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Court of Appeals
Division I
State of Washington

74828-9

No. 74828-9-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

LONZO WILSON,

Appellant.

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

The Honorable Timothy A. Bradshaw

BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT 1

B. ASSIGNMENT OF ERROR 1

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

D. STATEMENT OF THE CASE..... 2

E. ARGUMENT 5

In light of Mr. Wilson’s low risk to reoffend and his therapist’s willingness to continue to treat him even in light of the allegations, the trial court abused its discretion in revoking the SSOSA 5

1. *A violation of a SSOSA community custody provision allows the court to consider alternative sanctions other than revocation. 5*

2. *The court abused its discretion in failing to consider alternatives to revocation in light of Mr. Wilson’s low risk to reoffend and his ability to continue treatment despite the violations. 7*

F. CONCLUSION 8

TABLE OF AUTHORITIES

FEDERAL CASES

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484
(1972)..... 7

WASHINGTON CASES

State v. Badger, 64 Wn.App. 904, 827 P.2d 318 (1992)..... 7

State v. Canfield, 154 Wn.2d 698, 116 P.3d 391 (2005)..... 6

State v. Dahl, 139 Wn.2d 678, 990 P.2d 396 (1999)..... 6, 7

State v. Goss, 56 Wn.App. 541, 784 P.2d 194 (1990)..... 6

STATUTES

RCW 9.94A.670 5, 6

OTHER AUTHORITIES

D. Boerner, *Sentencing in Washington* (1985)..... 6

A. SUMMARY OF ARGUMENT

Lonzo Wilson was sentenced to a Special Sex Offender Sentence Alternative (SSOSA) in 2002. The SSOSA was modified over the years due mainly to Mr. Wilson's poverty. In 2016, the State moved to revoke Mr. Wilson's SSOSA due mainly to his use of methamphetamine. Mr. Wilson's therapist agreed to continue treating him despite the violations and saw Mr. Wilson as having a low risk of reoffending. Nevertheless, the trial court revoked Mr. Wilson's SSOSA and imposed the 102 month sentence originally imposed. Mr. Wilson seeks reversal of the revocation and reinstatement of the SSOSA.

B. ASSIGNMENT OF ERROR

The trial court abused its discretion when it revoked Mr. Wilson's SSOSA.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

When imposing a SSOSA, the court must include a term of community custody which includes conditions the defendant must follow. A violation of a condition may result in a revocation of the SSOSA and imposition of the term of imprisonment, but alternatives to revocation are statutorily available.

Mr. Wilson, who was sentenced to a SSOSA in 2002, admitted violations of community custody. The trial court revoked Mr. Wilson's SSOSA despite a therapist's opinion that he represented a low risk to reoffend and that he should continue treatment. Did the trial court abuse its discretion when it refused to consider alternatives to revocation?

D. STATEMENT OF THE CASE

In 2002, 25 year-old Lonzo Wilson pleaded guilty to one count of second degree rape of a child involving a 13 year-old girl. CP 4-19, 210. On August 2, 2002, pursuant to an agreed recommendation, Mr. Wilson was sentenced to a Special Sex Offender Sentence Alternative (SSOSA) sentence of 102 months in custody, suspended on the condition Mr. Wilson spend 20 days in confinement and undergo and complete three years of treatment. CP 23. The court also imposed a life term of community custody. CP 23.

Over the ensuing years, Mr. Wilson was at times successful in treatment, at other times his sentence was modified because of trouble he had obtaining treatment or for violations of the terms of community custody. These violations occurred mainly because of Mr. Wilson's financial instability. CP 165-66, 198-200.

On May 22, 2015, the State moved to revoke his SSOSA. The State alleged Mr. Wilson had tested positive of methamphetamine, stayed overnight at an unapproved residence, and had unapproved contact with his biological minor children. Mr. Wilson admitted the violations. CP 200; 2/12/2016RP 117.

At the revocation disposition hearing, Michael O'Connell, Mr. Wilson's sex offender treatment provider, stated he had been treating Mr. Wilson since May 2013. 2/12/2016RP 120. Mr. McConnell agreed to continue to work with him despite the violations. 2/12/2016RP 125 ("I would be willing to continue to work with him.").

Q And I'm just going to ask you again, I mean, are you still -- knowing all you know now, are you still willing to continue to work with him?

A I would be willing to work with him if the -- if the Court wants to give him another chance.

...

I see the risk of real harm as being pretty low.

2/12/2016RP 138-39.

Mr. McConnell also expressed to the court that Mr. Wilson is not a sex predator and his risk in being in the community was very low:

There's nothing predatory I'm seeing, really, anywhere in his history and certainly not in his recent behavior.

Q And do you -- would you strike -- would you characterize his, I guess the problems that he has and the

things he does wrong as being more self-defeating or more dangerous to the community?

