

NO. 48134-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

MATHEW WELLINGTON

Appellant.

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

The Honorable James Orlando, Judge

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	<b>Page</b>
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
Issues Presented on Appeal.....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	2
1. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE SSOSA. .....	2
D. <u>CONCLUSION</u> .....	6

**TABLE OF AUTHORITIES**

**Page**

WASHINGTON CASES

*State v. Adamy*,  
151 Wn.App. 583, 213 P.3d 627 (2009).....2, 4

*State v. Goss*,  
56 Wn.App. 541, 784 P.2d 194 (1990).....3, 5

*State v. Grayson*,  
154 Wn.2d 333, 111 P.3d 1183 (2005).....2

*State v. Jackson*,  
61 Wn.App. 86, 809 P.2d 221, 223-24 (1991).....3

*State v. Osman*,  
157 Wn.2d 474, 139 P.3d 334 (2006).....2

STATUTES, RULES AND OTHERS

D. BOERNER, SENTENCING IN WASHINGTON  
§ 2.5(c) (1985).....3, 5

RCW 9.94A.670 (2).....2-5

Sentencing Reform Act of 1981.....2

A. ASSIGNMENT OF ERROR

The trial court abused its discretion by denying the SSOSA where Wellington precisely fit the criteria for a SSOSA.

B. STATEMENT OF THE CASE

Wellington, an Iraq war veteran with PTSD, who received medals for bravery, pleaded guilty to two counts of rape of a child. CP 11-22; RP 33-34, 55-56. Wellington requested a Special Sexual Offender Sentencing Alternative (SSOSA). RP 28-32. The Pre-Sentence Investigation Report (PSI) indicated that Wellington was amenable to treatment and had a very low risk of reoffending. RP 28-29. The trial court ordered the PSI on July 17, 2015 and discussed the document during sentencing, but apparently the PSI was not filed with the court. RP 28-20. The Department of Corrections did not oppose the SSOSA. RP 31.

Wellington met all of the criteria for a SSOSA: he has no priors, he did not cause bodily harm, he was amenable to treatment, he was related to the victim, he has a low risk of reoffending, he wants treatment and understands that he needs treatment. RP 28-33. The victim's mother, Wellington's soon to be ex-wife, objected to the SSOSA on grounds that Wellington repeatedly raped his step daughter. RP 38-39.

The trial court denied the SSOSA on grounds that the level of abuse was more than a simple molestation and Wellington's psychosexual revealed that he had disturbing patterns of sexual behavior and attraction toward children which he denied. RP 38-39. The court acknowledged that Wellington was capable of change but believed that Wellington posed a greater a risk to the community. RP 39-40. The court characterized Wellington's crimes as "life sentence for this child" ...and "A life sentence for Mr. Wellington as well". RP 38.

This timely appeal follows. CP 48-64.

C. ARGUMENT

THE TRIAL COURT ABUSED ITS  
DISCRETION BY DENYING THE SSOSA.

Denial of a SSOSA is reviewed for abuse of discretion. *State v. Adamy*, 151 Wn.App. 583, 587-88, 213 P.3d 627 (2009). "A trial court abuses its discretion if it ... denies a sentencing request on an impermissible basis." *State v. Osman*, 157 Wn.2d 474, 482, 139 P.3d 334 (2006). Wellington may challenge the procedure involved in denial of the SSOSA. *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005).

When an offender meets the criteria under RCW 9.94A.670 (2), he is eligible for a SSOSA. *Id.* Under the Sentencing Reform Act of 1981,

chapter 9.94A RCW, a first-time sex offender may be eligible for a suspended sentence under the SSOSA provisions. RCW 9.94A.670(2). “SSOSA was created because it was believed that for certain first-time sexual offenders, ‘requiring participation in rehabilitation programs is likely to prove effective in preventing future criminality.’” *State v. Goss*, 56 Wn.App. 541, 544, 784 P.2d 194 (1990 (quoting D. BOERNER, SENTENCING IN WASHINGTON § 2.5(c) (1985))).

The legislature understood that the behavior of sex offenders is compulsive and likely to continue without treatment. The legislature also recognized that providing alternatives to confinement leads to increased reporting of sex crimes, particularly in cases of intra-family abuse. *State v. Jackson*, 61 Wn.App. 86, 92-93, 809 P.2d 221, 223-24 (1991).

When the court receives the PSI, the court decides whether the defendant and the community will benefit from a SSOSA. In determining whether to grant a SSOSA request, “the court shall consider whether the offender and the community will benefit from the use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the

community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section." RCW 9.94A.670(4).

Here, Wellington was eligible for the SSOSA and amenable to treatment but the victim's mother opposed the SSOSA because of the harm inflicted on her family. RP12-17. The prosecutor also opposed the SSOSA believing it to be too lenient under the facts of the case. RP 19. The defense presented statistics revealing that the risk of reoffending for defendants who complete a SSOSA as opposed to a prison based treatment was significantly lower. RP 29. Also, significantly, Wellington admitted his crimes, knew he was wrong and expressed remorse. RP 30, 34-37.

The defense established for Wellington the availability of SSOSA housing, funding and an opening for treatment if the court granted the SSOSA. RP 30-34.

In *Adamy*, the trial court abused its discretion by categorically refusing to grant a SSOSA because Mr. Adamy was subject to a deportation order. The trial court refused to consider other factors based on its erroneous belief that a defendant who was subject to a deportation order was not eligible for a SSOSA. *Adamy*, 151 Wn.App. 583, 586-87.

Here, the trial court did not categorically refuse to grant a SSOSA based on an incorrect understanding of the law, but the court did deny the SSOSA based on an incorrect understanding of the purpose of a SSOSA. This was an abuse of discretion. Wellington fit every criteria for the SSOSA: he was amendable to treatment and a low risk to reoffend. The trial court was concerned with protecting the community but according to research, SSOA was the community's best chances for protection against Wellington reoffending. *Goss*, 56 Wn.App. at 544 (quoting D. BOERNER, SENTENCING IN WASHINGTON § 2.5(c) (1985)).

The trial court's denial of the SSOSA based on its apparent emotional response to the victim's mother was an abuse of discretion because it was based on untenable grounds. The court wanted to protect the community but denied the community the best chance of protection by denying the SSOSA. The court also denied the SSOSA based on its emotional response believing that Wellington was at risk of reoffending even though the PSI indicated that Wellington was a low risk of reoffending, and DOC did not object to the SSOSA. The trial court's denial of the SSOSA was an abuse of discretion based on untenable grounds. This court should remand for resentencing with a SSOSA.

D. CONCLUSION

Mr. Wellington respectfully requests this Court reverse his sentence and remand for imposition of a SSOSA

DATED this 3rd day of March 2016.

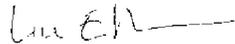
Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor's Office [pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us) and Mathew Wellington DOC# 384477 Stafford Creek Corrections Center 191 Constantine Way Aberdeen, WA 98520 true copy of the document to which this certificate is affixed, on March 3, 2016. Service was made electronically.



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Signature

**ELLNER LAW OFFICE**

**March 03, 2016 - 8:48 PM**

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