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Court of Appeals
Division II
State of Washington
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NO. 53937-3-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SHAITAYA McCOOL

Appellant.

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

The Honorable David Gregerson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The sentencing court improperly denied Shaitaya McCool a Drug Offender Sentencing Alternative (DOSA) on untenable grounds and for untenable reasons.

2. The appellant's judgment and sentence in each cause number contains legal financial obligations including interest accrual and a Department of Corrections supervision fee that are no longer authorized following *State v. Ramirez*¹ and after enactment of House Bill 1783.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The sentencing court must fully and fairly consider a request for a DOSA and may not deny a request based on a misapprehension of the law or for untenable reasons. Ms. McCool was statutorily eligible for a DOSA and she needed the structured drug treatment available in a DOSA, and the community would benefit from a DOSA's requirements of treatment and punishment. The court declined to impose a DOSA sentence for untenable reasons where it denied the request based on a “pattern of non-compliance.” Did the court deny Ms. McCool a DOSA on an impermissible basis or on untenable grounds? Assignment of Error 1.

2. Should the case be remanded to the trial court to strike the interest accrual provision and community supervision fee in the judgment and sentences in each cause number that are no longer authorized after enactment of

¹191 Wn.2d 732, 747, 426 P.3d 714 (2018).

House Bill 1783? Assignment of Error 2.

C. STATEMENT OF THE CASE

1. Procedural facts:

Shaitaya McCool, age 24, pleaded guilty in Clark County Superior Court in the following cause numbers on July 5, 2019:

Cause Number	Charges	Date of Offense
19-1-00042-06	Delivery of heroin Possession of methamphetamine	December 20, 2018
19-1-01609-06	Possession of methamphetamine Possession of heroin	April 16, 2019
19-1-01645-06	Possession of heroin	June 7, 2019
19-1-01746-06	Theft in the second degree Identity theft in the second degree Theft in the second degree Identify theft in the second degree Theft in the second degree Identity theft in the second degree Vehicle prowling in the second degree	May 31, 2019

Report of Proceedings (RP) at 4-16;² Clerk's Papers (CP) (Statement on Plea of Guilty, 9, 112, 163); (Judgment and Sentence) 44, 85, 134, 201.

Ms. McCool was charged in an additional case on July 11, 2019, and pleaded guilty on July 26, 2019 to the following charges:

19-1-01892-06	Identify theft in the second degree Possession of stolen property in the second degree	June 1, 2019
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²The record of proceedings is designated as follows: July 5, 2019 (change of plea); July 10, 2019; July 26, 2019 (change of plea); and August 23,

RP at 17-21, 22-3; CP (Statement on Plea of Guilty) 224; (Judgment and Sentence) 248.

The cases came for sentencing on August 23, 2019, the Honorable David Gregerson presiding. RP at 31-52. Ms. McCool was evaluated for a Drug Offender Sentencing Alternative (DOSA) and determined to be eligible for DOSA. RP at 31; CP (Order for DOSA Exam) 30, 131, 184, 244, 264; CP State's Sentencing Memorandum) 40, 101, 150, 264.

The Department of Corrections filed a Risk Assessment Report by Community Corrections Officer Amy Baddgor on August 15, 2019. CP 31, 76, 186.

A letter from DOC Officer Molly Shotwell was entered at sentencing. RP at 31; Supplemental CP _____. Attachment A at 1. Officer Shotwell alleges in the letter that Ms. McCool committed eight DOC violations since her release from prison in August, 2018, and that she has not followed through with DOC requirements. RP at 32; SCP ____; Attachment A at 1. The State agreed that Ms. McCool was eligible for DOSA, but objected to imposition of DOSA in all five cases. RP at 31. The State argued at sentencing and in its sentencing memorandum that she had not been willing to comply with treatment, that she wanted DOSA just to get a reduced sentence, and that she is unlikely to comply with the requirements of DOSA. RP at 32; CP 40-42, 101-03, 150-52, 195-97, 264-66. The State argued that Ms. McCool was

2019 (sentencing hearing).

unlikely to comply with DOSA requirements and that she has had DOC violations since her release from prison in 2018. RP at 31-35.

After hearing argument from counsel and a statement from Ms. McCool, the court denied the DOSA request, stating that DOSA:

doesn't seem to fit and from my standpoint is a good use of resources and risks to try to squeeze into this program given the history, which we see a fairly consistent pattern of non-compliance, which is not a good sign for chances for success.

So there may be resources in prison. I'm sure there are. I hope you take advantage of them, but I'm not going to grant the DOSA alternative.

RP at 42-43.

