

FILED  
OCTOBER 5, 2012  
Court of Appeals  
Division III  
State of Washington

No. 30915-1-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER GOOCH,

Appellant.

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

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

A. ASSIGNMENT OF ERROR ..... 1

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR ..... 1

C. STATEMENT OF THE CASE ..... 2

D. ARGUMENT ..... 3

**The sentencing court erred in failing to fairly consider Mr. Gooch's request for a DOSA, because Mr. Gooch's criminal history demonstrates he is eligible for the program** ..... 3

    a. Mr. Gooch may appeal his sentence. .... 3

    b. The Legislature created DOSA to treat drug addicts and prevent recidivism, and courts must consider imposing it when eligible defendants request it. .... 4

    c. The court abused its discretion in denying the DOSA request because Mr. Gooch is eligible for the program but the court failed to fairly consider it. .... 6

E. CONCLUSION ..... 8

## TABLE OF AUTHORITIES

### **Washington Supreme Court Decisions**

<u>State v. Grayson</u> , 154 Wn. 2d 333, 111 P.3d 1183 (2005) (emphasis added).....	7
<u>State v. Mail</u> , 121 Wn.2d 707, 854 P.2d 1042 (1993).....	4
<u>State v. Williams</u> , 149 Wn.2d 143, 65 P.3d 1214 (2003).....	4, 6

### **Washington Court of Appeals Decisions**

<u>State v. Bramme</u> , 115 Wn. App. 844, 64 P.3d 60 (2003) .....	4
<u>State v. Garcia-Martinez</u> , 88 Wn. App. 322, 944 P.2d 1104 (1997)3, 4	
<u>State v. Kane</u> , 101 Wn. App. 607, 5 P.3d 741 (2000) .....	4
<u>State v. Smith</u> , 118 Wn. App. 288, 75 P.3d 986 (2003).....	3, 4, 6
<u>State v. Watson</u> , 120 Wn. App. 521, 86 P.3d 158 (2004), <u>aff'd</u> , 155 Wn. 2d 574, 122 P.3d 903 (2005).....	6, 7

### **Statutes**

Laws of 2002, ch. 290 .....	5
RCW 9.94A.660 .....	5, 6, 7
RCW 9.94A.662 .....	6

A. ASSIGNMENT OF ERROR

The sentencing court erred in failing to fairly consider Mr. Gooch's request for a Drug Offender Sentencing Alternative ("DOSA").

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A defendant is eligible for a DOSA if (1) his current offense is not a violent offense or a sex offense and does not involve a firearm or deadly weapon enhancement; (2) his current offense is not a felony DUI; (3) his prior convictions do not include violent offenses or sex offenses; (4) his current offense, if drug-related, involved only a small quantity of drugs; (5) the defendant is not subject to deportation; (6) the standard range sentence for the current offense exceeds one year; and (7) the defendant has not received a DOSA more than once in the last 10 years. An eligible defendant has a right to have the sentencing court fairly consider imposing a DOSA sentence. Mr. Gooch requested a DOSA and his criminal history demonstrates he is eligible, but the sentencing court said, "there has been a negotiating process here that I think I have to respect here. Suffice it to say I am not going to impose a DOSA at this point." Did the court err by refusing to fairly consider Mr. Gooch's request for a DOSA?

### C. STATEMENT OF THE CASE

Christopher Gooch was convicted of two counts of attempting to elude a police vehicle. CP 31. At sentencing, the State requested concurrent sentences of 29 months, which was the high end of the standard range. 2 RP 268. Mr. Gooch's attorney stated, "the court does have before it the joint recommendation." 2 RP 273.

Mr. Gooch requested a DOSA. 2 RP 288. His wife wrote a letter to the judge supporting his request, and his mother and aunt spoke at sentencing about his need for drug treatment. 2 RP 267-71; Supp. CP \_\_\_\_ (sub no. 50). Mr. Gooch's aunt, who owns two small businesses, said that Mr. Gooch had worked for her and was one of the hardest workers she knew. 2 RP 271. She said he had a lot of potential that was unrealized because of his drug problem, and stated that if he could receive intensive treatment during incarceration it would benefit him tremendously. 2 RP 270-71. Mr. Gooch's attorney agreed with Mr. Gooch and his family that "some treatment is necessary for Mr. Gooch." 2 RP 273. "He is wanting and desiring to have that opportunity while he is in custody." 2 RP 273.

The court imposed a sentence of 29 months on each count, to be run concurrently.<sup>1</sup> 2 RP 287. Mr. Gooch said, “I don’t understand why I wouldn’t be a candidate for DOSA.” 2 RP 289. The court responded, “there has been a negotiating process here that I think I have to respect here. Suffice it to say I am not going to impose a DOSA at this point.” 2 RP 289.

Mr. Gooch timely appeals. CP 29.

D. ARGUMENT

**The sentencing court erred in failing to fairly consider Mr. Gooch’s request for a DOSA, because Mr. Gooch’s criminal history demonstrates he is eligible for the program.**

a. Mr. Gooch may appeal his sentence.

Although a standard-range sentence is not ordinarily reviewable, a defendant may challenge legal errors or abuses of discretion in the determination of what sentence applies. State v. Smith, 118 Wn. App. 288, 292, 75 P.3d 986 (2003). The court’s refusal to exercise discretion or its choice to sentence on an improper basis is also appealable. State v. Garcia-Martinez, 88 Wn. App. 322, 328, 944 P.2d 1104 (1997). A defendant may appeal where the issue is whether the sentencing court failed to follow

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<sup>1</sup> The court also imposed sentences for other cause numbers at this hearing.

proper procedures under the Sentencing Reform Act. State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003) (citing State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993)).

