

FILED  
Court of Appeals  
Division III  
State of Washington  
3/22/2018 2:49 PM

No. 35494-6-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,

Respondent

v.

MICHAEL ODOM,

Appellant

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

NO. 14-1-00718-7

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BRIEF OF RESPONDENT

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ANDY MILLER  
Prosecuting Attorney  
for Benton County

Anita I. Petra, Deputy  
Prosecuting Attorney  
BAR NO. 32535  
OFFICE ID 91004

7122 West Okanogan Place  
Bldg. A  
Kennewick WA 99336  
(509) 735-3591

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

- A. The sentencing court did not err because the sentences for Counts I and II are running concurrently.
- B. The State will not seek appellate costs in this matter.

## **II. STATEMENT OF FACTS**

On June 17, 2014, the State charged Mr. Odom with two counts of Identity Theft in the First Degree. CP 1. On January 25, 2016, the defendant entered pleas of guilt to both counts. CP 9. The State would recommend a Drug Offender Sentencing Alternative (“DOSA”) if the defendant was found to be a good candidate for the program or, in the alternative, bottom of the range. 01/25/2016 RP 7.

On March 8, 2016, the defendant was found to be a “very marginal candidate” for the DOSA program. CP 27. On February 16, 2017, the defendant filed a motion to withdraw his guilty plea. CP 43-62. On May 4, 2017, the defendant’s motion to withdraw guilty plea was denied. 05/04/2017 RP 48.

On July 27, 2017, the defendant was sentenced and granted a DOSA sentence over the State’s objection. 07/27/2017 RP 49-99. The defendant was sentenced to the midpoint of the standard range on both counts, 36.75 months, to run concurrent to each other but consecutive to his Spokane matter. 7/27/2017 RP 92; CP 203. There was no order that

Counts I and II should run consecutive to each other nor did the State request that Counts I and II run consecutive to each other. 07/27/2017 RP 49-99.

### III. ARGUMENT

**A. The Court did not order Counts I and II to run consecutive to each other; therefore, no findings for an exceptional sentence are necessary.**

At sentencing, the judge struck a section of 4.4, which stated, “All Counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above in Section 2.3, and except for the following counts which shall be served consecutively:

\_\_\_\_\_.” CP 203.

In this matter, there was not an enhancement alleged to Counts I and II, so there is not an enhancement in section 2.3. CP 1-2, 200. At no point during the sentencing hearing did the State, defense, nor the judge reference an enhancement. 07/27/2017 RP 49-99. Sentences for multiple offenses set at one sentencing hearing are served concurrently unless an exception applies. RCW 9.94A.589. There was no such exception in this case.

Should this court feel the judgment and sentence is not clear, the State does not object to remand for clarification of the judgment and sentence.

**B. Appellate Costs.**

The State will not seek appellate costs in this matter.

**IV. CONCLUSION**

Because the sentences for Counts I and II are running concurrently, the judgment and sentence should be affirmed or, in the alternative, remanded for clarification.

**RESPECTFULLY SUBMITTED** on March 22, 2018.

**ANDY MILLER**

Prosecutor



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Anita I. Petra, Deputy  
Prosecuting Attorney  
Bar No. 32535  
OFC ID NO. 91004

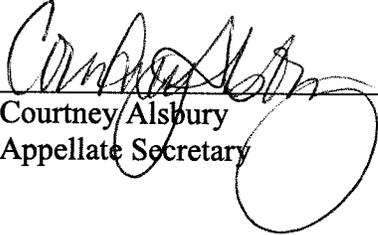
**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Reed Speir  
Attorney at Law  
3800 Bridgeport Way W, Ste. A #23  
University Place, WA 98466-4495

E-mail service by agreement  
was made to the following  
parties:  
reedspeirlaw@seanet.com

Signed at Kennewick, Washington on March 22, 2018.

  
Courtney Alsbury  
Appellate Secretary

**BENTON COUNTY PROSECUTOR'S OFFICE**

**March 22, 2018 - 2:49 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 35494-6  
**Appellate Court Case Title:** State of Washington v. Michael Lamar Odom  
**Superior Court Case Number:** 14-1-00718-7

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**Filing on Behalf of:** Anita Isabelle Petra - Email: anita.petra@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

Address:  
7122 W. Okanogan Place  
Kennewick, WA, 99336  
Phone: (509) 735-3591

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