The court imposed the following sentences to be served concurrently, for a total sentence of 90 months, followed by 12 months of community custody:

Cause number	Sentence
19-1-00042-06	Count 1: 90 months Count 2: 24 months
19-1-01609-06	Count 1: 24 months Count 2: 24 months
19-1-01645-06	24 months
19-1-01746-06	Count 1: 29 months Count 2: 57 months Count 3: 29 months Count 4: 57 months Count 5: 29 months Count 6: 57 months Count 7: 60 months
19-1-01892-06	Count 1: 57 months Count 2: 29 months

RP at 43-51; CP 48, 89, 138, 205, 251.

The court found that indigency was established, and imposed a \$500 crime victim assessment in each cause number. RP at 45; CP 50, 91, 140, 207, 253.

The judgment and sentence in each cause number states that “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.” CP 51, 92, 141, 208, 254.

Section 4.2 (B) of the judgment and sentence in each cause number provides that the defendant “shall pay supervision fees as determined by DOC.” CP 49, 89, 139, 206, 252.

Timely notice of appeal was filed on September 9, 2019. CP 60, 154, 217, 268.

D. ARGUMENT

1. REMAND IS REQUIRED BECAUSE THE SENTENCING COURT FAILED TO FULLY AND FAIRLY CONSIDER MS. McCOOL'S APPROPRIATENESS FOR A PRISON-BASED DOSA

a. The court must consider whether the defendant is eligible and whether a DOSA would benefit the defendant and the community

The Drug Offender Sentencing Alternative (DOSA) program is intended to help offenders who will likely benefit from treatment. *State v.*

Grayson, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005). The DOSA program authorizes trial judges to give eligible nonviolent drug offenders a reduced prison term along with increased supervision, and treatment for their addictions. *Id.*; RCW 9.94A.660.

The sentencing judge has discretion to grant or deny a DOSA. RCW 9.94A.660(3). Generally, a judge's decision to grant a DOSA is not reviewable, but “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).

RCW 9.94A.660 provides meaningful treatment and rehabilitation incentives for those convicted of drug crimes, when the trial judge concludes that the sentence would serve the best interests of the individual and the community. *Grayson*, 154 Wn.2d at 337. RCW 9.94A.660(1) sets out the eligibility requirements for a sentencing alternative.³

³Under RCW 9.94A.660(1) a person 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

The purpose of the DOSA statute was to provide “treatment-oriented sentences” for drug offenders. *State v. Conners*, 90 Wn. App. 48, 53, 950 P.2d 519, rev. denied, 136 Wn.2d 1004 (1998). If the court determines a DOSA is appropriate, the court imposes a sentence which is one-half the midpoint of the standard range sentence in prison. RCW 9.94A.662. If the court grants a DOSA, “the defendant serves only about one-half of a standard range sentence in prison and receives substance abuse treatment while incarcerated” and afterward she is released into community supervision and additional treatment. *Grayson*, 154 Wn.2d at 337-38.

A DOSA participant has a strong incentive to progress with his or her treatment because if a person violates any of the requirements or conditions of the sentence during community custody, the court may terminate DOSA and order the person to serve the prison sentence under the standard range. RCW 9.94A.660.

Exceptions to the general rule that a court’s decision whether to grant

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

a DOSA is not reviewable are if the trial court refused to exercise discretion at all or relied on an impermissible basis in making the decision. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), review denied, 136 Wn.2d 1002, 966 P.2d 902 (1998). A defendant may challenge the procedure by which the sentence was imposed because every defendant is entitled to have the trial court give the request meaningful consideration. *Grayson*, 154 Wn.2d at 342 (citing RCW 9.94A.585(1)); *State v. Bramme*, 115 Wn.2d 844, 850, 64 P.3d 60 (2003). A defendant is entitled to a review of the denial of a DOSA request in order to correct a legal error or the trial court's abuse of discretion. *Williams*, 149 Wn.2d at 147; *State v. White*, 123 Wn.App. 106,114, 97 P.3d 34 (2004).

In *Grayson*, the State opposed a DOSA because of Mr. Grayson's history of drug crimes and pending charges, even though he was eligible for the program. 154 Wn.2d at 336. However, the judge denied the DOSA mainly because he believed the program was underfunded. *Id.* at 342. Although this was not the judge's sole reason, the Supreme Court ruled that this was reversible error. *Id.* The court held that because the judge's primary reason for denying the DOSA was lack of funding, the trial court abused its discretion by categorically refusing to consider the alternative sentence. *Id.* "While no

more than once in the prior ten years before the current offense.

defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered.” *Id.* at 342. A trial court’s failure to meaningfully consider a sentencing alternative is reversible error. *Id.*

Ms. McCool met the DOSA eligibility requirements. The Risk Assessment Report by DOC Officer Baddgor states, “[a]ll of McCool’s criminal history is related to drugs---possessing, selling or committing property crimes in order to support her habit. Her first conviction was at age 15.” CP 33, 78, 188.

