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Court of Appeals
Division I
State of Washington

NO.

(COURT OF APPEALS CAUSE NO. 73872-1-I)

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:

MATTHEW DOUGLAS SCHLEY,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

ROBERT W. FERGUSON
Attorney General

ALEX KOSTIN, WSBA# 29115
JOHN J. SAMSON, WSBA #22187
Assistant Attorneys General
Corrections Division OID# 91025
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445
AlexK@atg.wa.gov
JohnS@atg.wa.gov

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I. IDENTITY OF MOVING PARTY

The Department of Corrections asks this Court to accept review of the Court of Appeals decision designated in part II below.

II. COURT OF APPEALS' DECISION

The Department seeks review of the Court of Appeals' published opinion, *In re Pers. Restraint of Schley*, __ P.3d __ (February 21, 2017) (No. 73872-1-I) (2017 WL 684265), that invalidates the revocation of a Drug Offender Sentencing Alternative (DOSA) sentence. *See* Appendix A.

III. INTRODUCTION

This case raises issues regarding the proof needed for the Department to revoke a DOSA sentence where clinical staff had terminated an inmate from the drug abuse treatment program after the inmate received a serious prison infraction. The Department contends that it properly revoked the prisoner's DOSA sentence when the hearing officer found by a preponderance of the evidence that the inmate had been terminated from the treatment program. But the Court of Appeals concluded that due process required more. The Court of Appeals held that in addition to proving the inmate had been terminated from the treatment program, the Department must also prove by a preponderance of the evidence the facts underlying the serious prison infraction that led clinical staff to terminate the treatment.

The Court of Appeals' decision conflicts with RCW 9.94A.662 and this Court's precedent, including *State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (2009) and *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 978 P.2d 1083 (1999). The Department seeks review because of the significant harm this decision will cause to the proper administration of DOSA sentences.

IV. STATEMENT OF THE ISSUES

1. Where RCW 9.94A.622 mandates revocation of the DOSA sentence after an inmate is terminated from treatment, and the hearing officer found by a preponderance that treatment was terminated, does due process require that the hearing officer further find by a preponderance of the evidence the facts underlying an earlier serious prison infraction that led to the decision to terminate treatment?

2. Does the conclusion that the Department must reprove the facts underlying the serious prison infraction conflict with *State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (2009) and *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 978 P.2d 1083 (1999)?

3. Did the Court of Appeals err in determining that Schley's DOSA revocation hearing presents a complex case that may require the appointment of counsel?

V. STATEMENT OF THE CASE

A. The Department Revoked the DOSA Sentence Because a Preponderance of the Evidence Proved Schley Had Been Terminated From the Treatment Program

Schley was separately convicted of first degree theft and second degree burglary. Appendices B and C, Judgments and Sentences. The superior court sentenced Schley to two concurrent prison-based DOSA sentences under RCW 9.94A.662. Appendices B and C. The statute and the judgments expressly required Schley to successfully participate in treatment while in prison.

The DOSA statute allows the court to waive a standard range sentence, and to impose a more lenient alternative sentence consisting of just one-half the midpoint of the standard sentence range, followed by community custody for the remaining half of the midpoint of the standard sentence range. RCW 9.94A.662(1). But to obtain the benefit of this lenient alternative sentence, both the statute and the sentence require the inmate to participate in substance abuse treatment. RCW 9.94A.662(2); Appendices B and C, at 4. If the inmate is terminated from treatment, the statute and the judgments expressly require revocation of the alternative sentence. RCW 9.94A.662(3); Appendices B and C, at 4. In short, the statute and the judgments require the Department to revoke the DOSA sentence if the inmate is terminated from treatment while in prison.

The Department provided Schley with written notice that his DOSA sentence required him to participate in the treatment program. Appendix D, DOSA Agreement. The notice expressly informed Schley that termination from the treatment program would result in the revocation of his DOSA sentence. Appendix D. The notice also informed Schley that he could be terminated from the treatment program for, among other reasons, receiving a serious prison infraction. Appendix D; Appendix E, Chemical Dependency Treatment Participation Requirements.

Schley acknowledged these notices. Appendices D and E. Schley specifically agreed to refrain from any threats or acts of physical violence. Appendices D and E. Schley also acknowledged in writing that he could be terminated from the treatment program if he failed to comply with the conditions of the program, or if he received a serious prison infraction. Appendices D and E.

Just days after beginning the treatment program, Schley fought with another prisoner. Appendix F, Serious Infraction Report. After the two started yelling at each other, Schley swung but missed, and then grabbed the other inmate's throat and arm, causing both men to fall backward onto a bed. Appendix F. The other inmate then hit and kicked Schley off the bed. Appendix F. Schley received injuries consistent with a fight. Appendix F.

Fighting between inmates is a serious violation of prison rules. *See* WAC 137-25-030 (serious violation 505, fighting with another prisoner). Correctional staff charged Schley with a serious prison infraction for this violation of prison rules, and placed him in the Special Housing Unit. Appendix F; Appendix G, OMNI Chronos, at 1 (entry dated 1/28/15). The placement in the Special Housing Unit, the prison's segregation unit, made Schley non-compliant with the conditions of the treatment program. Appendix G, at 1 (entry dated 1/29/2015).

Correctional staff then held a prison disciplinary hearing. Appendix F. The disciplinary hearing officer found by "some evidence" that Schley fought with the other inmate. Appendix F. The disciplinary hearing officer found Schley guilty of the serious infraction, and sanctioned him to 15 days in segregation, plus a loss of 15 days of good conduct time. Appendix F. Schley received credit for time served on the segregation sanction. Appendix F.

The next day, a team of clinical staff determined that Schley should be terminated from the treatment program. Appendix H, Chemical Dependency Clinical Staffing. The team of clinical staff decided to terminate Schley from the treatment program because he had received a serious prison infraction that caused a change of custody level or violated

a condition of the treatment program. Appendix H. The decision to terminate was a clinical decision. Appendix H.

As a result of Schley's termination from treatment, the Department held a DOSA revocation hearing pursuant to RCW 9.94A.662(3). Appendix I, Initial Serious Infraction Report; Appendix J, Notice of Allegation; Appendix K, DOSA 762 Infraction Hearing Report. The hearing officer considered the evidence that Schley had been terminated from the treatment program. Appendix K, at 2-3, and 5.

