

NO. 69256-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MAXFIELD DARE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT.

Eighteen-year-old Maxfield “Max” Dare asked the superior court to impose a Drug Offender Sentencing Alternative (DOSA) following his guilty pleas to four counts of residential burglary and a variety of theft and stolen property offenses arising in part from his untreated poly-substance dependence. While recognizing Mr. Dare was statutorily eligible and in need of treatment, the sentencing judge denied the request. Mr. Dare contends that because the court did not fully and fairly consider his appropriateness for a DOSA in light of the legislature’s expanded vision of the program, a new sentencing proceeding is required.

B. ASSIGNMENT OF ERROR.

The trial court improperly denied Mr. Dare’s request for a DOSA sentence on untenable grounds and for untenable reasons where it denied the request based on factors considered by the Legislature in establishing the expanded availability of this sentencing alternative.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

The sentencing court must fully and fairly consider a request for a DOSA and may not deny a request based on a misapprehension of the law or for untenable reasons. Here, the

court declined to impose a DOSA sentence for untenable reasons where it determined Mr. Dare was eligible and would benefit from treatment, but denied the request based on factors such as multiple offenses and rapid recidivism which were factors already considered by the Legislature in its expansion of the sentencing alternatives' eligibility. Did the court, therefore, deny Mr. Dare a DOSA on an impermissible basis or on untenable grounds?

D. STATEMENT OF THE CASE.

Mr. Dare was charged under King County cause 12-1-01536-4 with:

Count 1 Possession of a Stolen Vehicle; and

Count 2 Trafficking in Stolen Property.

CP 1-2. The information was amended to add:

Count 3 Residential Burglary;

Count 4 Residential Burglary; and

Count 5 Residential Burglary.

Each burglary charge also included a special allegations that the offense was committed while the victim of the burglary was present.

CP 12-17. A second amended information was later filed adding:

Count 6 Theft of a Motor Vehicle;

Count 7 Residential Burglary;

Count 8 Theft of a Motor Vehicle; and

Count 9 Trafficking in Stolen Property in the First Degree.

CP 18-35.

Mr. Dare was also charged under King County cause 12-1-01541-1 with robbery in the second degree. CP 242. That information was subsequently amended as part of a plea bargain to charge instead one count of theft in the first degree and one count of assault in the fourth degree. CP 248-50.

Mr. Dare subsequently plead guilty to the nine counts charged in cause 12-1-01536-4 and stipulated to the fact that the victims were present during the burglaries. CP 36-107. Mr. Dare also plead guilty to the amended information in cause 12-1-01541-1 charging first degree theft and fourth degree assault. The two causes were then sentenced together. RP 8/24/12.

At sentencing, the prosecutor argued for an exceptional sentence based on the presence of the victims during the burglaries (RCW 9.94A.535(3)(u)) and because Mr. Dare's "high offender score results in most of his current crimes going unpunished." CP 168.

Defense counsel requested the court impose a DOSA in particular to provide the community supervision that would allow

Mr. Dare to transition back into the community at the end of his confinement. CP 207-26; 8/24/12RP 27-28.

In support of this DOSA request, Mr. Dare's father Michael explained the difficult circumstances which had lead Max to his current predicament.

Max was a confused two-year-old when I finally won legal custody from his indigent, meth-addicted mother in 1995 in Los Angeles. She kept showing up making demands, so I decided to move into the middle of nowhere where she couldn't find me, miles from civilization, in unincorporated land near Joshua Tree, California. A literal ghost community where the aquifer had gone dry; that is where I raised Max entirely on my own. I never even had a babysitter, there's no one else to blame for his upbringing; it was me all the way.

Max had a simple rural childhood, often without electricity, and sometimes no running water. We had to truck it into a holding tank, and Max and I would bring it into the house by the pail.

....

Where we lived, there were no neighbors, no fences, no gangs, no drugs, no culture, no social life, just coyotes, roadrunners, tortoises, rattlesnakes, rabbits, and the incredible desert scenery.

8/24/12RP 29-30. Michael Dare then outlined the difficult times which eventually befell them:

After his turbulent first few years, the next 10 were completely peaceful away from civilization, he was basically Opie of Mayberry.

Then we were evicted and started an odyssey by bus, train and boat in the middle of nowhere, Palm Spring to Los Angeles, to San Francisco, to Ilwaco, Washington, to Seattle, back to San Francisco, to Palm Desert, to Los Angeles, to Portland, to Seattle again. Max behaved well and we had great adventures together.

