

NO. 41110-5-II

FILED  
CLERK OF COURT  
COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II  
SEATTLE, WASHINGTON  
11/10/11

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

---

STATE OF WASHINGTON,

Respondent,

v.

CRAIG D. OLSON,

Appellant.

---

**REPLY BRIEF OF APPELLANT**

---

CHARLES H. WILLIAMS  
Attorney for Appellant

707 S. Snoqualmie St., Ste. 4A  
Seattle, WA 98108-1700  
(206) 915-4001  
WSBA No. 11674

11/10/11

**TABLE OF AUTHORITIES**

State Cases

*State v. O’Hara*, 167 Wn.2d 91, 217 P.3d 756 (2009). . . . .1

Statutes

RCW 9.94A.670 . . . . .1

RCW 9.94A.670(8) . . . . .7

RCW 9.94A.670(9). . . . .8

Chap. 18.205 RCW. . . . .6

Chap. 70.96A RCW. . . . .6

Other Authorities

Schizoid personality disorder, WIKIPEDIA . . . . .2, 5

In his opening brief, the appellant Olson alleged error by the court below in its failure to hold the annual review and treatment termination hearings required by the SSOSA statute, RCW 9.94A.670. Contrary to the claims of the respondent, the omission was raised in the court below (see item no. 10 below), the errors were “manifest” in the sense of actually prejudicing Olson,<sup>1</sup> and the remedy requested is authorized by the SSOSA statute (see item no. 9 below). Olson also argued that the omission of the treatment termination hearing constituted a due-process violation. These errors alleged by Olson pre-dated the revocation decision to which Olson also took exception.

In this reply, Olson stands on the statements made in his opening brief, except to take issue with the following assertions (more or less, of a factual nature) made by the respondent.

1. **Quarterly reports.** “*Quarterly reports (i.e., four per year) were submitted . . .*” (Respondent’s brief at 1). For 2009, Olson’s SOTP Jeanglee Tracer submitted only three of the four required reports. Ex. 3.
2. **Satisfactory progress in treatment.** “*Mr. Olson’s SSOSA sentence was revoked due to his lack of progress in treatment . . .*” (Respondent’s

---

<sup>1</sup> See the discussion of the term *manifest* in, e.g., *State v. O’Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009).

brief at 2). A failure to make satisfactory progress in treatment would have been one of two statutory grounds for revocation, but, as argued in Olson’s opening brief, the court below failed to identify and apply either standard in revoking Olson. In any event, the claim that Olson failed to make satisfactory program in treatment is contradicted, in quite a substantial manner, by Tracer’s quarterly reporting over a period of five years (Ex. 3).

3. **Comte’s diagnosis.** *SOTP Michael Comte “did not actually diagnose Mr. Olson as having a schizoid personality disorder”*

(Respondent’s brief at 4). In his 2005 SSOSA evaluation, Comte quoted the DSM-IV-R definition of schizoid personality disorder—namely, “a pervasive pattern of detachment from social relationships and a restricted range of expression of emotions in interpersonal settings” (CP 112).<sup>2</sup> Under the heading “background history,” he expressly concurred with Dr. Trowbridge’s diagnosis<sup>3</sup> as to the *relevance* of schizoid personality disorder in explaining Olson’s history (CP 112). Under the heading “psychological tests and diagnosis,” Comte regarded schizoid personality disorder as “most relevant” in explaining the results of

---

<sup>2</sup> See the WIKIPEDIA article on schizoid personality disorder and related citations.

<sup>3</sup> Schizoid personality disorder was the main diagnosis of forensic psychologist Brett C. Trowbridge, Ph.D., J.D., in the two risk assessments that he conducted in this case (CP 122; Ex. 5 at 6).

Olson's personality testing (CP 114). In the final paragraph of that same testing and diagnostic section, Comte stated: "In summary because of schizoid personality features, Mr. Olson presents to others as 'odd' and socially inept." Comte plainly regarded schizoid personality disorder as a central condition or cause of Olson's criminal behavior.

4. **Comte's treatment recommendations.** *"Nothing in Mr. Comte's treatment recommendations apparently directs Mr. Olson be treated specifically for a schizoid personality disorder"* (Respondent's brief at 5).

Consistent with this diagnosis of schizoid personality disorder, Comte emphasized in his SSOSA evaluation two specific treatment directions. First, he mentioned in several places the importance of educating Olson on "victim psychology"—e.g., "It will be important for him to develop an empathetic understanding of the plight of victims of sexual abuse" (CP 117). Second, he stated that "[s]ocial skill enhancement should be emphasized in treatment" (CP 115) and recommended that Olson "be encouraged to participate in activities with adults" (CP 116).

5. **Extent of Trowbridge's investigation.** *Dr. Trowbridge's "opinion was formulated after meeting with the defendant in Thurston County Jail on May 2, 2005"* (Respondent's brief at 5). Dr. Trowbridge, a well-known Olympia forensic psychologist with some 33 years of experience,

evaluates criminal defendants for a living. Ex. 6. Here he was asked to conduct risk assessments of Olson in 2005 (CP 118-23) and in 2010 (Ex. 5). His sources of information in 2005 included not only a face-to-face interview with Olson to observe his behavior and collect historical information, but also psychological testing, discussion with his mother to corroborate history, and review of police reports of the incident (CP 119). Dr. Trowbridge updated his information in 2010 with another personal interview of Olson, psychological testing, discussions with his mother and brother, and review of additional information and materials provided by Comte and Tracer. Ex. 5 at 2.

