

09256-9

09256-9

NO. 69256-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
MAXFIELD DARE,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MICHAEL TRICKEY

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 MAY 15 PM 2:58

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

MAFÉ RAJUL
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF FACTS</u>	1
C. <u>ARGUMENT</u>	7
1. STANDARD OF REVIEW.....	7
2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO IMPOSE A DOSA SENTENCE AFTER HAVING CONSIDERED THE REQUEST, AND AFTER WEIGHING THE BENEFITS TO DARE AND THE PUBLIC.....	8
D. <u>CONCLUSION</u>	13

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Conners, 90 Wn. App. 48,
950 P.2d 519, review denied,
136 Wn.2d 1004 (1998)..... 8

State v. Garcia-Martinez, 88 Wn. App. 322,
944 P.2d 1104 (1997), review denied,
136 Wn.2d 1002 (1998)..... 8

State v. Grayson, 154 Wn.2d 333,
111 P.3d 1183 (2005)..... 8, 10

State v. Gronnert, 122 Wn. App. 214,
93 P.3d 200 (2004)..... 9

State v. Jones, 171 Wn. App. 52,
286 P.3d 83 (2012)..... 9, 11

State v. Smith, 118 Wn. App. 288,
75 P.3d 986 (2003)..... 9

State v. White, 123 Wn. App. 106,
97 P.3d 34 (2004)..... 8

State v. Williams, 149 Wn.2d 143,
65 P.3d 1214 (2003)..... 7

Statutes

Washington State:

RCW 9.94A.535..... 1, 4

RCW 9.94A.660 8

Other Authorities

Sentencing Reform Act of 19817

A. ISSUE PRESENTED

Did the trial court properly exercise its discretion when it declined to impose a Drug Offender Sentencing Alternative (DOSA) sentence after full and careful consideration of the request, and when it concluded that, although the offender had a substance abuse problem, because of his criminal history, rapid recidivism, and number of victims, a DOSA sentence would not be in the best interest of the public?

B. STATEMENT OF FACTS

On March 14, 2012, the State charged Maxfield Dare (Dare) with one count of possession of stolen vehicle and one count of trafficking in stolen property in the first degree. CP 1-11. At the time of the filing of the Information, the Seattle Police Department continued investigating several occupied nighttime residential burglaries, and on March 27, 2012, the State filed its First Amended Information charging Dare with three counts of residential burglary with the aggravating factor that the burglaries had been committed while the victims were in their residence, pursuant to RCW 9.94A.535(3)(u). CP 12-17.

On May 17, 2012, the State received additional information of more nighttime burglaries committed by Dare, and filed its Second Amended Information charging Dare with one more count of residential burglary, committed while the victim was present in the residence, one count of trafficking in stolen property in the first degree and two counts of theft of a motor vehicle. CP 18-35.

The State further charged Dare under a different cause number with the crime of robbery in the second degree. CP 242. Pursuant to plea negotiations, the State amended the Information to the reduced charges of theft in the first degree and assault in the fourth degree. CP 248-50; 1RP 2.¹

On June 20, 2012, Dare entered a plea of guilty to a total of ten felonies and one misdemeanor. CP 36-107; 1RP 3-25. Dare pled guilty to four counts of residential burglary with the victim present aggravator in each instance, one count of possession of stolen vehicle, two counts of theft of a motor vehicle, two counts of trafficking in stolen property in the first degree, theft in the first degree and assault in the fourth degree. 1RP 10-14. Pursuant to plea negotiations, the State agreed not to file any additional

¹ The Verbatim Report of the plea and sentencing hearings consist of two volumes. Volume one, the plea hearing, will be referred to as 1RP (June 20, 2012); and volume two, the sentencing hearing, will be referred to as 2RP (August 24, 2012).

charges stemming from Dare's burglary spree, so long as Dare agreed to pay restitution for all of the fourteen homes he burglarized and abide by a no contact order with all of the victims of the charged and the uncharged counts contained in fourteen Seattle Police Department police reports. CP 98-99.