Schley contended he had a right to litigate his guilt or innocence of the serious prison infraction; *i.e.*, whether he actually fought with the other inmate. But the hearing officer noted that the facts underlying the serious prison infraction were not the issue before her. Appendix K, at 4; Appendix L, Transcript of Hearing, at 18-20. Instead, the hearing officer had to decide whether Schley's termination from the treatment program warranted revocation of the DOSA sentence. Appendix L, at 20.

After considering the evidence, the hearing officer concluded by a preponderance of the evidence that Schley was terminated from the treatment program. Appendix K, at 5; Appendix L, at 32-35; Appendix M, Hearing and Decision Summary Report. The hearing officer also concluded by a preponderance of the evidence that the DOSA sentence should be revoked. Appendices K, L, and M.

B. The Court of Appeals Held That the Revocation Hearing Violated Schley's Right to Due Process

Schley filed a personal restraint petition, alleging the revocation hearing violated due process. Schley argued the Department failed to prove by a preponderance of evidence the facts underlying the serious prison infraction that led to the decision to terminate his treatment. Schley also alleged the Department failed to provide him with counsel during the revocation hearing. The Court of Appeals granted relief. Appendix A.

The Court of Appeals recognized that “[t]he legislature enacted the drug offender sentencing alternative to provide a treatment-oriented alternative to the standard sentence,” and that the DOSA sentence “is conditioned on successful participation in chemical dependency treatment.” Appendix A, at 4-5. The court recognized that the Department must revoke a sentence if the offender is terminated from treatment. Appendix A, at 5 (citing RCW 9.94A.662(3)). The court recognized that the hearing officer revoked the DOSA sentence only after finding by a preponderance of the evidence that Schley had been terminated from treatment. Appendix A, at 5-6. But the Court of Appeals then concluded that the Department must do more to comply with due process than prove “a fact that was utterly indisputable: that Schley had been terminated from treatment.” Appendix A, at 8.

Characterizing the fact of termination from treatment as a “mere formality” and a “pretense,” *see* Appendix A, at 8, the court determined that “[t]he DOSA revocation hearing did not resolve any genuine issue of fact by a preponderance of the evidence.” Appendix A, at 6. The court concluded that the essential fact for the revocation was not the termination of treatment, but instead was whether Schley fought with another inmate. Appendix A, at 6 (“The essential fact for DOSA revocation was resolved at the infraction hearing for fighting.”)

The Court of Appeals concluded that “Schley’s DOSA was functionally revoked once he was found guilty of fighting by ‘some evidence’ at the infraction hearing.” Appendix A, at 6. Relying on *In re Pers. Restraint of McKay*, 127 Wn. App. 165, 110 P.3d 856 (2005), the court concluded that before the Department may revoke Schley’s DOSA sentence, the Department must prove by a preponderance of the evidence the facts underlying the serious prison infraction that led the clinical staff to decide to terminate Schley’s treatment. Appendix A, at 7-9. In other words, the Department must prove by a preponderance of the evidence that Schley actually fought with the other inmate before the Department could revoke the sentence. Appendix A, at 7-9. The court concluded the Department’s failure to find these essential facts by a preponderance of the evidence violated Schley’s right to due process. Appendix A, at 8-9.

The Court of Appeals also concluded that Schley was denied the right to request counsel for the DOSA hearing because the Department did not advise him of the right. Appendix A, at 9-11. The court concluded the lack of such an advisement was not harmless error because of the possible complexity of the hearing. Appendix A, at 10-11. The court recognized the issue of whether Schley was terminated from the treatment program was not a complex issue, but concluded that the factual issue of whether Schley actually had a fight with another inmate presented a more complex case that may require the appointment of counsel. Appendix A, at 9-11. For this reason, the court concluded that the Department should advise Schley of his right to request counsel. Appendix A, at 11.

VI. STANDARD OF REVIEW

A Court of Appeals' decision granting a personal restraint petition is subject to review by this Court through a motion for discretionary review. RAP 13.5A; RAP 16.14(c). This Court applies the standards set forth in RAP 13.4(b) in deciding whether to grant discretionary review. The Court will grant review if the decision of the Court of Appeals conflicts with a decision of this Court or another Court of Appeals' decision. RAP 13.4(b)(1) and (2). The Court will also grant review if the case raises significant questions of constitutional law or involves issues of substantial public interest. RAP 13.4(b)(3) and (4).

VII. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. **The Conclusion That Termination From Treatment is a “Mere Formality” and “Pretense” For Revocation Conflicts With the DOSA Statute and This Court’s Precedent**

Concluding that Schley’s termination from treatment was a “mere formality” and “pretense” for revocation, the Court of Appeals held that the Department must prove the facts of the underlying serious prison infraction in order to revoke the DOSA sentence. This decision exceeds the requirements of the statute and due process. The Court should grant review because the decision below conflicts with the statute and this Court’s precedent.

The alternative DOSA sentence is an act of leniency authorized by the Legislature, and applied to the offender by the grace of the trial court. *State v. McCormick*, 166 Wn.2d 689, 702, 213 P.3d 32 (2009). The leniency continues only as long as the offender complies with the strict requirements of the sentence. *Id.* Because the offender has already been convicted, “an offender facing a revocation of a suspended sentence has only minimal due process rights because the trial has already occurred and the offender was found guilty beyond a reasonable doubt.” *Id.* at 699-700 (citing *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999)). Due process allows revocation upon proof that the offender failed to comply with the terms of the sentence. *McCormick*, 166 Wn.2d at 705.

The Court reviews the plain language of the statute to determine the facts necessary to justify revocation. *McCormick*, 166 Wn.2d at 697. Here, in order to revoke the DOSA sentence, the plain language of the statute requires only proof that the inmate was “administratively terminated from the program. . . .” RCW 9.94A.662(3); *see also McCormick*, 166 Wn.2d at 705 (SSOSA sentence may be revoked if the offender has failed to make satisfactory progress in treatment). The statute does not require proof of the facts leading up to the decision to administratively terminate the treatment.

