the courthouse and had limited access to legal materials or the courts. 7/2/08RP 8, 11. Despite the court order appointing counsel, no attorney ever filed a notice of appearance or proffered any argument to the court on Melville's behalf. Because the court order appointing counsel was never obeyed or enforced and no attorney ever assisted Melville, she was denied counsel and the case must be remanded for further proceedings.

a. The trial court's appointment of counsel triggered a right to the meaningful assistance of counsel. Under the Sixth Amendment and the express provisions of the Washington Constitution, Article I, § 22, all accused persons have the right to "appear and defend in person or by counsel." Wash. Const. Art. I, § 22. The Fifth and Sixth Amendments, as well as the right to due process, similarly, albeit less explicitly, mandate that an accused or convicted person has the right to be present at all critical stages of

a criminal proceeding. Kentucky v. Stincer, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987); U.S. Const. amends. 5, 6, 14. Sentencing is a critical stage of a criminal proceeding, and when counsel provides no assistance whatsoever, it constitutes a presumptive denial of the right to counsel. United States v. Cronin, 466 U.S. 648, 659 n.25, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).

The court appointed an attorney to assist Melville with a post-sentencing motion to amend the sentence. CP 86-87. Although Melville had already been sentenced, the court treated the motion as a request to revise the sentence under CrR 7.3. CP 277. CrR 7.8 also applies to post-judgment motions and authorizes the appointment of counsel under CrR 3.1, which provides that counsel shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review.” CrR 3.1(b)(2). In addition to the constitutional right to be present and represented by counsel at this stage of the proceedings, Melville had the procedural right to the assistance of counsel. State v. Templeton, 148 Wn.2d 193, 216, 59 P.3d 623 (2002). The court rules deem the appointment of counsel at this stage of proceedings to be “an integral part of the judicial process.” Id.

Due process requires the “opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” Mathews v. Eldridge, 424 U.S. 319, 323-24, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Here, without an attorney advocating of her, Melville was prevented from presenting any meaningful argument.

The appointment of counsel is illusory and meaningless if not predicated on competent representation in a meaningful fashion. Even in a non-criminal case, when liberty interests are at issue, the statutory right to counsel must be meaningfully provided. In re Welfare of J.M., 130 Wn.App. 912, 920, 125 P.3d 245 (2005) (citing In re Moseley, 34 Wn.App. 179, 660 P.2d 315 (1983)); see also In re G.A.R., 137 Wn.App. 1, 150 P.3d 643 (2007).

CrR 3.1 sets forth the procedure for the court to ensure it complies with the constitution right to counsel, including that the right to counsel “shall accrue as soon as feasible,” and “shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review.” CrR 3.1(b)(1), (2); Templeton, 148 Wn.2d at 216-17. Melville’s liberty interests were at issue in her motion to revise her sentencing and the court recognized the important interest at stake by appointing counsel to assist her. CP 86-87; 7/2/08RP 4, 8-9. The prosecution took no position on the

appointment of counsel and registered no objection. 7/2/08RP 5.

The court told Melville that the attorney would discuss the case with her, may file additional motions, and the court and parties would “take it from there.” 7/2/08RP 9.

Yet the appointed attorney provided no assistance or advocacy whatsoever, thus denying Melville her right to counsel and obstructing the fair operation of the judicial process as contemplated by the requirement of appointed counsel.

Templeton, 148 Wn.2d 193, 216; J.M., 130 Wn.App. at 920.

b. Because Melville’s appointed attorney did not provide any assistance whatsoever, she was denied counsel.

The trial court entered an order appointing Paul Wesson as Melville’s counsel finding that “good cause” existed to appoint an attorney to represent Melville. CP 86. CrR 3.1 requires the appointment of counsel for post-verdict motions in superior court and the judge ruled that Melville had the right to counsel in these proceedings. CP 86; 7/2/08RP 8.

