IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. KHAMSAY KEODARA, Defendant, and VANNAK YUN, Respondent.	No. 62472-5-I DIVISION ONE UNPUBLISHED OPINION FILED: March 1, 2010

BECKER, J.— A jury convicted Vannak Yun of taking a motor vehicle without permission in the second degree. He requested a drug offender sentencing alternative (DOSA), which the trial court denied after noting that Yun's codefendant did not receive a DOSA and confirming that Yun had already received a DOSA in 2006. Because the record shows that the trial court did not categorically decline to consider a DOSA, we affirm the standard range sentence imposed.

FACTS

On February 1, 2008, the State charged Yun with taking a motor vehicle without permission in the second degree. On August 8, 2008, a jury found him guilty as charged. The State recommended that the sentencing court impose the maximum standard range sentence of 29 months based on Yun's offender score of 21. Yun requested a prison-based DOSA as provided for under RCW 9.94A.662, as opposed to the residential chemical dependency treatment based alternative provided for under RCW 9.94A.664, which is only available when, unlike in this case, the midpoint of the standard range is 24 months or less. See RCW 9.94A.660. The trial court noted its concern that Yun receive a sentence consistent with his codefendant, who did not receive a DOSA.

In response to Yun's request, the State asserted that Yun had already received a DOSA in 2006. Yun's counsel confirmed the previous DOSA sentence at the request of the trial court while arguing that Yun was still statutorily eligible for a DOSA in this case. The State countered that given Yun's extensive history of car theft, the trial court would be setting him up for failure by imposing a DOSA. The trial court declined to sentence Yun under DOSA and imposed a 25 month sentence. Yun appeals.

STANDARD OF REVIEW

"As a general rule, the trial judge's decision whether to grant a DOSA is not reviewable." State v. Grayson, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005),

citing RCW 9.94A.585(1). "However, an offender may always challenge the procedure by which a sentence was imposed." Grayson, 154 Wn.2d at 338. A trial court abuses its discretion by categorically refusing to seriously consider whether a DOSA sentence was appropriate. Grayson, 154 Wn.2d at 338.

DISCUSSION

Yun argues that the trial court's consideration of whether Yun's sentence would be consistent with his codefendant's amounted to a categorical refusal to consider his DOSA request. In Grayson, 154 Wn.2d at 342-43, the trial court abused its discretion by denying a DOSA request on the basis that a funding shortage meant the effect of granting a DOSA would be to cut the defendant's sentence in half. Here, the trial court indicated an unwillingness to impose inconsistent sentences between Yun and his codefendant, but that unwillingness does not amount to a refusal to consider imposing a DOSA under any circumstances. Instead it shows that the trial court was exercising its discretion to consider whether it was imposing consistent sentences. See RCW 9.94A.010 (explaining that a purpose of the Sentencing Reform Act of 1981, chapter 9.94A RCW, is to ensure that felony offenders receive punishment "commensurate with the punishment imposed on others committing similar offenses").

Additionally, the record does not show that the trial court declined to impose a DOSA based solely on its concern for consistent sentences. For example, the trial court verified that Yun had already received a DOSA for a prior

offense. And before reaching its decision, the trial court entertained Yun's argument that he remained statutorily eligible for DOSA and the State's argument that another DOSA would set Yun up for failure based on his extensive history of car theft.

Because the record does not show that the sentencing court categorically refused to consider Yun's DOSA request, we hold that the trial court did not abuse its discretion by imposing a standard range sentence.

Becker, J.

WE CONCUR:

Appelwick, J.

Ellington, J.