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Division III
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NO. 35382-6-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

CECILIA RAMOS,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

Drug addiction is a serious problem for many people living in this country and the number one cause of death for persons under 50. Cecelia Ramos suffers from an addiction so significant that her sentencing court determined a drug offender sentencing alternative sentence, commonly known as a DOSA, was in the interests of both her and the community.

Ms. Ramos made attempts to get clean, but struggled with her recovery and had trouble complying with her community custody officer's rules. For her first violation of her sentence, Ms. Ramos was ordered to serve 30 days in jail.

The court revoked Ms. Ramos' DOSA sentence only seven days later when the court found Ms. Ramos had failed to provide a urine sample to the community custody officer within an hour of his request.

This violation does not warrant revocation of Ms. Ramos' DOSA sentence. When the court revoked the DOSA sentence and sent Ms. Ramos to prison for 38 months, it abused its discretion. Ms. Ramos asks this Court to reverse the sentencing court's decision.

B. ASSIGNMENT OF ERROR

The court abused its discretion when it revoked Ms. Ramos' DOSA sentence on only seven days after her first violation where Ms. Ramos was unable to provide a urine sample for drug analysis within an hour of being asked to do so.

C. ISSUE PERTAINING TO THE ASSIGNMENT OF ERROR

When a court sentences a person to a drug offender sentencing alternative sentence, it finds that person suffers from drug addiction and will probably commit future crimes if the addiction is not treated. Did the court abuse its discretion when it revoked Ms. Ramos' DOSA sentence for failing to provide a urine sample to her community custody officer when she had only been released from custody for her only other violation just seven days prior?

D. STATEMENT OF THE CASE

Ms. Ramos was a 27 year old mother of five children, ranging in age from 11 to one, when she was sentenced for stealing property and possessing drugs. RP 17-18. She had a severe addiction problem that the court determined would cause her to continue to commit crimes if left untreated. RP 19.

Ms. Ramos was charged with a number of property and drug possession crimes. Ms. Ramos took responsibility for her actions and pled guilty to the charged crimes. RP 11, 16. The court determined she should receive a drug offender sentence alternative, commonly known as a DOSA, and suspended her sentence. RP 19. *See* RCW 9.94A.660.

Ms. Ramos was sent immediately to a 90 day in-patient treatment program, which she completed. CP 103. On her return to the community, she had trouble. CP 39. For her first violation of her DOSA sentence, Ms. Ramos was sentenced to 30 days. RP 25.

Only seven days later, Ms. Ramos' community correction officer decided to violate her again, this time asking that her DOSA sentence be revoked. CP 47. The officer alleged that Ms. Ramos had appeared in his office, but had not been able to provide a urine sample within an hour of when he requested one. CP 47.

Ms. Ramos had appeared in her officer's office. RP 30. It was only after Ms. Ramos' release that the community corrections officer told her he wanted her to return to in-patient treatment. RP 31. The officer also told Ms. Ramos that she had to give him a urine sample. RP 30. Ms. Ramos said she could not and asked to provide an oral swab, as she had done previously. RP 33. The officer refused, telling the court

“the offender has the expectation to produce” a urine sample. RP 33. Ms. Ramos was arrested an hour later, when she was unable to provide a urine sample. RP 38. Ms. Ramos was shocked when she was arrested, as she believed she was working with her officer to get a bed date for treatment. RP 38.

Because Ms. Ramos was not able to provide a urine sample within an hour of the officer’s request, the court revoked Ms. Ramos’ DOSA sentence. RP 44. Ms. Ramos was re-sentenced within the standard range to 38 months of incarceration. RP 47.

E. ARGUMENT

The sentencing court abused its discretion when it revoked Ms. Ramos’ DOSA on her second violation when she failed to provide a urine sample within an hour of her community custody officer’s request.