The Legislature specifically required that an inmate given a DOSA sentence must participate in a treatment program. RCW 9.94A.662(2). The statute expressly provides that if the inmate is terminated from the treatment program, the sentence must be revoked. RCW 9.94A.662(3). That is the only fact required by the statute for revocation of the sentence. Due process does not require any further proof regarding the events leading up to termination of treatment. *McCormick*, 166 Wn.2d at 703 (due process did not require proof that the offender willfully violated the requirement of the sex offender sentencing alternative statute). Rather, the alternative “sentence may be revoked at any time if there is sufficient proof to reasonably satisfy the court that the offender has . . . failed to make satisfactory progress in treatment.” *Id.* at 705.

Although the Court of Appeals believed the facts underlying the serious prison infraction were the “essential” facts for revocation, the Court of Appeals simply substituted its own judgment for that of the Legislature when determining what constitutes a proper basis for revocation. Because RCW 9.94A.662(3) mandates revocation when the inmate is terminated from the treatment program, and the Department proved Schley was terminated from treatment, the Department satisfied due process.¹

Here, the hearing officer applied the proper standard of proof and determined by a preponderance of evidence that Schley had been terminated from the treatment program. Appendices K, L, and M. The hearing officer then applied the preponderance of the evidence standard to determine that Schley’s termination from treatment warranted revocation of the DOSA sentence. Appendices K, L, and M. The hearing officer’s decision complied with due process.

¹ An allegation that clinical staff acted with racial animus or with a retaliatory motive in deciding to terminate treatment would be a proper issue for the revocation hearing and a personal restraint petition. But there is simply no allegation or proof that the clinical staff here acted with an improper motive in deciding to terminate treatment. Instead, Schley merely alleged that he has a right to litigate the facts of events that led up to the decision to terminate treatment; *i.e.*, whether he actually fought with the other inmate.

B. The Conclusion That the Department Must Reprove the Facts Underlying the Serious Prison Infraction Conflicts With This Court's Precedent

The Court of Appeals' decision also conflicts with this Court's decision in the case of *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 978 P.3d 1083 (1999). In *Gronquist*, the inmate had been found guilty of a serious prison infraction after he committed four minor prison infractions within a six month period of time. *Id.* at 390-91. The inmate contended that he had a due process right to litigate his innocence of the prior minor infractions during the serious prison infraction hearing under the heightened due process standard applicable to serious prison infractions. *Id.* Similar to Schley, the inmate argued that because he received lower due process in the prior hearings, the Department must again prove that he committed the minor infractions under a heightened standard before using them to prove his guilt in the subsequent hearing. *Id.* at 398, 401.

Rejecting the contention, this Court held that due process does not require the Department to relitigate the prior infractions used as evidence in the subsequent hearing. *Gronquist*, 138 Wn.2d at 399-406. Due process does not allow an inmate to collaterally challenge his guilt of a prior infraction in a subsequent hearing. *Id.* at 403. Similarly, due process did not require the Department to reprove Schley's guilt of the serious prison infraction in the later DOSA revocation hearing.

The Court of Appeals distinguished *Gronquist* on the ground that Schley has a greater liberty interest at stake than the inmate in *Gronquist*, and therefore a higher standard of due process must apply. But this Court rejected such reasoning in *Gronquist*.

This Court noted that the prosecution need not reprove the defendant's guilt of a prior conviction before using the prior conviction in a subsequent proceeding. *Gronquist*, 138 Wn.2d at 402-04 (citing *Custis v. United States*, 511 U.S. 485, 493-97, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994) (no right to collaterally attack a prior conviction in subsequent proceedings); *Nichols v. United States*, 511 U.S. 738, 748-49, 114 S. Ct. 1921, 128 L. Ed. 2d 745 (1994) (use of uncounseled misdemeanor conviction in later prosecution did not violate the Sixth Amendment)); *see also State v. Ammons*, 105 Wn.2d 175, 713 P.2d 719 (1986) (proving existence of the prior convictions by a preponderance of the evidence rather than beyond a reasonable doubt does not violate due process).

Several crimes contain a predicate element, the existence of which is proven without having to prove the facts underlying the predicate itself. For example, to convict a felon of unlawful possession of a firearm, the prosecution need only prove the defendant had a prior felony conviction. The prosecution need not also prove the defendant committed the acts that resulted in the prior felony conviction. *See, e.g., Lewis v. United States*,

445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980). Similarly, the crime of first degree escape requires proof that the defendant had been convicted of a felony, but the prosecution need not reprove in the subsequent trial that the defendant committed the acts underlying the prior felony crime. *State v. Hall*, 104 Wn.2d 486, 706 P.2d 1074 (1985). Even when the predicate element is an administrative decision made with a lower level of due process, the prosecution need not prove the acts underlying that administrative decision. *See, e.g., State v. Storhoff*, 133 Wn.2d 523, 531-32, 946 P.2d 783 (1997) (alleged defect in revocation by Department of Licensing did not preclude prosecution for driving while license revoked); *Upward v. State*, 38 Wn. App. 747, 752-53, 689 P.2d 415 (1984) (the prosecution is not required to reprove the validity of the traffic offenses upon which the status of habitual traffic offender is based).

Here, due process did not require the Department of Corrections to reprove under a higher evidentiary standard the fact that Schley was guilty of the serious prison infraction. The hearing officer did not revoke the sentence because Schley fought with another inmate. Rather, the hearing officer revoked the DOSA sentence because Schley had been terminated from treatment, and the termination warranted revocation. By finding these elements by a preponderance of the evidence, the hearing officer satisfied due process.

In finding a due process violation, the court below also misunderstood the purpose of the prison disciplinary hearing. The hearing is not used to find under a lower burden of proof the facts necessary to justify revocation. Appendix A, at 8-9. Rather, such hearings are a necessary tool to maintain prison discipline and ensure institutional security. *In re Grantham*, 168 Wn.2d 204, 215, 227 P.3d 285, 292 (2010) (“Prison discipline is an essential function of the day to day management of a safe and secure correctional institution.”). Tens of thousands of disciplinary hearings occur each year. *Id.* Requiring the Department to conduct such hearings at a higher standard of proof because the inmate might be subject to a subsequent DOSA revocation hearing would unnecessarily impair the proper operation of the prisons.

