95324-4

NO. 49232-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JORDAN PITTMAN,

Appellant.

RESPONSE TO PETITION FOR REVIEW

JASON LAURINE/WSBA 36871
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington, represented by Jason Laurine, Deputy Prosecuting Attorney, Cowlitz County Prosecuting Attorney's Office.

II. FACTS

In general, the State agrees with appellant's rendition of the facts. If any relevant disputes exist, they will be addressed in the body of the argument.

III. ARGUMENT

I. Appellant has not shown he is entitled to review.

A petition for review will be accepted only:

1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, petitioner failed to allege the existence of any of the four considerations for review enumerated in RAP 13.4(b). Consequently, Pittman's petition should be denied.

II. It was not abuse of discretion for the trial court to deny sentencing under SSOSA.

Even if the Court finds Pittman has met the threshold requirement for review, the facts contradict Pittman's position that the trial court heavily relied upon its own opinion when it refused to award him the extraordinary sentencing alternative. Unlike the trial court in *State v. Grayson*, 154 Wash.2d 333, 111 P.3d 1183 (2005), where the Court reversed the sentencing court's refusal to impose DOSA because the sentencing court failed to meaningfully consider whether it was appropriate for the defendant and instead based its decision of funding issues, the trial court in the current matter did provide meaningful consideration to all of the issues at stake before denying Pittman's request.

The decision to impose a SSOSA is entirely within the trial court's discretion. *State v. Onefrey*, 119 Wash.2d 572, 575, 835 P.2d 213 (1992). Sentencing is reviewed under the abuse of discretion standard. *State v. Hays*, 55 Wash.App. 13, 776 P.2d 718 (1989). A court abuses its discretion only if it categorically refuses to impose a particular sentence or if it denies a sentencing request on an impermissible basis. *State v. Khanteechit*, 101 Wash.App. 137, 139, 5 P.3d 727 (2000). RCW 9.94A.670 lists the process for determining whether SSOSA is appropriate. RCW 9.94A.670(4) guides a sentencing court's decision whether to sentence under SSOSA, or not. It

lists plainly several factors that must be considered, once initial eligibility is met:

> the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment.
>
> When making its decision, a trial court is not limited to these factors.

State v. Hays, 55 Wash.App. 13, 776 P.2d 718 (1989).

The trial court denied Pittman SSOSA because it was not the right thing for either the victim or the community. RP: 115-117. It ruled "there's some deep-seated issues that even with the treatment, I'm not sure would...would be healing and curing of the issue." RP June 16, 2016; 117:1-5. It further reasoned that "the best option, at this point, is to keep

Mr. Pittman away from children and others for a significant period of time." RP June 16, 2016; 117: 6-25.

The trial court made its ruling for several reasons, not least of which was the fact the defendant would not fully account for his actions. As the court in *State v. Frazier* reasoned, where a defendant who denies committing the offense until after his conviction suggests neither he nor the community will benefit from a SSOSA sentence. 84 Wash.App. 752, 754, 930 P.2d 345 (1997). During trial, Mr. Pittman either diminished his actions or outright lied. As the court found during its March 22, 2016 ruling, "his story of what happened, at least in my estimation, under reports his involvement." RP June 16, 2016; 62:19-20. The court was also unimpressed by Mr. Pittman's recitation of the frequency of the abuse, noting that it likely occurred more than the single instance described by Pittman. RP June 16, 2016; 63:5-9. The court's skepticism was clear when it stated that "notwithstanding Mr. Pittman's expression of sorrow and regret, and taking the responsibility for expressing sorrow for breaking trust and hoping forgiveness, I'm not convinced that the SSOSA is the right thing." RP June 16, 2016; 116:21-25.

In his presentence investigation (PSI) statement, Pittman blamed the victim. He claimed her nascent and precocious sexual curiosity caused him

to molest her; that she found the pocket pussy and the vibrator; and that she was the one who placed it on her own bottom and inserted it into her anus. His recitation of that facts did not change from his statement to Detective Stumph. RP March 2, 2016; 171-175.

Further, the victim's father and stepmother were not in favor of SSOSA, and requested the defendant go to prison. This is a valid consideration. *Frazier*, 84 Wash.App. at 754, 930 P.2d 345 *citing Hays*, 55 Wash.App. at 17-18, 776 P.2d 718 (stating a court's refusal to sentence under SSOSA is appropriate when court considers testimony from the mother of the victim requesting a stiff sentence). Indeed, under RCW 9.94A.670(4), a sentencing court is to give great weight to the victim's opinion whether the defendant should receive a treatment disposition.

At the June 16, 2016, sentencing, the victim's stepmother was adamant Mr. Pittman not receive SSOSA, stating:

> I am so far convinced that he has robbed this little girl in more ways than imaginable. I suspect she will grow to become a very challenged individual, and trust issues, I'm sure, will be just one of the many ailments she will suffer from. Jordan's sick, selfish crime, as well as the loss of her immediate family members, will have an immense impact on her life.
>
> I'd ask the court to remember testimony, to take into consideration his denial, which pressed for this trial could go on for so long, it's been over a year, which also resulted in

> those two little girls to be forced into such a position as to be testifying, which yet should be another crime. How scary for them. I believe had [the victim] had not told her story, his acts of raping her would still be ongoing.
>
> I believe a lengthy sentence is in order. No SSOSA, no special services. Is that a fair trade for a ruined life of a little girl? Probably not, but definitely a fair trade. RP June 16, 2016; 100:5-24.

In a letter to the court, the victim's father, Pittman's brother, also requested the court not award Pittman the extraordinary alternative to prison. He wrote that Pittman betrayed brotherly trust, a trust held between uncle and nieces, and that "he does not deserve the SSOSA program after what he did." RP June 16, 2016; 101: 15-22.

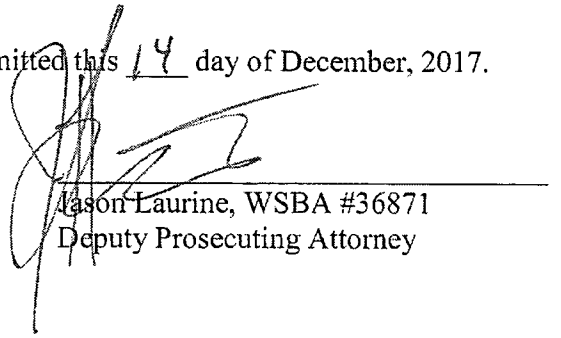
Even still, the PSI and Dr. Carey, the writer of Pittman's psycho-sexual evaluation, both indicated that Pittman was a "marginal candidate, at best" for SSOSA. RP 116:4-5. Over any of the arguments made by defense counsel, the sentencing court was persuaded by this point. RP June 16, 2016; 116.

IV. CONCLUSION

Pittman has not shown either that review is appropriate or that the trial court abused its discretion when declining to sentence him to a SOSSA,

following trial. For these reasons, the State respectfully requests his petition for review be denied.

Respectfully submitted this 14 day of December, 2017.



Jason Laurine, WSBA #36871
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division I portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on December 19th, 2017.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

December 19, 2017 - 10:45 AM

Transmittal Information

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