Yet the court’s appointment of counsel was illusory. Neither Wesson nor any other attorney ever filed a notice of appearance in the case. No attorney filed any motions on behalf of Melville. No attorney offered any oral argument on behalf of Melville. No

attorney set a hearing for the court to decide Melville's post-judgment motion.

Melville wrote to the court complaining about a complete lack of contact from and communication with the attorney the court told her it had appointed. CP 275-76. After the court told Wesson to contact Melville following her complaint that the attorney never contacted her or responded to her letters or telephone calls, Melville received a single telephone call from Wesson. CP 274; see also CP 295-97; CP 298. Wesson asked Melville to send him information and she did so. Melville never again had contact with Wesson and received a copy of the court's decision only because she wrote further letters to the court inquiring about her case, complaining about her lack of contact with any attorney, and asking for a new attorney to be appointed.

In J.M., this Court reversed a parental termination order when the appointed attorney appeared in court and argued on behalf of his client but did not object to significantly prejudicial and potentially inadmissible evidence or mount any challenge to the State's case. The court ruled that such bare bones legal advocacy amounts to the denial of meaningful assistance of counsel. Similarly, in G.A.R., the court found that an attorney's failure to

advocate in any way for his client cannot be legitimate strategy and must be presumed prejudicial. 137 Wn.App. at 8.

Not only did the attorney appointed to represent Melville never appear in court on her behalf, he never even filed a notice of appearance indicating his intent to appear. He neither argued on her behalf nor sought a court ruling on Melville's *pro se* motion. The attorney's representation was not conducted outside of court, as Melville's letters explain a complete lack of contact with counsel to a degree that counsel did not even inform her of the trial court's order. CP 275-76.

The right to effective assistance entitles a person to meaningful assistance of competent counsel. The competence of counsel is measured by prevailing professional norms, as guided by accepted standards of practice articulated by the bar association. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Washington's Rules of Professional Conduct (RPC) "establish standards of conduct by lawyers." RPC Preamble, § 20. They mandate that a lawyer must "promptly inform the client of any decision of circumstance" in the case; "reasonably consult with the client" about the case; "keep the client reasonably informed about the status of the matter"; and

“promptly comply with reasonable requests for information.” RPC 1.4(a). Likewise, the American Bar Association (ABA) Standards direct defense counsel to “act with reasonable diligence and promptness” in representing a client 4-1.3. ABA Standards for Criminal Justice, Prosecution Function and Defense Function, 3rd Ed. (1993). An attorney also should seek a relationship of “trust and confidence,” explain counsel’s duties to the client, and keep the client informed. ABA Standards 4-3.1 & 4-3.8; see also ABA Standard 4-3.6;⁵ ABA Standard 4-5.1 (“defense counsel should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.”).

Wesson did not tell Melville about the court’s decision, meaningfully consult with her about the case, or promptly respond to her requests for information. Without offering Melville either out-of-court consultation or in-court advocacy his appointment as her attorney was entirely meaningless.

c. The case must be remanded for further consideration of Melville’s motion and the appointment of

⁵ “Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights. Defense counsel should consider all procedural steps which in good faith may be taken.” ABA Standard 4-3.6.

competent counsel. As the court ruled in J.M., the right to a meaningful hearing requires “at a minimum, the opportunity to argue the strengths of one's own position and to attack the State's position.” 130 Wn.App. at 925. Here, counsel's failure to take any steps to advocate for the client cannot be a legitimate strategy and denied Melville her right to a meaningful hearing. Id.

When counsel does not perform his or her function, it is the equivalent of the complete denial of counsel and the respondent need not show prejudice to prevail. Cronic, 466 U.S. at 659; Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed.2d 158 (1932).

Melville's attorney did not perform any function whatsoever and thus, Melville was denied her right to counsel under CrR 3.1 and the state and federal constitutions, and her corollary right to a meaningful hearing under the due process clause.