I still worked online as the editor of the Los Angeles Free Press. Seattle's Porch Light Program in Seattle helped us move to a small house, Max was going to Ballard High and I was working two jobs, we were moving up.

The first time I came home and found Max with a bunch of friends, I thought it was fantastic, my son finally had friends to hang with, he'd never been able to do this simple thing.

I did my best to discourage the smoking and drinking, but he was unsupervised until I got home. I found empty beer cans, bongs made out of all kinds of things, mirrors and razor blades. And it turns out that he had the kind of friends who were impressed that he had a house to himself with no parent around.

Then I lost both jobs, we packed up our stuff to move to cheaper place, only to find the old tenants had not left, that was the moment that we became homeless. That was when Max said to me, Dad, worry about yourself, I'm sure I can stay with a friend.

8/24/12RP 30-31. Mr. Dare then explained the bad influences that came into Max's life while he was homeless.

Well, I met his friend and I met her mom, who offered to take Max into their spare bedroom. It was way better than what I had to offer, and it was the first night in Max's life that he'd ever spent apart from me, he was 15. I had no way of knowing that that wasn't just the end of my supervision, but the end of all supervision.

The next time I saw him he was listening to gangster rap, wearing gigantic white T-shirts with his shorts below his butt, a baseball cap on the side, and hanging out with a circle of thieves and drug dealers. This was not the same kid that I said good-bye to weeks earlier, it was a radical change in behavior, he either had a brain tumor or he was doing drugs.

I couldn't call the police, the police were calling me asking why was my son out in the street? What could I do? I couldn't say come home, I didn't have one.

My son was part of a group of stoners who hung out after school in the park. He never had friends like these. He never experienced peer pressure. He never experienced

fashion, he had no idea he'd never fit into school with the cheap shoes I bought him, shoes that made him an outcast.

8/24/12RP 31-32. Max was soon drawn into a criminal element which took him further away from his father.

[O]ne day he's walking down the street with a friend, wondering how he's ever going to fit in, and his friend says, he, man, check this out, and he opens up the passenger door of a car parked right there're in the street with the door unlocked, grabs and (inaudible) right off the seat, and closes the door and kept walking.

Now, Max couldn't believe what he just saw, but at that age, their brains are sponges and he absorbed what was around him, this somehow become in his mind a cool thing to do.

He was never on his own when he started taking things, it was an obvious progression. First he started hanging out with pot smokers, and because pot is illegal, this introduced him to the underground economy, where every transaction is illegal, untaxed and no one ever gets a receipt. Start with pot, you end up selling it, trading it for all kinds of other things, hash, cocaine, booze, iPods, cool shoes, hat, cameras all traded regularly in the underground economy.

He'd never driven a car. For him, seeing a parked car with the keys in it as just too tempting. He didn't take cars to keep them or to sell 'em to a chop shop, he took cars just to get to drive. This is my fault, my parents bought me a car when I was 16. I couldn't afford to buy him one, if I had, none of this would've happened.

8/24/12RP 32-33.

It was actually the structure of the juvenile justice system that helped best illustrate Max's potential to succeed in DOSA.

Finally he was arrested, he spent his 17th year in juvenile detention at the Naselle Youth Camp in southwestern Washington. While he was there he studied for his GED, there was a fish hatchery, gardening and fire

training. He never tried to escape, he was set to get his red card to be a full-fledged firefighter, this program was working. He was putting together a new life.

8/24/12RP 33.

It was, in turn, the loss of that structure that then left Max alone and unprepared after the completion of his JRA experience.

Then, just one year ago this week, right before his 18th birthday, despite the fact that Nacelle keeps kids until they're 21, they took him out of this successful rehabilitation program, drive him five hours to the heart of downtown Seattle and just let him go, with no address, no place to sleep, no food, no money, no probation, no drug rehab, and no one to report to. This was a minor with no address. In fact, he was weeks away from turning 18, shouldn't make any difference, homeless minors are supposed to be put in group homes, not dumped in the streets. And that's what they did to him. I'm sorry, this was an insane thing to do to a boy.

8/24/12RP 33-34.¹

¹ Mr. Dare also challenged the premise upon which the prosecutor sought an exceptional sentence.

The idea that he deliberately sought houses where people were home is completely absurd. Why would anybody do that? I mean, think about it, they're saying that he went to a house and saw -- considered robbing it and thought, oh, there's nobody home, I'll go to the next house. Oh, there's nobody home, I'll go to the next house, ooh, there's somebody home here, I'll rob this house. That is preposterous. Nobody has -- nobody has that m.o., no one, especially considering this fact that Max was completely non-violent.

