

65745-3

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NO. 65745-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW CLINE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAY WHITE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

- 1. A TRIAL COURT HAS BROAD DISCRETION TO IMPOSE A DRUG OFFENDER SENTENCING ALTERNATIVE ("DOSA") IF THE OFFENDER IS ELIGIBLE AND IF THE COURT DETERMINES THAT THE ALTERNATIVE SENTENCE IS APPROPRIATE. IN THIS CASE, THE COURT CONSIDERED ALL THE INFORMATION IT WAS GIVEN AND DENIED THE DEFENDANT'S REQUEST FOR A DOSA, FINDING THAT IT WAS NOT AN APPROPRIATE SENTENCE IN THIS CASE. UNDER THESE CIRCUMSTANCES, DID THE TRIAL COURT ABUSE ITS DISCRETION IN IMPOSING A STANDARD-RANGE SENTENCE RATHER THAN A DOSA?**

B. STATEMENT OF THE CASE

On May 13, 2010 the defendant pled guilty to six counts of Domestic Violence Felony Violation of a Court Order. 5/13 RP.

The amended information was based on a felony court order violation premised on an assault in Count I and five additional counts of felony court order violation for contacting the victim from jail. CP 4-10, 7/1 RP 3. At the time of sentencing the defendant had five prior domestic violence convictions for crimes involving the same victim. CP 33, 7/1 RP 3-4.

The defendant also committed these crimes while he had a pending VUCSA case in Pierce County Superior Court and while he was on probation for other convictions. 7/1 RP 3-4, CP 33. While

on probation and while participating in Drug Court in Pierce County the defendant committed these six domestic violence offenses. 7/1 RP 4, 7. As the State argued, "he is not a good candidate for a DOSA because he's proven that he does not abide by Court orders or conditions of probation." 7/1 RP 4.

Further, at sentencing the domestic violence victim advocate spoke on behalf of the victim, who was also objecting to a DOSA and asking the court to sentence the defendant to a standard range prison sentence. 7/1 RP 5-6.

After hearing from defense the court declined to impose a DOSA. The court noted that the defense had presented "a compelling argument" on behalf of their request for a DOSA. 7/1 RP 10. The court also noted that there was "significant evidence of a drug problem." 7/1 RP 10.

However, the court also noted that there was "repeated violations of protection orders involving the same victim" and "assaultive behavior in connection with Count 1." 7/1 RP 10. As the court concluded, "Taking everything into account, the Court is not persuaded that [this] is a case where the Court should allow a DOSA sentence." 7/1 RP 10. Noting that there were some "compelling personal circumstances" present in this case, the court

ultimately concluded that this was not the type of cases "where the legislature intends the court to impose a DOSA sentence." 7/1 RP 10. The court then imposed a standard range sentence, including community custody. 7/1 RP 11, CP 36-44.

C. ARGUMENT

1. THE TRIAL COURT ACTED WITHIN ITS DISCRETION WHEN IT IMPOSED A STANDARD RANGE SENTENCE AFTER DETERMINING THAT A DOSA WAS NOT AN APPROPRIATE SENTENCE IN THIS CASE.

If a sentencing court determines that the offender is eligible for a DOSA and "*that the alternative sentence is appropriate*," the court may impose a DOSA, which results in a sentence outside the standard sentence range. RCW 9.94A.660(3) (emphasis added). If the court deems that an offender is eligible for a DOSA and that a DOSA is appropriate, the court must then impose either a prison-based DOSA under RCW 9.94A.662 or a residential treatment-based DOSA under RCW 9.94A.664. RCW 9.94A.660(3). In this case, the defendant was only eligible for a prison-based DOSA, as the midpoint of his standard range was not twenty-four months or less. RCW 9.94A.660(3).

A prison-based DOSA results in the suspension of half of the defendant's prison term, as calculated from the mid-point of the

standard range. RCW 9.94A.662(1). A prison-based DOSA includes a mandatory substance abuse assessment and treatment during incarceration, as well as substance abuse conditions imposed during the defendant's subsequent community custody term. RCW 9.94A.662(1)(b) and (2).

As a general rule, the trial court's decision whether to grant a DOSA is not reviewable. State v. Bramme, 115 Wash.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); State v. Grayson, 154 Wash.2d 333, 338, 111 P.3d 1183 (2005).

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. Carrol 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. 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).

Here, the court did not misapply the law and the court's ruling is supported by facts in the record. Further, the court did not categorically deny the defendant's request. See, Grayson, 154 Wash.2d at 343, 111 P.3d 1183 (trial judge did not appear to meaningfully consider whether a sentencing alternative was appropriate). The trial court carefully considered all of the information before it and concluded that although the defendant was statutorily eligible for a DOSA that in this case a DOSA was not appropriate.

Given all of the information that was before the sentencing court, the court did not abuse its discretion when it denied the defendant's request for a DOSA. Based on the record below, the defendant had several prior domestic violence convictions involving the same victim, as well as six total convictions before it for sentencing. This pattern of domestic violence was a valid concern

for the court, in determining the appropriateness of a DOSA sentence. The defendant was also on probation at the time of his crimes in this case and was already participating in Drug Court and drug treatment in Pierce County at the time of his crimes in this case. This pattern of violating court orders was a valid concern for the court in determining the appropriateness of this particular defendant for a DOSA sentence. Although Mr. Cline may disagree with the trial court's decision to impose a standard-range sentence rather than a DOSA, the trial court has discretion to decide "whether [the offender] *and the community* will benefit from use of DOSA." Watson, 120 Wn. App. at 531, 86 P.3d 158 (emphasis in original); RCW 9.94A.660(2).

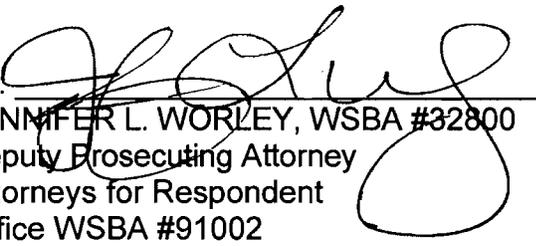
D. CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court affirm the trial court's decision not to impose a DOSA because that decision was well within the discretion of the trial court.

DATED this 19th day of February 2011.

Respectfully submitted,

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