- 1. The court ordered Ms. Ramos into a drug offender sentencing alternative because of her drug addiction.*

By the time Ms. Ramos was arrested for possession of stolen property and other crimes, her drug addiction had reduced her to stealing out of mailboxes. CP 2, 62. She had no apparent support system and relied on criminal activity to feed her addiction. At sentencing, she was a 27 year old mother of four children, whose ages at sentencing were 11, eight, six, three, and one. 1. RP 17-18. The court

found her to be drug dependent and sentenced her under the drug offender sentencing alternative. RP 19; *see also* RCW 9.94A.660.

The crisis that has destroyed so many lives in this country captured Ms. Ramos. So sick from her addiction, she was sent to an in-patient treatment program immediately from custody. RP 18. Ms. Ramos did well in her initial treatment program, graduating from her initial treatment program in 90 days. CP 103.

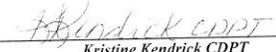
AMERICAN
BEHAVIORAL HEALTH SYSTEMS

★ *Certificate of Beginnings* ★

Congratulations on your first step toward a new beginning, and the choice you have made to live a healthy life in recovery.

Cecilia Ramos

*Is hereby awarded this certificate which attests to this achievement
Given this 1st day of November, Two Thousand and Sixteen.*



Kristine Kendrick CDPT
Primary Counselor



Karen Parry CDP
Clinical Supervisor

American Behavioral Health Systems, Inc. P.O. Box 9977 Spokane, WA 99209

CP 103.

Like so many people suffering from this disease, however, this treatment was not enough. Quickly after returning to her community,

she began to have trouble. Her disease again took over her life, causing her to relapse. CP 40. Ms. Ramos' relapse resulted in being violated by her community custody officer. CP 41.

Ms. Ramos' sentencing judge incarcerated her for 30 days for her first violation. CP 24. There is no indication Ms. Ramos received treatment while she was incarcerated for her first violation.

Seven days later, the corrections officer filed another violation notice, this time asking the court to revoke Ms. Ramos' DOSA sentence. RP 48. Ms. Ramos had failed to give the officer a urine sample within an hour of coming to his office. RP 47-48. Ms. Ramos pleaded with the court for another opportunity, promising to work hard, complete her program, pass her drug tests, and complete the DOSA sentence. RP 42. She said to the court, "I believe in my future and my success for my life and my children's life." RP 42.

Ms. Ramos was not given another chance. RP 44. The court revoked Ms. Ramos' DOSA sentence and sent her to prison for 38 months. RP 47. With her DOSA now revoked, she will no longer receive priority for treatment and is likely to continue to struggle with

her disease. *Substance Use Disorder Treatment Services*, State of Washington Department of Corrections, 4 (2017).¹

2. *Drug addiction is a disease where those who are trying to recover are likely to relapse before achieving sobriety.*

Addiction is a disease, as recognized by most medical associations, including the American Medical Association and the American Society of Addiction Medicine. Kathy Bettinardi-Angres, Daniel H. Angres, *Understanding the Disease of Addiction*, *Journal of Nursing Regulation*, 31 (2010)²; American Society of Addiction Medicine, *Definition of Addiction* (2011).³ The American Psychiatric Association also considers it a mental health disorder. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Health Disorders: DSM-5* (5th ed.), 483 (2013). Drug overdose is the leading cause of death in the United States among people under 50. Lindsey Vuolo, Tiffany John, Linda Richter, *Ending the Opioid Crisis: A Practical Guide for State Policymakers*, *The National Center on Addiction and Substance Abuse*, 3 (2017).⁴

¹ <http://www.doc.wa.gov/information/policies/files/580000.pdf>.

² https://www.ncsbn.org/Understanding_the_Disease_of_Addiction.pdf

³ <https://www.asam.org/resources/definition-of-addiction>.

