

NO. 47174-4-II

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

STATE OF WASHINGTON, RESPONDENT

v.

SHANNA WILLIAMS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Edmund Murphy, Judge

No. 13-1-04254-3

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

1. May defendant appeal a standard range sentence? 1

2. Did the court act within its discretion when it imposed a standard range sentence when that sentence was stipulated to as part of a Drug Court Agreement and defendant did not object?..... 1

3. Does this court have discretion to award appellate costs to the State if it prevails in this appeal? 1

B. STATEMENT OF THE CASE. 1

1. Procedure 1

C. ARGUMENT..... 2

1. THE COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT SENTENCED DEFENDANT WITHIN THE STANDARD RANGE 2

2. THE STATE HAS NOT REQUESTED AN AWARD OF APPELLATE COSTS AND THIS COURT HAS THE DISCRETION TO AWARD THEM IF A COST BILL IS FILED 5

D. CONCLUSION. 5

Table of Authorities

State Cases

| | |
|-------------------------------------------------------------------------------|------|
| <i>State v. Garcia-Martinez</i> , 88 Wn. App. 322, 944 P.2d 1104 (1997) | 2 |
| <i>State v. Mail</i> , 121 Wn.2d 707, 712, 854 P.2d 1042 (1993)..... | 2, 3 |
| <i>State v. Nolan</i> , 141 Wn.2d 620, 628, 8 P.3d 300 (2000) | 5 |

Statutes

| | |
|---------------------------|---|
| RCW 10.73.160 | 5 |
| RCW 9.94A.660(7)(c) | 3 |

Rules and Regulations

| | |
|----------------|---|
| RAP 14.2 | 5 |
|----------------|---|

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

1. May defendant appeal a standard range sentence?
2. Did the court act within its discretion when it imposed a standard range sentence when that sentence was stipulated to as part of a Drug Court Agreement and defendant did not object?
3. Does this court have discretion to award appellate costs to the State if it prevails in this appeal?

B. STATEMENT OF THE CASE.

1. Procedure

On November 5th, 2013, Shanna Williams (“defendant”) was charged by Information of Residential Burglary (“Count I”). CP 1. The court granted defendant’s petition to enter Drug Court. CP 14-17, 18-19. Defendant pleaded guilty to Count I and entered into a Drug Offense Sentencing Alternative (DOSA) agreement. CP 4-13, 14-17. Defendant stipulated in the agreement to a standard range sentence in the event she was terminated from Drug Court. CP 17.

After entering Drug Court supervision, defendant used controlled substances and twice provided positive urine samples before being sent to an inpatient treatment facility. CP 42-44. Defendant completed inpatient

treatment on June 30th 2014. CP 43. In the weeks following her completion of inpatient treatment, defendant failed to comply with three urine tests and tested positive for heroin on another. CP 44.

On November 18th, 2014, the State filed a petition requesting defendant be terminated from drug court due to the above violations. The court denied the State's petition and gave defendant a "last chance" opportunity to continue in the Drug Court program. CP 45. On December 11, 2014, defendant again tested positive for heroin which led to her termination from Drug Court. CP 46-7.

C. ARGUMENT.

1. THE COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT SENTENCED DEFENDANT WITHIN THE STANDARD RANGE.

A trial court that has considered the facts of a case and imposed a standard range sentence has acted within its discretion. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). Defendant may not appeal a sentence within the standard range unless she can show the court failed to follow statutory requirements for sentencing hearings or she objected to consideration of specific information at the trial court. *Id.*; *State v. Mail*, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993). The trial court can order a defendant who violates the terms of a drug offense sentencing

alternative (DOSAs) to a sentence within the standard range of the offense underlying the DOSA. RCW 9.94A.660(7)(c).

In the present case, the trial court acted within its statutory authority when it imposed a sentence within the standard range and defendant did not object to the sentence at trial. As a condition of her participation in Drug Court, defendant agreed to a standard range sentence of 64-84 months on Count I if terminated from Drug Court. CP 50-3. The court terminated defendant from Drug Court and sentenced her to 84 months, a sentence within the standard range stipulated to in the Drug Court agreement. CP 14-7. Therefore, defendant is barred from challenging her sentence on appeal. *State v. Mail*, 121 Wn.2d at 712, 854 P.2d 1042.

Defendant attempts to avoid this procedural bar by claiming that the sentencing court failed to recognize its discretion to impose a sentence on the low end of the standard range. Brief of Appellant at 5. This argument is unsupported by the record. Defendant's assertion that the court erred is based on the following statement by the sentencing court:

I know I'm sentencing your family as well because this is not an easy thing to do. I don't take this lightly. I don't like doing this. But, I don't feel like, as I said, I had any choice.

2RP 10.

The court was not referencing a perceived legal limitation concerning the length of confinement. Rather the court determined that given defendant's repeated failures to complete court ordered drug

treatment, including a final opportunity framed in “last chance” language, the court had little rational option than to terminate defendant from Drug Court. CP 45. The sentencing court felt that such language would be without meaning and undermine integrity of the court if defendant did not face consequences for failing to obey the court’s previous orders. The court discussed this difficult decision immediately prior to sentencing:

[C]ourts that don’t terminate and give opportunities and put [the decision not to terminate] in the language of the last chance has to mean something.

So, I don’t know what options I have when I have to try to uphold what other judges have done and don’t really have the ability to send you to inpatient treatment...I don’t like making these decisions, but sometimes I have to. So, I am gonna terminate you from the Drug Court program.

2RP 5-6.

The sentencing court merely stated that defendant’s repeated violations of her Drug Court agreement left it with no choice other than to terminate defendant from drug court and sentence her within the standard range. The court did not abuse its discretion when it sentenced defendant to a term of confinement within the standard range.

2. THE STATE HAS NOT REQUESTED AN AWARD OF APPELLATE COSTS AND THIS COURT HAS THE DISCRETION TO AWARD THEM IF A COST BILL IS FILED.

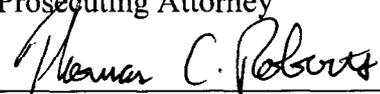
The State has not yet requested an award of appellate costs. The State agrees with defendant that this court has the discretion to grant or deny a request for appellate costs once a cost bill has been filed. *State v. Nolan*, 141 Wn.2d 620, 628, 8 P.3d 300 (2000). Should the State prevail in this appeal and file a cost bill defendant may object to the cost bill. The decision of whether to award appellate costs is the prerogative of this court in the exercise of its discretion under RCW 10.73.160 and RAP 14.2.

D. CONCLUSION.

For the foregoing reasons the State respectfully requests defendant's sentence be affirmed.

DATED: May 16, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442



Neil S. Brown
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by ^{U.S. mail or} ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. 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, on the date below.

5/16/16 Shanna Williams
Date Signature

PIERCE COUNTY PROSECUTOR

May 16, 2016 - 4:11 PM

Transmittal Letter

Document Uploaded: 1-471744-Respondent's Brief.pdf

Case Name: State v. Williams

Court of Appeals Case Number: 47174-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

glinskilaw@wavecable.com