

64136-1

64136-1

NO. 64136-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ALSETH,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

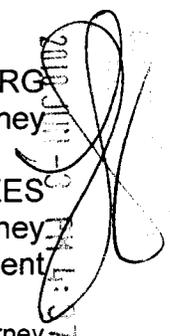
THE HONORABLE MARY ROBERTS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

ALEXANDRA E. VOORHEES
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

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



Handwritten signature of Daniel T. Satterberg, King County Prosecuting Attorney, written over a vertical stamp that reads "DANIEL T. SATTERBERG" and "KING COUNTY PROSECUTING ATTORNEY".

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A. ISSUE PRESENTED

Whether the sentencing court abused its discretion in denying the appellant's request for the imposition of a Drug Offender Sentencing Alternative (DOSA) sentence?

B. STATEMENT OF THE CASE

The Appellant came before the Honorable Judge Mary Roberts for sentencing on two King County Superior Court cases on September 4, 2009. Under 08-1-12911-6 KNT the defendant had originally been charged with the crime of Burglary in the Second Degree, which pursuant to negotiations was reduced to Criminal Trespass in the First Degree. Under cause number 09-1-02828-8 KNT the defendant was originally charged with one Count of Possession of a Stolen Vehicle, one count of Making or Having Vehicle Theft Tools and four counts of Trafficking Stolen Property in the Second Degree. On that cause number the defendant pled guilty to one count of Possession of a Stolen Vehicle, one count of Making or Having Vehicle Theft Tools, and five counts of Theft of a Motor Vehicle. Based on a review of the defendant's criminal history and the current offenses the appellant

has an offender score of 23 with respect to each of the auto theft related crimes to which he pled guilty.

After reviewing the certifications for determination of probable cause stipulated to by the parties as real facts and hearing argument by both the State and defense the court declined to grant the appellant's request for a DOSA sentence, and imposed a sentence at the high end of the standard sentencing range under the Sentencing Reform Act (SRA) of 57 months on each of the felony offenses to be served concurrently with each other and consecutive to suspended sentences on the two misdemeanor offenses to which he had pleaded guilty.

According to the evidence before the court while the defendant was charged with the crime of Burglary in the Second Degree under 08-1-12911-6 KNT, and pending resolution of that matter, the appellant was involved in a scheme whereby he would take vehicles that did not belong to him, and either forge or have forged for him a notarized transfer of title. He would then take the vehicles to International Metal and sell the vehicles for scrap. According to the certification for determination of probable cause stipulated to by the parties as real facts there were eight identified victims.

C. ARGUMENT

The sentencing court in this case did not abuse its discretion in denying the defendant's request to be sentenced to a DOSA sentence.

RCW 9.94A.660 Drug offender sentencing alternative – Prison based or residential alternative, sets forth the eligibility requirements for the DOSA program.

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such

factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) *If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate*, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

RCW 9.94A.660 (emphasis added).

Once a defendant is found to be eligible for a DOSA, ***it is then within the sentencing court's discretion whether to grant a DOSA.*** State v. Grayson, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005) (emphasis added). As a general rule, the trial court's decision whether to grant a DOSA is not reviewable. State v. Bramme, 115 Wn. App. 844, 850, 64 P.3d 60 (2003). Although a defendant cannot generally challenge the imposition of a standard-range sentence or a court's decision not to impose a sentencing alternative like a DOSA, a defendant may challenge legal errors in sentencing or an abuse of discretion. State v. Watson, 120 Wn. App. 521, 529, 86 P.3d 158 (2004); State v. Gronnert, 122 Wn. App. 214, 225, 93 P.3d 200 (2004); see also, Grayson, 154 Wn.2d at 338, 111 P.3d 1183.

A trial court abuses its discretion when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A decision is manifestly unreasonable if it falls outside the range of acceptable choices, given the facts and the applicable legal standard; if the record does not support the factual findings; or if the court misapplies the law. In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 136 (1997); State v.