This was not the first time Dare was being sentenced for these types of charges. He had fifteen juvenile adjudications for very similar behavior. CP 104-05. As a result of Dare's criminal history, he was off the charts with a score of 23 for the residential burglary, a score of 16 for the trafficking in stolen property in the first degree, and a score of 35 for the possession of stolen vehicle and theft of a motor vehicle. CP 100-03. His highest standard range was 63-84 months. CP 101-02.

On August 24, 2012, Dare appeared before the Honorable Michael Trickey for sentencing. 2RP 1-51. Present at the sentencing hearing, on behalf of the State, were several Seattle Police Department officers, victims, and members of the community. 2RP 2. The State requested that the court impose an exceptional sentence of 132 months in prison. CP 168-89; 2RP 24-25. The State's request was pursuant to Dare's plea to the aggravator of having committed the four burglaries while the victims

were present, RCW 9.94A.535(3)(u), and under the free crimes doctrine, RCW 9.94A.535(2)(C). CP 45-46, 168-89; 1RP 11-13; 2RP 4.

The trial court heard from two victims who were present at the hearing, Cindy Bellamy and Ruth Yeo. 2RP 9-11. They both expressed the impact Dare's actions caused in their lives; mainly, the sense of invasion and the loss of feeling safe and secure in their home. 2RP 9-11. The court also heard from two other members of the community, Ellen Blackstone, the Wedgewood Block Watch Captain, which is the area where most of the burglaries took place, as well as Richard Fuhr. 2RP 12-13. The State also read into the record two letters from two victims who were unable to be present at the hearing, also expressing the stress, fear and loss of safety Dare left in their lives. 2RP 18-22. In addition to the victims and members of the community, the court heard from the two detectives who had been investigating Dare since he was a juvenile, Seattle Police Department Detective Davisson and Detective Hernan. 2RP 13-16. Detective Davisson provided the court with information he had obtained in investigating Dare and his associates. Specifically, Detective Davisson talked about his knowledge of Dare teaching others how to commit crimes

and not get caught. 2RP 14. Detective Davisson also described Dare's defiant attitude towards law enforcement, the justice system and authority. 2RP 16.

Dare asked the court to impose a prison-based DOSA. CP 207-26; 2RP 27-28. Dare's father, Michael Dare, was present on behalf of the defense and addressed the court outlining Dare's difficult life growing up and requesting a DOSA on behalf of his son. 2RP 29-39. The trial court reviewed a substance abuse evaluation prepared by Sunrise Center. CP 220-22.

After hearing from the State and the defense, Judge Trickey started his ruling by saying: "Well, let me just say to all the people interested in this case, these sentences are always difficult for the Court, I accept, and, in fact, I'm persuaded that Max has a significant drug problem." 2RP 43. Judge Trickey then expressed his insight regarding addicts from the perspective of a drug court judge and then stated, "I am also a big believer in the DOSA alternative because, for one thing, DOSA gives you supervision upon release." 2RP 43. In addressing the choices before him with respect to what sentence to impose, he added, "I've seriously considered the DOSA here, but I just cannot impose the DOSA, I just can't." 2RP 43.

Judge Trickey then explained his reason why he couldn't impose a DOSA, "there comes a point where I have to weight [sic] the benefit to the individual in giving the defendant, Mr. Dare, a chance to receive the treatment he so obviously needs versus the protection of the public." 2RP 43. In articulating the balancing test and the factors he considered, he added, "what concerns me here is not just that he reoffended so quickly after release from JRA, but that it was multiple offenses, and that's the significant factor for me." 2RP 43. Judge Trickey emphasized that public safety was the reason why he ultimately was declining to impose a DOSA sentence. 2RP 44. He said, "I just cannot justify, in the interest of the public, a DOSA sentence." 2RP 44.