C. Schley Was Not Denied the Right to Counsel Because the Issues In the Revocation Hearing Did Not Present a Complex Case

The appointment “of counsel will probably be both undesirable and constitutionally unnecessary in most revocation hearings. . . .” *Gagnon v. Scarpelli*, 411 U.S. 778, 790, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973). Counsel is not necessary where a case is not complex and the inmate is able to speak effectively in defense of himself. *Id.* at 790-91. Counsel is not needed where the factual issues are easily resolved. *Id.*

As discussed above, the issue to be decided in the revocation hearing was whether Schley had been terminated from treatment. Although the Court of Appeals disagreed that this was the essential issue, the court recognized that counsel would not be necessary for such a factual issue because “the evidence supporting that allegation was irrefutable and the presence of a lawyer, no matter how skillful, would have made no difference.” Appendix A, at 11. Because the revocation hearing properly focused on the easily resolved issue of whether Schley had been terminated from treatment, Schley was not entitled to the appointment of counsel in the revocation hearing.

The Court of Appeals, of course, believed that the hearing should focus not on termination from treatment, but on the facts underlying Schley’s serious prison infraction. The court determined that these factual issues “are more complex than the limited issue of whether Schley was terminated from treatment.” Appendix A, at 11. But even if the court were correct that the hearing should involve the underlying facts of the serious prison infraction, this is still not a complex case.

Whether Schley fought with another inmate is not “a complex case that involved evidentiary or legal subtleties.” *In re Price*, 157 Wn. App. 889, 906, 240 P.3d 188 (2010). Instead, the issue involves “straightforward factual determinations about the alleged violations and

the credibility of various witnesses.” *Price*, 157 Wn. App. at 906. The case would be limited to testimony from inmates and staff as to whether Schley fought with another inmate; evidence that Schley could easily present and refute on his own behalf. This was not a complex case.

Nor was Schley incapable of representing himself. Schley showed a competent ability to represent himself, citing to case law and arguing why the hearing officer should reevaluate the evidence of the underlying infraction. The record shows Schley was capable of representing himself.

D. This Case Involves a Matter of Substantial Public Interest Because the Decision Below Drastically Hinders the Proper Administration of DOSA Sentences

The Court of Appeals recognized the Department’s concerns about the substantial administrative burden and practical ability to reprove events that have occurred over a long period of time. Appendix A, at 8; *Gronquist*, 138 Wn.2d at 398 (summarizing concerns of revisiting events occurring months before or holding hearings under a heightened standard). But the court cursorily dismissed these concerns by simply stating “[t]hose concerns are not present in this case.” Appendix A, at 8. The court reasoned that because Schley was charged with a single fight, the Department could have easily reproved the facts. Appendix A, at 8. But the court’s cursory rejection of the Department’s legitimate concerns ignores the realities of how the decision will apply in other cases.

A rule requiring the Department to prove not only the fact of termination of treatment, but also the underlying facts that ultimately led to the decision to terminate treatment, detrimentally affects the administration of DOSA sentences. Although Schley had a single serious prison infraction occurring not long before the DOSA revocation hearing, many other cases involve inmate behavior over an extended period of time that leads staff to decide to terminate treatment. For example, staff may terminate treatment because the inmate displayed “[a] pattern of behavioral issues that have been continual and responses to interventions have been unsuccessful.” Appendix D, at 1. Similarly, staff might terminate treatment because the offender’s continual behavior “causes placement in an Intensive Management Unit for a length of time. . . .” Appendix D, at 1.

Under the Court of Appeals’ decision, the Department would not only have to prove that clinical staff terminated the inmate from treatment, but would also have to prove the facts of this underlying behavior over a period of time. If the Department could not prove these underlying facts, the inmate would be terminated from treatment but the DOSA sentence would not be revoked. The inmate would receive the benefit of a DOSA sentence without having to participate in treatment. Such an outcome is against legislative intent and the public interest and leads to an absurdity.

VIII. CONCLUSION

For the reasons stated above, the Department respectfully requests that the Court grant the motion for discretionary review, and reverse the decision of the Court of Appeals.

DATED this 21st day of March, 2017.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

s/ Alex Kostin
ALEX KOSTIN, WSBA #29115
JOHN J. SAMSON, WSBA #22187
Assistant Attorneys General
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
AlexK@atg.wa.gov
JohnS@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the MOTION FOR DISCRETIONARY REVIEW with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

WASHINGTON APPELLATE PROJECT
ATTN: MARLA L. ZINK
1511 3RD AVENUE SUITE 701
SEATTLE WA 98101-3647

THE DEFENDER INITIATIVE
ATTN: ROBERT C. BORUCHOWITZ
SEATTLE UNIVERSITY SCHOOL OF LAW
PO BOX 222000
SEATTLE WA 98122-1090

COLUMBIA LEGAL SERVICES
ATT: NICK ALLEN, RHONA TAYLOR
101 YESLER WAY, SUITE 300
SEATTLE WA 98104

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 21st day of March, 2017, at Olympia, WA.

s/ Amy Jones
AMY JONES
Legal Assistant
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
AmyJ@atg.wa.gov

APPENDIX A

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT OF)	No. 73872-1-1
)	
)	
)	DIVISION ONE
)	
MATTHEW RAY DOUGLAS SCHLEY,)	
)	PUBLISHED OPINION
)	
Petitioner.)	FILED: <u>February 21, 2017</u>

SPEARMAN, J. — An offender facing revocation of a sentence imposed pursuant to the drug offender sentencing alternative (DOSA) has a due process right to have an alleged violation of a condition of the sentence proved by a preponderance of the evidence. In this case, Matthew Schley's DOSA sentence was revoked when the State proved by a preponderance of the evidence that he had been terminated from the required substance abuse treatment program. But the basis for the termination from the treatment program was a determination in a prior proceeding that Schley had been involved in a fight, which was a violation of program rules. That finding was proved using the "some evidence" standard applicable to proceedings involving alleged infractions of prison rules. Though

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these very same facts established the basis for Schley's DOSA revocation they were not proved by a preponderance of the evidence. We agree with Schley that the failure to do so denied him due process and grant his personal restraint petition.

FACTS

Matthew Schley pleaded guilty to first degree theft and second degree burglary. The court imposed two concurrent DOSA sentences of 50 and 59.5 months, half to be served in prison and half in community custody. After the sentence, Schley signed a "DOSA agreement" and a chemical dependency treatment form. The DOSA agreement stated that Schley "may be 'administratively' terminated from the DOSA chemical dependency treatment program" for "[a]ny major infraction that causes a change in custody level or the violation of condition(s) outlined in the CD [chemical dependency] Treatment Participation Requirements DOC 14-039" Br. of Appellant, App. at 23. Chemical dependency treatment form DOC 14-039 notified Schley that "[t]he following behaviors WILL result in termination from the Department's CD treatment program: 1. Any threat or act of violence toward staff or another patient." Br. of Appellant, App. at 25 (formatting omitted).