Olivera-Avila, 89 Wn. App. 313, 949 P.2d 824 (1997). Said another way, a trial court abuses its discretion when it takes a position on an issue that no reasonable person would adopt. State v. Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

In determining whether a DOSA sentence is appropriate under RCW 9.94A.660 (3) the court not only considered the baseline eligibility requirement but also the purposes set forth in the SRA under RCW 9.94A.010:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community.

RCW 9.94A.010.

In this case after a lengthy sentencing hearing the court found that the appellant, while legally eligible, was not a good candidate to receive a DOSA sentence. In denying the appellant's request for a DOSA sentence the court stated the following:

Let me turn first to the DOSA. This court is generally very receptive to a DOSA recommendation, because the court believes that unless the underlying problem is addressed, giving somebody jail time and just letting him cycle through ultimately isn't in society's best interest. However, in this case, the court concludes that there is simply not enough evidence of a significant drug problem for the Court to believe that a DOSA really is the appropriate sentence. I have no doubt that Mr. Alseth may have been involved with meth, at least at some point. He has some prior convictions for that, but I do agree with the State that we are basically talking about self reporting and I generally require something more substantial. I need to see that somebody isn't just asking for a DOSA because it may result in less incarceration and some drug use. I certainly understand why Mr. Alseth would like a DOSA, but given the significant criminal history that he has and given the very sparse evidence, except in checking some boxes on an evaluation the court is not going to impose a DOSA.

RP 16-17.

The Court's stated reasoning for imposing a sentence at the high end of the standard sentencing range is also informative on the courts rationale for denying the DOSA. The court stated:

Mr. Alseth you were in court earlier when I was talking to, I think, a previous defendant about how I approach these, and what I indicated then was I start in the middle of the range, I look at the criminal history, I look at the egregiousness of the offenses, the number of the offenses, and I look at the offender score. And in your case you are off the charts in terms of offender score, and this, I think, does qualify as a crime spree. So I am going to give you the top of the range in this case.

RP 18.

In this case the court did not categorically deny the appellant's request for a DOSA sentence. In making a determination that the imposition of a DOSA sentence was not appropriate in this case the court considered the facts of the cases before it, the defendant's criminal history and lack of evidence to support the appellant's claim that of addiction and the purposes set forth for the SRA under RCW 9.94A.010.

D. CONCLUSION

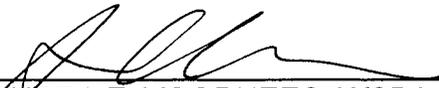
Because the sentencing court did not abuse its discretion in denying the defendant's request for a DOSA sentence this court

should deny the defendant's request to remand this matter to the sentencing court for re-sentencing.

DATED this 3rd day of June, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
ALEXANDRA E. VOORHEES, WSBA #31915
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

COURT OF APPEALS FOR WASHINGTON
DIVISION I

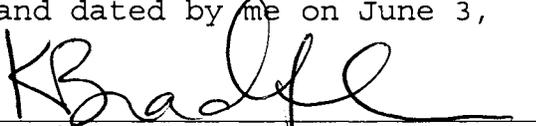
STATE OF WASHINGTON,)
)
 Respondent,) NO. 64136-1-I
)
 v.) CERTIFICATION OF
) SERVICE BY MESSENGER
 William Alseth,)
)
 Appellant.)
 _____)

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Kerri N. Bradford

Kerri N. Bradford, Paralegal, King County
Prosecutor's Office, Criminal Division, certifies that
on June 3, 2010, she personally served Gregory C. Link,
attorney for William Alseth, with Brief of Respondent
by ABC legal messenger:

Gregory C. Link
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle WA 98101

Under penalty of perjury under the laws of the
State of Washington, I certify that the foregoing is
true and correct. Signed and dated by me on June 3,
2010.



Kerri N. Bradford