Judge Trickey enumerated the mitigating factors he took into consideration when deciding what sentence to impose, such as Dare's young age, which was countered by the fact Dare affected and invaded the lives of many victims over and over again soon after having received the benefit of the services provided by JRA. 2RP 45. Judge Trickey then imposed a sentence of 120 months, the maximum penalty for each of the residential burglaries where Dare had pled to the aggravators. 2RP 45.

C. ARGUMENT

1. STANDARD OF REVIEW.

As a general rule, the length of a criminal sentence imposed by a superior court is not subject to appellate review, so long as the punishment falls within the correct standard sentencing range established by the Sentencing Reform Act of 1981. State v. Williams, 149 Wn.2d 143, 146, 65 P.3d 1214 (2003). This rule arises from the notion that, so long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence's length. Id. 146-47. Appellate review is available for the correction of legal errors or abuses of discretion in the determination of what sentence applies. Id.

Dare is not arguing the trial court erred in imposing an exceptional sentence as a matter of law. Dare's only claim is that the trial court improperly denied his DOSA sentence request on untenable grounds and for untenable reasons. The standard review is for abuse of discretion.

2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO IMPOSE A DOSA SENTENCE AFTER HAVING CONSIDERED THE REQUEST, AND AFTER WEIGHING THE BENEFITS TO DARE AND THE PUBLIC.

A trial court abuses its discretion when it can be said no reasonable person would adopt the trial court's view. State v. White, 123 Wn. App. 106, 114, 97 P.3d 34 (2004). The sentencing court has discretion to impose a DOSA sentence if the defendant meets the DOSA eligibility requirements and if the court determines that the offender and the community will benefit from the use of the sentencing alternative. RCW 9.94A.660(2). Even when a defendant is eligible for a DOSA sentence, the decision to impose it rests solely in the trial court's discretion. State v. Conners, 90 Wn. App. 48, 53, 950 P.2d 519, review denied, 136 Wn.2d 1004 (1998). The appellate court's review of the denial of a DOSA sentence is limited to claims that the trial court categorically refused to exercise its discretion to impose a DOSA, or relied on an impermissible basis for refusing to impose a DOSA, such as religion, race, or gender. State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005); State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), review denied, 136 Wn.2d 1002 (1998).

The trial court does not abuse its discretion when it declines to impose a DOSA sentence after considering the request. State v. Jones, 171 Wn. App. 52, 56, 286 P.3d 83 (2012); State v. Smith, 118 Wn. App. 288, 293-94, 75 P.3d 986 (2003) (holding it is not abuse of discretion to decline the imposition of a DOSA sentence to a candidate who had already failed to successfully complete drug treatment); State v. Gronnert, 122 Wn. App. 214, 225-26, 93 P.3d 200 (2004) (holding the trial court did not abuse its discretion in denying a DOSA sentence by finding the DOSA would not benefit either the defendant or the community, even though the court reasoned that “DOSA provides very little if any benefit other than cutting the sentence in half”).

In this case, the trial court meaningfully and carefully considered the request for a DOSA sentence. Only after cautiously weighing the benefits to both Dare and the community, Judge Trickey rejected Dare’s DOSA request. The trial court had an abundance of information to aid him in his sentencing decision. Judge Trickey was informed of Dare’s criminal history, substance abuse problems, and previous attempts to treatment, and just as important, he had the benefit of hearing from members of the community itself. With respect to Dare, not only did the court

review the substance abuse evaluation but he also heard from Dare and his father. CP 220-22; 2RP 29-40. As to the concerns of the community, Judge Trickey heard from four of the fourteen victims, two who appeared in court and two who submitted letters, as well as two members of the community. 2RP 9-13, 18-22. In addition, the court also heard from two detectives who knew Dare in the criminal context and who explained Dare's attitude towards the rules of society. 2RP 18.