⁴ <https://www.centeronaddiction.org/addiction-research/reports/ending-opioid-crisis-practical-guide-state-policymakers>

Addiction affects over 21 million people in America, 8.2% of the population. U.S. Department of Health and Human Services , *Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings*, 7 (2014).⁵ About 25-50% of people with a substance use problem appear to have a severe, chronic disorder. National Center for Addiction and Substance Abuse, *Addiction as a Disease* (2017) (*hereinafter* National Center for Addiction, 2017).⁶ For people like Ms. Ramos, this addiction is a progressive, relapsing disease that requires intensive treatments and continuing aftercare, monitoring and family or peer support to manage their recovery. *Id.*

Addiction relapse is common. Approximately half of all individuals who try to get sober will return to heavy use, with 70 to 90 percent experiencing at least one mild to moderate relapse. David Sack, *Why Relapse Isn't a Sign of Failure*, *Psychology Today* (October 12, 2012).⁷ Addicts typically relapse when they return to their communities, largely because they have such difficulty escaping the drug-related cues of their past lives. *Id.* Research rejects a one-size-fits-

⁵<https://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>.

⁶ Available at <https://www.centeronaddiction.org/what-addiction/addiction-disease>.

⁷<https://www.psychologytoday.com/blog/where-science-meets-the-steps/201210/why-relapse-isnt-sign-failure>.

all approach to treatment, instead emphasizing that success is greatly enhanced when treatment is tailored to the person in need of treatment.

Id.

Data shows that court ordered treatment can be effective. Regardless of the reason for entering treatment, research shows that treatment can have a positive potential for success. Lori Whitten, *Court-Mandated Treatment Works as Well as Voluntary*, National Institute on Drug Abuse (2006). Like all types of treatment, however, without sufficient support, a person who engages in court ordered treatment is likely to fail. National Center on Addiction and Substance Abuse at Columbia University. *Addiction Medicine: Closing the Gap between Science and Practice*, 10 (2012).⁸

3. *When the sentencing court ordered Ms. Ramos to engage in drug treatment it should have understood the difficulties Ms. Ramos would have in completing this sentence without relapse.*

The legislature enacted the drug offender sentencing alternative to provide a treatment-oriented alternative to the standard sentence.

State v. Kane, 101 Wn. App. 607, 609, 5 P.3d 741 (2000). The drug

⁸ Available at <https://www.thenationalcouncil.org/BH365/wp-content/blogs.dir/7/files/2016/02/Addiction-medicine-closing-the-gap-between-science-and-practice.pdf>.

offender sentencing alternative allows courts to impose a DOSA sentence for qualified offenders. RCW 9.94A.660(1). Before imposing this alternative, the court considers whether the offender suffers from a drug addiction, there is a probability the addiction will cause future criminal behavior, effective treatment for the addiction is available, and whether the offender and the community will benefit from the alternative sentence. RCW 9.94A.660(2). The purpose of RCW 9.94A.660 is to provide meaningful treatment and rehabilitation incentives for those convicted of drug crimes, when the trial judge concludes it would be in the best interests of the individual and the community. *State v. Grayson*, 154 Wn.2d 333, 343, 111 P.3d 1183 (2005); *State v. Waldenberg*, 174 Wn. App. 163, 166 n. 2, 301 P.3d 41 (2013).

When the court sentenced Ms. Ramos, it recognized her “obvious” drug problem. RP 17. The court understood that the types of conduct Ms. Ramos was engaging in, along with the fact she was caught possessing methamphetamines, indicated her substantial addiction. RP 17. Likewise, the prosecution recognized her disease, when recommending the court put Ms. Ramos into the DOSA program.

RP 16-17. Everyone in the courtroom recognized the need and value of treatment for Ms. Ramos. RP 17.

The court also recognized the severity of Ms. Ramos' addiction. When Ms. Ramos asked to be released from custody a day before her treatment program began, so that she could see her children, the court said no. RP 18. The court understood that Ms. Ramos was "right on the edge" and that treatment would be difficult for her. RP 18. At the same time, the court advised Ms. Ramos that this treatment program was her "one shot." RP 18-19. "Go to treatment, do it well. Fail and you go to prison." RP 19-20.