Schley entered the chemical dependency treatment program at the Olympic Corrections Center on January 22, 2015. According to anonymous reports, Schley taunted another prisoner in the treatment program by calling him "Mr. DOSA." Br. of Appellant, App. at 27. After the other prisoner responded,

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Schley swung at him and missed. He grabbed the other prisoner's throat and arm, and the two fought. Schley received minor injuries, including cuts, scrapes, and red marks. He was charged with fighting and placed in segregation for 15 days.

At his prison infraction hearing, Schley contended that there was no fight. He supplied five witness statements corroborating that there was no fight. He explained that the marks on his body were minor injuries from exiting his bunk. Under the "some evidence" burden of proof, Schley was found guilty of fighting based on confidential witness reports and physical marks on his body. The disciplinary findings were affirmed on appeal.

On February 10, 2015, Schley was administratively terminated from the chemical dependency treatment program due to the fighting infraction. The Department of Corrections (Department) then sought to revoke Schley's DOSA because he had been terminated from chemical dependency treatment.

At his DOSA revocation hearing, Schley again argued that no fight had occurred. He also argued that to revoke his DOSA, the fighting offense must be reevaluated under a preponderance of the evidence standard. The hearing officer did not reevaluate the evidence of fighting. Schley's DOSA was revoked because he had been terminated from the chemical dependency treatment program. As a result, Schley had to serve the remainder of his sentence in

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custody.¹ The DOSA revocation was affirmed by an appeals panel and the risk management director.

Schley filed a personal restraint petition to reinstate his DOSA sentence. This court appointed counsel to submit additional briefing.

DISCUSSION

Burden of Proof

Schley argues that the Department violated his due process rights by using facts proved by "some evidence" at his fighting infraction hearing to establish a DOSA violation by a preponderance of the evidence.

To obtain relief in a personal restraint petition, a petitioner must prove that he is being restrained and that the restraint is unlawful. RAP 16.4(a). A petitioner's restraint is unlawful if his sentence violates the United States or Washington Constitution. RAP 16.4(c)(2).

The legislature enacted the drug offender sentencing alternative to provide a treatment-oriented alternative to the standard sentence. State v. Kane, 101 Wn. App. 607, 609, 5 P.3d 741 (2000). Under the DOSA program, an offender serves less time in prison and more time in community custody while undergoing substance abuse treatment. RCW 9.94A.660(5)(a), (b); State v. Grayson, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005). DOSA is conditioned on successful

¹ Schley's judgment and sentence states that "[i]f the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence." Br. of Appellant, App. at 4.

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participation in chemical dependency treatment. An offender who fails to complete or is administratively terminated from the program must serve the unexpired term of his or her sentence in custody. RCW 9.94A.662(3). The Department may revoke a DOSA for administrative termination from a substance abuse treatment program. WAC 137-25-030. An offender will be terminated from substance abuse treatment if he or she is found guilty of a fighting infraction under WAC 137-25-030 505. In an infraction hearing, the Department reviews allegations under a "some evidence" burden of proof. In re Pers. Restraint of Grantham, 168 Wn.2d 204, 216, 227 P.3d 285 (2010). But a DOSA revocation must be proved by a preponderance of the evidence. In re Pers. Restraint of McKay, 127 Wn. App. 165, 170, 110 P.3d 856 (2005).

In McKay, the offender was in a chemical dependency treatment program while serving the prison-based portion of her DOSA sentence. She was charged with two infractions. In a single hearing, the hearing examiner applied a "some evidence" standard of proof, found McKay guilty of both infractions, and revoked her DOSA. Id. at 167-68. This court found that "the serious nature of a proceeding resulting in revocation of a DOSA sentence requires a preponderance of the evidence standard of proof." Id. at 168.

Here, the Department bifurcated Schley's hearings process, considering the infraction at one hearing and the DOSA revocation at a later hearing. But the inevitable result of a finding of guilt at Schley's infraction hearing was revocation of his DOSA. First, Schley was found guilty of a fighting infraction based on a

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"some evidence" burden of proof. The inescapable result of that finding was Schley's termination from his chemical dependency treatment program.

Termination from the chemical dependency treatment program led to a DOSA revocation hearing at which revocation of Schley's DOSA sentence was the only possible outcome. The hearing officer described the issue at the hearing: "What was proven to me is that the program terminated you, and you being terminated, that qualifies for a DOSA revocation." Verbatim Report of Proceedings at 37. Thus, Schley's DOSA was revoked.

The DOSA revocation hearing did not resolve any genuine issue of fact by a preponderance of the evidence. The DOSA hearing officer limited her finding to whether chemical dependency treatment was terminated. The essential fact for DOSA revocation was resolved at the infraction hearing for fighting. Schley's DOSA was functionally revoked once he was found guilty of fighting by "some evidence" at the infraction hearing.

Citing In re Personal Restraint of Gronquist, 138 Wn.2d 388, 978 P.2d 1083 (1999), the Department argues that Schley's fighting infraction cannot be reevaluated with a heightened burden of proof in his DOSA revocation hearing. In Gronquist, an offender was found guilty of four "minor" infractions and was subsequently charged with the "serious" infraction of collecting four minor infractions. Id. at 390-91. The court held that Gronquist could not challenge prior minor infractions in the serious infraction hearing. Id. at 403. But Gronquist is not

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controlling because, here, Schley's liberty interest is significantly greater and, thus, so too are the due process rights that attach to the proceeding.

We determine what process is due in a particular situation by examining (1) the individual's liberty interest, (2) the value of the proposed procedural safeguard to protect against erroneous deprivation of that interest, and (3) the State's interest, including administrative and financial burdens of the proposed procedure. In re Pers. Restraint of Bush, 164 Wn.2d 697, 705, 193 P.3d 103 (2008) (citing Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). In Gronquist, the liberty interest at stake in the hearing for the serious infraction was 10 days' loss of good time and 5 days' segregation. A prisoner has a liberty interest in earning good time credits such that minimum due process rights attach. Gronquist, 138 Wn.2d at 397. Minimum due process requires that the Department review allegations under a "some evidence" burden of proof. Grantham, 168 Wn.2d at 216.

