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Oct 01, 2012  
Court of Appeals  
Division III  
State of Washington

30302-1-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

PHILIP S. INGRAM, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY

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APPELLANT'S REPLY BRIEF

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Janet G. Gemberling  
Attorney for Appellant

JANET GEMBERLING, P.S.  
PO Box 9166  
Spokane, WA 99209  
(509) 838-8585

**INDEX**

A. STATEMENT OF THE CASE.....1

B. ARGUMENT.....2

C. CONCLUSION.....4

**TABLE OF AUTHORITIES**

**STATUTES**

RCW 9.94A.670..... 2

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

RCW 9.94A.670(3)..... 3

RCWA 9.94A.670..... 4

## A. STATEMENT OF THE CASE

The plea agreement required the prosecutor to recommend SSOSA if Mr. Ingram was found amenable to treatment. (CP 16) The agreement did not specify who was to make the determination. The trial court entered an order specifically ordering Dr. Ronald Page to do the SSOSA evaluation. (CP 26) Dr. Page found Mr. Ingram amenable to treatment. (CP 6-7) On the basis of interviews with other individuals and her construction of the requirements of RCW 9.94A.670, the community corrections officer who prepared the pre-sentence investigation report declined to recommend the SSOSA sentencing alternative. (CP 46) The report does not incorporate or otherwise reference Dr. Page's evaluation. (CP 37-46)

At sentencing the prosecutor, relying on the community correction officer's report, suggested that Mr. Ingram was not amenable to treatment. (RP 8) Adopting arguments offered by the report relating to SSOSA requirements, the prosecutor contended that the State was not required to recommend SSOSA. (RP 9) The prosecutor conceded that if, but only if, the court concluded Mr. Ingram was amenable to treatment, then the State would recommend SSOSA in compliance with the agreement. (RP 9)

B. ARGUMENT

The first step in deciding whether the court should impose a sentence under the special sex offender sentencing statute (SSOSA), RCW 9.94A.670, is to determine whether the defendant meets the eligibility criteria, two of which appear to have been at issue in this case:

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, *the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. . . .*

...

(e) The offender had an established relationship with, or connection to, the victim such that *the sole connection with the victim was not the commission of the crime . . . .*

RCW 9.94A.670(2) (emphasis added)

The record contains a sufficient factual basis for the court and prosecutor to conclude that Mr. Ingram was eligible.

Mr. Ingram, in his guilty plea statement, affirmed his guilt and his commission of the elements of the offense. The statute does not require him to repeat this statement at every subsequent interview or prevent him from making statements that may be inconsistent with such an admission on subsequent occasions.

Mr. Ingram was “connected” with the victims through one or more of their mutual acquaintances who had brought the victims to his apartment, and by passing a social evening of drinking and celebrating prior to the admitted sexual contacts.

The next step, which is presumably dependant on a determination that the defendant has met the eligibility requirements, is to order an examination to determine whether the defendant is amenable to treatment:

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

RCW 9.94A.670(3). The court entered such an order in this case.

After the eligibility and amenability sections have been satisfied, the court in the exercise of its discretion considers numerous factors, including the offender’s amenability to treatment, the prosecutor’s recommendations, and other information which may be provide by the Department of Corrections presentence investigation report and other sources.

After receipt of the reports, the court shall consider whether the offender and the community will benefit from 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. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. . . .

West's RCWA 9.94A.670.

SSOSA does not suggest that the Department of Corrections has any role in determining whether an offender is eligible for a SSOSA sentence or amenable to treatment. The presentence investigation report contains much of the information upon which the court may rely in exercising its discretion, but the State has cited no authority that would permit the prosecutor to rely on such a report as a justification for attempting to circumvent the plea agreement.

### C. CONCLUSION

The issue before this court is not whether Mr. Ingram should be sentenced under SSOSA. The sole issue is whether the State may disregard the court-ordered determination of the defendant's amenability to treatment in deciding whether it should be bound by the terms of a plea agreement. The State has breached the plea agreement and this matter should be remanded to permit Mr. Ingram to decide whether to withdraw

his guilty plea or elect specific performance of the plea agreement before a different judge.

Dated this 1st day of October, 2012.

JANET GEMBERLING, P.S.



Janet G. Gemberling #13489  
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 30302-1-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
PHILIP S. INGRAM,	)	
	)	
Appellant.	)	

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I certify under penalty of perjury under the laws of the State of Washington that on October 1, 2012, I served a copy of the Appellant's Reply Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Theresa Chen  
tchen@wapa-sep.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that on October 1, 2012, I mailed a copy of the Appellant's Reply Brief in this matter to:

Philip S. Ingram  
#350577  
Airway Heights Correction Center  
PO Box 2049  
Airway Heights, WA 99001

Signed at Spokane, Washington on October 1, 2012.

  
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Jill S. Reuter #38374