

NO. 42341-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DUSTIN DRANSFIELD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Linda Lee

No. 08-1-04371-3

Respondent's Brief

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was the trial court's decision to revoke defendant's SSOSA sentence a proper exercise of discretion where defendant had violated the terms of the sentence, and the court had imposed a lesser sanction for previous violations?

B. STATEMENT OF THE CASE.

On September 19, 2008, the State charged defendant, Dustin Dransfield, with one count of rape of a child in the first degree. CP 1. Defendant pleaded guilty to the charge on February 5, 2009. CP 5-16. In the Statement of Defendant on Plea of Guilty defendant wrote, "On or about 8/15/08 – 9/2/08 in Pierce County, I engaged in sexual intercourse with my cousin K.S., who was 11 years old. K.S. is more than 24 months younger than me and is not married to me." *Id.* On March 6, 2009, the court sentenced defendant to 123 months, with 111 months suspended under the Special Sex Offender Sentencing Alternative (SSOSA). CP 22-36. This sentence is at the high end of the standard range. CP 19-21.

As a part of defendant's SSOSA sentence, defendant was required to undergo and successfully complete three years of outpatient sex offender treatment. CP 2-36, 37-39. Defendant was also prohibited from any contact with minors without prior written authorization from his

treatment provider and his community corrections officer (CCO). *Id.* Under appendix H to the judgment and sentence, defendant was also required to report to his CCO as directed, not consume controlled substances except by prescription, receive prior approval of living arrangements, notify his CCO of changes in his address, inform his CCO of any romantic relationships, register as a sex offender, and obey all laws. CP 37-39.

On April 2, 2010, the court held a SSOSA review hearing. RP (04/02/2010) 2. The court found that the defendant was in compliance with his SSOSA sentence, and set the next review hearing for March 18, 2011. *Id.* at 4.

On June 15, 2010, the honorable Edmund Murphy issued a warrant for defendant's arrest because he had absconded from supervision. CP 72. On August 14, 2010, defendant was arrested on the bench warrant. CP 119. On August 16, 2010, Commissioner Patrick Oishi ordered defendant held without bail. CP 117-118. On August 27, 2010, the State filed a petition for hearing to determine noncompliance with the conditions of sentence. CP 76-80. The State alleged that defendant had failed to report to DOC since May 27, 2010; failed to register as a sex offender; and failed to successfully complete the sexual deviancy treatment program. Defendant appeared in custody without counsel the same day. RP (08/27/2010) 2. The court set the hearing over and appointed counsel for defendant. RP (08/27/2010) 3. On September 17, 2010, the court held a

revocation hearing. RP (08/27/2010) 2. The court found that defendant had committed the three violations alleged in the State's petition, and imposed a sanction of 270 days in custody. CP 83. The court also ordered that defendant have an approved treatment plan and residency plan before his release from custody. RP (02/04/2011) 6.

On February 4, 2011 the court held a SSOSA review hearing while defendant remained in custody on the sanction. RP (02/04/2011) 2. Defendant did not yet have a treatment plan or residency plan in place, and the hearing was set over until March 18, 2011. RP (02/04/2011) 8-9. At the hearing on March 18, defendant did not have a treatment plan in place, and the court ordered that defendant remain in custody until the treatment plan could be evaluated. RP (03/18/2011) 7-8. The court set another hearing for April 15, 2011. *Id.*

At the April 15 hearing, defendant provided the court with his intended residential plan and his treatment plan. RP (04/15/2011) 4. The court ordered defendant released on April 18, 2011, and set a review hearing for August 5, 2011. RP (04/15/2011) 9.

On May 26, 2011, the State petitioned the court for a hearing to determine noncompliance with the conditions of the sentence. CP 95-98. The State alleged that defendant had consumed alcohol on or about May 14, 2011, in violation of the conditions of his SSOSA. *Id.* On June 3, 2011, the court set the review hearing over until June 22, 2011 so that the defense could adequately prepare. RP (06/03/2011) 7.

On June 21, the State filed a supplemental petition for a hearing to determine noncompliance with the conditions of the sentence.