Department of Corrections Officer Molly Shotwell stated in her letter to the court that she supervised Ms. McCool since her release from prison in August 2018. SCP ___, Attachment A at 1. Ms. Shotwell wrote that Ms. McCool “may not be a good” DOSA candidate because she had not followed through with DOC requirements since her release from prison, not engaged in treatment and has not remained sober. SCP ___, Attachment A at 1. The letter alleges that Ms. McCool said during jail calls that she was going to “try for DOSA” or Drug Court, and concluded that “it appears that McCool wants to take any program that she can get in order to decrease her time in prison but has no intention on actively programming.” SCP ___, Attachment A at 1. In the letter, Officer Shotwell stated that during her monitored jail calls, Ms.

McCool did not “made any positive statements that she was looking forward to DOSA or how she plans to be successful in the program, stay clean, etc.” SCP ____, Attachment A at 1.

The DOC Risk Assessment Report by Officer Baddgor described Ms. McCool’s history of drug dependency starting at age twelve, and her heroin addiction. CP 33-36, 78-81, 188-91. The report describes her family life, which stated that she was raised by her mother, who “struggled with money, and that her mother engaged in “selling herself” to supporting Ms. McCool and her sisters, and that she used drugs with her father. CP 34-35, 79-80, 189-90. The report states that Ms. McCool first used methamphetamine at age 12 or 13 and that she used drugs with her dad after he was released from prison, that she started using drugs intravenously at age 15, and started using heroin at age 16. CP 35, 80, 190.

During sentencing, defense counsel explained Ms. McCool should be granted a DOSA because contrary to Officer Shotwell’s contention that Ms. McCool seeks DOSA because she merely wants less prison time, “it’s equally likely, again based on the statements that she made in the risk assessment, that it’s an understanding that she needs help and assistance in maintaining her sobriety and law-abiding behavior.” RP at 37.

Officer Shotwell stated in her report that Ms. McCool broke rules at the

Clark County Jail by “possessing numerous items of contraband,” and that she refuses to follow DOC rules, and concluded that based on her behavior, “it is likely that she will not follow the rules of DOSA.” SCP ____, Attachment A at 1.

The opinion contained in Officer Shotwell’s letter that Ms. McCool “may not be a good candidate for the DOSA program” is also based in large part on the assertion that she wants less time in prison and based on record jail conversations in which she does not discuss wanting sobriety, without consideration of whom she was talking to, the context of the telephone conversation, or whether a conclusion can be drawn simply because she has not said precisely the right things to convince Ms. Shotwell of her sincerity of her request for DOSA. Officer Baddgor’s DOC Risk Assessment, on the other hand, shows that Ms. McCool was looking forward to making a change in her life, that she completed DOC chemical dependency drug dependency screen, and that although she had been discharged from the Therapeutic Community program in prison, she said she “hadn’t been ready, didn’t want to get clean[,] [b]ut that she has a different mindset now, is married and that she [‘]”wants to be an adult”[‘]. CP 35, 80, 190.

Because the DOSA program was enacted to treat offenders with chemical dependency issues like Ms. McCool, she was eligible for a DOSA,

and the record shows she was a long term drug addict and that she was looking forward to entering treatment and would benefit from DOSA treatment, there was no tenable reason to deny her request.

Ms. McCool told the judge that she has been addicted to drugs for thirteen years, and that she wants “now more than anything is the chance” to prove she can do DOSA. RP at 40. She stated at sentencing that she

will go into treatment and give my all and dive all way into recovery, to give my all into learning a new way to live, working every day on everything that makes me feel like I must use.

I will learn to deal with my emotions in a positive way that will be keep drug-free. I’m going to learn what it means to become an active member of society, learning so many skills that I will use for the rest of my life. I believe in my heart that I’m ready.

RP at 41.

The court found that her drug use is a “major concern” and that the court did not have any doubt about her sincerity. RP at 42.

b. The court denied Ms. McCool's motion for DOSA on untenable grounds

Ms. McCool satisfied the DOSA requirements. She also demonstrated during sentencing both she and the community would benefit from the DOSA program because she would receive structured treatment and supervision. Since she was eligible, the trial court was required to meaningfully consider the sentencing alternative. Instead, the court merely found that her pattern of non-compliance “is not a good sign for chances of success.” RP at 43.

The court's denial of Ms. McCool's request for DOSA was based on untenable grounds and untenable reasons; the judge did not consider the relevant factors pertinent to assessing the appropriateness of the DOSA request. By failing to fully and fairly consider the benefit both to Ms. McCool and the community, the court abused its discretion.