Ms. Ramos was initially successful. CP 103. However, her success did not last. For her first violation, Ms. Ramos admitted she had failed to report to probation and had fallen out of treatment. RP 24. The court found she had violated the conditions of her DOSA and sanctioned Ms. Ramos to 30 days in jail. RP 25. The court did not otherwise modify her conditions.

Only seven days later, the court was asked to revoke Ms. Ramos' sentence. RP 26. Ms. Ramos was violated for failing to give a urine sample the day after she was released from custody. RP 28. At

that time, she asked to give a mouth sample, which was refused. RP 33.

She was expected “to produce it [the urine] like everyone else.” RP 33.

Ms. Ramos was still having trouble meeting her basic needs.

She lacked reliable transportation and had to lean on others to get to the community custody office. RP 37. When she spoke to her officer, they agreed she could come in the next morning, which she did. RP 37.

Her officer also wanted Ms. Ramos to return to in-patient treatment. When Ms. Ramos asked for accommodation from the officer so she could try to integrate into the community rather than return to in-patient treatment, he informed her that there was “no negotiation on this matter.” RP 31. However, Ms. Ramos understood she would return as requested. RP 38. When she was arrested for the second violation, she was sitting in the community custody office, trying to create a urine sample and get a bed date for treatment. RP 38. Because she had been unable to produce a sample within an hour of the officer’s request, he arrested her instead. RP 38.

4. The court abused its discretion in revoking Ms. Ramos’ suspended sentence, only 7 days after her first violation.

To revoke a suspended sentence, the court must find by a preponderance of the evidence a violation occurred. *In re PRP of McKay*, 127 Wn. App. 165, 168–69, 110 P.3d 856 (2005). Once a

violation has been found, revocation is not mandatory. RCW 9.94A.660 (7). Instead, the court may modify the conditions of the sentence to help ensure compliance. *Id.* While sentencing errors are not generally reviewable, appellate review is available when the court abuses its discretion at sentencing *State Williams*, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003). A sentencing 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).

Here, the court abused its discretion in revoking Ms. Ramos' DOSA sentence only 7 days after her first violation, when she was unable to produce a urine sample within an hour of her community custody officer's request. RP 44. Ms. Ramos has a serious addiction that she was trying to fix. In addition, she had significant stressors, including the care of her children and the lack of transportation. RP 29.

While Ms. Ramos had struggled with compliance, there is no reason to believe she was not on the road to recovery. She had appeared for her meeting with her community custody officer. CP 47. She was sitting in his office when he decided to revoke her. She had expected

she was working on treatment issues. Instead, because she had failed to provide a urine sample within an hour of his request, she was arrested.

No one is entitled to a drug offender sentencing alternative. But when a court orders one, it must understand that the person attempting to get clean will struggle. National Center for Addiction, 2017. Ms. Ramos' path was not unusual. *Id.* She successfully completed treatment and then relapsed. CP 103, 40. She was returned to court, where she attempted to make a fresh start. And while she was sanctioned to 30 days, there do not appear to have been any attempts to place her in treatment while serving this sanction. Instead, she was released back into the community, where she was already having trouble. Only 7 days after the court found the first violation, Ms. Ramos was returned to custody, this time for failing to submit a drug sample. RP 31.

In determining Ms. Ramos' drug offender alternative sentence should have been revoked, the sentencing court abused its discretion. Ms. Ramos needed greater support in order to succeed. In failing to recognize this, the court abused its discretion. Mr. Ramos asks this Court to reinstate her DOSA sentence, so she can continue to work on her recovery.

F. CONCLUSION

Ms. Ramos asks this Court to find the sentencing court abused its discretion in revoking her DOSA sentence. Accordingly, she respectfully requests that this Court reverse her sentence and reinstate her DOSA sentence.

DATED this 2nd day of March 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

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)	
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)	NO. 35382-6-III
v.)	
)	
CECILIA RAMOS,)	
)	
Appellant.)	

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