**6. Tracer's awareness of Olson's schizoid personality disorder diagnosis.** *"Like Mr. Comte, Ms. Tracer did not diagnose Mr. Olson as having a schizoid personality disorder and throughout almost five years of interaction, she did not observe behaviors consistent with such a diagnosis"* (Respondent's brief at 6). Tracer admitted to her ignorance of the previous diagnosis as well as to her inability to define this malady for the Court. RP 29. So she did not make such a diagnosis, but she did observe behaviors consistent with it. She reported *all but three* personal treatment goals of Olson as completed at the time of his expulsion. The uncompleted personal goals were (10) having satisfactory social skills and

manifesting them in appropriate social activities, (12) understanding and playing an appropriate role in family, and (16) having appropriate sexual and affectional outlets.<sup>4</sup> These observed behaviors are consistent with schizoid personality disorder (whether Tracer recognized this or not).<sup>5</sup>

7. **Deception as violation.** *“Deception was a violation of the treatment program”* (Respondent’s brief at 7). While Tracer cites honesty as an underlying premise of her treatment program, this is nowhere spelled out explicitly as a treatment goal for program participants. Nor, as previously pointed out, was deception one of the violations alleged as a basis for revocation (Appellant’s brief at 40). There is no evidence that Olson deceived Tracer about any acts—e.g., re-offending, Internet use, contact with potential victims, viewing of pornography, program participation, etc.—other than alcohol consumption.

8. **Predisposition to alcoholism.** *“Ms. Tracer then testified she felt he was predisposed to alcoholism based on his family history . . .”* (Respondent’s brief at 7). This was an afterthought or subsequent realization. Tracer, who made no claim to being certified as a chemical

---

<sup>4</sup> Cf. the treatment-goals table in Appellant’s brief at 12-13, with the quarterly evaluation summaries in the Appendix thereto (based on Ex. 1 and 2).

<sup>5</sup> Again, see the WIKIPEDIA article on schizoid personality disorder and related citations.

dependency professional,<sup>6</sup> failed to grasp the significance of an earlier incident where Olson's previous CCO had caught him cooking with wine. RP 23. When she learned of Olson's drinking and expelled him from her treatment program, her stated reaction was one of surprise: "[H]onestly I was shocked that he was drinking alcohol because that's never been an issue for him, never been part of his offense." RP 24.

9. **Authority for relief requested.** *Olson "fails to cite any authority supporting his requested remedy and thus the court should not consider those assignments of error"* (Respondent's brief at 8).

In the court below, Olson asked in his response to the plaintiff's petition (CP 55-56) and in his hearing memorandum (CP 57-71) for (a) the denial of the revocation requested by the plaintiff and (b) the modification of his conditions of community custody to include termination from outpatient sex offender treatment. In this Court, he asks for (a) vacation of the revocation and (b) remand of the case for hearing to modify conditions of community custody and to determine whether he should be terminated *or* continued in treatment.

It should be noted that the respondent nowhere denies the basic error claimed by Olson—namely, that no annual review hearings or

---

<sup>6</sup> See, e.g., chapters 18.205 and 70.96A RCW.

treatment termination hearing were ever afforded to him. He is asking for the benefit of the relief that would have been available to him in the annual review hearings and the treatment termination hearing, had such hearings been afforded to him.

It would seem obvious that the sources of authority for the relief requested are statutory. First, the language of RCW 9.94A.670(8) explicitly gives the court conducting an annual review hearing authority to “modify conditions of community custody” without any expressed limitations. Under paragraph 4.5 of the original Judgment and Sentence entered herein—namely, “Special Sexual Offender Sentencing Alternative”—the treatment program itself is made a condition of community custody. CP 32. Therefore, in this instance, the court monitoring treatment may also modify the offender’s treatment program. If the power to modify includes the power to set, change or end conditions, then, arguably, it includes the power to terminate or extend treatment as well.<sup>7</sup>

Second, the language of RCW 9.94A.670(9) additionally authorizes the court conducting a treatment termination hearing to “either (b)

---

<sup>7</sup> This, of course, assumes that notice, reporting and other requirements for termination set forth in RCW 9.94A.670(9) would also have been observed preparatory to an annual review.

terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.”

10. **Alleged failure to raise issues of review and termination hearings in the court below.** *Olson “failed to raise the issues of annual review hearings, the setting of a termination hearing, or the issuance of 14-day notice to the victim of the termination hearing, and thus waives those issues now”* (Respondent’s brief at 9).

Olson was convicted of attempted second-degree child rape, arising from an Internet sting operation by police officers, and of possessing pornography of minors engaging in sexually explicit acts. Because there were no identifiable victims in this prosecution, the issue of notice to victims would never have come up, and, of course, Olson would not have raised it and did not.

The Court need only refer to the record below to see that Olson did in fact raise the issues of the failure of the court below to hold annual review hearings and set a treatment termination hearing. In his hearing memorandum, Olson made the basic contention:

The third issue relates to the impact upon the defendant of the failure to schedule a termination hearing, as required by RCW 9.94A.670(7), and annual hearings to review the defendant’s treatment progress, as required by RCW 9.94A.670(8). Arguably, a good part of the problem in this case derives from the fact that

no oversight has been exercised by the Court and no feedback has been given to the defendant or his treatment provider as to the expectations of the Court.

CP 66. The court below revoked Olson's SSOSA and chose not to address the problem.

**RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of June, 2011.

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

CHARLES H. WILLIAMS  
Attorney for Appellant  
WSBA No. 11674