

Court of Appeals No. 43593-4-II  
and No. 43596-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON

Plaintiff/Respondent,

v.

SHAWN TEETER,

Defendant/Appellant.

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BRIEF OF APPELLANT

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Appeal from the Superior Court of Pierce County,  
Cause No. 11-1-01978-2 and No. 11-1-04010-2

The Honorable Brian Tollefson, Presiding Judge

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## **I. ASSIGNMENTS OF ERROR**

1. Appellate review of Mr. Teeter's conviction is impossible since the trial court failed to enter the required findings of fact and conclusions of law regarding the exceptional sentence.
2. The trial court erred in failing to enter findings of fact and conclusions of law regarding the exceptional sentence in this case.
3. The trial court abused its discretion in denying Mr. Teeter's motion for a DOSA sentence.

## **II. ISSUES PRESENTED**

1. Is appellate review of Mr. Teeter's case possible where the trial court failed to enter the requisite findings of fact and conclusions of law regarding Mr. Teeter's exceptional sentence? (Assignments of Error Nos. 1 and 2)
2. Was it error for the trial court to impose an exceptional sentence without entering written findings of fact and conclusions of law? (Assignments of Error Nos. 1 and 2)
3. Did the trial court abuse its discretion in denying Mr. Teeter's motion for a DOSA sentence where the trial court based its denial of Mr. Teeter's DOSA request on the fact that the trial court did not have a presentence report upon which to base its decision? (Assignment of Error No. 3)

## **III. STATEMENT OF THE CASE**

### *Factual and Procedural Background*

On or about April 10, 2011, Ms. Thea Hopkins told her nephew, Mr. Shawn Teeter that he was not welcome in her apartment. RP 154-157, 165-166.

At about 7 AM on May 10, 2011, Mr. Teeter attempted to contact Ms. Hopkins at her apartment. RP 154-157, 271-273, 366-368. Mr. Teeter knocked on Ms. Hopkins' front door and called her apartment on his cell phone. RP 268-274. Gordon Hall observed Mr. Teeter knock on Ms. Hopkins' door and heard the telephone ring in Ms. Hopkins' apartment when Mr. Teeter tried to call her. RP 268-274, 281-282. Mr. Hall asked Mr. Teeter what he was going and Mr. Teeter said he was trying to get into Ms. Hopkins' apartment to see her. RP 282, 289.

Mr. Hall watched Mr. Teeter knock loudly on Ms. Hopkins' front door, call Ms. Hopkins' telephone, and then go to the back of Ms. Hopkins' apartment and look in the bathroom window. RP 271-275, 281-282. There was a screen on the bathroom window. RP 275. Mr. Hall then left for work but called 911 and gave police a description of Mr. Teeter. RP 279.

Tacoma Police Officer Chris Yglesias responded to Ms. Hopkins' apartment and saw nobody at the front door, so he went to the back of the apartment. RP 361-363. Officer Yglesias saw that the bathroom window was closed but that the screen had been removed from the window. RP 364. Officer Yglesias did not see anybody behind Ms. Hopkins' apartment but observed a blue bag on the ground under the bathroom window and next to the screen for the bathroom window. RP 364.

Tacoma Police Officer Douglas Billman also responded to Ms. Hopkins' apartment. RP 302-302. When Officer Yglesias heard Officer Billman arrive, Officer Yglesias went back around to the front of the apartment and contacted Officer Billman. RP 304, 365. The officers attempted to contact Ms. Hopkins by knocking on the front door to the apartment numerous times, but nobody answered. RP 305, 365.

While the officers were knocking on the front door to the apartment, Mr. Teeter walked around the corner of the building. RP 306, 366. Mr. Teeter matched the description of the individual provided by police dispatch. RP 388. When the officers first saw Mr. Teeter he had his hands in his pockets and was walking towards the officers looking lost. RP 307. Mr. Teeter told the police that he was at the apartment to meet his aunt. RP 368. Mr. Teeter was sweating and speaking very rapidly and was very jittery in his movements. RP 369-370.

