

APR 30 2012
STATE OF WASHINGTON
COURT OF APPEALS

30168-1-III
COURT OF APPEALS
DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

CHARLES R. TUCKER, RESPONDENT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

HONORABLE JEROME J. LEVEQUE

REPLY BRIEF OF APPELLANT

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I.

ISSUE PRESENTED

- (1) May the State appeal this sentence?

II.

ARGUMENT

- A. THE STATE MAY APPEAL THE SENTENCE BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING A DOSA SENTENCE.

So long as a sentence falls within the proper presumptive sentencing ranges set by the legislature there can be no abuse of discretion as a matter of law as to the sentence's length. However, this prohibition does not bar a party's right to challenge the underlying legal conclusions and determinations by which a court comes to apply a sentencing provision. Thus, it is well established that 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, 146-47, 65 P.3d 1214 (2003). The assigned error alleges that the trial court abused its discretion when it determined that a chemical dependency contributed to the offense, and then imposed a DOSA sentence.

Contrary to the defendant's assertion, the record does not reflect that he left the scene of the accident because "he was going after drugs". RP 26. The defendant initially claimed that the reason he was driving was because he was going to the store. RP 14. At the sentencing hearing the defendant claimed for the first time that the reason that he was driving was because he was going after drugs. RP 26. Whichever version is correct is irrelevant to the crime for which the defendant was convicted, Failure to Remain at the Scene of an Accident-Injured Person. The defendant's claimed chemical dependency would have to contribute to that offense.

The defendant told the police that he left the scene because his license was suspended and the vehicle was not insured. RP 14. Both driver's license information and insurance information are required to be provided to the other driver when there is an accident. RCW 46.52.020(3). There is no evidence that the defendant's alleged chemical dependency contributed to his decision to leave the scene of the accident without complying with the requirements of RCW 46.52.020(3). It was an abuse of discretion for the trial court to conclude otherwise and impose a DOSA sentence.

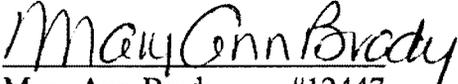
III.

CONCLUSION

For the reasons stated herein and previously, the case should be remanded to the sentencing court for the entry of new sentencing documents that do not contain a finding of chemical dependency and that impose a non-DOSA sentence on the defendant that is within the standard range.

Dated this 30 day of April, 2012.

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