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State of Washington  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, Respondent

v.

ANASTASIS ANGELO MOURELATOS, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NOS.19-1-01882-06,  
19-1-00255-06, 18-1-03462-06, 18-1-02765-9

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BRIEF OF RESPONDENT

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## **RESPONSE TO ASSIGNMENTS OF ERROR**

- I. The trial court did not abuse its discretion when it sentenced Mourelatos to a standard range sentence rather than to the Drug Offender Sentencing Alternative.**

### **STATEMENT OF THE CASE**

Anastasis Angelo Mourelatos was originally charged by information with Harassment – Death Threats and Assault in the Fourth Degree for threatening and assaulting Nikki Meisner on or about October 19, 2018. CP 5-6. Each count also contained the special allegation of domestic violence. CP 5-6. While the case was pending multiple no-contact orders protected Meisner from Mourelatos, but Mourelatos violated the no-contact orders on numerous occasions and was charged in two additional cases with the crime of Felony Domestic Violence Court Order Violation (At Least Two Previous Convictions) for contact occurring on or about December 24, 2018 and on or about January 24, 2019. CP 64-65, 114-15.

The parties agreed to a settlement offer in which Mourelatos would plead guilty to felony harassment and the State would move to dismiss the assault and reduce the felony court order violations to gross misdemeanors

to which Mourelatos would also plead. CP 20-22.<sup>1</sup> Pursuant to that deal, Mourelatos faced a standard sentencing range of 33 to 43 months of total confinement on the harassment charge. CP 20. Mourelatos pleaded guilty pursuant to the settlement offer. CP 9-23.

After pleading guilty, but before sentencing, Mourelatos again violated the relevant no-contact orders by having contact with Meisner. CP 25-28. He also sought to withdraw his plea by alleging malfeasance on the part of his original attorney<sup>2</sup> and by claiming that he (Mourelatos) was under the influence of drugs at the time of his plea. CP 165-66. After a hearing, the court denied Mourelatos's motion to withdraw his plea. RP 96-98. Mourelatos also pleaded guilty to the newest domestic violence court order violation, which pursuant to an amended settlement offer was reduced to a gross misdemeanor. CP 167-68, 178-180.

The parties reconvened for sentencing on September 11, 2019. RP 100-14 (9/11/19). By this time Mourelatos had pleaded guilty to one count of felony harassment and three gross misdemeanor counts of domestic violence court order violation. CP 30, 88, 138, 178-79, 183. Mourelatos's offender score was 8, due to his other current offenses and a criminal

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<sup>1</sup> The State also agreed not to file additional criminal charges against Mourelatos including domestic violence court order violations (DVCOV), Telephone Harassment and Cyberstalking. CP 22.

<sup>2</sup> In particular, Mourelatos claimed that his attorney "advised him to stay in contact with the complaining party. . . ." CP 85.

history that included five other convictions for violating domestic violence protection orders.<sup>3</sup> CP 32, 41-42. His new standard sentencing range was 43 to 57 months in total confinement, though he sought a Drug Offender Sentencing Alternative (DOSA), which, if granted, would result in him serving 25 months in total confinement and 25 months on community custody. CP 32; RP 101 (9/11/19).

The State argued for a low-end standard range sentence of 43 months and opposed the DOSA. RP 101-03 (9/11/19). The State informed the court that Meisner, the victim, was “terrified of the defendant” and was afraid of how soon he would be out of prison under the DOSA as compared to a standard range sentence. RP 101-02 (9/11/19).

Additionally, the State argued that Mourelatos was not:

actually under the influence of drugs at the time he committed the offenses. What we have here is a pattern of behavior starting with a threat to kill an intimate partner and repeated, repeated violations of the no-contact order -- plural -- no-contact orders, plural, put in place to protect the victim and to facilitate the administration of justice.

RP 102 (9/11/19). Basically, Mourelatos had “been given multiple opportunities to show that he would comply with court orders [and he] just fails to do so.” RP 103 (9/11/19). And, as a result, the State did not believe

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<sup>3</sup> Mourelatos’s criminal history also included a conviction for Telephone Harassment – Domestic Violence that did not add a point to his offender score. CP 41.

Mourelatos would successfully complete a DOSA and had “even less faith he would comply with no-contact orders in the case.” RP 103 (9/11/19).

