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NO. 53919-5-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

ANASTASIS MOURELATOS,

Appellant.

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

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The sentencing court improperly denied Anastasis Mourelatos a Drug Offender Sentencing Alternative (DOSA) by relying on nonstatutory and untenable factors.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

When an individual asks the sentencing court to impose a DOSA, the court must give due consideration to the request and may not deny the DOSA based on a misunderstanding of the law or by failing to consider the mandatory statutory criteria. It was clear that Mr. Mourelatos was statutorily eligible for a DOSA, he needed the structured drug treatment available in a DOSA, and the community would benefit from a DOSA's dual requirements of treatment and punishment. The court refused the DOSA because it incorrectly found an insufficient nexus between the crimes charged and Mr. Mourelatos's drug use, and because the court improperly emphasized the complaining witness's discomfort with that disposition of the case. Did the court deny Mr. Mourelatos a DOSA on an impermissible basis?

C. STATEMENT OF THE CASE.

Anastasis Mourelatos pled guilty to violation of a no-contact order and two misdemeanor violations of a no-contact order, all with a domestic violence designation. 6/6/19 RP 36-42. He asked for a DOSA because he recognized his violations of the order arose from his substance abuse and that he needed structured drug treatment while in prison. 9/11/19 RP 103-10.

Mr. Mourelatos told the court he needed help with his addiction. *Id.* He said he had started the Reach 2 program while in custody.<sup>1</sup> *Id.* at 107. He acknowledged that his addiction had played a large part in his behavior before his arrest, in his parenting decisions, and in how he processed his discovery that his daughter was being abused by the complaining witness's new partner. *Id.*<sup>2</sup> Mr. Mourelatos asked the court to consider his clear need for treatment and rehabilitation in imposing a treatment-based sentence. *Id.* at 105-06.

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<sup>1</sup> The ReEntry And Community Health (REACH) program began at the Monroe Correctional Complex. <https://www.doc.wa.gov/news/2018/08242018.htm> (last visited Jun. 8, 2020).

<sup>2</sup> Mr. Mourelatos acknowledged that he had contacted his daughter's mother; however, he explained that he was trying to protect his daughter from sexual abuse in the mother's home. 1/31/19 RP 6; 6/6/19 RP 36-42; 9/11/19 RP 107-09. He also contacted CPS about the abuse of his daughter. 1/25/19 RP 51.

The prosecution argued that Mr. Mourelatos should not have the opportunity to attend a DOSA because the complaining witness “simply feels unsafe” with that type of disposition. *Id.* at 101.<sup>3</sup> In addition, the prosecution suggested there was an insufficient nexus between the charged crimes and Mr. Mourelatos’s drug use, as there was no allegation he was “stealing to support a habit” or that he was “actually under the influence of drugs” at the time the orders were violated. *Id.* at 102.<sup>4</sup>

The prosecution told the court it seemed unlikely, based upon Mr. Mourelatos’s past behavior, that he would successfully complete a DOSA, and asked the court to impose a straight prison sentence.

9/11/19 RP 103.

The court commented that Mr. Mourelatos was “a community safety threat at this point,” without further explanation of that phrase. *Id.* at 111. The court stated that although Mr. Mourelatos’s drug use “doesn’t help” the situation, it found an insufficient nexus between the

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<sup>3</sup> Shortly after the sentencing hearing, the complainant moved to modify the no-contact order so that she could re-initiate the relationship and visit Mr. Mourelatos in prison with their daughter. CP \_\_, sub. nos. 94, 95, 99.

crimes and Mr. Mourelatos's admitted drug involvement. *Id.* The court imposed a mid-range sentence, denying the prison-based DOSA. *Id.*; CP 30-44.

D. ARGUMENT

**The court denied Mr. Mourelatos a prison-based DOSA by relying on impermissible factors.**

*1. The court must consider the mandatory sentencing criteria when determining whether to impose a DOSA.*

A court's sentencing authority stems from statute. *In re the Pers. Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980). When asked to consider imposing a DOSA, the sentencing statutes structure a court's authority. *State v. Grayson*, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005). A court may never categorically refuse to consider a DOSA sentence for an eligible individual and may not deny this sentence for impermissible reasons. *Id.*

In *Grayson*, an eligible defendant asked the court to impose a DOSA sentence. *Id.* The prosecutor opposed the DOSA based on the defendant's long history of drug selling and other pending charges. *Id.*

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<sup>4</sup> The record reveals nothing about whether Mr. Mourelatos was tested for intoxicants when he was arrested for any of the three matters. As to the December 24, 2018 incident, Mr. Mourelatos was not arrested at the scene, but later at his own home; therefore, no information was available about his physical

The “main reason” the court gave for denying the DOSA was that the State does not have the money to treat people in the DOSA system, which would result in the defendant being released without adequate treatment. *Id.* at 337.

The Supreme Court noted that the judge was relying on his understanding of the DOSA system’s funding, even though that information was not part of the record presented at sentencing. *Id.* at 340. Because the defendant had not objected, it considered any potential objection waived. *Id.* at 340-42.

Instead, the Court examined whether the court’s refusal to impose a DOSA complied with its obligations under the sentencing statutes and principles of due process of law. *Grayson*, 154 Wn.2d at 342. The refusal to consider a DOSA for anyone, or for a class of offenders, “is effectively a failure to exercise discretion and is subject to reversal.” *Id.*

The DOSA 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. *Id.* at 337; *see generally* RCW 9.94A.660.

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condition. 1/2/19 RP 41-43.