The sentencing court did balance these factors against the considerable benefit to both Ms. McCool and the community from her active involvement in drug treatment, particularly with the degree of supervision provided by DOSA. Because the record demonstrated Ms. McCool was eligible for a DOSA and would benefit from treatment, the sentencing court's denial based solely on the perception that her failure to comply with DOC requirements indicated that she would not be successful in DOSA, the judge denied this request on an untenable ground and for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The sentencing court abused its discretion when it denied Ms. McCool's request because the record indicates that the court denied the sentencing alternative based in large part "the whole pattern and constellation of information that I have in front of me, including the report here and the DOC statement," which includes Officer Shotwell's report alleging that Ms. McCool broke rules at the Clark County Jail by possessing contraband and

refused to follow DOC rules, from which Officer Shotwell extrapolated to conclude that “based on her behavior, it is likely that she will not follow the rules of DOSA.” SCP ____, Attachment A at 1.

A trial court abuses its discretion when its decision is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons” *State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d at 26. A decision is manifestly unreasonable or exercised on untenable grounds if the trial court applied the wrong legal standard in making the decision or the decision is unsupported by the record. *State v. Salgado-Mendoza*, 189 Wn.2d 420, 427, 403 P.3d 45 (2017).

Here, Ms. McCool satisfied the DOSA statutory criteria. The court, however, denied her a DOSA based on an undefined standard of a “fairly consistent pattern of non-compliance.” RP at 42-43. The court's failure to base its consideration of a DOSA on the statutory criteria requires reversal of Ms. McCool's sentence. This court should remand for resentencing in which the court gives consideration to the statutory guidelines for imposing a DOSA sentence.

2. THE COURT ERRED IN IMPOSING THE INTEREST ACCRUAL AND SUPERVISION FEE

a. Recent statutory amendments prohibit discretionary costs for indigent defendants

A court may order a defendant to pay legal financial obligations (LFOs), including costs incurred by the State in prosecuting the defendant. RCW 9.94A.760(1); RCW 10.01.160(1), (2). The legislature recently amended former RCW 36.18.020(2)(h) in Engrossed Second Substitute House Bill 1783, which modified Washington's system of LFOs and amended RCW 10.01.160(3) to prohibit trial courts from imposing criminal filing fees, jury demand fees, and discretionary LFOs on defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, §§ 6, 9, 17. The amendments to the LFO statutes apply prospectively to cases pending on direct review and not final when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

House Bill 1783 amended “the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c).” *Ramirez*, 191 Wn.2d at 746 (citing LAWS OF 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”).

Subsection .010(3) defines “indigent” as a person who (a) receives certain forms of public assistance, (b) is involuntarily committed to a public mental health facility, (c) whose annual after-tax income is 125% or less than the federally established poverty guidelines, or (d) whose “available funds are insufficient to pay any amount for the retention of counsel” in the matter before the court. RCW 10.101.010(3).

In this case, the court imposed a \$500 crime victim fund assessment in each cause number. CP 50, 91, 140, 207, 253. The court found that Ms. McCool is indigent. RP at 45. Shortly after the sentencing hearing the court found Ms. McCool unable to contribute to the costs of her appeal while ordering the appeal to proceed solely at public expense. CP 62, 105, 156, 219, 270. Thus, the record indicates that Ms. McCool was indigent under RCW 10.101.010(3) at the time of the sentencing hearing on August 23, 2019.

b. Remand is necessary to strike the interest accrual provision and supervision fee

Ms. McCool challenges the interest accrual on non-restitution LFOs assessed in Section 4.3 of the judgment and sentence in each cause number. CP 51, 92, 141, 208, 254. The 2018 legislation eliminated the accrual of interest on non-restitution LFOs. The judgment and sentence in each case states that financial obligations imposed by it shall bear interest from the date of the judgment until payment in full at the rate applicable to civil judgments. CP 51, 92, 141, 208, 254. The 2018 legislation states that as of its effective date “penalties, fines, bail forfeitures, fees, and costs imposed against a defendant in

a criminal proceeding shall not accrue interest.” As amended, RCW 10.82.090 now provides:

- (1) Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of the effective date of this section [June 7, 2018], no interest shall accrue on non-restitution legal financial obligations.

See LAWS OF 2018, ch. 269.

Under RCW 10.82.090(1) and (2)(a) the interest accrual provision in the judgment and sentence pertaining to non-restitution LFOs must be stricken.

In Section 4.2(B) of the judgment and sentence in each cause number, the court also directed Ms. McCool to pay a community supervision fee to the Department of Corrections. CP 49, 89, 139, 206, 252. The relevant statute provides that this is discretionary: “Unless waived by the court ... the court shall order an offender to ... [p]ay supervision fees as determined by the department.” RCW 9.94A.703(2)(d). For this reason, costs of community custody, including monitoring costs, are discretionary and are subject to an ability to pay inquiry. *State v. Lundstrom*, 6 Wn.App.2d 388, 396 n. 3, 429 P.3d 1116 (2018). Because Ms. McCool is indigent, this Court should strike this condition.

E. CONCLUSION

Because the sentencing court improperly denied her DOSA request, Ms. McCool requests this Court reverse the sentencing court’s ruling and remand for resentencing.