RP(06/22/2011) 3¹. The State alleged five additional violations, four of which were for unauthorized contact with minors, taking place on June 4, June 7, June 11, and June 12, 2011, and one of which was for failing to make satisfactory progress in treatment. *Id.* Defendant waived any objection to the timeliness of the filing. *Id.*

On June 22, 2011, the court held a review hearing. Defendant stipulated that the violations of having unauthorized contact with minors alleged in the supplemental petition had occurred. RP(06/22/2011) 3. The defendant was held in Pierce County Jail at the time, after having been given a sanction for absconding from supervision. The contacts he had were with the mother of his child, herself only 17 years old, and his infant daughter. RP(06/22/2011) 3. The contacts on June 4th, 11th and 12th were phone calls during which he talked with the young woman about marriage, masturbating to thoughts of her, carving his daughter's name into his chest with a pencil tip, and various other things. RP(06/22/2011) 7. Defendant also spoke to his infant daughter to stop her from crying. RP(06/22/2011) 8. Defendant's minor girlfriend and his infant daughter visited him in jail on June 7th. RP(06/22/2011) 8.

¹ While the record reflects that the court and opposing counsel both received copies of the State's supplemental petition, the document is not contained in the clerk's file. The record reflects the additional allegations contained in the supplemental petition.

Defendant requested that the court reserve its ruling until testimony from an alternative therapist could be provided. RP(06/22/2011) 6. The State requested that the court hear the testimony from the witnesses present before deciding whether or not to grant defendant's request. RP(06/22/2011) 9. After hearing testimony from Mr. DeWaelche, and the defendant's allocution, the court found multiple violations. RP(06/22/2011) 51. In explaining its ruling, the court noted that it was unlikely that testimony from an alternative treatment provider would change the court's ruling on a sanction. RP(06/22/2011) 52. The court then revoked defendant's SSOSA. CP 107-09, RP(06/22/2011) 52. The court noted it was revoking the SSOSA for all six violations, but that it would have done the same for any one of the six violations if it had not found the others. RP(06/22/2011) 64.

Defendant filed a timely notice of appeal on June 30, 2011.

C. ARGUMENT.

1. THE COURT DID NOT ABUSE ITS DISCRETION IN REVOKING DEFENDANT'S SSOSA SENTENCE.

On appeal, the revocation of a SSOSA sentence is reviewed for abuse of discretion. *State v. Partee*, 141 Wn. App. 355, 361, 170 P.3d 60 (2007), *State v. Ramirez*, 140 Wn. App. 278, 290, 165 P.3d 61 (2007). A court abuses its discretion if its decision is manifestly unreasonable or arbitrary, or is based on untenable grounds. *State v. Miller*, 159 Wn. App. 911, 918, 247 P.3d 457 (2011) citing *State ex rel. Carroll v. Junker*, 79

Wn.2d 12, 26, 482 P.2d 775 (1971). “A court may revoke an offender's SSOSA at any time if it is reasonably satisfied the offender violated a condition of the suspended sentence.” *Partee*, 141 Wn. App. at 361, *citing State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

When a violation of the conditions of the SSOSA has been proved, the trial court may revoke the SSOSA sentence or impose a lesser sanction. *Dahl*, 139 Wash.2d at 683. Nevertheless, it may be an abuse of discretion if the court fails to consider other legally available options because it erroneously believes revocation is the only option. *Partee* at 361-62, *citing State v. Badger*, 64 Wn. App. 904, 910, 827 P.2d 318 (1992).

Here, the court determined that the violations had occurred based on defendant's stipulation, and Mr. DeWaelche's testimony. RP (06/22/2011) 51. Mr. DeWaelche testified that after being terminated from treatment, and readmitted, defendant had not made any real progress in treatment, and expressed concerns that defendant was not making good decisions, and was placing himself in situations that would lead to reoffending. RP(06/22/2011) 19-20. Mr. DeWaelche concluded that defendant had a “total disregard for rules,” and that he knew he was breaking rules, but would engage in the behavior anyway. RP(06/22/2011) 20.

Mr. DeWaelche testified that he began treating defendant in October of 2009. RP(06/22/2011) 10. Mr. DeWaelche continued to

treat defendant until June of 2010, when the defendant absconded from supervision. RP(06/22/2011) 10-11. Mr. DeWaelsche terminated defendant from treatment at that time. RP(06/22/2011) 11.