Mr. Gooch argues that the sentencing court committed procedural error in failing to fairly consider his request for a DOSA. Thus, this Court may review Mr. Gooch's sentence. Id.; Smith, 118 Wn. App. at 292; Garcia-Martinez, 88 Wn. App. at 328.

- b. The Legislature created DOSA to treat drug addicts and prevent recidivism, and courts must fairly consider imposing it when eligible defendants request it.

In 1995, the legislature enacted the DOSA program as a "treatment-oriented alternative to a standard range sentence." State v. Kane, 101 Wn. App. 607, 609, 5 P.3d 741 (2000). It is focused on treatment for addicted offenders who do not have a history of violent crime or high-quantity drug offenses. State v. Bramme, 115 Wn. App. 844, 852, 64 P.3d 60 (2003).

The Legislature clearly intends that drug treatment be used as an alternative to standard sentencing in order to reduce recidivism:

It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing

recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced.

Laws of 2002, ch. 290, § 1.

The Legislature granted sentencing courts discretion to impose a DOSA where the offender meets certain eligibility requirements and the court determines that sentencing alternative is appropriate. RCW 9.94A.660. A defendant is eligible for a DOSA if (1) his current offense is not a violent offense or a sex offense and does not involve a firearm or deadly weapon enhancement; (2) his current offense is not a felony DUI; (3) his prior convictions do not include violent offenses or sex offenses; (4) his current offense, if drug-related, involved only a small quantity of drugs; (5) the defendant is not subject to deportation; (6) the standard range sentence for the current offense exceeds one year; and (7) the defendant has not received a DOSA more than once in the last 10 years. RCW 9.94A.660(1). If the defendant is eligible, the court may order a risk assessment report and/or a chemical dependency screening report. RCW 9.94A.660(4).

After receipt of the report, the court determines whether a DOSA would be an “appropriate” sentence. RCW 9.94A.660(3). If so, the offender serves half of his standard-range sentence in prison where he receives a comprehensive substance abuse assessment and treatment services, and the other half as a term of community custody, with continuing treatment. Id.; RCW 9.94A.662. “[A]n eligible defendant ... has a right to have the sentencing court fairly consider imposing a DOSA sentence.” State v. Watson, 120 Wn. App. 521, 532, 86 P.3d 158 (2004), aff’d, 155 Wn. 2d 574, 122 P.3d 903 (2005).

This Court reviews the denial of a DOSA for abuse of discretion. Smith, 118 Wn. App. at 290. The court abuses its discretion by failing to follow required procedures. Williams, 149 Wn.2d at 147.

- c. The court abused its discretion in denying the DOSA request because Mr. Gooch is eligible for the program but the court failed to fairly consider it.

The trial court denied Mr. Gooch’s request for a DOSA, stating only, “[T]here has been a negotiating process here that I think I have to respect here. Suffice it to say I am not going to impose a DOSA at this point.” 2 RP 289. But a judge is not bound

by either party's recommendation. Cf. CrR 4.2 (standard plea form provides, "(h) The judge does not have to follow anyone's recommendation as to sentence"). Mr. Gooch has no history of violent or sex offenses, so he is eligible for a DOSA under the statute. CP 33. Thus, the court's failure to fairly consider a DOSA constitutes an abuse of discretion. See Watson, 120 Wn. App. at 532.

The judge did not analyze whether a DOSA would benefit both Mr. Gooch and the community, and did not order an examination report to assist in the analysis. See RCW 9.94A.660. This was so even though the State did not contest Mr. Gooch's eligibility and did not dispute that a DOSA would benefit both Mr. Gooch and the community. 2 RP 267-91. Mr. Gooch, his wife, his mother, his aunt, and his attorney all explained that Mr. Gooch was a hardworking person with a great deal of potential who was a pleasant and productive member of society when not on drugs. His primary problem is drug addiction, and solving that problem would help him and help society.

The Legislature created the Drug Offender Sentencing Alternative for people like Mr. Gooch. "[E]very defendant is entitled to ask the trial court to consider such a sentence and to have the

alternative actually considered.” State v. Grayson, 154 Wn. 2d 333, 342, 111 P.3d 1183 (2005) (emphasis added). The sentencing court abused its discretion when it failed to fairly consider a DOSA. This Court should reverse and remand for resentencing. See id. at 343 (reversing where trial judge “did not appear to meaningfully consider” whether DOSA was appropriate).

E. CONCLUSION

For the reasons set forth above, Mr. Gooch respectfully asks this Court to reverse his sentence and remand for resentencing.

DATED this 5<sup>th</sup> day of October, 2012.

Respectfully submitted,

  
\_\_\_\_\_  
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Washington Appellate Project  
Attorney for Appellant

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DIVISION THREE**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 30915-1-III
	)	
CHRISTOPHER GOOCH,	)	
	)	
APPELLANT.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5<sup>TH</sup> DAY OF OCTOBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MARK LINDSEY SPOKANE COUNTY PROSECUTOR'S OFFICE 1100 W. MALLON AVENUE SPOKANE, WA 99260	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
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**SIGNED** IN SEATTLE, WASHINGTON THIS 5<sup>TH</sup> DAY OF OCTOBER, 2012.

X \_\_\_\_\_ 

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