Ms. McCool also respectfully requests this Court to remand for

resentencing with instructions to strike the discretionary costs of the interest
accrual and the DOC supervision fee.

DATED: February 18, 2020.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", written over a horizontal line.

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CERTIFICATE OF SERVICE

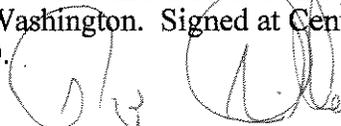
The undersigned certifies that on February 18, 2020, that this Appellant's Opening Brief was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and Rachael Rogers and copies were mailed by U.S. mail, postage prepaid, to the following Appellant:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on February 18, 2020.



PETER B. TILLER

ATTACHMENT A

8
MH

19-1-0004206



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Scott G. Weber, Clerk, Clark Co.

Your Honor,

This letter is in reference to Shaitaya Mary Justice McCool regarding her consideration for the Drug Offender Sentence Alternative (DOSA) program. I have supervised McCool under the Department of Corrections (DOC) jurisdiction since her release from prison in August of 2018. Since her release from prison, McCool has had eight DOC violations ranging from Failing to Report, Failing to follow facility rules, Consumption of Controlled Substances to include Methamphetamine and Heroin, Associating with known felons, and Traveling outside of the state without permission.

Based on her behavior while on DOC supervision, McCool may not be a good candidate for the DOSA program for numerous reasons. First, McCool has not followed through with majority of her requirements while on DOC since her release from prison. She has not engaged in treatment, remained clean and sober, or resisted from associating with convicted felons. Also, one of the first statements that McCool made in jail calls after her arrest with new charges was that she "was going to try for DOSA" and, if was not accepted into the program, that she was going to try for Drug Court. It appears that McCool wants to take any program that she can get in order to decrease her time in prison but has no intention on actively programming. She has not yet during any monitored jail calls made any positive statements that she was looking forward to DOSA or how she plans to be successful in the program, stay clean, etc.

Furthermore, see attached Clark County Jail report. McCool was caught breaking the rules of the facility by possessing numerous items of contraband. Not only does McCool refuse to follow the rules of DOC she also refuses to follow facility rules and based on her behavior, it is likely that she will not follow the rules of DOSA.

Molly Shotwell
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(360) 600-5902

"Working Together for SAFE Communities"



CLARK COUNTY SHERIFFS OFFICE

INCIDENT REPORT #19001836

INCIDENT DETAILS					
INCIDENT TYPE MAJOR	LOCATION C/D	INCIDENT DATE 08/11/2019 15:00	OFFICER ID 4321	OFFICER NAME SCIARETTA, BRANDON	
ENTERED DATE 08/11/2019 16:00	SUPERVISOR ID 4092	NAME ASHWORTH, RYAN	DATE REVIEWED	COMMANDER I	NAME
DATE REVIEWED	ASSIGNED ID 4129	ASSIGNED NAME FERRELL, JOSHUA	APPROVAL ID 4129	APPROVAL NAME FERRELL, JOSHUA	

SUMMARY: F Sqd Conducted Random Searches/Bar Checks in C/D Pod

MENTIONED: Inmate Herlofson CFN 237703

Inmate Humphries CFN 217231

Inmate McCool CFN 217822

Deputy Pattie PSN 4854

Deputy Miller PSN 4162

Deputy McKinney PSN 4872

Sgt Ferrell PSN 4129

DOCUMENTS: None

DETAILS: F Squad was conducting bar checks and random cell searches. We entered D1, and I checked cell 1. I then went upstairs and saw Inmate McCool walk into cell 7. I went to cell 7, and ordered her out of her cell. The cell had a lot of obvious saved food on mats. I started searching the cell. I got to the top bunk, and the bin was full of saved crackers and whole oranges. I walked out of the cell, ordered all inmates downstairs from the upper tier. The rest of the squad then came up to cell 7. Dep Pattie and I started removing the saved food when Dep Miller found three shampoo bottles wrapped up in the blankets on the bunk. They were full of an orange fermented liquid commonly known as pruno. The bunk had paperwork from Inmate Herlofson. Dep Miller took the bottles out to the tier and asked who had the pruno. Inmate Herlofson admitted it was hers. We continued to search. Dep Pattie and I started searching the bottom bunk, when I found a cup with three ink pens, tweezers, and a small silver colored piercing in it. The bunk had paperwork and pictures belonging to Inmate McCool. Pattie and I continued searching totes, and I found a cover to a feminine pad rolled up about 4 inches tall and 1 in wide. It was tied together with a hair tie. I opened it up, and it had a small plastic ziplock bag with two cut down/capped syringes, lighter, plastic tube, charred foil, and another feminine pad cover with some pieces of cotton from the inside of a pad. The tote has paperwork in it belonging to McCool. Sgt Ferrell responded to D1-7. He authorized a strip search of McCool, which was completed by Dep Rothenberger with negative results. All contraband was disposed of. Inmate McCool was infractioned for Possession of Any Item which may Constitute a Threat to Safety and Security (704). Inmate Herlofson was infractioned for Make or Possession of Any Intoxicant/Drug (602). Inmate Humphries was infractioned for possession of saved food (107).

