

FILED

**Aug 19, 2013**

Court of Appeals  
Division III  
State of Washington

31356-5-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

RONALD HENDER,

Appellant.

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DIRECT APPEAL  
FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY

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RESPONDENT'S BRIEF

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Respectfully submitted:



by: Teresa Chen, WSBA 31762  
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**I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

**II. RELIEF REQUESTED**

Respondent asserts no error occurred in the sentencing of the Appellant.

**III. ISSUE**

Did the sentencing court abuse its discretion in denying an alternative sentence and imposing a standard sentence after the Defendant expressed at the sentencing hearing that he had committed no crime, denied that he was a methamphetamine dealer while admitting to two counts of methamphetamine delivery, and blamed the police for his acts?

**IV. STATEMENT OF THE CASE**

The Defendant Ronald Hender was charged with three counts of delivery of methamphetamine with school zone enhancements, alleged to have occurred between November 2011 and January 2012. CP 9-11. The allegations regarded controlled buys made through a confidential informant on three separate occasions. CP 2-3, 5-7.

With the jury waiting, the Defendant made a last minute change of plea. RP 4. For the change of plea, the information was amended to two counts of delivery of methamphetamine with a single school zone enhancement. CP 12-24. The 55 year old Defendant had a previous methamphetamine conviction with a 2004 offense date, which did not affect the sentencing range. CP 12, 21; RP 6; RCW 9.94A.517. The standard sentencing range was 36 to 44 months. CP 13, 27.

At the time of guilty plea, the prosecutor advised that he would be recommending against a DOSA (drug offender sentencing alternative). CP 15; RP 7. The Honorable Judge John Lohrmann explained that the sentencing alternative would mean reduced prison time significantly below the standard range, only 20 months (one half the midpoint of the standard range). RP 8-9.

At sentencing, the State recommended a low-end, standard-range sentence and argued against the sentencing alternative, noting that the plea was made only after a jury had been called – implying a lack of remorse or accountability which required the State to expend public resources preparing for trial and securing a material witness with a warrant. RP 17.

Defense counsel noted her client's age and described the Defendant's involvement with methamphetamine as a "medical issue."

RP 15-16. She told the court that the Defendant worked in construction, and implied that he would have been a successful business owner, but for his drug abuse. RP 16 (“it’s frustrating to see, I guess, where he is [and what] his mind has really come to over this time period”). Counsel argued that the Defendant would have the support of his “tight family and his children” in treatment. RP 16. She also acknowledged that the court could order treatment whether or not it imposed a DOSA. RP 17.

The Defendant’s family agreed that the Defendant was in need of substance abuse treatment and expressed faith in his ability to “be 100% on recovery on this if given the last chance.” RP 18-19.

The Defendant, however, minimized his offense.

I don’t feel like methamphetamine’s ever made me a criminal. I’ve never been out robbing people or doing anything and having it being illegal. And over the years it’s turned my brain to poop and just caused a lot of trouble, you know. So it’s all done. And [I] just want to get it over with.

RP 17. The judge confronted the Defendant on this minimization of his behavior, explaining that the Defendant’s dealing methamphetamine was a criminal act. RP 20. When the Defendant denied that he had been dealing methamphetamine, the judge reminded him of his guilty plea to exactly this offense. RP 20. The Defendant continued to deny responsibility,

arguing that the City had lured him out of retirement and he “fell through the loop.” RP 20.

Before imposing sentence, the judge said:

... when you do that, and you try to share that with other people, I don't care if it was a controlled buy or not, that was the attempt, and that's awful. So you need to take responsibility. You need to take accountability. I hope you do get free of meth because you seem like a nice guy. You have a nice family. And I don't know why anybody would want to throw all that away. So this is a problem that you need to take care of before it kills you.

RP 20.

The court imposed a low-end, standard sentence of 36 months and a day. CP 31. The Defendant is appealing from the denial of his request for a DOSA.

## **V. ARGUMENT**

THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING A STANDARD RANGE, LOW-END SENTENCE.