Under this program, the court imposes a prison sentence of one-half the midpoint of the standard range sentence. *Id.* While in prison, the individual receives chemical dependency treatment. RCW 9.94A.660(5)(a). Once the person completes the total confinement part of the sentence, he serves the rest of the sentence in closely monitored community supervision and treatment. RCW 9.94A.660(2). But if a person fails to comply with the conditions of a DOSA, even while in prison, DOC may administratively revoke the drug-treatment program and require the person to serve the remainder of the sentence in prison. RCW 9.94A.660(8)(c); *Grayson*, 154 Wn.2d at 338.

The statute provides the court with mandatory criteria to evaluate in determining eligibility. RCW 9.94A.660.

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.

The sentencing court must evaluate an offender using the statutory criteria under RCW 9.94A.660 when determining eligibility for a DOSA.

*2. The court denied Mr. Mourelatos's DOSA request on untenable grounds.*

Mr. Mourelatos satisfied the DOSA eligibility requirements. He successfully participated in a pre-screening evaluation through the Department of Corrections, in which he scored a five out of a possible

five. CP \_\_\_\_, sub. no. 70. The evaluation determined that Mr. Mourelatos was a good candidate for a DOSA because of his history of substance abuse, as well as his amenability to treatment. *Id.*

Moreover, the court acknowledged that Mr. Mourelatos's substance abuse contributed to his behavior in this case. 9/11/19 RP 110. The court told Mr. Mourelatos, "If you're really serious about getting treatment, you need to do that and you need to get out and follow court orders..." *Id.* at 111. Yet the court denied Mr. Mourelatos the very tools he needed to obtain that treatment.

The prosecution urged the court to deny the treatment-based sentence despite Mr. Mourelatos's eligibility because the idea of a treatment-based sentence simply made the complaining witness feel unsafe. *Id.* at 101-02. It also told the court that Mr. Mourelatos had pled guilty after receiving "a very fair offer, a very reasonable offer," and that he should not be permitted to receive a DOSA. *Id.*

But this analysis is misplaced. A prison-based DOSA is a mechanism for addressing the causes of wrongful behavior; it is not a sentence imposed based on weighing mitigating factors or leniency akin to an exceptional sentence below the standard range. *See, e.g.,* RCW

9.94A.535(1) (explaining mitigating circumstances for exceptional sentence).

A DOSA requires the court to impose a prison term of the middle of the standard range as the sentence. RCW 9.94A.662(1)(a). The offender must serve this term and engage in prison-based treatment before starting the strictly monitored community-based portion of the sentence. *Id.* The failure to comply with DOSA requirements at any point results in termination of treatment and the imposition of the entire prison term. RCW 9.94A.662(1), (3). Termination from the drug treatment program may occur long before the community-based portion of the program begins, if a person misbehaves or fails to follow rules while in prison. *See* DOC Policy 580.655, VI (Revocation of Prison DOSA Sentence).<sup>5</sup>

It was clear from Mr. Mourelatos's actions and his history that he needed chemical dependency treatment, and that without it, he was likely to continue his cycle of drug addiction and law violations; the court expressed and understood this at the time of sentencing. 9/11/19 RP 110 ("If you're really serious about treatment, you need to do that"). But the court refused to order a DOSA.

The court's analysis misapplied the DOSA criteria. It deemed the DOSA unavailable because Mr. Mourelatos had violated no-contact orders, acted impulsively or combatively, and because the complaining witness – also a drug user – had expressed that she did not want him to receive treatment. 9/11/19 RP 1009-11. This analysis is not permitted. Mr. Mourelatos was not an ineligible or inappropriate DOSA candidate because he exhibited behavior perfectly consistent with drug addiction. These factors made him an ideal candidate. This is the reason the screening evaluation found him to qualify, scoring a five out of five points. CP \_\_\_\_, sub. no. 70.

Further, the complaining witness's personal wishes are not an appropriate factor in assessing whether Mr. Mourelatos merits regimented, structured, and highly incentivized drug treatment. It had no logical connection to Mr. Mourelatos's eligibility for a DOSA or his ability to succeed in a treatment-based program. The court denied the

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<sup>5</sup> Available at: <http://www.doc.wa.gov/information/policies/default.aspx>.

DOSA based on unreasonable, illogical, or inapplicable considerations untethered from the purpose of the DOSA sentence.<sup>6</sup>

3. *Because the trial court abused its discretion, this Court should reverse Mr. Mourelatos's sentence.*

A court abuses its discretion by using the wrong legal standard or by resting its decision upon facts unsupported by the record. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (quoting *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993)); see also *State v. Mail*, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993) (failure to follow statutory procedure is legal error reviewable on appeal). “[T]rial judges have considerable discretion under the SRA, [but] they are still required to act within its strictures and principles of due process of law.” *Grayson*, 154 Wn.2d at 338.

Mr. Mourelatos satisfied the DOSA statutory criteria. No one disputed that both he and the community would benefit from his engagement in structured drug treatment with significant punitive sanctions imposed should he fail to comply. But the court denied him a

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<sup>6</sup> Just five months after the sentencing hearing, the complaining witness retained an attorney and moved to modify the no-contact order in Clark County Superior Court. CP \_\_\_, sub. nos. 94, 95, 99. The no-contact order was modified

DOSA based on impermissible factors. The court's failure to limit its consideration of a DOSA to the statutory criteria requires reversal of Mr. Mourelatos's sentence. He is entitled to a resentencing hearing at which the court gives proper consideration to the guidelines for imposing a DOSA sentence.

E. CONCLUSION

Mr. Mourelatos's sentence should be reversed and remanded for a new sentencing hearing and any further relief this Court deems appropriate.

DATED this 9th day of June 2020.

Respectfully submitted,

s/ Jan Trasen

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so that the complainant could visit Mr. Mourelatos in prison. *Id.*

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STATE OF WASHINGTON,	)	
	)	
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v.	)	
	)	
ANASTASIS MOURELATOS,	)	
	)	
Appellant.	)	

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