

NOV 30 2012

30915-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER B. GOOCH, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

STEVEN J. TUCKER  
Prosecuting Attorney

Andrew J. Metts  
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Attorneys for Respondent

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I.

APPELLANT'S ASSIGNMENT OF ERROR

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

II.

ISSUE PRESENTED

1. Does the record show that the sentencing court did not fairly consider the defendant's request for a DOSA?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

- A. THE DEFENDANT HAS NOT SHOWN THAT THE COURT FAILED TO EXERCISE ITS DISCRETION IN DENYING THE DEFENDANT'S LAST MINUTE REQUEST FOR A DOSA SENTENCE.

The defendant makes a single assignment of error, claiming that the sentencing court did not fairly consider his request for a DOSA sentence. While

extensive, the defendant's prior and current history does not appear to contain any DOSA disqualifying convictions.

The sentencing court has discretion to impose a DOSA sentence if the defendant meets the DOSA eligibility requirements and if the court determines that the offender and the community will benefit from use of the sentencing alternative. RCW 9.94A.660(2). However, even if a defendant meets the listed qualifiers, the decision to impose a DOSA sentence rests solely with the trial court's discretion. *State v. Conners*, 90 Wn. App. 48, 53, 950 P.2d 519, *review denied*, 136 Wn.2d 1004 (1998).

The trial court's decision of whether to grant a DOSA is ordinarily not reviewable on appeal. *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005); RCW 9.94A.660. An appeal may be had when the trial court categorically refuses to exercise its discretion to use a DOSA sentence or when the sentencing court uses an impermissible basis for refusing to impose a DOSA sentence. *Grayson*, 154 Wn.2d at 342.

In this case, the defendant claims the trial court did not exercise its discretion.

(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.

RCW 9.94A.660(3) (emphasis added).

Apparently, the sentencing court did not think that a DOSA sentence would be appropriate.

The record shows that the sentencing court listened to the defendant's mother. RP 270. The sentencing court listened to Barbara Thiefault who runs some small businesses. RP 272.

The defendant's counsel noted that the State and the defendant had made a joint recommendation. RP 273. At no point in defense counsel's remarks was a DOSA sentence mentioned. Defense counsel did not mention the defendant had a drug problem and the defendant wanted drug treatment while he was in custody. RP 273-75.

The sentencing court inquired of defense counsel as to the defendant's outstanding LFOs. RP 275. Apparently, the defendant owes five figures plus between his other cases and the current case. RP 275.

The sentencing court listened to the defendant's extensive outline of his life course. RP 277-82.

The sentencing court noted that there was a drug problem involved and imposed 29 months on each of two attempt to elude convictions. CP 31-42. These sentences were to be served concurrently. It was only after the defendant

heard the sentencing court impose the 29 months of prison time that the defendant questioned why he was not a candidate for DOSA. RP 789. The reason the defendant was not a “candidate” prior to his question to the court was because no one had asked the trial court for a DOSA.

The sentencing court noted that there had been negotiations between the State and the defendant. Had the court imposed a DOSA sentence, the amount of incarceration would have been reduced considerably and a DOSA sentence certainly would have made the negotiations unfair to the State. The trial court was correct to ignore the defendant’s last minute request for a DOSA sentence. The defense had obviously not discussed this situation with the State and no coherent agreed recommendation (which included DOSA) had been presented to the court.

Considering the defendant’s extensive criminal history and the defendant’s rather short prior sentences, a DOSA sentence would only have placed the public in danger again for no good reason.

The defendant requests that his sentence be reversed and remanded for resentencing. “What sort of resentencing” is the obvious question. The defendant does not say. One can assume that since this appeal is based on whether to impose a DOSA sentence, the results of a remand would be pointless. As for resentencing, if the defendant thinks that abrogating the agreement between himself and the State is a good idea, the State wishes to point out that there is no

way the defendant would be able to hold the State to an agreement of 29 months consecutive, with a DOSA sentence. The defendant might find himself being resentenced with the State arguing for a much higher standard sentencing range. Even so, the court need only add some explanatory language and then re-impose the same sentence.

V.

CONCLUSION

For the reasons stated, the sentence of the defendant should be affirmed.

Dated this 30<sup>th</sup> day of November, 2012.

STEVEN J. TUCKER  
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Andrew J. Metts #19578  
Deputy Prosecuting Attorney  
Attorney for Respondent

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 30915-1-III
v.	)	
	)	CERTIFICATE OF MAILING
CHRISTOPHER B. GOOCH,	)	
	)	
Appellant,	)	

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I certify under penalty of perjury under the laws of the State of Washington, that on November 30, 2012, I mailed a copy of the Respondent's Brief in this matter, addressed to:

Lila J. Silverstein  
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1511 - 3rd Ave, Suit 701  
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Walla Walla WA 99362

11/30/2012  
(Date)

Spokane, WA  
(Place)

*Kathleen H. Owens*  
(Signature)