

FILED

JAN 26 2012

CLERK OF COURTS  
STATE OF WASHINGTON

30168-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

CHARLES R. TUCKER, RESPONDENT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JEROME J. LEVEQUE

---

BRIEF OF APPELLANT

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**INDEX**

ASSIGNMENTS OF ERROR.....1

ISSUE PRESENTED.....1

STATEMENT OF THE CASE.....1

ARGUMENT.....4

CONCLUSION.....7

**TABLE OF AUTHORITIES**

**WASHINGTON CASES**

STATE V. GREWE, 117 Wn.2d 211,  
813 P.2d 1238 (1991)..... 5

STATE V. HARTWELL, 35 Wn. App. 135,  
684 P.2d 778 (1984)..... 6

**SUPREME COURT CASES**

MIRANDA V. ARIZONA, 384 U.S. 436,  
86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)..... 2

**STATUTES**

RCW 9.94A.607(1)..... 5

RCW 9.94A.660(1)..... 4

RCW 9.94A.660(1)(d) ..... 4

RCW 9.94A.660(3)..... 5

RCW 46.52.020(4)(B) ..... 5

RCW 46.52.030(3)..... 6

I.

ASSIGNMENTS OF ERROR

- (1) The trial court erred when it found that a chemical dependency contributed to the offense.
- (2) The trial court erred when it imposed a sentence under the Drug Offender Sentencing Alternative.

II.

ISSUE PRESENTED

- (1) Did the court abuse its discretion when it found that a chemical dependency contributed to the defendant's offense and imposed a sentence under the Drug Offender Sentencing Alternative?

III.

STATEMENT OF THE CASE

The defendant/respondent, Charles Robert Tucker, was charged by Information with one count of Failure to Remain at the Scene of an Accident – Injured Person. (CP 1)

The incident occurred on December 18, 2010. The defendant was driving a car that went through a stop sign at Broadway and Ella in

Spokane County. The defendant's car struck a car that was driven by Kathy Johnson. Ms. Johnson was injured as a result of the collision. (CP 2) The defendant drove away from the accident scene. Christopher Larson witnessed the accident. He located the defendant's car at 916 N. Ella and told the police where it was. (CP 3)

Deputy Olson of the Spokane County Sheriff's Office contacted the defendant at 916 N. Ella, #17. The defendant admitted that he had been driving, had been involved in an accident and had left the scene. (CP 3) The defendant was arrested and booked into the Spokane County Jail. (CP 3)

The defendant entered a guilty plea to the charge on July 18, 2011. (RP 3) The defendant's offender score was 5, which made the standard range sentence 22-29 months. There was no dispute as to either the defendant's criminal history or the standard range sentence.

At the plea hearing the information provided to the court to support a factual basis for the plea indicated that the defendant had made a statement to the police the night of the incident. After being advised of his *Miranda*<sup>1</sup> warnings, the defendant told the police that he decided to leave the scene of the accident because his license was suspended and the vehicle was not insured. (RP 14) The facts presented to the court

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

indicated that the officers arrived at the apartment on Ella approximately six minutes after the accident. (RP 15) Deputy Todd Miller, one of the responding deputies, is a Drug Recognition Expert. If called to testify, he would testify that he did not observe the defendant under the influence of either alcohol or a central nervous stimulant. (RP 15)

The sentencing hearing occurred immediately after the defendant pled guilty. (RP 15) The State recommended a sentence within the standard range of 25 months at the Department of Corrections. (RP 15) The defendant asked the court to impose a sentence under the Drug Offender Sentencing Alternative (DOSA). (RP 19)

The defendant did not dispute that he was not under the influence of drugs or alcohol at the time the crime occurred. (RP 21-22) The defendant did not dispute that when he was evaluated by County Corrections, he did not indicate that he had an active substance abuse problem. (RP 20) . The only indication of an active substance abuse problem was an evaluation from May 2011. (RP 20)

During his comments, counsel for the defendant stated that the defendant was in need of methamphetamine, and was on his way to purchase or to find methamphetamine. He claimed that factored into the defendant's decision to leave the scene. (RP 22) Counsel for the defendant conceded at the sentencing hearing that the incident was not

directly drug related, as if the defendant had been intoxicated or drugs were found inside the vehicle. (RP 22) Counsel argued that the defendant's verified treatment needs provided the court with a basis to impose a DOSA sentence. (RP 22)

The defendant told the court that he was going after drugs and that he "would really like treatment again if he could". (RP 26)

After considering the statements of the defendant and counsel the court made a finding that a chemical dependency contributed to the offense and imposed a DOSA sentence. (RP 29) The State timely appealed. (RP 30-45)

## V.

### ARGUMENT

The State contends that there was no factual basis from which the court could have found that a chemical dependency contributed to the defendant's offense. In the absence of those facts, a DOSA sentence was not appropriate.

The defendant was eligible for the DOSA sentencing option because he meets the criteria set forth in RCW 9.94A.660(1) (a, b, c, e, f, g). The current offense is not a drug offense so RCW 9.94A.660(1)(d)

does not apply. Due to the standard range sentence of 22-29 months the defendant was eligible for prison-based DOSA only. RCW 9.94A.660(3).

In determining whether to impose a DOSA sentence, the court has to determine that the offender is eligible for an alternative sentence and that the alternative sentence is appropriate. RCW 9.94A.660(3). The State submits that an alternative sentence is appropriate only when there is a finding of chemical dependency pursuant to RCW 9.94A.607(1), which states:

Where the court finds that the offender has a chemical dependency that has contributed to his or her offense, the court may, as a condition of his or her sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

RCW 9.94A.607(1).

This court reviews factual findings made by a sentencing court for substantial evidence. *State v. Grewe*, 117 Wn.2d 211, 218, 813 P.2d 1238 (1991). In this case the State submits there is not substantial evidence to support the sentencing court's finding that a chemical dependency contributed to the offense.

The offense before the court was Failure to Remain at the Scene of an Accident-Injured Person, in violation of RCW 46.52.020(4)(B). The

elements of that offense are that the defendant knew that he was in an accident, that the accident resulted in injury to another person, and that he did not remain at the scene and comply with the requirements of RCW 46.52.030(3). The crime is committed when a person leaves the scene of an accident without complying with the requirements of RCW 46.52.030(3). *State v. Hartwell*, 35 Wn. App. 135, 140, 684 P.2d 778 (1984). The defendant told the police that he left the scene because his license was suspended and the vehicle did not have insurance. (RP 14) Neither of those factors have anything to do with a chemical dependency; they are just reasons that a driver would want to avoid contact with the police. The defendant's claimed reason for driving the car, "I was really going after drugs" (RP 26), has nothing to do with the nature of the offense, which is leaving the scene of an accident. The defendant admitted to counsel that he was not under the influence of alcohol or drugs at the time of the accident. (RP 21-22) If he were that might have provided a basis for the court to find that a chemical dependency contributed to the offense.

The sentencing court's own comments indicate its uncertainty as to whether the defendant had a chemical dependency at all, let alone one that contributed to the offense. (RP 27-28) If there is a doubt that the defendant has a chemical dependency, a sentencing court cannot even

reach the question as to whether a chemical dependency contributed to the commission of the offense. In the absence of a connection between a chemical dependency and the commission of the crime for which the defendant was being sentenced, it was error for the court to impose a DOSA sentence.

VI.

CONCLUSION

For the reasons stated, the matter should be remanded to the sentencing court for the entry of new sentencing documents that do not contain a finding of chemical dependency and that impose a non-DOSA sentence on the defendant that is within the standard range.

Dated this 26 day of January, 2012.

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