The police handcuffed and searched Mr. Teeter. RP 307-308, 369. As he was handcuffing Mr. Teeter, Officer Yglesias noticed little bits of beauty bark on Mr. Teeter's hands. RP 369. Officer Yglesias discovered two plastic credit cards, a set of car keys, an address book, and a candy bar on Mr. Teeter's person. RP 308, 370. The car keys, candy bar, and credit cards were found in Mr. Teeter's coat pockets. RP 370-373.

The credit cards found in Mr. Teeter's pockets had the name

“Colleen Begallia” on them. RP 373. Mr. Teeter said he had found the credit cards lying on the ground. RP 373-374. Mr. Teeter said that he had found the keys in Ms. Hopkins’ vehicle. RP 382.

Officer Yglesias returned to the rear of the apartment building and saw that the blue bag had been moved from under the bathroom window and was sitting on the sidewalk next to a red bag. RP 374-375. Officer Yglesias also noticed that the bathroom window was now open and the screen had been placed back on the window. RP 375. Officer Yglesias observed that the beauty bark under the window had been freshly disturbed. RP 375-376.

Officer Yglesias returned to Mr. Teeter, advised him of his constitutional rights, and questioned him about the blue and red bags. RP 376-377. Mr. Teeter said that the bags were his. RP 376-377.

The police contacted the manager of the apartment complex, obtained a key for Ms. Hopkins’ apartment, and entered Ms. Hopkins’ apartment to conduct a welfare check. RP 310, 377. Ms. Hopkins was in the bathroom of the apartment. RP 311, 377-378.

Officers asked Ms. Hopkins to check the apartment to see if anything appeared to be disturbed or missing. RP 379-380. Ms. Hopkins told police that a ten dollar bill and the keys to her apartment and car were missing from her purse. RP 380. The police showed Ms. Hopkins the

items that had been discovered on Mr. Teeter's person and Ms. Hopkins identified the keys, candy bar, address book, and the credits cards. RP 381. Ms. Hopkins said the credit cards belonged to her daughter and were supposed to be in the spare bedroom in the apartment. RP 381. Ms. Hopkins also identified the red bag as belonging to her. RP 381. The police returned the items to Ms. Hopkins. RP 381.

Police questioned Mr. Teeter and he stated he knew nothing about the window screen and denied having been inside Ms. Hopkins' apartment. RP 394, 398.

Officer Billman transported Mr. Teeter to the Pierce County Jail where Mr. Teeter was searched incident to being booked. RP 312-316. During the search of Mr. Teeter, a small baggie containing what later tested positive for methamphetamine was found in his underwear. RP 317-318, 334-342, 353-355.

On May 11, 2011, Mr. Teeter was charged with one count of residential burglary and one count of theft in the second degree. CP 1-2.

On July 11, 2011, the charges were amended to one count of residential burglary, one count of theft in the second degree, and one count of unlawful possession of a controlled substance. CP 6-8.

In July of 2011, Ms. Hopkins received a letter with a return address of Mr. Teeter. RP 184-185. Ms. Hopkins recognized Mr.

Teeter's handwriting on the envelope but not on the letter itself. RP 185-186. However, some of the terms and speech patterns used in the letter were similar to what Ms. Hopkins had heard Mr. Teeter use before. RP 186-187. The letter threatened Ms. Hopkins that she would be harmed if she testified against Mr. Teeter and Mr. Teeter went to jail and told her not to testify. CP 9-11.

On August 2, 2011, the charges against Mr. Teeter were again amended, this time to add a charge of intimidating a witness. CP 9-11. With regards to the residential burglary charge only, the State added the aggravating factor that Mr. Teeter committed multiple current offenses and his high offender score would result in some of his current offenses going unpunished. CP 9-11.

Mr. Teeter's trial on these counts began on April 23, 2012. RP 154.

The jury found Mr. Teeter not guilty of the crime of residential burglary, not guilty of the crime of second degree theft, guilty of the crime of attempted intimidating of a witness, and guilty of unlawful possession of a controlled substance. CP 168-173.