It is clear from the record that Judge Trickey considered all of the information received and he did not categorically or unreasonably deny Dare's DOSA request. In fact, Judge Trickey stated "I have seriously considered a DOSA..." 2RP 43. Contrary to Grayson, 154 Wn.2d at 337, where the court's main reason for denying the DOSA was lack of funding, Judge Trickey articulated the balancing test he underwent in concluding a DOSA sentence was not appropriate. Judge Trickey explained, "I just cannot justify, *in the interest of the public*, a DOSA sentence." 2RP 44 (emphasis added). Judge Trickey went to great lengths to explain what factors he took into consideration in determining the appropriate sentence. He considered Dare's drug abuse and young age, as well as the lives he affected and the impact he had on victims by engaging in

the same behavior over and over again shortly after his release from JRA. 2RP 44. Judge Trickey also noted that Dare had reoffended quickly after having been released from JRA, where he benefitted from services. 2RP 44. Lastly, Judge Trickey also pointed out two significant factors in deciding what sentence to impose were the number of offenses combined with their temporal proximity. 2RP 43. The court's analysis was reasonable, thorough and thoughtful.

Dare argues the court's decision was based on untenable grounds and for untenable reasons because the court took into consideration the multiple offenses and rapid recidivism. App Brief 19. Dare, however, provides no authority to support his claim that these factors are untenable or impermissible. In fact, caselaw supports the contrary. In Jones, supra, at 52, Jones was convicted of possession of a stolen vehicle and requested a prison-based DOSA. Id. At the sentencing hearing, the trial court acknowledged that Jones would benefit from treatment and deferred imposition of sentencing as a result of a pending charge. Id. at 54. Ultimately, the trial court denied the DOSA request. Id. On review, the Court found the trial court did not abuse its discretion by declining to impose a DOSA sentence after considering Jones' criminal history,

the pending charge, whether he would benefit from treatment, and whether the DOSA would serve him and the community. Id. at 55-56.

The same is true in this case. Judge Trickey acknowledged Dare has a substance abuse problem, while, rightfully, also taking into consideration Dare's criminal history and the damage he caused to multiple victims. Judge Trickey clearly considered the benefits a DOSA sentence would serve not only to Dare, but also to the community, as envisioned by the legislature. The reasons provided by Judge Trickey are not untenable, and instead are rational and supported by caselaw.

Dare also argues the trial court did not consider the legislative goals of a DOSA sentence. This argument is without merit. Judge Trickey indicated he was persuaded that Dare had a significant drug problem and that addicts often fail treatment. 2RP 43. Judge Trickey, as a drug court judge, gave his insight with respect to drug treatment and went on to say that he "is a believer in the DOSA alternative." 2RP 43. Judge Trickey engaged in the balancing test that the legislature expected judges would, that is, to balance the benefit to the defendant in receiving the treatment he needs versus the protection to the public. 2RP 43. The court

concluded that, although Dare was eligible to receive a DOSA sentence, it was not in the best interest of the public. 2RP 44.

D. CONCLUSION

The trial court did not rely on an impermissible reason, such as race, gender, or religion, in denying the request, nor did the trial court categorically deny Dare's DOSA request. For the foregoing reasons, the State asks this Court to affirm Dare's sentence.

DATED this 15th day of ~~April~~^{May}, 2013.

Respectfully submitted,

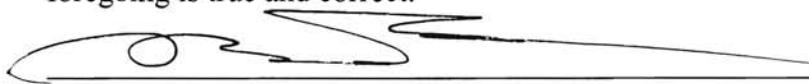
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
MAFÉ RAJUL, WSBA #37877
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to David L. Donnan, of Washington Appellate Project, at the following address: 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, the attorney of record for the appellant, containing a copy of the Brief of Respondent in STATE V. MAXFIELD DARE, Cause No. 69256-9-I in the Court of Appeals of the State of Washington, Division I.

I certify under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



05/15/13

Name

Date

Done in Seattle, Washington