CONCLUSION: Three inmates infractioned.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. I intend my printed name and PSN on this document to be my signature. This document was signed in Clark County, Washington.

VICTIM/SUBJECT REPORTS

NAME TYPE DEPUTY	OFFICER ID 4872	NAME MCKINNEY,	INVOLVEMENT STAFF	REPORT TYPE MAJOR INFRACTION
COMMENTS				
NAME TYPE DEPUTY	OFFICER ID 4162	NAME MILLER,	INVOLVEMENT STAFF	REPORT TYPE MAJOR INFRACTION
COMMENTS				
NAME TYPE DEPUTY	OFFICER ID 4854	NAME PATTIE,	INVOLVEMENT STAFF	REPORT TYPE MAJOR INFRACTION
COMMENTS				
NAME TYPE DEPUTY	OFFICER ID 4692	NAME ROTHENBERGER,	INVOLVEMENT STAFF	REPORT TYPE MAJOR INFRACTION
COMMENTS				
NAME TYPE DEPUTY	OFFICER ID 4321	NAME SCIARETTA,	INVOLVEMENT STAFF	REPORT TYPE MAJOR INFRACTION
COMMENTS				

INMATE REPORTS

INMATE ID NO. 237703	BOOKING NO. 19006654	NAME HERLOFSON, MELODY LYNN	SEX F	RACE W	CLASSIFICATION	LOCATION MJ-D-1-7-1
COMMENTS						
INMATE ID NO. 217231	BOOKING NO. 19005261	NAME HUMPHRIES, MARIAH LAVONE	SEX F	RACE W	CLASSIFICATION	LOCATION MJ-D-1-7-2
COMMENTS						
INMATE ID NO. 217822	BOOKING NO. 19005974	NAME MCCOOL, SHAITAYA	SEX F	RACE W	CLASSIFICATION	LOCATION MJ-D-1-7-3
COMMENTS						

SUPPLEMENTS

DISCIPLINE

NAME HERLOFSON, MELODY LYNN		DOB 07/31/1995	HOUSING LOCATION MJ-D-1-7-1		
VIOLATION CODE 602	VIOLATION DESCRIPTION MAKE OR POSSESS ANY INTOXICANT OR DRUG			PLEA	
DETAILS Make or Possess any Intoxicant/Drug (602)					
FINDINGS CODE	HEARING PIN	SANCTIONS 1	SANCTIONS 2	SANCTIONS 3	
FINDINGS					
HEARING DATE 08/14/2019 13:00	ACCEPTS <input type="checkbox"/>	CLOSED DATE	ENTERED PIN 4321	ENTERED NAME SCIARETTA, BRANDON	
NAME HUMPHRIES, MARIAH LAVONE		DOB 05/28/1996	HOUSING LOCATION MJ-D-1-7-2		
VIOLATION CODE 107	VIOLATION DESCRIPTION SAVE FOOD AFTER MEALS			PLEA	
DETAILS Inmate Humphries had saved food on bunk.					
FINDINGS CODE	HEARING PIN	SANCTIONS 1	SANCTIONS 2	SANCTIONS 3	
FINDINGS 24 Hours Lockdown 08/12/19 0800 - 08/13/19 0800					
HEARING DATE	ACCEPTS <input type="checkbox"/>	CLOSED DATE	ENTERED PIN 4321	ENTERED NAME SCIARETTA, BRANDON	
NAME MCCOOL, SHAITAYA MARIEJUSTICE		DOB 02/17/1995	HOUSING LOCATION MJ-D-1-7-3		
VIOLATION CODE 704	VIOLATION DESCRIPTION POSS WEAPON, KNIFE, TOOL, ITEM THAT THREATENS S&S			PLEA	
DETAILS Possession of Any Item that may Constitute a Threat to Safety/Security (704)					
FINDINGS CODE	HEARING PIN	SANCTIONS 1	SANCTIONS 2	SANCTIONS 3	
FINDINGS					
HEARING DATE 08/14/2019 13:00	ACCEPTS <input type="checkbox"/>	CLOSED DATE	ENTERED PIN 4321	ENTERED NAME SCIARETTA, BRANDON	