Furthermore, had counsel represented Melville, counsel could have discussed the various statutory changes to DOSA procedures and sought the court's application of the 2005 statutory amendment rather than the statute in effect in 2004. As Melville's *pro se* brief noted, the DOSA statute changed in 2005 and the court apparently viewed only the previous version as the court's ruling indicates only minor amendments occurred rather than the

significant alterations to DOSAs enacted in 2005. CP 266 (discussing 2005 amendments taking effect in October 2005, enacted in Laws 2005, ch. 460, § 2); CP 277-78 (Finding of Fact 1, focusing on prior version of statute from July 2005). Neither Melville nor an attorney addressed the different versions of the statute and their application to Melville.

Melville's attorney should also have recognized another plain error on the face of the judgment and sentence had counsel read the record. Melville was sentenced to the statutory maximum for a Class B felony, 120 months, but the court also imposed community custody. This error renders the sentence in excess of the statutory maximum and requires remand. State v. Linerud, 147 Wn.App. 944, 949, 197 P.3d 1224 (2008).

Melville's attorney made no effort to investigate her claims, inform her about her case, or advocate for her in the court. This denial of counsel renders the proceedings unfair and requires reversal for further consideration of Melville's objection to her sentence.

2. THE COURT DENIED MELVILLE A DOSA SENTENCE BASED ON AN UNTENABLE VIEW OF THE FACTS, A LEGALLY ERRONEOUS APPLICATION OF THE PERTINENT STATUTE,

AND WITHOUT MEANINGFUL ASSISTANCE OF
COUNSEL

a. A sentencing court may not refuse to consider a DOSA sentence for an eligible offender. The DOSA program is an attempt by the Legislature to provide treatment for some offenders judged likely to benefit from it. 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. Under a DOSA sentence, the defendant serves only about one-half of a standard range sentence in prison and receives substance abuse treatment while incarcerated. After completion of the one-half sentence, the defendant is released into closely monitored community supervision and treatment for the balance of the sentence. RCW 9.94A.660(2).

Under RCW 9.94A.660(1)(c), a defendant is eligible for a DOSA sentence if his current offense is a violation of chapter 69.50 RCW and involved only a small quantity of drugs as determined by the judge. When determining whether the quantum of drugs involved is a "small quantity," the judge may consider such factors

as the weight, purity, packaging, sale price, and street value of the controlled substance. Id. Pursuant to specifications enacted in 2005, if an offender is determined to be eligible for a DOSA, the court may order an examination which may address:

- (a) Whether the offender suffers from drug addiction;
- (b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
- (c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and
- (d) Whether the offender and the community will benefit from the use of the alternative.

Id.; see Laws 2005, ch. 406. The examination report should also contain a treatment plan, designate a treatment provider, set forth a monitoring plan, and identify affirmative conditions. RCW 9.94A.660(3). If the court determines a DOSA is appropriate, the court shall waive a standard range sentence and impose a sentence 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.

Generally, a trial court's decision to deny a DOSA is not reviewable. Grayson, 154 Wn.2d at 338. Because a sentence under DOSA falls within the standard sentence range set by the legislature in the sentencing statute, appellate courts presume that the trial court did not abuse its discretion. State v. Garcia-Martinez, 88 Wn.App. 322, 329, 944 P.2d 1104 (1997). Although not every defendant is entitled to a DOSA, every defendant is entitled to ask the trial court for meaningful consideration of his request. Grayson, 154 Wn.2d at 342. A party may challenge a trial court's failure to exercise any discretion where the trial court categorically denies a DOSA sentence. Grayson, 154 Wn.2d at 342. A trial court's denial of a request for a DOSA is reviewed for abuse of discretion, which occurs when the trial court bases its decision on manifestly unreasonable or untenable grounds. State v. White, 123 Wn.App. 106, 114, 97 P.3d 34 (2004).