Mourelatos and his counsel advocated that he be sentenced to the DOSA, argued that his crimes were related to his drug use (alcohol), and stressed his need for treatment. RP 103-110 (9/11/19). The sentencing court first responded to Mourelatos’s allocution by indicating that it did not think he was being honest. RP 109 (9/11/19). The court then recounted Mourelatos’s history that included:

this previous relationship in 2013 where we’ve got repeated no-contact order violations then with another woman who you admitted that you were obsessed with, couldn’t let her go, and you continued . . . to basically stalk and harass her. Then you get out of that relationship, you do the same thing with this woman.

RP 110 (9/11/19). The court characterized this history as “probably the most concerning thing.” RP 109 (9/11/19). The court continued by relaying some of the facts of Mourelatos’s current felony harassment case, in which he is overheard on the 911 call saying, “I’m going to shoot this bitch.” RP 110 (9/11/19). The court then remarked that it considered Mourelatos “a community safety threat at this point,”<sup>4</sup> and stated that it did not find a “sufficient nexus between the crimes charged and the drug

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<sup>4</sup> Related to this concern the sentencing court told Mourelatos that he needed to “follow court orders” and “one of the things they tell us when they train us as judges is that a person who stalks and repeatedly violates court orders is one of the riskiest to the victim, and I believe you are.” RP 111 (9/11/19).

involvement here.” RP 111 (9/11/19). The sentencing court concluded by calling Mourelatos’s case “one of the more severe DV cases” and imposing a sentence of 48 months in total confinement—higher than the State’s recommendation—and ordering the misdemeanor time to run consecutively. RP 111 (9/11/19).

Upon being sentenced, Mourelatos acted out, became disruptive, and was threatened with contempt. RP 112-13. Mourelatos filed timely notices of appeal. CP 45, 98, 148, 193.

#### **ARGUMENT**

**I. The trial court did not abuse its discretion when it sentenced Mourelatos to a standard range sentence rather than to the Drug Offender Sentencing Alternative.**

Mourelatos argues that the sentencing court denied him a DOSA “based on unreasonable, illogical, or inapplicable considerations untethered from the purpose of the DOSA statute” to include taking into account the victim’s view of the potential sentences. Brief of Appellant at 10-11. This claim is without merit because a sentencing court when deciding whether to grant a sentencing alternative may properly take into account an offender’s criminal behavior, criminal history, and repeated violations of court orders, along with whether the relevant crimes were

related to the offender's addiction issues, community safety concerns, and the victim's thoughts.

A. STANDARD OF REVIEW

Generally, “the trial judge’s decision whether to grant a DOSA is not reviewable.” *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005) (citing RCW 9.94A.585(1)); *State v. Glant*, --- Wn.App.2d ----, 465 P.3d 382, 393-94 (2020) (noting that a “trial court that imposes a sentence within the range set by the legislature cannot abuse its discretion as to the length of the sentence as a matter of law”). But a defendant can “challenge the procedure by which a sentence was imposed,” like whether the sentencing court categorically refused to consider the DOSA or based its rejection of the DOSA for the particular defendant on impermissible factors. *Id.* at 341-42; *State v. Osman*, 157 Wn.2d 474, 482, 139 P.3d 334 (2006). Nevertheless, the sentencing court’s determination whether “the offender is eligible for an alternative sentence and, significantly, whether the alternative is appropriate” is reviewed under an abuse of discretion standard. *State v. Hender*, 180 Wn.App. 895, 900-01, 324 P.3d 780 (2014).

## B. DOSA SENTENCING CONSIDERATIONS

As a preliminary matter, eligibility for a DOSA “does not automatically lead to a DOSA sentence, [i]nstead . . . the sentencing court must still determine that ‘the alternative sentence is appropriate,’” i.e., whether the “offender is a good candidate for the program.” *Hender*, 180 Wn.App. at 900 (quoting *State v. Barton*, 121 Wn.App. 792, 795 P.3d 1138 (2004)); *Grayson*, 154 Wn.2d at 342-43. An offender is *eligible* for a DOSA 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.

RCW 9.94A.660(1).