CLARK COUNTY SHERIFFS OFFICE

Inmate Alert Listing for: MCCOOL, SHAITAYA MARIEJUSTICE

Date	Code	Description	Comment
7/25/2019 10:55:00 AM	LOC	LOSS OF COMMISSARY	INCIDENT 19001660 FOUR WEEK LOC, INCIDENT 19001813 TWO WEEK LOC, INCIDENT 19001836 FOUR WEEK LOC
7/24/2019 8:54:00 AM	NO VISITS	LOSS OF VISITING	#19001660 IM LOST VISITING FOR 4 WKS *7/24/19-8/21/19* 4958 #19001836 IM LOST VISITING FOR 4 WKS *08/21/19-09/18/19* 4962
7/24/2019 8:00:00 AM	LOCKDOWN	LOCKDOWN	INCIDENT #19001660 - MAJOR INFRACTION 701 LOCKDOWN: 20 DAYS 07/24/19 @ 0800 TO 08/13/19 @ 0800 19001813 MINOR 309 START 8/13/19 END 8/15/19 BMS3603 19001836 MAJOR 704 START 8/15/19 END 9/11/19 BMS3603
7/12/2019 12:15:00 PM	LOC	LOSS OF COMMISSARY	INCIDENT 19001589 TWO WEEK LOC
7/10/2019 8:00:00 AM	LOCKDOWN	LOCKDOWN	19001589
6/24/2019 2:10:00 PM	DENIED	DENIED	MAT PROGRAM MA4379
6/7/2019 5:36:53 PM	MEDICAL	MEDICAL	AUTOALERT

TOTAL ALERTS: 7

CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4608 - DERTHICK, NICHOLAS		
COMMENTS CODE 50 IN D1 CS4536 08/14/14		
DATE	REASON	NAME
8/17/2019 5:49:00 PM		
INMATE IDENTIFICATION NUMBER	DOB	RACE SEX
CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4507 - KARCHER, ROBERT		
COMMENTS PER POD DEPUTY; RK4507		
DATE	REASON	NAME
6/7/2019 5:36:56 PM		
INMATE IDENTIFICATION NUMBER	DOB	RACE SEX
CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4608 - DERTHICK, NICHOLAS		
COMMENTS RM REQ CEE3957 07/28/14		
DATE	REASON	NAME
7/5/2019 10:43:00 AM		
INMATE IDENTIFICATION NUMBER	DOB	RACE SEX
CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4404 - CHOMA, CHRISTOPHER		
COMMENTS PER VM MASON		
DATE	REASON	NAME
8/13/2019 2:30:00 PM	OTHER	MCAULEY, BETHANY ANN
INMATE IDENTIFICATION NUMBER	DOB	RACE SEX
204207	07/17/1992	W F
CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4186 - BOND, PAUL		
COMMENTS MCAULEY WAS TRYING TO SEND DRUGS INTO MCCOOL/THEY BOTH WERE INVOLVED IN TRYING TO SEND DRUGS INTO INMATES IN CUSTODY		
DATE	REASON	NAME
6/11/2019 5:43:00 PM	OTHER	MCAULEY, JAMES EDWARD
INMATE IDENTIFICATION NUMBER	DOB	RACE SEX
189965	08/15/1989	W M
CLEARED DATE	CLEAR TYPE	CLEAR TYPE DESCRIPTION
CLEARED BY PIN AND NAME 4640 - TRESEDER, SEAN		
COMMENTS ATTEMPTING TO SEND DRUGS INTO FACILITY TOGETHER WHILE ON THE OUTSIDE - SPT4640		
DATE	REASON	NAME

6/17/2019 5:09:00	REF MEDS	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS REFUSED DIABETIC CHECK		
DATE	CODE	CODE DESCRIPTION
7/2/2019 5:11:00 AM	MED INFO	MEDICAL INFORMATION
SUB CODE		SUB CODE DESCRIPTION
COMMENTS REFUSED DIABETIC CHECK		
DATE	CODE	CODE DESCRIPTION
7/3/2019 5:16:00 AM	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS REFUSED DIABETIC CHECK		
DATE	CODE	CODE DESCRIPTION
7/4/2019 5:10:00 AM	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS REFUSED DIABETIC CHECK		
DATE	CODE	CODE DESCRIPTION
7/4/2019 4:30:00 PM	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS INMATE MASON-ROTH, AMY (CFN 154541) TAPPED OUT OF D2-6 STATING HER CELLMATE MCCOOL, SHAITAYA (CFN 217822) THREATENED HER. INMATE MASON-ROTH DID NOT FEEL SAFE IN D2 AND WAS PLACED IN C/D-INT ROOM. LATER RE-HOUSED TO C2D PER CLASSIFICATION.		
DATE	CODE	CODE DESCRIPTION
7/5/2019 5:01:00 AM	REF MEDS	REFUSED MEDICATION
SUB CODE		SUB CODE DESCRIPTION
COMMENTS REFUSED DIABETIC CHECK.		
DATE	CODE	CODE DESCRIPTION
7/5/2019 10:35:00	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS DURING MORNING MAT MEDLINE MCCOOL ASKED IF MASON-ROTH WAS PUT ON HER KEEP SEPERATE LIST. I CHECKED AND SAID SHE WAS NOT. SHE STATED THERE NEEDS TO BE ONE ADDED BECAUSE OF AN INCIDENT THAT HAPPENED IN D2 A DAY PRIOR. SHE STATED MASON-ROTH USED HER PIN TO SUBMIT A INMATE KITE THAT SAID SHE WAS SUICIDAL. SHE STATED IT WAS A FALSE STATEMENT AND SHE WAS NOT SUICIDAL. MASON-ROTH WAS MOVED TO A DIFFERENT HOUSING UNIT BUT NO KEEP SEPERATE WAS ADDED. CLASSIFICATION WAS NOTIFIED.		
DATE	CODE	CODE DESCRIPTION
7/10/2019 12:35:00	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS MCCOOL REQUESTING CORRESPONDENCE WITH HER PROCLAIMED SPOUSE, MCAULEY, JAMES 189965. BOTH CURRENTLY IN CUSTODY. THEY ARE CO-DEFENDANTS ON VPD CASE 2319-9450. NEITHER OF THESE CASES HAVE BEEN RESOLVED IN THE COURT SYSTEMS AS OF THE TIME OF THIS LOG. REQUEST FOR CORRESPONDENCE DENIED AT THIS TIME.		
DATE	CODE	CODE DESCRIPTION
8/2/2019 5:55:00 AM	INFO	INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION
COMMENTS		