In Grayson, the trial court refused the defendant's request for a DOSA on the basis that

the State no longer has money available to treat people who go through the DOSA program. So I think in this case if I granted him a DOSA it would be merely to the effect of it cutting his sentence in half. I'm unwilling to do that for this purpose alone. There's no money available. He's not going to get any treatment; it's denied.

154 Wn.2d at 337 (emphasis in original). In reversing, the Washington Supreme Court ruled, "Considering all of the circumstances, the trial court categorically refused to consider a statutorily authorized sentencing alternative, and that is reversible error." Id. at 342.

Here, the court did not contest Melville's eligibility for a DOSA. Indeed, a chemical dependency counselor, Debbie Brenson, testified on Melville's behalf at sentencing about her assessment of Melville. 7/8/05RP 137. Brenson explained that Melville meets "the DSM criteria for chemical dependency" based on her history of dependence on several substances. 7/8/05RP 137. She recommended long-term treatment in a structured environment. Melville had not been successful in previous efforts at treatment but the counselor explained that in her experience, people who receive treatment have less chance of reoffending and

she opined that Melville would benefit from such treatment, as would society if she curbed the likelihood of reoffending. 7/8/05RP 138.

Melville also explained that she had been addicted to drugs “on and off” for a long time. 7/8/05RP 139. She had struggled and relapsed numerous times as traumatic events occurred in her life. 7/8/05RP 141. Although she said she is “clean now,” she knows it is always important to maintain her treatment because of her history. 7/8/05RP 142-43.

The court refused to even consider a DOSA, finding that the court would not grant Melville treatment because of her criminal history. 7/8/05RP 160. 4/6/07RP 19-20. But the Legislature considered the criminal history that should bar someone from a DOSA and Melville is eligible for a DOSA sentence despite her criminal history. RCW 9.94A.660.

The court cannot skirt the Legislative dictates of the Sentencing Reform Act (“SRA”) based on a perception that the DOSA is not adequate to punish the defendant in light of the defendant’s failure to take responsibility or show remorse. State v. Grewe, 59 Wn.App. 141, 796 P.2d 438 (1990), as modified, 117 Wn.2d 211, 813 P.2d 1238 (1991). Similarly, the court’s belief that

the sentencing options provided by the Legislature do not adequately advance the goals of the SRA is not a valid basis for discarding sentencing alternatives. State v. Allert, 117 Wn.2d 156, 169, 815 P.2d 752 (1991).

The facts supported a finding Melville was eligible for and would benefit from treatment. No one contested her eligibility, and she completed a chemical dependency assessment documenting her need for treatment.

To the extent the Legislature has made the DOSA sentence available to offenders convicted of these offenses, the judge's personal opinion that the defendant had not taken responsibility for the offense or shown remorse and therefore not deserving of a DOSA represents the form of second-guessing precluded by statute and caselaw. Grayson, 154 Wn.2d at 342 (categorical rejection of a DOSA for delivery of cocaine found to be an abuse of discretion). The court's denial of the DOSA was based upon just this personal opinion that the DOSA is limited to those who take responsibility or show remorse and ignored the clear dictates of the Legislature when it enacted the DOSA. The court abused its discretion and the appropriate remedy is reversal of the sentence and remand for resentencing. Grayson, 154 Wn.2d at 343 ("We

reverse on the limited grounds that the trial judge did not appear to meaningfully consider whether a sentencing alternative was appropriate.”).

b. The court refused to review its ruling denying Melville’s DOSA on unreasonable grounds. Although Melville never had a substantive hearing or the actual assistance of counsel, the court entered a ruling denying Melville’s motion to revise her sentence. CP 277-81. The court’s order paid little heed to the tremendous volume of material Melville submitted regarding her accomplishments following her sentence, while presently incarcerated. CP 43-73 (Declaration Supporting Review and attachments). The court’s order focuses on its original sentencing decision and contains several unreasonable and unsupported factual findings that should be disregarded.