In determining the appropriateness of a DOSA for a particular, eligible defendant the sentencing court may take into account, for example, the defendant's criminal history, whether a DOSA would serve both the defendant and the community, the type and circumstances of the crime at issue, the defendant's refusal to take responsibility for his or her actions, and the continued commission of crimes while on release for other crimes. *Hender*, 180 Wn.App. at 902; *State v. Jones*, 171 Wn.App. 52, 55-56, 286 P.3d 83 (2012); *State v. Van Noy*, 3 Wn.App.2d 494, 499, 416 P.3d 751 (2018); *Grayson*, 154 Wn.2d at 343. On the other hand, the only factors that our courts have found impermissible when deciding whether to sentence a defendant to a sentencing alternative are consideration of the defendant's race, sex, or religion, or a judge's personal animus towards a defendant. *Osman*, 157 Wn.2d at 482 n.8; *State v. Garcia-Martinez*, 88

Wn.App. 322, 329, 944 P.2d 1104, 1109 (1997); *State v. Lemke*, 7

Wn.App. 2d 23, 27–28, 434 P.3d 551 (2018).

That the victims of crimes have a role at sentencing should at this point be beyond dispute. RCW 7.69.010; RCW 7.69.030(13)-(14); Art. 1 sec. 35; RCW 9.94A.500(1); RCW 9.94A.431(1). Victims have an absolute right to make a statement at sentencing and sentencing courts are required to consider “arguments from . . . the victim . . . as to the sentence imposed.” RCW 9.94A.500(1); Art. 1 sec. 35; *State v. Gentry*, 125 Wn.2d 570, 628-29, 888 P.2d 1105 (1995); *State v. Sanchez*, 146 Wn.2d 339, 353, 46 P.3d 774 (2002). Accordingly, where a defendant seeks a sentencing alternative his or her victim may, like at any other sentencing, opine as to what sentence he or she thinks the defendant deserves, come to a conclusion as to the appropriateness of a sentence different from the desire of the defendant, and even weigh in as to whether the sentencing court should sentence the defendant to a standard range sentence or a sentencing alternative like the DOSA. RCW 9.94A.500(1); *See State v. Gleason*, 1 Wn.App.2d 1065, 2018 WL 332965, 2-4 (2018) (holding that defendant did not preserve the argument that the trial court, in denying a DOSA, improperly relied on an oral statement from the victim at sentencing that the relevant crime “was revenge” and that the defendant “shouldn’t be

rewarded with a DOSA,” by failing to “raise a timely and specific objection”).<sup>5</sup>

Here, Mourelatos argues that the sentencing court denied him a DOSA “based on unreasonable, illogical, or inapplicable considerations untethered from the purpose of the DOSA statute.” Br. of App. at 10-11. But Mourelatos fails to provide any authority for the proposition that a sentencing court cannot, as a matter of law, take into account an offender’s criminal behavior, criminal history, community safety concerns, repeated violations of court orders, whether the relevant crimes were related to the offender’s addiction issues, and the victim’s thoughts—the actual factors the sentencing court considered in this case—when deciding whether to grant a sentencing alternative. RP 109-11 (9/11/19); Br. of App. at 4-11. Case law suggests the opposite. *Hender*, 180 Wn.App. at 902; *Jones*, 171 Wn.App. at 55-56; *Grayson*, 154 Wn.2d at 343; RCW 9.94A.500(1). In fact, Mourelatos’s argument section entitled “The court denied Mr. Mourelatos’s DOSA request on untenable grounds” does not include a single citation to authority for what constitutes an “untenable ground.” Br. of App. at 7-11.

Rather Mourelatos argues why he believes he was a good candidate for DOSA based on his view of what a sentencing court may

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<sup>5</sup> This court’s opinion in *Gleason* is unpublished. Pursuant to GR 14.1 the opinion “may be accorded such persuasive value as the court deems appropriate.”

consider and then conflates eligibility—the parties and court agreed Mourelatos was *eligible* for a DOSA—with suitability by claiming that the sentencing “court’s analysis misapplied the DOSA [eligibility] criteria” and “deemed the DOSA unavailable” to him. Br. of App. at 7-10. But it is well within the sentencing court’s discretion to make a determination as to whether the “offender is a good candidate for the program.” *Grayson*, 154 Wn.2d at 342-43. And this court had ample reason to believe that Mourelatos was not such a candidate and articulated those reasons on the record, such as the fact that he “repeatedly violates court orders.” RP 109-111 (9/11/19). The sentencing court did not abuse its discretion when it sentenced Mourelatos to a standard range sentence and his sentence should be affirmed.

#### CONCLUSION

For the reasons above, Mourelatos’s sentence should be affirmed.

DATED this 10<sup>th</sup> day of September, 2020.

Respectfully submitted:

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## Transmittal Information

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