On May 9, 2012, a jury also found Mr. Teeter guilty of the crime of custodial assault in Pierce County Superior Court No. 11-1-04010-2. CP 191-204.

Mr. Teeter stipulated to his criminal history and offender score.  
CP 174-176.

Mr. Teeter moved for a DOSA sentence. CP 191-204.

At sentencing, the trial court denied Mr. Teeter's DOSA request and imposed standard range sentences of 24 months on the unlawful possession of a controlled substance charge and 60 months on the attempted intimidation of a witness charge to be served concurrently. CP 177-190. The sentences were to be run concurrent with each other but consecutive to Mr. Teeter's sentence in the custodial assault case, Pierce County Superior Court cause number 11-1-04010-2. CP 177-190; RP 574-579.

At sentencing, the State requested that the sentences in the two cases be run consecutively under RCW 9.94A.535(2) because Mr. Teeter had committed multiple current offenses and his high offender score would result in some of the offenses going unpunished. RP 562-564. The trial court adopted the State's arguments and imposed the exact sentence requested by the State: 60 months on the attempted intimidation of a witness charge and 24 months on the possession of a controlled substance charge to be run concurrent with each other but ran the sentence in cause number 11-1-04010-2 consecutive to the sentence in this case. RP 564, 574.

No findings of fact and conclusions of law were entered following the imposition of sentence and no box was checked in the portion of Mr. Teeter's Judgment and Sentence dealing with an exceptional sentence. CP 177-190.

The trial court indicated it denied Mr. Teeter's motion for a DOSA sentence because no presentence had been prepared and without a presentence report the court did not know if Mr. Teeter's behavior was a result of his drug use or other mental health problem and, therefore, could not determine whether a DOSA sentence would help Mr. Teeter control his behavior in the future. RP 573-574.

Notice of appeal was filed on June 14, 2012. CP 205.

#### **IV. ARGUMENT**

Under RCW 9.94A.589(1)(a),

[W]henver a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535.

Under RCW 9.94A.589(1)(a), the trial court should have sentenced Mr. Teeter's terms of confinement to run concurrently unless it found an

aggravating factor warranting an exceptional sentence. The trial court relied on its finding that Mr. Teeter had committed multiple current offenses and his high offender score would result in some of the offenses going unpunished to impose an exceptional sentence of running the sentence in Pierce County Superior Court Cause Number 11-1-04010-2 consecutive to the sentence in this case.

**1. The trial court erred in failing to enter findings of fact and conclusions of law regarding Mr. Teeter's exceptional sentence.**

Under RCW 9.94A.535, "Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law." "RCW 9.94A.535...requires a trial court to enter written findings of fact and conclusions of law to justify its imposition of *any* sentence outside the standard range. The statutory language is clear and the trial court must enter findings and conclusions justifying its exceptional sentence..." *State v. Hale*, 146 Wn.App. 299, 306, 189 P.3d 829 (2008) (emphasis in original).

These findings of fact and conclusions of law are critical to appellate review. Under RCW 9.94A.535, "If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW

9.94A.585(4).” Under RCW 9.94A.585(4),

To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) **Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense;** or (b) that the sentence imposed was clearly excessive or clearly too lenient.

Emphasis added.

“The remedy for a trial court's failure to issue findings of fact and conclusions of law is ordinarily remand for entry of the findings.” *In re Breedlove*, 138 Wn.2d 298, 311, 979 P.2d 417 (1999), *citing State v. Head*, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998).

Here, the trial court imposed an exceptional sentence but failed to make written findings of fact and conclusions of law. This court should remand Mr. Teeter’s case for entry of the findings of fact and conclusions of law.

**2. The trial court abused its discretion in denying Mr. Teeter’s motion for a DOSA sentence where the trial court based its denial of Mr. Teeter’s DOSA request on the fact that the trial court did not have a presentence report.**

The trial court made the following ruling:

**THE COURT:** Well one of the unfortunate consequences of tightening governmental budgets, not just in the recent few years but over the last many years is that we, the judges, have lost any

kind of presentence reports from the Department of Corrections. We used to get them when I was first a judge. We only get those on sex offender cases now. They don't give them on anything else, so that's the very unfortunate consequences.