The court entered Finding of Fact 1, claiming Melville’s argument relied on minor amendments to the DOSA statute enacted in July 2005. CP 277-78. However, Melville’s motion for sentencing review also discussed and relied on changes in the DOSA statute effective October 2005, which altered the procedural considerations the court must undertake in deciding whether to

impose a DOSA. CP 264, 266. The court never addressed or acknowledged this discrepancy.

The court entered Finding of Fact 6, stating that Melville asserted she had no drug addiction issues whatsoever. CP 278. Yet not only did Melville testify at sentencing that she had a long-term, on-and-off drug dependency that required treatment, she submitted to an assessment by a chemical dependency counselor and presented that counselor's testimony at the sentencing hearing. 7/8/05RP 137-43. The counselor told the court that Melville indeed had a diagnosed chemical dependency and would benefit from long-term, structured treatment. 7/8/05RP 137-38. Finally, even the court acknowledged Melville's admitted addiction to prescription drugs, which would certainly qualify as requiring treatment. CP 278. Accordingly, the court's finding the Melville denied needing drug treatment is entirely unreasonable.

In Finding of Fact 8, the court found that Melville had attempted treatment in the past and had not succeeded. CP 279. But prior treatment failures in no way disqualify a person for future treatment, indeed, relapse is a common problem among people with drug addictions and hardly provides a reasonable basis to disqualify the person from future treatment. See e.g., In re Rentel,

107 Wn.2d 276, 289, 729 P.2d 615 (1986) (discussing statistics that fewer than 17 percent of people in treatment for cocaine addiction remain drug-free for one year). The extent of her prior opportunities to obtain meaningful drug treatment is neither explained nor supported by the record. Even drug counselor Brennan told the court that in her experience, and treatment helps to curb reoffense, if not curing the addiction.

In Findings of Fact 7, 9, and 10, the court expressed its desire to punish Melville rather than provide treatment. CP 278-79. Melville does not agree with the court's characterization of her intent or efforts at rehabilitation, although these factual findings appear to reflect the court's conclusions and not its factual determinations.

In sum, neither in its initial sentencing ruling nor in its later revision hearing where Melville was unrepresented by counsel did the court properly consider the legal criteria for a DOSA or enter reasonable factual determinations. Remand is required.

F. CONCLUSION.

For the reasons stated above, Ms. Melville respectfully asks this Court to remand her case for further proceedings.

DATED this 22nd day of June 2009.

Respectfully submitted,



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APPENDIX A

FILED
 IN SUPERIOR COURT STEVENS COUNTY
JAN 02 2009
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 COUNTY-CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON,)	
)	NO 05-1-00056-7
Plaintiff,)	
v)	FINDINGS
)	AND ORDER
PAULETTE MARGARET MELVILLE,)	DENYING CrR 7 3
)	MOTION TO REVISE
Defendant)	SENTENCE

THIS MATTER came on regularly before the undersigned on the date shown below on the defendant's motion to revise her sentence, brought pro se, and for which the court later, at her request, appointed counsel for the defendant, namely, Paul J Wasson Defendant moves for an order amending her Judgment and Sentence entered July 8, 2005 The court has determined that, in view of the defendant's appeal, which was not finally resolved by the Mandate until April 30, 2008, defendant's motion is timely pursuant to CrR 7 3

FINDINGS

1 Defendant asks that the court allow her to be sentenced under the Drug Offender Sentencing Alternative ("DOSA") which underwent

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some minor but non-material change effective July 1, 2005, a few days prior to her sentence See RCW 9 94A 660

2 The defendant in essence argues that she did not get a DOSA sentence and should have

3 The State, however, at the initial hearing on this motion July 2, 2008, pointed out that the defendant's counsel, at the time of sentencing, did propose a DOSA sentence The court then ordered a transcript of the sentencing hearing, which has since been reviewed

