

**FILED**

APR 11, 2016

Court of Appeals  
Division III  
State of Washington

**NO. 33605-1-III**

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**COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

RAVEN NEWMAN, APPELLANT

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APPEAL FROM THE SUPERIOR COURT OF GRANT COUNTY

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BRIEF OF RESPONDENT

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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

*Did the trial court misread the DOSA statute or misunderstand its sentencing authority such that it abused its discretion in denying Newman's requested residential DOSA sentence? (Assignment No. 1)*

II. STATEMENT OF THE CASE.<sup>1</sup>

The State adopts and supplements the substantive and procedural facts recited by appellant Raven Newman in her Statement of the Case.

RAP 10.3(b).

At trial, confidential informant William McLain testified he had purchased methamphetamine from Newman four times before making the controlled buy for which Newman was charged. RP 261–63, 321. McLain usually paid cash, the most being \$40. RP 263, 316. For one purchase, McLain traded Newman some dental tools for methamphetamine worth \$80. RP 319–20.

The \$20 purchase for which Newman was charged and convicted took place at her residence. RP 273–74. McLain watched Newman transfer his methamphetamine from a larger bag of the drug she carried in her purse. RP 277. McLain could also see Newman's purse contained a "significant amount of money." RP 325.

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<sup>1</sup> The State follows Newman's designation of the record. "RP \_\_\_" refers to the trial transcript and "1RP \_\_\_" refers to the transcript of the July 14, 2015 sentencing hearing.

After Newman's arrest and subsequent release pending trial, RP 286, Newman's boyfriend went to McLain's residence and took him to meet Newman and her friend Roberta Stark. RP 332 -33. Newman and Stark urged McLain "to write this letter to try to get her charges dismissed." RP 287. Stark told McLain there would be "repercussions" if Newman ended up in jail. RP 287. Stark gave McLain a "decent sized bag" of methamphetamine. RP 341, more or less as "hush money." RP 307. The three of them—Newman, Stark, and McLain—discussed what McLain should say in the letter recanting his statements to law enforcement. RP 288. Newman and Stark told McLain to take the letter to the prosecutor. RP 297. After collaborating on the letter, McLain, Newman, and Stark "got really fucking high" on methamphetamine. RP 339.

McLain did not take the letter to the prosecutor, but instead took it to the police. RP 288. He did not disclose to the police that he had been given the "hush money" methamphetamine nor did he disclose he had gotten high with Newman and Stark after they collaborated on the recanting letter. RP 307-08, 340.

On a separate occasion, Newman's cousin, Ryan Newman, accompanied by another of Newman's male friends, pounded on McLain's door demanding he come outside to talk. RP 296. McLain characterized

their middle-of-the-night visit as “an intimidation technique.” RP 348.

McLain refused to go outside, believing he “probably would have gotten [his] ass kicked.” RP 348.

The jury found Newman guilty of delivery of methamphetamine, RCW 69.50.401(2)(b). CP 34–35. Her 2001 conviction for methamphetamine possession had washed out for sentencing purposes. 1RP 16. With an offender score of zero, Newman’s standard sentencing range was 12+ to 20 months of incarceration. CP 36.

Newman sought a residential chemical dependency treatment-based sentencing alternative (DOSA) under RCW 9.94A.660. Prior to sentencing, Newman submitted to the court eight letters of support from various friends and family members. CP 59–69.<sup>2</sup> The letters recounted Newman’s love for her children and how helpful she is to her disabled father and to other people who are physically incapable of taking care of themselves. CP 60, 62, 63–64. Newman was depicted as a fun and happy person, generous, and good with children. CP 66–67. Her sister described her as hard-working and dependable, loved and needed by her children and her elderly, frail father. CP 68. Among the letters was one from Roberta Stark, CP 69, the friend who helped Newman and McLain write

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<sup>2</sup> CP 61 appears to be the reverse side of CP 60, a one-page letter from one of Newman’s friends.

the recanting, who gave McLain the “hush meth,” and with whom McLain and Newman got high after finishing the letter. RP 339. Stark wrote that Newman was an awesome mother, daughter, and family member, and that she had always provided for her children, “even when times were hard in her life.” CP 69. Although several of the letter-writers alluded to difficult times for Newman, none mentioned substance abuse or asserted Newman would benefit from treatment. Her father said, “I think most of her problems stem from being with the wrong people, and she is trying to change that.” CP 62. The closest anyone came to addressing treatment was a friend’s assertion that “with good counseling [sic], Raven could work out things that are ailing her, that have been ailing her for quite some time now.” CP 60.

