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Division III
State of Washington
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NO. 35382-6-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION III

STATE OF WASHINGTON, RESPONDENT

v.

CECILIA RAMOS, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY

RESPONDENT'S BRIEF

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I. ISSUE PRESENTED FOR REVIEW

1. A trial court's decision to revoke a DOSA sentence is reviewed for abuse of discretion. Ramos' concurrent DOSA sentences were revoked following the eighth violation of Ramos' terms of community custody which occurred immediately after Ramos' release from confinement imposed as a sanction on the prior seven violations. Did the trial court abuse its discretion by revoking Ramos' DOSA sentences in light of Ramos' history of violations?

II. STATEMENT OF THE CASE

On February 23, 2016, Ramos was charged with one count of possession of stolen property in the second degree, one count of possession of stolen mail, and one count of possession of a controlled substance, methamphetamine, under Yakima County Superior Court cause number 16-1-00316-39. Clerk's Papers (hereinafter "CP") at 6–7. On July 12, 2016, an amended information was filed in 16-1-00316-39 charging an additional two counts of possession of stolen property in the second degree. *Id.* at 8–9.

On February 25, 2016, Ramos was charged with one count of possession of stolen property in the second degree and one count of

identity theft in the second degree under Yakima County Superior Court cause number 16-1-00341-39. *Id.* at 63.

On July 21, 2016, Ramos pleaded guilty to all seven counts charged under both 16-1-00316-39 and 16-1-00341-39. *Id.* at 10–22, 64–74. The count carrying the highest standard range, that for identity theft in the second degree, was thirty-three to forty-three months. *Id.* at 65. As part of the plea agreements, the State agreed to recommend that Ramos be permitted to participate in a residential drug offender sentencing alternative (hereinafter “DOSA”). *Id.* at 16, 68.

Ramos acknowledged the terms of a DOSA sentence by initialing language in both plea agreements. *Id.* at 17–18, 69–70. The initialed section cautioned Ramos that

[t]he judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

Id. at 18, 70. The court found that Ramos’ decisions to plead guilty were made freely, voluntarily, and intelligently. VRP 7/21/16 at 11, 16. The

court followed the parties' joint recommendation and sentenced Ramos to two concurrent residential DOSAs, placing Ramos on twenty-four months of community custody. *Id.* at 19; *see also* CP at 25, 76–77.

On December 21, 2016, the Department of Corrections (hereinafter “DOC”) filed a Notice of Violation concerning Ramos’ DOSA sentences. CP at 39–42. The Notice alleged four violations: (1) failing to report for thirty days of twice weekly reporting on December 7, 2016; (2) failing to participate in recommended treatment since November 16, 2016; (3) failing to following a community corrections officer issued verbal directive of December 8, 2016; and (4) failing to enter intensive inpatient treatment on December 15, 2016. *Id.* at 40–41.

On March 14, 2017, DOC filed a Supplemental Notice of Violation. CP at 43–44. The Supplemental Notice alleged three additional violations all involving Ramos’ failure to maintain law-abiding behavior: (5) a new charge of driving while license suspended; (6) a new charge of failing to obey a police officer; and (7) a new charge of being a vehicle operator refusing to comply with the police. *Id.*

On April 11, 2017, a hearing was held during which Ramos admitted the violations and the court imposed thirty days confinement as a sanction. VRP 4/11/17 at 24–25.

On April 19, 2017, DOC filed a second Notice of Violation concerning Ramos' DOSA sentences. CP at 46–48. The Notice alleged that Ramos had failed to provide a urine sample for testing on April 18, 2017. *Id.* at 47. DOC recommended that Ramos' suspended sentences be revoked as Ramos “has no interest whatsoever of making any genuine effort in terms of cooperation with her DOSA sentence conditions, including treatment.” *Id.* at 48.

On May 12, 2017, a hearing was held on the State's petition to revoke Ramos' DOSA sentences. VRP 5/12/17 at 26. DOC Officer Jeff Yancey testified that he supervised Ramos in his role as a community corrections officer. *Id.* at 27. Officer Yancey indicated that Ramos had accrued a number of community custody violations and spent much of the preceding six months either incarcerated or subject to an active warrant. *Id.* at 27–28.

Officer Yancey testified that Ramos had been required to report to him following Ramos' release from the Benton County Jail on April 17, 2017. *Id.* at 29. After Ramos failed to report, Officer Yancey confronted Ramos outside her home. *Id.* Ramos agreed to appear the next day to provide a urine sample. *Id.* at 30. On April 18, 2017, Ramos failed to provide the required urine sample and was arrested. *Id.*

After hearing argument from counsel, the court found that the violation had occurred and revoked Ramos' DOSA sentences. *Id.* at 44. Ramos was sentenced to thirty-eight months incarceration, the middle of Ramos' standard range for identity theft in the second degree, as well as concurrent sentences on the remaining six counts. *Id.* at 47; *see also* CP at 49–50, 76, 89–90.

III. ARGUMENT

A. Ramos cannot show that the trial court's decision to revoke her DOSA sentences following an eighth violation days after the adjudication of Ramos' prior seven violations was manifestly unreasonable

Ramos does not assign error to the trial court's finding that she violated the terms of her community custody and DOSA sentences. Instead, Ramos argues that "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." Br. of Appellant at 13.

RCW 9.94A.660 establishes both the eligibility requirements and revocation procedure for a residential DOSA. Under RCW 9.94A.660(7)(c),

[t]he court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody

if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

RCW 9.94A.660(7)(c).

“Revocation of a suspended sentence due to violations rests within the discretion of the trial court and will not be disturbed absent an abuse of discretion.” *State v. McCormick*, 166 Wn.2d 689, 705–06, 213 P.3d 32 (2009). “Discretion is abused when the trial court’s decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.” *State v. Blackwell*, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993); *see also State v. Dye*, 178 Wn.2d 541, 548, 309 P.3d 1192 (2013) (describing “manifestly unreasonable” as a decision which “falls ‘outside the range of acceptable choices, given the facts and the applicable legal standard’”) (internal citation omitted).

As noted by Ramos, a DOSA sentence is a privilege. *See* Br. of Appellant at 14. After beginning her DOSA sentences, Ramos accrued at least eight separate violations of the terms of her community custody. Officer Yancey specifically noted that Ramos had spent much of the six months prior to the revocation hearing either in custody or subject to a warrant. *See* VRP 5/12/17 at 27–28. DOC recommended that, due to Ramos’ lack of effort in complying with treatment, the court revoke

Ramos' DOSA sentences. CP at 48. Ramos was well-aware of the potential consequences of violating the terms of her community custody. *See id.* at 18, 70. In light of Ramos' frequent violations and overall lack of success on community custody, Ramos cannot credibly complain that the trial court's decision to revoke was "manifestly unreasonable." *See Blackwell*, 120 Wn.2d at 830.

Whether or not to revoke a DOSA suspended sentence is a choice that rests squarely within the discretion of the trial court. In demanding that this Court find that the trial court abused its discretion, Ramos is asking this Court to re-litigate the revocation hearing. As this Court does not substitute its discretion for that reasonably exercised by a trial court, this Court should affirm the revocation of Ramos' DOSA sentences.

IV. CONCLUSION

Ramos cannot demonstrate that the trial court's decision to revoke her two DOSA sentences was "manifestly unreasonable, or [] exercised on untenable grounds, or for untenable reasons." *See Blackwell*, 120 Wn.2d at 830. As such, this Court should affirm the trial court.

Dated this 31st day of May, 2018.

STATE OF WASHINGTON

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Transmittal Information

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