When he broke into a house, he only came in through open doors making these all crimes of opportunity. He never used a weapon, none of his victims were ever in any physical danger, if anything, he was the only one in physical danger. And I want to thank you not hurting my son.

Upon confronting people who were home, he never did anything but turn and run. The only reason it looks like a signature is because the prosecution cherry-picked these crimes to make it look like a signature.

8/24/12RP 37-38.

Speaking on his own behalf, Max acknowledged the poor judgment he had shown and reiterated his request the court impose a DOSA sentence to address the root of his problems. 8/24/12RP 39-40.

I would just like to say that when – well, first of all, I would like to apologize to all the victims and the pain that I've cause.

And I'd like to say that when – when I went out on the streets and –and I'm like, high doing drugs, drinking alcohol, that I'm not in the same mind, I'm saying that I'm not in the same mindset, I really don't think before my actions and everything I do.

And I – I'd like to say that when I'm, uh, after a period of time being sober and thinking about the crimes that I've committed, that I really do feel remorseful for the things that I've done. And again, I'd just really like to apologize to the victims and I'm sorry, And no matter what, when I come out of this, I'm going to come out a better person

Id.

Finally, again illustrating his potential for success in an appropriately structured and sober environment, Max had already completed, while he was in custody, his GED and a substance abuse evaluation which recommended treatment a one year program. CP 217-26.

After hearing from the parties and a number of the victims, Judge Michael Trickey found:

I'm persuaded that Max has a significant drug problem, that chemical dependency evaluation that defense provided said he was withdrawing from benzodiazepines

when he was booked into the jail. And I've been a drug court judge, I know that addicts have difficulty succeeding and sometimes they fail multiple times before they succeed, I am also a big believer in the DOSA alternative because, for one thing DOSA gives you supervision upon release, which the State's recommendation doesn't. And so I've seriously considered the DOSA here, but I just cannot impose the DOSA, I just can't.

8/24/12RP 43. Judge Trickey went on, however, to conclude:

And I think 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.

And 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. Just looking at the dates, there being multiple offenses being committed just so close in time, and so I just cannot justify, in the interest of the public, a DOSA sentence.

8/24/12RP 43-44.

Judge Trickey then imposed 120-month exceptional sentences on the burglary offenses and concurrent standard range sentences were ordered on the remaining offenses. CP 196-206. Findings of Fact and Conclusions of Law for Exceptional Sentence were subsequently entered in support of the 120 month exceptional sentence. CP 238-41.

E. ARGUMENT.

BY FAILING TO FULLY AND FAIRLY CONSIDER MR. DARE'S APPROPRIATENESS FOR A DOSA SENTENCE IN LIGHT OF THE LEGISLATURE'S EXPANSION OF THE PROGRAM, THE COURT ABUSED ITS DISCRETION AND A NEW SENTENCING HEARING IS REQUIRED

Mr. Dare detailed a significant substance abuse history that began with drinking beer at age 12, advanced to using marijuana at 13, regularly drinking hard liquor by 14 and using cocaine by 15. CP 221. This use became regular and also included the abuse of tranquilizers and hallucinogens. Id. Based on their evaluation, Sunrise Centers, a state certified chemical dependency treatment center, found sufficient evidence to conclude Max was poly-substance dependent and recommended a one year treatment program. CP 222.

Judge Trickey agreed Max had a "significant drug problem" and noted the benefits of the DOSA program including the supervision that defense counsel believed was crucial. 8/24/12RP 43. Because the court declined to impose a DOSA, however, without fully and fairly considering the legislative goals in expanding statutory eligibility, the court based its decision on untenable grounds and for untenable reasons where the number and timing of the offenses appear to be factors already taken into

consideration by the legislature. The case should, therefore, be remanded for resentencing. The court's subsequent imposition of an exceptional sentence does not make this error harmless because the process by which that determination was reached was flawed. See e.g. State v. Grayson, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005).

1. The court must consider whether the defendant is eligible and whether a DOSA would benefit the defendant and the community. The DOSA statute authorizes judges to give eligible nonviolent offenders a sentence that includes treatment and increased supervision following a reduced period of confinement in an attempt to help them recover from their addictions. RCW 9.94A.660; Grayson, 154 Wn.2d at 342.²

² RCW 9.94A.660, the drug offender sentencing alternative, provides in pertinent part:

(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 46.601.504(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;

....