The court ordered the Department of Corrections (DOC) to prepare a Substance Abuse Screening Report Summary (Report Summary). CP 70–71. The Report Summary stated Newman may currently suffer from a substance abuse disorder, would benefit from a substance abuse assessment, and had been diagnosed with a substance use disorder in a prior assessment, the date of which was not included. CP 70. The report stated Newman would “likely” return to live at her brother’s home in Ephrata if she entered the residential DOSA program. CP 71.

The court was not provided a copy of the Report Summary before

sentencing and first reviewed the document during the sentencing hearing. 1RP 17. Newman argued through counsel she was eligible for a residential DOSA because nothing about her circumstances disqualified her. 1RP 20. Counsel told the court Newman did not have custody of her two children but that she was a loving, caring mother who saw her children every chance she got. 1RP 21. Counsel argued Newman was disciplined and mindful of how important it was to be a good, caring mother. 1RP 22. Counsel did not argue Newman was an addict and did not provide any facts to support whether she was in fact addicted or whether she and the community would benefit if she received treatment. 1RP 19–22. Newman herself said only:

None of this is good, I know. I -- I just want something positive to come out of it. And I don't think prison is going to be -- I don't think that's what I need. I think drug treatment is what I need. And I do -- I have visitation with my kids, and it's very limited right now, so -- I think it would be best for me to go to treatment.

1RP 24.

The State argued the Summary Report mentioned Newman had been diagnosed with a substance abuse problem in a prior assessment but did not address whether Newman currently had an addiction, nor did the report indicate how strong her addiction might be. 1RP 17. The State told the court Newman had rejected a pre-trial residential DOSA plea offer.

1RP 18. The State also pointed out Newman's conviction was for methamphetamine delivery, not possession. 1RP 18.

Following argument and Newman's elocution, the court discussed general sentencing considerations of punishment and rehabilitation, of incapacitation and deterrence. 1RP 24. The court said, "Punishment is defined as retribution or your just desserts; you've heard the saying you do -- do the crime you do the time. And that's one part of sentencing. Rehabilitation is another." *Id.* Noting Newman's primary focus was on rehabilitation, the court pointed out treatment also could be ordered under a standard sentence. *Id.* The court stated if Newman were truly interested in treatment, she could accomplish that either with the DOSA or as part of her community custody. 1RP 25.

The court pointed out the Summary Report indicated only that Newman would benefit from a substance abuse *assessment* and that she *may* suffer a substance use disorder. 1RP 25 (emphasis added). The report was bereft of supporting facts and did not address the likelihood treatment would prevent future criminal behavior. 1RP 25–26. "And here the question would be, would Ms. Newman be less likely to sell drugs in the future if she wasn't addicted to drugs (inaudible)." 1RP 26. The court stated there was nothing in the report to indicate "whether the community and the offender would benefit from the use of the [DOSA] alternative."

*Id.* The court stated, “we have here more than just possessing drugs; someone is selling or delivering drugs in the community.” *Id.* “We can look at whether someone is -- for instance under a DOSA sentence, likely to be rehabilitated -- they suffer from a drug abuse problem, are they less likely to commit a crime in the future if they receive treatment. *I’m not convinced that that would be the case here, that treatment would solve the problem of-- selling or delivering drugs.* And so I will sentence within the standard range.” 1RP 27 (emphasis added).

The court stayed imposition of Newman’s 15-month prison sentence and community custody pending appeal. CP 56–57.

### III. ARGUMENT.

*The trial court did not misread the DOSA statute or misunderstand its sentencing authority and properly exercised its discretion in denying Newman’s request for a residential DOSA sentence. (Assignment No. 1)*

Generally, a trial judge’s decision whether to grant a DOSA is not reviewable. *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005) (citing *State v. Bramme*, 115 Wn. App. 844, 850, 64 P.3d 60 (2003)). But “every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered.” *Grayson*, 154 Wn.2d at 342.

“The legislature entrusted sentencing courts with considerable

discretion . . . to determine . . . whether [an] alternative is appropriate.”  
*State v. Hender*, 180 Wn. App. 895, 900-01, 324 P.3d 780 (2014). The fact  
that Newman was statutorily eligible does not automatically entitle her to  
the alternative sentence. *Id.* at 900. “As a general rule, the trial judge’s  
decision whether to grant a DOSA sentence is not reviewable.” *Id.*

Newman challenges the procedure by which the sentence was  
imposed, arguing she was denied a residential DOSA sentence “because  
the court misunderstood the law and its sentencing authority when it  
denied the request.” Br. of Appellant at 7. She asserts the court “possessed  
a mistaken belief it could not impose a DOSA without a report [from  
DOC] addressing certain considerations, such as whether the offender and  
the community would benefit by the alternative sentence and/or whether  
[she] would be less likely to commit future offenses if she received the  
alternative.” *Id.* at 8.