4 The defendant has filed additional materials and submitted letters, pro se, all of which have now been considered, the latest being a letter of November 9, 2008, received November 12, 2008

5 DOSA was indeed argued at the sentencing hearing (see Verbatim Report of Proceedings, filed as Sub No 144 herein, at pages 125 et seq)

6 Perhaps more important, the defendant's position at trial was that she was totally innocent of the charges Moreover, at sentencing, it was her position that she had no drug problem and had been "clean and sober for five years," except for her prescription drugs VRP, Sub No 144, at 124-125

7 The facts of the case established that the defendant cynically and for monetary gain exposed her children to and involved her adult daughter in her illegal drug activity Even her mother was brought

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into the drug activity, allowing defendant to sell the mother's "leftover" prescription paid medicine for household expenses

8 Defendant's offender score of 10 represented an appalling history of drug involvement with prior opportunities to rehabilitate herself, and, her Idaho probation (for which extradition proceedings were pending at the time of trial) had her supposedly involved in treatment when she was committing the subject crimes

9 Punitive sanctions – not an additional opportunity for drug treatment – were in order for this defendant. Thus this court was in no way inclined to consider a DOSA sentence for this defendant

10 Defendant has demonstrated by her certificates of completion and other filings that she has made progress with addressing her thinking errors and her drug problem while in prison. This however, provides no legal basis upon which to modify, revise or amend the Judgment and Sentence. Indeed, one way of looking at this progress is that it appears to demonstrate that defendant in fact needed a lengthy prison sentence to prompt her finally to address the problems she should have addressed prior to committing the subject crimes.

Thus being fully advised, the court now enters the following

ORDER

1 The defendant's motion to modify, revise, or otherwise her Judgment and Sentence entered July 8, 2005, is hereby DENIED

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2 The Court Administrator is hereby ordered to mail a copy of this
order to Mr Troberg, to Mr Wasson, and to the defendant at their
addresses on file herein

DATED this 21st day of Dec., 2008

Rebecca M Baker
Rebecca M Baker
Judge

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CERTIFICATE OF MAILING/DELIVERY

I hereby certify, under penalty of perjury of the laws of the State of Washington, that I am a U S citizen and neither a party to nor interested in the above-entitled action and that a true copy of the Findings and Order Denying CrR 7 3 Motion to Revise Sentence, was mailed by U S Mail, postage prepaid, or hand delivered to the following parties on the date shown below

John Troberg
Deputy Prosecuting Attorney
215 S Oak Street, 1st Floor
Colville, WA 99114

U S Mail
 Hand delivery

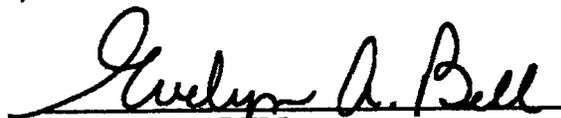
Paul Wasson
Attorney at Law
2521 W Longfellow Ave
Spokane, WA 99205

U S Mail
 Hand delivery

Paulette Melville
749695, 2-C-14
Pine Lodge Corrections Center for Women
P O Box 300
Medical Lake, WA 99022-0300

U S Mail
 Hand delivery

DATED this 31st day of December, 2008


EVELYN A BELL

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 27829-8-III
v.)	
)	
PAULETTE MELVILLE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF JUNE, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JOHN ALLAN TROBERG, DPA	(X)	U.S. MAIL
STEVENS COUNTY PROSECUTOR'S OFFICE	()	HAND DELIVERY
215 S OAK ST, STE 114	()	_____
COLVILLE, WA 99114-2862		
[X] PAULETTE MELVILLE	(X)	U.S. MAIL
278298	()	HAND DELIVERY
PINE LODGE CC FOR WOMEN	()	_____
PO BOX 300		
MEDICAL LAKE, WA 99022		

SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF JUNE, 2009.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
☎(206) 587-2711