THIS SHIFT LOG ENTRY WAS ENTERED ON 8/01/2019 BY DEPUTY BARTON:
 I/M MCCOOL, SHAITAYA TAPPED OUT OF D-2-3 DUE TO ARGUEMENTS WITH MULTIPLE INMATES IN THAT AREA. SHE
 FELT THEY WOULD FIGHT IF SHE STAYED IN D-2

DATE 8/7/2019 9:47:00 PM	CODE INFO	CODE DESCRIPTION INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION

COMMENTS
 INMATE HUMPHRIES 217231 AND INMATE MCCOOL 217882 ATTEMPTED TO MANIPULATE THEIR HOUSING BY CLAIMING TO BE HAVING ISSUES WITH INMATE CRICHTON 197220. THEY ARE ALL HOUSED TOGETHER IN D1-1 AND MCCOOL AND HUMPHRIES WANTED TO MOVE TO D1-7. WE WERE GOING TO MOVE CRICHTON TO 7 BUT SHE IS LT/LB SO MCCOOL AND HUMPHRIES THEN SAID THAT IF THEIR OPTION WAS C1 THEY WERE FINE IN D1-1 AND HAD NO PROBLEMS. BOTH WERE INFRACTED FOR MINOR DIVERSION FOR TRYING TO MINIPULATE THEIR HOUSING AND TOLD THAT IF THERE WERE ANY MORE ISSUES WITH EITHER OF THEM THEY WOULD BE MOVING TO C1.

DATE 8/13/2019 7:50:00	CODE INFO	CODE DESCRIPTION INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION

COMMENTS
 I/M 2 I/M MAIL INCERCEPTED, FROM MCAULEY, BETHANY TO MCOOL, SHAITAYA. MCOOL ADMITTED TO TRYING TO SEND IT.

DATE 8/16/2019 8:37:00	CODE INFO	CODE DESCRIPTION INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION

COMMENTS
 MCCOOL, SHAITAYA 217822 C1-4 WILL COME OUT TO MEDICAL ON A FAIRLY REGULAR BASIS AND USE THE G HALL BATHROOM. THERE ARE CONCERNS ABOUT HER PATTERN AND THE PASSING OF CONTABAND. MCCOOL CAN USE THE MEDICAL BATHROOM INSTEAD OF G HALL. BMS3603

DATE 8/17/2019 5:08:00	CODE INFO	CODE DESCRIPTION INFORMATION ONLY
SUB CODE		SUB CODE DESCRIPTION

COMMENTS
 MCCOOL SENT OUT A REQUEST FOR RETURN OF GT THAT SHE LOST FROM HER LAST COUPLE MAJOR INFRACTIONS. THE REQUEST WAS DENIED. BMS3603

INMATE PHONE LOG DETAILS

INMATE PHOTO DETAILS

	PHOTO DATE 6/7/2019 6:28:00 PM	IMAGE TYPE FACE	TITLE	REASON BOOKING
	COMMENT			
	PHOTO DATE 4/8/2014 12:00:00 AM	IMAGE TYPE	TITLE KIMBERLY	REASON
	COMMENT KIMBERLY			
	PHOTO DATE 4/8/2014 12:00:00 AM	IMAGE TYPE	TITLE SMILE NOW CRY LATER	REASON
	COMMENT SMILE NOW CRY LATER			

THE TILLER LAW FIRM

February 18, 2020 - 2:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53937-3
Appellate Court Case Title: State of Washington, Respondent v. Shaitaya McCool, Appellant
Superior Court Case Number: 19-1-00042-2

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