After defendant was released from custody on the sanction, Mr. DeWaelsche began treating him again on May 12, 2011. RP(06/22/2011) 15. During that session, defendant admitted that during the time he had absconded, he had been living in King County with people “who weren’t aware of his status as a sexual offender, and that he’d impregnated their daughter.” RP(06/22/2011) 15. Defendant’s daughter had been born shortly before this treatment session. RP(06/22/2011) 15.

During defendant’s second session with Mr. DeWaelsche after his release from custody, he discussed his romantic interest in a “girl” he met in church. RP(06/22/2011) 16. Mr. DeWaelsche did not know whether the young woman was a minor or not. RP(06/22/2011) 16. Mr. DeWaelsche reminded defendant that he was not to have any romantic relationships at that time, and that there were steps he needed to complete before the two could be sexually involved, including full disclosure of his sexual offender status, and a meeting between the woman and Mr. DeWaelsche. RP(06/22/2011) 16-17. Defendant did not have permission to be involved with any female, either adult or minor. RP(06/22/2011) 17.

During defendant’s session with Mr. DeWaelsche on May 19, 2011, he disclosed that he “went out and [he] went drinking with the

young lady.” RP(06/22/2011) 18. Mr. DeWaelche asked defendant who the young lady was, and whether she was aware of [defendant’s] rules.

RP(06/22/2011) 18. Defendant answered that she was aware of the rules, and that she was still “willing to go out drinking” with him.

RP(06/22/2011) 18.

Mr. DeWaelche’s report from treatment, filed May 27, 2011, stated that defendant had impregnated his girlfriend during the time he had absconded from supervision. CP 99-100. His girlfriend was 16 years old at the time. RP (06/22/2011) 7, 27, 50. Mr. DeWaelche concluded that defendant was unwilling to comply with his treatment and the conditions of his court order, and that he continued to pose a risk to the community. CP99-100. Mr. DeWaelche contacted defendants CCO because he felt that defendant wasn’t “making any headway.” RP(06/22/2011) 18. Mr. DeWaelche testified that in his opinion nothing was making “much of an impact on him.” RP(06/22/2011) 18. When asked about defendant’s risk of reoffending with “a prepubescent child,” Mr. DeWaelche testified, “[I]f some opportunity came about [] he might cross that line to have sexual contact, if he felt that person was pursuing him.” RP(06/22/2011) 26.

In addition to Mr. DeWaelche’s testimony, the court was aware that defendant had previously violated his SSOSA by absconding from supervision. CP 84-85, RP(09/17/2010) 11. Because of the defendant’s progress through treatment before he absconded, and his young age, the

court had imposed a sanction of 270 days rather than revoking defendant's SSOSA on that occasion. RP (09/17/2010) 11. In making its ruling, the court noted that the imposition of a sanction rather than revocation of the SSOSA was only going to happen once. RP (09/17/2010) 12. The court made every indication to the defendant that it would not tolerate any more violations of the requirements of SSOSA. RP (09/17/2010) 12-13. When defendant appeared again for revocation because of the new violations, the court did not abuse its discretion in revoking the SSOSA, after finding that the violations had occurred.

The court clearly understood that it had the option of imposing a lesser sanction for defendant's violations of the SSOSA. The court had previously imposed a sanction of 270 days in custody, and discussed the reasons why a lesser sanction was inappropriate in her ruling revoking defendant's SSOSA. CP 84-85, RP (09/17/2010) 11. When it revoked defendant's SSOSA, the court explained that defendant had been given a 270 day sanction for his previous violations, and "the letter [he] wrote to [the court] the last time [he] violated... said the exact same things [he] said [at the first revocation hearing.] RP (06/22/2011) 52. The court also told defendant, "You have shown me time and time again through multiple violations that you're not willing to do what you need to do to deserve a SSOSA sentence. I am going to revoke." RP(06/22/2011) 63.

The court did not abuse its discretion by revoking defendant's SSOSA sentence where the defendant had violated the conditions, and the court determined a lesser sanction was inappropriate.

D. CONCLUSION.

For the aforementioned reasons, the State respectfully requests that this Court affirm defendant's sentence.

DATED: April 19, 2012.

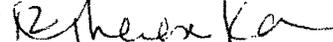
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