By contrast, at stake at Schley's DOSA revocation hearing was the loss of over two and one half years in the community. In addition, while Gronquist enjoyed the possibility of earning back some or all of his lost good time credits, the deprivation for Schley was irrevocable. Thus, Schley enjoys greater due process protections, including a hearing structured to assure that the fighting finding is based on verified facts and accurate knowledge. McKay, 127 Wn. App. at 168-69 (citing Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) and quoting In re Pers. Restraint of McNeal, 99 Wn. App. 617, 628,

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994 P.2d 890 (2000)). We conclude that due to the different liberty interests at stake, revocation of Schley's DOSA sentence is subject to greater due process protections than the prisoner was entitled to in Gronquist.

An additional concern in Gronquist was the substantial administrative burden and practical ability to rehear four general infractions occurring over a six-month period for each of the many serious infraction hearings conducted by the Department. Those concerns are not present in this case. Here, the Department was well aware that once Schley was charged with the single incident of fighting, the inexorable result, if he was found to have committed the infraction, would be termination from the treatment program and revocation of his DOSA sentence. Given the inevitability of this process, there is minimal additional burden on the Department to apply the appropriate burden of proof at the initial infraction hearing.

We conclude that the Department violated Schley's due process rights by using facts proved by "some evidence" at his infraction hearing to establish his DOSA revocation by a preponderance of the evidence. While bifurcating the infraction and DOSA revocation hearings appears to comply with our holding in McKay, in fact it turns the DOSA revocation proceeding into a mere formality. At that hearing, the Department bore the burden of proving by a preponderance of the evidence a fact that was utterly indisputable: that Schley had been terminated from treatment. It is a pretense to suggest that such a hearing provides the due process protections that attach to the liberty interest at risk in a DOSA revocation

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proceeding. We hold that under McKay, proof of a fact that necessarily results in revocation of a DOSA sentence must be by a preponderance of the evidence.

Right to Counsel

Schley contends that the Department violated his due process rights by failing to inform him, prior to the DOSA revocation hearing, that he could request the appointment of counsel, and that the Department had a duty to determine on a case-by-case basis whether the request should be granted. He argues that had he been so informed, he would have requested counsel and that the request should have been granted. In support of this argument, Schley relies on Grisby v. Herzog, 190 Wn. App. 786, 362 P.3d 763 (2015). In that case, we held that under the due process clause of the United States Constitution, the Department has "a clear duty to consider the right to counsel on a case-by-case basis in community custody violation hearings"² Id. at 811; U.S. CONST. amends. V, XIV, § 1.

The Department does not appear to dispute Schley's argument that under Grisby, he had a right to be informed that he could request legal representation at the hearing. The Department's primary argument appears to be that "because Schley never requested counsel for the hearing, the Department was not required to determine whether counsel should be appointed for Schley in the hearing." Br. of Resp't at 14. We reject this argument because, as Schley points

² We note that at the time of his alleged violation, Grisby was serving the out of custody portion of his DOSA sentence. However, neither party addresses whether this is a material distinction from the circumstances here, where, at the time of his alleged violation, Schley was still serving the in-custody portion of his sentence. Accordingly, we assume, for purposes of this case, that the distinction is immaterial.

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out, we will not presume waiver of a constitutional right where the State cannot show it was made knowingly, intelligently, and voluntarily. See e.g., Miranda v. Arizona, 384 U.S. 436, 470-71, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Here, the evidence is virtually indisputable that Schley was advised before the hearing that he did not have the right to request counsel. The Department has not shown that Schley knowingly waived that right.³

The Department also argues that even if the notice was deficient, any error was harmless because if Schley had requested counsel, the request would have properly been denied. The Department contends that because the only issue at Schley's revocation hearing was whether he had been terminated from the treatment program, the issue was not sufficiently complex to warrant the appointment of counsel.

The Department is correct that as conducted below, the only issue was whether Schley had been terminated from the treatment program. As we have

³The Department's claim that the notice it gave to Schley was sufficient to apprise him of the right to request counsel is meritless. The only notice Schley received on that issue was as follows:

You have the following rights:

- ◆ To present your case to the Hearing Officer. . . . However, no other person may represent you in presenting your case. There is no statutory right to an attorney or counsel and without prior written approval from the Hearings Program Administrator, no attorney will be permitted to represent you.

Br. of Appellant, App. at 31-32. The thrust of the notice, under any reasonable reading, is that in a DOSA revocation hearing, neither an attorney nor any other persons are permitted to provide assistance to an inmate. We reject the Department's argument that the notice may be read to imply otherwise.

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discussed, the evidence supporting that allegation was irrefutable and the presence of a lawyer, no matter how skillful, would have made no difference. But Schley is entitled to a new revocation hearing at which the factual issues underlying the fighting allegation will be determined under the proper standard of proof. Those issues are more complex than the limited issue of whether Schley was terminated from treatment.⁴

Finally, we note that at oral argument, counsel for the Department conceded that if this case was remanded for a new hearing, it would advise Schley that he had a right to request counsel. In light of that concession, we assume that the Department will do so. Then, if counsel is requested, the Department must decide, in the first instance, whether an appointment is warranted based on the issues presented at the new hearing. We need not and do not decide that issue here.

Scope of the Department's Authority

Schley argues that the Department exceeded its authority by imposing three sanctions for a single incident of fighting. He contends that WAC 137-28-350 authorizes the Department to impose only one sanction for multiple violations arising out of a single incident. Schley counts three sanctions for fighting: 15 days' segregation, termination from chemical dependency treatment,

⁴ To the extent the Department relies on *In re Personal Restraint of Price*, 157 Wn. App. 889, 240 P.3d 188 (2010), to suggest that an allegation of fighting is insufficiently complex to warrant appointment of counsel, we note that the nature of the allegation is not the determinative factor. The particular facts of each case must be taken into account.

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and DOSA revocation that caused additional incarceration. While precipitated by fighting, each sanction arose out of a distinct incident: fighting, change in custody status, and termination from chemical dependency treatment. We find that the Department acted within its authority under WAC 137-28-350(2) because Schley's sanctions arose from distinct incidents.