A I don't see danger to the community being a significant factor in his recent behavior. I mean, ultimately self-defeating in the long – I'm meaning in the long-term. But in the short run, you know, there's a finger-in-the-dike quality about his behavior, that I see motivating it.

2/12/2016RP 122.

Mr. McConnell told the court the treatment he anticipated Mr.

Wilson most needed:

Q And what kind of treatment do you think he might need, if any?

A You know, probably coaching and counseling and sort of life skill support. And he's a guy with a sex offense conviction, he's on the sex offense registry, he's got, you know, a couple of daughters. He's wanting to reunite with his family. And the other thing I've been working on is helping him do that in a way that makes the community at large and the criminal justice system feel some margin of safety for, you know, children that he's inevitably going to be coming into contact with, with a couple of -- couple of daughters.

2/12/2016RP 124-25.

Despite Mr. McConnell's continued support of Mr. Wilson and his willingness to continue to treat Mr. Wilson even in light of the recent allegations leading to the revocation, the trial court revoked Mr.

Wilson's SSOSA and imposed the original sentence of 102 months. CP

222-23.

I've have previously and I've tried today to consider the alternatives before the Court. I've relied on all the evidence before me, which is the CCO's document and report of allegations, the pleadings of the parties, as well as then the testimony of Dr. O'Connell. And what's changed is we're simply at what I would describe as a -- in that balancing, we're at a tipping point.

The motion for revocation is granted. And the Court takes no joy in the ruling.

2/12/2016RP 166.

E. ARGUMENT

In light of Mr. Wilson's low risk to reoffend and his therapist's willingness to continue to treat him even in light of the allegations, the trial court abused its discretion in revoking the SSOSA

1. *A violation of a SSOSA community custody provision allows the court to consider alternative sanctions other than revocation.*

Under the Sentencing Reform Act (SRA), a first-time sex offender may be eligible for a suspended sentence under the SSOSA provisions. RCW 9.94A.670(2)¹. A SSOSA is a special procedure authorized by statute that allows a trial court to suspend a sex offender's

¹ The legislature amended this statute in 2009, but the amendments did not affect this statutory provision.

felony sentence if the offender meets the eligibility criteria as defined by statute. *State v. Canfield*, 154 Wn.2d 698, 701 n. 1, 116 P.3d 391 (2005). “SSOSA was created because it was believed that for certain first-time sexual offenders, ‘requiring participation in rehabilitation programs is likely to prove effective in preventing future criminality.’” *State v. Goss*, 56 Wn.App. 541, 544, 784 P.2d 194 (1990), quoting D. Boerner, *Sentencing in Washington* § 2.5(c) (1985).

Where the offender violates a condition of community custody, the trial court may either impose a sanction of up to 60 days confinement per violation or by revocation of the suspended sentence and the original sentence imposed. RCW 9.94A.633(1)(a),(2)(d).

A superior court may revoke a sex offender’s SSOSA suspended sentence at any time if it is reasonably satisfied that the offender violated a condition of his suspended sentence or failed to make satisfactory progress in treatment. RCW 9.94A.670(11); *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). Because revocation of a suspended sentence is not a criminal proceeding, the due process rights afforded at a revocation hearing are not the same as those afforded at trial.² *Dahl*, 139 Wn.2d at 683. A trial court’s decision to revoke a

² These rights include:

SSOSA suspended sentence is reviewed for abuse of discretion. *State v. Badger*, 64 Wn.App. 904, 908, 827 P.2d 318 (1992).

2. *The court abused its discretion in failing to consider alternatives to revocation in light of Mr. Wilson's low risk to reoffend and his ability to continue treatment despite the violations.*

During the entirety of Mr. Wilson's SSOSA, he did not reoffend and many of his violations were related to his financial instability. His therapist of three years expressed a willingness to continue to treat Mr. Wilson despite his recent setback and considered Mr. Wilson a very low risk to commit a sex offense.

Despite all of the positive aspects of Mr. Wilson's SSOSA, the trial ignored these and went immediately to revocation without considering any alternatives. Dr. McConnell succinctly opined that there was little benefit to committing Mr. Wilson to prison for his violations when he said: "I don't think the community will be made

(a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for revocation.

Dahl, 139 Wn.2d at 683, citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

safer from sexual predation by him going to prison.” 2/12/2016RP 125-26. Nevertheless, the court chose to imprison Mr. Wilson for relatively minor violations. The court’s failure to consider lesser alternative sanctions constituted an abuse of discretion. Mr. Wilson asks this Court to reverse the revocation of his SSOSA.

F. CONCLUSION

For the reasons stated, Mr. Wilson asks this Court to reverse the revocation of his SSOSA and remand for reinstatement of his SSOSA.

DATED this 26th day of October 2016.

Respectfully submitted,

s/Thomas M. Kummerow

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DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF OCTOBER, 2016, 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:

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SIGNED IN SEATTLE, WASHINGTON THIS 26TH DAY OF OCTOBER, 2016.



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