Newman misunderstands what the trial judge said at the sentencing  
hearing. Nothing in the law requires a trial court to consider any type of  
report in deciding whether an offender is an appropriate candidate for a  
DOSA sentence. *State v. Bribiesca Guerrero*, 163 Wn. App. 773, 778, 261  
P.3d 197 (2011). And nothing said by the court at Newman’s sentencing  
suggests the court believed it was required to have a report addressing the  
criteria in RCW 9.94A.660(5)(a). On the contrary, the court’s comments

about the Summary Report, taken in context, demonstrate judicial concern over the lack of any evidence that a residential DOSA was appropriate in Newman's case.

The decision to impose a DOSA is based on the court's determination that a DOSA meets the purpose of the statute and will benefit both the defendant and the community. At the start of the sentencing hearing, the trial court knew Newman had delivered methamphetamine to McLain on multiple occasions, that she kept a larger quantity of the drug in her purse along with a significant amount of money, and that she used methamphetamine while her case was pending. The court knew Newman, assisted by various friends and family, participated in witness tampering and intimidation, tampering that included shared use of methamphetamine. The court also knew Newman had declined the State's pre-trial offer to settle the case with an agreed residential DOSA sentence.

What the court did not know was whether Newman was currently addicted to drugs. RCW 9.94A.660(5)(a)(i). The court correctly pointed out the Summary Report indicated only that Newman would benefit from a substance abuse *assessment* and that she *may* suffer a substance use disorder. 1RP 25 (emphasis added). The report was bereft of supporting facts, including the date of Newman's prior assessment, and did not

address the likelihood treatment would prevent future criminal behavior. 1RP 25–26. There was nothing in the report to indicate “whether the community and the offender would benefit from the use of the [DOSA] alternative.” 1RP 26.

The record shows the trial court also found nothing in Newman’s letters of support, her own statement, and her attorney’s argument, supporting a residential DOSA. Newman herself failed to present any evidence she was an addict. She did not say she was addicted, or even that she had a substance abuse problem. Her friends and family did not specify substance abuse issues, only “problems.” Newman and her friends did not assert treatment would be successful or that successful treatment would change her accustomed manner of earning a living. The letters focused on the benefit to Newman’s family and friends, and to Newman herself, from a sentence in which she stayed out of custody.

Newman’s behavior following her arrest—continued drug use and witness tampering—likely focused the trial court on whether “Ms. Newman [would] be less likely to sell drugs in the future if she wasn’t addicted to drugs (inaudible).” *Id.* The court elaborated, “we have here more than just possessing drugs; someone is selling or delivering drugs in the community.” *Id.* “We can look at whether someone is -- for instance under a DOSA sentence, likely to be rehabilitated -- they suffer from a

drug abuse problem, are they less likely to commit a crime in the future if they receive treatment. *I'm not convinced that that would be the case here, that treatment would solve the problem of -- selling or delivering drugs.* And so I will sentence within the standard range.” 1RP 27 (emphasis added). The court discussed the dual sentencing goals of retribution and rehabilitation, pointing out Newman’s argument focused solely on her own rehabilitation and that treatment would be available to her regardless of whether she received a DOSA or went to prison.

Although the trial court had no obligation to give reasons for its determination that an alternative to a standard range sentence is inappropriate, *State v. Hays*, 55 Wn. App. 13, 15, 776 P.2d 718, 719 (1989), it did so here. The court’s statements clearly demonstrate it failed to find evidence a residential DOSA would stop Newman’s drug dealing in the community. It does not suggest the trial court would have ordered the alternative sentence but for the arguably deficient Summary Report.

“[W]here a trial court considers valid factors in its denial of a DOSA, its sentencing decision is not an abuse of discretion.” *State v. Jones*, 171 Wn. App. 52, 55, 286 P.3d 83 (2012). The trial court properly exercised its discretion, finding it unlikely a residential DOSA sentence would prevent future criminal activity and concluding the alternative was not appropriate.

IV. CONCLUSION.

Because the trial court properly exercised its discretion in declining to order a residential DOSA sentence, this Court should affirm Newman's sentence and return the case to the trial court for its imposition.

DATED this 11th day of April, 2016.

Respectfully submitted,

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COURT OF APPEALS, DIVISION III  
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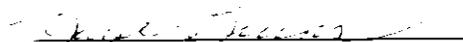
STATE OF WASHINGTON,            )  
  )  
                          Respondent,    ) No. 33605-1-III  
  )  
                          vs.                )  
  )  
RAVEN NEWMAN,                 ) DECLARATION OF SERVICE  
  )  
                          Appellant.     )  
\_\_\_\_\_ )

Under penalty of perjury of the laws of the State of Washington,  
the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this  
matter by e-mail on the following party, receipt confirmed, pursuant to the  
parties' agreement:

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Dated: April 11, 2016.

  
\_\_\_\_\_  
Kaye Burns