(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;

The purpose of the DOSA statute was to provide "treatment-oriented sentences" for drug offenders. State v. Conners, 90 Wn. App. 48, 53, 950 P.2d 519, rev. denied, 136 Wn.2d 1004 (1998). If the court determines a DOSA is appropriate, the court imposes a sentence which is one-half the midpoint of the standard range

(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.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

sentence in prison. RCW 9.94A.662.³ Once the defendant has completed the custodial part of the sentence, he is released into closely monitored community supervision and treatment for the balance of the sentence. *Id.* The defendant has a significant incentive to comply with the conditions of a DOSA, since failure may result in serving the remainder of the sentence in prison. RCW 9.94A.662(3); Grayson, 154 Wn.2d at 338.

³ RCW 9.94A.662, Prison-based drug offender sentencing alternative, provides in pertinent part:

(1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

....

The Sentencing Reform Act required the sentencing judge determine Mr. Dare's eligibility for a DOSA and use his discretion to determine whether to impose the DOSA. State v. Williams, 112 Wn. App. 171, 177, 48 P.2d 354 (2002). Under RCW 9.94A.660(1), Mr. Dare was eligible for a DOSA because (1) his current offense was not a violent offense or a sex offense and did not involve a firearm or deadly weapon sentence enhancement; (2) his prior convictions did not include violent offenses or sex offenses; and (3) he or she was not subject to deportation.

2. The trial court's decision to deny a DOSA is reviewable on limited grounds. Every defendant is entitled to ask the trial court for fair and meaningful consideration of a DOSA request. Grayson, 154 Wn.2d at 342, citing State v. Garcia-Martinez, 88 Wn.App. 322, 330, 944 P.2d 1104 (1997). A party may obtain relief from a trial court's failure to properly exercise the discretion granted by the DOSA statute where the trial court categorically or unreasonably denies a DOSA sentence. Grayson, 154 Wn.2d at 342; State v. Jones, 171 Wn.App. 52, 55-56, 286 P.3d 83 (2012). A defendant may challenge the procedure by which the sentence was imposed because every defendant is entitled to have the trial court give the request meaningful consideration. State v. Grayson, 154 Wn.2d at

342 (citing RCW 9.94A.585(1)); State v. Bramme, 115 Wn.2d 844, 850, 64 P.3d 60 (2003). Moreover, a defendant is entitled to a review of the denial of a DOSA request in order to correct a legal error or the trial court's abuse of discretion. State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003); State v. White, 123 Wn.App. 106, 114, 97 P.3d 34 (2004).

A sentencing court abuses its discretion by using the wrong legal standard or by resting its decision upon facts unsupported by the record. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008); see also State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993) (failure to follow statutory procedure is legal error reviewable on appeal). As Grayson explained, “[T]rial judges have considerable discretion under the SRA, [but] they are still required to act within its strictures and principles of due process of law.” Grayson, 154 Wn.2d at 338. A sentencing court abuses its discretion by refusing to exercise its discretion or by relying on an impermissible basis for its sentencing decisions. State v. Garcia-Martinez, 88 Wn.App. at 330. Here, the sentencing court erred by failing to fully and fairly consider Mr. Dare's request for a DOSA in light of the legislative intention to expand eligibility. Id. Mr. Dare

is entitled to appellate review of the denial of his request for a DOSA.

3. By failing to fully and fairly consider the relevant factors for granting DOSA to a person plainly in need of treatment, the court abused its discretion. The legislature enacted RCW 9.94A.660 to address substance abuse problems among the offender population. Indicative of the Legislature's intention to broadly expand the use of DOSA, in 1999 the program was expanded to include not only first time offenders but all felony drug and property offenders. E2SHB 1006.⁴ The general intention of alternative sentencing programs, such as the DOSA, is to provide offenders with drug and alcohol treatment in order to reduce recidivism. See, e.g., Jean Soliz-Conklin, Washington State Department of Corrections, Washington State Drug Offender Sentencing Alternative Statistical Summary, Jan. 2010. Because the DOSA program was enacted to treat offenders with chemical dependency issues like Mr. Dare, he was eligible for a DOSA, on both his burglary offenses as well as the other offenses charged, and

⁴ The Legislature stated, "This is a measure that gets tough on those who have a substance abuse problem, but also stops the revolving door to the prisons. It gives the offender the treatment he needs so he is less likely to offend again, while still requiring confinement." Senate Bill Report. E2SGB 1006, at 3.

the record shows he would benefit from DOSA treatment, there was no tenable reason to deny his request.