The Defendant argues that the court “abused its discretion” in refusing to grant his request for a variation from the standard sentence. Under an abuse of discretion standard, the reviewing court will find error only when the trial court’s decision (1) adopts a view that no reasonable person would take and is thus manifestly unreasonable, (2) rests on facts

unsupported in the record and is thus based on untenable grounds, or (3) was reached by applying the wrong legal standard and is thus made for untenable reasons. *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

A defendant may not appeal the length of a standard range sentence. “A sentence within the standard range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed.” RCW 9.94A.585(1). RCW 9.94A.517 is the drug offense sentencing grid which provided the range within which this Defendant was sentenced.

A defendant may, however, appeal the trial court’s interpretation of a sentencing alternative statute. *State v. Adamy*, 151 Wn. App. 583, 587, 213 P.3d 627 (2009). For example, a defendant is entitled to ask the trial court to consider an alternative sentence and to have the court actually consider the request. *State v. Jones*, 171 Wn. App. 52, 55, 286 P.3d 83 (2012); *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005).

A court shall only permit a DOSA if the court determines that (1) the offender is eligible and (2) the alternative is appropriate. RCW 9.94A.660(3). The court here implicitly found that the alternative to a standard sentence was not appropriate.

The Defendant argues that the judge’s reason for not permitting the

DOSA was that he found that a *DOSA* did not hold the Defendant accountable or responsible. Brief of Appellant at 4-5, citing RP 23. This is a constrained way to read the record. It is apparent that the court felt that *the Defendant* did not consider that he had done anything wrong and was not owning up to his responsibility for his circumstances, but instead blaming his offense on the controlled buy. RP 17, 20-21.

A “standard” range sentence, not a sentencing “alternative,” is the presumptive sentence. A DOSA is a grace which may be granted to an offender who suffers from drug addiction and who wants to receive substance abuse treatment. RCW 9.94A.660(5)(a). In deciding whether to impose a residential DOSA, the court may consider whether there is effective treatment for the offender’s addiction and whether the alternative, on balance, will better serve both the offender and the community. *Id.* These factors are also relevant to the imposition of a prison-based DOSA.

The reduction of a standard range sentence should not be offered to an offender who does not accept responsibility for his offense or who minimizes the offense. The Defendant’s attitude is all the more discouraging when the court considered the Defendant’s age and the duration of the Defendant’s addiction. In deciding whether or not to grant

a significantly reduced sentence, the court was reasonable to consider that the Defendant's attitude was a factor that weakened the likelihood of successful treatment. For a person to change his behavior, he first needs to accept responsibility for it.

The Defendant's argument seems to suggest that a finding of eligibility would mandate a DOSA. Brief of Appellant at 6. This is not the case. The sentencing court has discretion to assess the appropriateness of the alternative in the particular case. RCW 9.94A.660(3). The Defendant argues that a sentencing court is not permitted to "rel[y] upon its own assessment of what best achieved the purposes of the SRA." Brief of Appellant at 6. But the court's discretion in determining appropriateness is exactly what is called for under the SRA. RCW 9.94A.660(3).

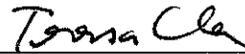
The sentencing court did not abuse its discretion in finding an alternative sentence was not more appropriate than the standard sentence as outlined in the SRA.

**VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: August 16, 2013.

Respectfully submitted:



\_\_\_\_\_  
Teresa Chen, WSBA#31762  
Deputy Prosecuting Attorney

<p>Gregory C. Link &lt;wapofficemail@washapp.org &gt;  Ronald Hender, DOC # 299933 Airway Heights Corrections Center P.O. Box 1899 Airway Heights, WA 99001-1899</p>	<p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED August 16, 2013, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
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# WALLA WALLA COUNTY PROSECUTOR

**August 16, 2013 - 5:37 PM**

## Transmittal Letter

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Case Name: State v. Ronald Hender  
Court of Appeals Case Number: 31356-5  
Party Represented: State of Washington  
Is This a Personal Restraint Petition?  Yes  No

Trial Court County: Walla Walla - Superior Court # 12-1-00029-5

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- Cost Bill
- Objection to Cost Bill
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Hearing Date(s): \_\_\_\_\_
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### Comments:

No Comments were entered.

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