Schley further argues that the Department's authority to revoke a DOSA under RCW 9.94A.662(3) does not give it the discretion to revoke a DOSA for conduct that is unrelated to chemical dependency. The Department must exercise delegated authority under the restraints of the statutes delegating the authority. State v. Brown, 142 Wn.2d 57, 62, 11 P.3d 818 (2000). The Department may revoke a DOSA if an offender "fails to complete the program or is administratively terminated from the program" RCW 9.94A.662(3). The grounds for administrative termination are not defined, but the Department has a broad grant of authority to administer its prisons. This includes a system that rewards good behavior with "increases or decreases in the degree of liberty granted the inmate within the programs operated by the department" RCW 72.09.130(1). The Department has authority to manage participation in chemical dependency treatment with rules about prisoner behavior. This authority is encompassed by the legislature's grant of authority for the Department to "administratively terminate[]" a prisoner from DOSA. We conclude that the Department did not exceed its statutory authority to administratively terminate Schley from chemical dependency treatment and thereby revoke his DOSA.

No. 73872-1-I/13

We grant Schley's personal restraint petition. On remand, Schley is entitled to a new DOSA violation hearing at which the Department shall apply a preponderance of the evidence standard to the fighting allegation.

Remanded.

WE CONCUR:

Leach, J.

Spelman, J.

Cox, J.

APPENDIX B

FILED
KING COUNTY, WASHINGTON

OCT 10 2014

SUPERIOR COURT CLERK
BY Karla Gabrielson
DEPUTY

ooc
COMMITMENT ISSUED **OCT 13 2014**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

No. 13-1-15302-1 KNT

vs.)

JUDGMENT AND SENTENCE
FELONY (FJS)

MATTHEW RAYDOUGLAS SCHLEY,)

Defendant.)

746992
10.14.14
(A)

I. HEARING

I.1 The defendant, the defendant's lawyer, Teri R. Kemp, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: DONALD SCHLEY, ARIEL DRAEBER

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 09/12/2014 by Plea of:

Count No.: I Crime: Burglary In The Second Degree
RCW: 9A.52.030 Crime Code: 02316
Date of Crime: 08/08/2013 through 08/09/2013

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim, RCW 9A.44.128, .130.
- (h) Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) Aggravating circumstances as to count(s) _____.

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	14	III			51 to 68 months	10 yrs. and/or \$20,000

Additional current offense sentencing data is attached in Appendix C.

2.5 **EXCEPTIONAL SENTENCE**

- Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. The court would impose the same sentence on the basis of any one of the aggravating circumstances.
- An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
- An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) _____.

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

[] This offense is a felony firearm offense (defined in RCW 9.41.010). Having considered relevant factors, including criminal history, propensity for violence endangering persons, and any prior NGI findings, the Court requires that the defendant register as a firearm offender, in compliance with 2013 Laws, Chapter 183, section 4. The details of the registration requirements are included in the attached Appendix L.

4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
[X] Restitution to be determined at future restitution hearing on (Date) at m.
[X] Date to be set.
[X] Defendant waives right to be present at future restitution hearing(s).
[] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment in the amount of \$500 (RCW 7.68.035 - mandatory).
Defendant shall pay DNA collection fee in the amount of \$100 (RCW 43.43.7541 - mandatory).

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them: Defendant shall pay the following to the Clerk of this Court:

- (a) [] \$ Court costs (RCW 9.94A.030, RCW 10.01.160); [X] Court costs are waived;
(b) [] \$ Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); [X] Recoupment is waived;
(c) [] \$ Fine; [] \$1,000; Fine for VUCSA [] \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); [X] VUCSA fine waived;
(d) [] \$ King County Interlocal Drug Fund (RCW 9.94A.030); [X] Drug Fund payment is waived;
(e) [] \$ \$100 State Crime Laboratory Fee (RCW 43.43.690); [X] Laboratory fee waived;
(f) [] \$ Incarceration costs (RCW 9.94A.760(2)); [X] Incarceration costs waived;
(g) [] \$ Other costs for:

4.3 PAYMENT SCHEDULE: The TOTAL FINANCIAL OBLIGATION set in this order is \$ 1000. Restitution may be added in the future. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [] Not less than \$ per month; [X] On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested. [X] Court Clerk's trust fees are waived. [X] Interest is waived except with respect to restitution.

4.4 (a) **PRISON-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) : The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant as follows:

The defendant is sentenced to the following term(s) of confinement in the custody of the Dept. of Corrections (DOC) to commence immediately; by _____ at _____ a.m./p.m.:

29.75 months (if crime after 6/6/06, 12 month minimum) on Count No. 2 ;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____ ;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____ ;

The above term(s) of confinement represents one-half of the midpoint of the standard range or, if the crime occurred after 6-6-06, twelve months if that is greater than one-half of the midpoint.

The terms imposed herein shall be served concurrently.

The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to cause No(s) _____

M-C 01874-2 KNT
The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to any previously imposed commitment not referred to in this judgment.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): _____ day(s) or days determined by the King County Jail.

Credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.

The court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).

Jail term is satisfied; defendant shall be released under this cause.

While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services.

COMMUNITY CUSTODY: The court further imposes 29.75 months, one-half of the midpoint of the standard range, as a term of community custody during which time the defendant shall comply with the instructions, rules and regulations promulgated by the Department for conduct of the defendant during community custody; shall perform affirmative acts necessary to monitor compliance, shall obey all laws and comply with the following mandatory statutory requirements:

- (1) The defendant shall undergo and successfully complete a substance abuse program approved by the ~~Division of Alcohol and Substance Abuse of the Dept. of Social and Health Services;~~
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

NON-COMPLIANCE. RCW 9.94A.660(5): If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

The court further imposes an additional term of Community Custody of 12 months upon failure to complete or administrative termination from DOSA program if any of these offenses is a crime against a person (RCW 9.94A.411) or a felony violation of RCW 69.50/52. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.7 herein.

4.4 (b) **RESIDENTIAL TREATMENT-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) (available if the midpoint of the standard range is 24 months or less): The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant on Count(s) _____ as follows:

The defendant shall serve 24 months in community custody under the supervision of the DOC, on the condition that the defendant enters and remains in residential chemical dependency treatment certified under RCW Ch. 70.96 for _____ (between 3 and 6) months. The DOC shall make chemical dependency assessment and treatment services available during the term of community custody, within available resources.