Mr. Dare explained that his behavior while under the influence of alcohol and drugs was anomalous and atypical of the general character.

... I'd like to say that when – when I went out on the streets and – and I'm like, high doing drugs, drinking alcohol, that I'm not in the same mind, I'm saying that I'm not in the same mindset, I really don't think before my actions and everything I do.

RP 39. Mr. Dare also noted that he was mentally prepared to make the step toward treatment and sobriety.

...I'd like to say that when I'm, uh, after a period of time being sober and thinking about the crimes that I've committed, that I really do feel remorseful for the things that I've done.

RP 39-40.

In denying Mr. Dare's request for DOSA, however, the court failed to properly consider the legislative goals underpinning the grant of the court's broad discretion. As a result, the court's denial of Mr. Dare's request was based on untenable grounds and untenable reasons. Although Judge Trickey noted Mr. Dare was statutorily eligible and in need of treatment, the judge did not appear to fully appreciate other relevant factors pertinent to assessing the appropriateness of the DOSA request. See e.g. State v.

Jones, 171 Wn.App. at 52 (court considers defendant's criminal history, whether he would benefit from treatment and whether a DOSA would serve the defendant or the community). By failing to fully and fairly consider the benefit both to Mr. Dare and the community as a whole, the court abused its discretion.

This failure is also significant because the court did not doubt Mr. Dare's need or eligibility for a treatment but rejected his request based on the number of offenses and the relatively rapid recidivism. 8/27/12PR 43-44; cf. State v. Williams, 149 Wn.2d 143, 148, 65 P.3d 1214 (2003). These factors appear to have already been taken into account, however, in the Legislature's expansion of DOSA eligibility and in the sentencing ranges from which both the terms of confinement and treatment are established. As a result, the Court's denial of Mr. Dare's DOSA request on this basis was untenable and an abuse of discretion. Mr. Dare is entitled to resentencing at which a court gives proper consideration to the guideline for imposing a DOSA sentence.

Instead of fully and fairly considering Mr. Dare's eligibility for a DOSA and exercising its discretion in a manner envisioned by the Legislature, the sentencing court dismissed the DOSA option

based on the “multiple offenses” and rapidity of re-offense.

8/27/12RP 43.

Just looking at the dates, there being multiple offenses being committed just so close in time, and so I just cannot justify, in the interest of the public, a DOSA sentence.

Id. at 43-44. This is not the balancing envisioned by the Legislature when it opened up the eligibility of DOSA to most nonviolent offenders. The sentencing court did not appear to balance these interests against the considerable benefit to both Mr. Dare and the community from his active involvement in drug treatment, particularly with the degree of supervision provided by DOSA.

Because the record demonstrated Mr. Dare was eligible for a DOSA and would benefit from treatment, the sentencing court’s denial based on factors such as the number of offenses and relatively rapid recidivism, both of which are reflected in the standard range, the judge denied this request on an untenable ground and for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

4. Reversal and remand for resentencing is required. Mr. Dare requests this Court reverse and remand for resentencing because the sentencing court’s denial of his request for DOSA was

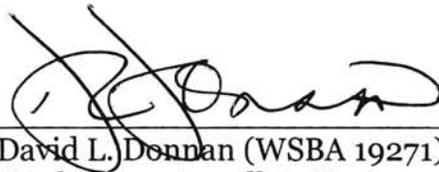
based on untenable grounds and untenable reasons. Judge Trickey abused his discretion by denying the DOSA request based on factors already considered by the Legislature in creating the sentencing alternative where the clear intent of the Legislature was to expand the use of this alternative sentence. Mr. Dare requests this Court reverse and remand so that a new sentencing court may fully and fairly consider Mr. Dare's eligibility for a DOSA sentence and sentence him accordingly.

F. CONCLUSION

Mr. Dare was eligible for a DOSA and the record showed he would benefit from substance abuse treatment. Because the sentencing court failed to fully and fairly consider, it improperly denied his DOSA request, Mr. Dare requests this Court reverse the sentencing court ruling and remand for resentencing.

DATED this 20nd day of March 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donnan", is written over a horizontal line.

David L. Donnan (WSBA 19271)
Washington Appellate Project
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69256-9-I
v.)	
)	
MAXFIELD DARE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20TH DAY OF MARCH, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> MAXFIELD DARE 360593 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY ABERDEEN, WA 98520	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 20TH DAY OF MARCH, 2013.

X _____ 

Washington Appellate Project
701 Melbourne Tower
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Seattle, WA 98101
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Fax (206) 587-2710