Mr. Teeter does have behavioral problems. **Without the thorough analysis that a presented report might give the Court, it's hard to tell** whether the basis of these - - and I acknowledge there's those competency evaluations in the - - in the court file. The focus of those competency evaluations is not to give guidance to the Court about what would be the best sentence. **So without a thorough evaluation of whether Mr. Teeter's behavior is an unfortunate result of other mental health problems that he might have, it's hard for me to tell whether a DOSA sentence would be of any use to him in controlling his behavior in the future. (Emphasis added)**

Under RCW 9.94A.660,

- (1) 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. Teeter met all the requirements of eligibility for a DOSA sentence under RCW 9.94A.660. CP 191-204. At sentencing, the State did not dispute that Mr. Teeter met the criteria for eligibility for a DOSA. RP 558-565. The State only argued that the court should not give Mr. Teeter a DOSA because of the nature of Mr. Teeter's current offenses. RP 558-565.

Generally, the trial court's decision to deny imposing a DOSA sentence is not reviewable. *State v. Bramme* 115 Wn.App. 844, 850, 64 P.3d 60 (2003). “[A] standard range sentence, of which a DOSA is an alternate form, may not be appealed.” *State v. Smith*, 118 Wn.App. 288, 292, 75 P.3d 986 (2003); RCW 9.94A.585(1). However, “it is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies.” *State v. Williams*, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003). A trial court abuses its discretion when its decision is “manifestly unreasonable or based upon untenable grounds or reasons....” *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997), *cert denied* 523 U.S. 1008, 118 S.Ct. 1193, 140 L.Ed.2d 323 (1998). A decision is based on untenable grounds or made for untenable reasons when it was reached by applying the wrong legal standard. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

A sentencing court shall waive the imposition of a standard range sentence in favor of a DOSA sentence if it determines the offender meets the statutory eligibility requirements for an alternative sentence *and an alternative sentence is appropriate*. RCW 9.94A.660(3) (emphasis added.)

The legislature has granted trial courts the discretion to impose a DOSA.

*State v. Gronnert*, 122 Wn.App. 214, 226, 93 P.3d 200 (2004). The trial court is required to decide whether a DOSA will benefit both the offender and the community. *See State v. Grayson*, 154 Wn.2d 333, 340, 111 P.3d 1183 (2005); *State v. White*, 123 Wn.App. 106, 115, 97 P.3d 34 (2004); RCW 9.94A.660(2).

In denying Mr. Teeter's motion for a DOSA, the trial court acknowledged that Mr. Teeter had drug problems, but held that it did not have enough facts to determine whether or not a DOSA was appropriate for Mr. Teeter because it had not received a presentence investigation report from DOC regarding Mr. Teeter. RP 573-574. The trial court blamed the lack of a presentence report on budget cuts preventing DOC from automatically providing presentence investigation reports on all cases save sex offenders. RP 573-574. The court failed, however, to consider obtaining a risk assessment and chemical dependency screening report which are available by court order.

Under RCW 9.94A.660(4), "To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500." In ruling that it lacked sufficient information to determine whether or not a DOSA sentence was appropriate for Mr. Teeter, the trial court abused its discretion because it



**Certificate of Service:**

The undersigned certifies that on February 11, 2013, she delivered by e-mail to the Pierce County Prosecutor's Office, [pcpatccf@pierce.wa.us](mailto:pcpatccf@pierce.wa.us), and by United States mailed to appellant, appellant, Shawn S. Teeter, DOC # 948794, Monroe Corrections Center, Post Office Box 514, Monroe, Washington 98272, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington February 11, 2013.

/s/

Norma Kinter

# ARNOLD LAW OFFICE

**February 10, 2013 - 8:28 PM**

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### Comments:

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