Pending DOC placement in residential chemical dependency treatment, the defendant is ordered to attend a DOC day reporting center and follow all applicable rules. The defendant shall report to DOC to begin the DOC day reporting program within 24 hours of release.

The defendant shall comply with the treatment and other conditions proposed in the examination report, as mandated by RCW 9.94A.665(2)(a). Frequency and length of treatment and monitoring plan are specified in the **EXAMINATION REPORT ATTACHED AS APPENDIX 1.**

A progress hearing is set in this court, during the residential treatment, for _____ (90 days from sentencing date). Additional progress hearings may be set.

A treatment termination hearing is set in this court three months before the expiration of the community custody term, for _____ (date).

Before the progress hearing and the treatment termination hearing, the treatment provider and the DOC shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, including recommendations regarding termination from treatment.

NON-COMPLIANCE. RCW 9.94A.665(4): At the progress hearing or treatment termination hearing, the court may modify the conditions of community custody, authorize termination of community custody status on expiration of the community custody term, or impose a term of total confinement equal to one-half the midpoint of the standard range, along with a term of community custody.

4.5 **ADDITIONAL COMMUNITY CUSTODY CONDITIONS OF DOSA SENTENCE:** The court further imposes the following non-mandatory conditions of Community Custody (if checked):

The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

~~The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.~~

Devote time to a specific employment or training.

Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.

Report as directed to a community corrections officer.

Pay all court ordered legal financial obligations.

Perform _____ community restitution hours on a schedule set by DOC.

Stay out of designated areas as follows: _____

Other conditions as set forth in APPENDIX F.

4.6 **ADDITIONAL CONFINEMENT:** The court may order the defendant to serve a term of total confinement within the standard range at any time during the period of community custody if the defendant violates the conditions of sentence or if the defendant is failing to make satisfactory progress in treatment.

4.7 CONDITIONS OF COMMUNITY CUSTODY IMPOSED AFTER TERMINATION OF DOSA:

- The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.
- The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.
- Report as directed to a community corrections officer.
- Pay all court ordered legal financial obligations.
- Stay out of designated areas as follows: _____

Other conditions: _____

4.8 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in **APPENDIX G.**

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

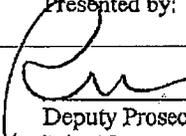
4.9 **OFF-LIMITS ORDER:** The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in **APPENDIX I** during the term of community supervision. **APPENDIX I** is attached and incorporated by reference into this Judgment and Sentence.

5.0 **NO CONTACT:** For the maximum term of 10 years, defendant shall have no contact with _____

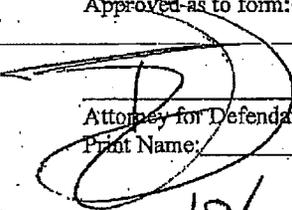
Date: 10-10-14



JUDGE
Print Name: _____

Presented by:


35411
Deputy Prosecuting Attorney, WSBA#
Print Name: _____

Approved as to form:


Attorney for Defendant, WSBA#
Print Name: 27701
10/10/2014

FINGER PRINTS



RIGHT HAND
FINGERPRINTS OF:
MATTHEW RAYDOUGLAS
SCHLEY

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

M. Schley
Doc

Dated: 10/10/14

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

[Signature]
JUDGE

By: [Signature]
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____
CLERK OF THIS COURT, CERTIFY THAT THE
ABOVE IS A TRUE COPY OF THE JUDGMENT AND
SENTENCE IN THIS ACTION ON RECORD IN MY
OFFICE.
DATED: _____

S.I.D. NO. WA15150497

DOB: _____

SEX: Male

RACE: White/Caucasian

By: _____
CLERK
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 13-1-15302-1 KNT

vs.

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

MATTHEW RAYDOUGLAS SCHLEY,

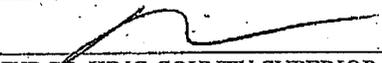
Defendant.

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv.	Cause Number	Location
Felon In Possession Of Firearm And Ammunition	12-17-2002	AF	01-cr-02093	U.S. District Court Spokane WA
Cont Subst Viol - Section (A)	02-20-2002	AF	01-1-00148-4	Kittitas Superior Court WA
cont subst viol - section (d)	12-30-1999	AF	99-1-00899-0	Lewis Superior Court WA
explosive lic required	12-30-1999	AF	99-1-00899-0	Lewis Superior Court WA
cont subst viol - section (d)	06-28-1999	AF	99-1-00396-3	Lewis Superior Court WA
cont subst vio a: mfg/delvr/p	08-01-1997	AF	97-1-04072-4	King Superior Court WA
burglary 2nd degree	02-09-1996	AF	95-1-00779-8	King Superior Court WA
burg 2	09-22-1993	JF	93-8-02375-0	King Superior Court WA
burg 2	11-09-1990	JF	90-8-00162-3	Mason Superior Court WA
cont subst viol	08-30-1990	JF	90-8-00115-1	Mason Superior Court WA
burg 2	09-22-1989	JF	89-8-00106-9	Mason Superior Court WA
burg 2	09-22-1989	JF	89-8-00106-9	Mason Superior Court WA
burg 2	09-22-1989	JF	89-8-00106-9	Mason Superior Court WA

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 6-10-24



JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MATTHEW RAYDOUGLAS SCHLEY,

Defendant.

No. 13-1-15302-1 KNT

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

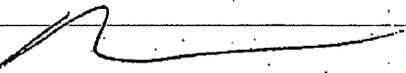
(2) **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 10.10.14



JUDGE, King County Superior Court

APPENDIX C

FILED
KING COUNTY, WASHINGTON

OCT 13 2014

DOC
COMMITMENT ISSUED _____

OCT 10 2014

SUPERIOR COURT CLERK
BY Karla Gabrielson
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
) Plaintiff,)
)
) vs.)
)
) MATTHEW RAYDOUGLAS SCHLEY,)
)
) Defendant.)

No. 14-C-01874-2 KNT

**JUDGMENT AND SENTENCE
FELONY (RJS)**

746992
10.14.14
B

I. HEARING

I.1 The defendant, the defendant's lawyer, Teri R. Kemp, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: ARIEL VETTER, DONALD SCHLEY

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 09/16/2014 by Plea of:

Count No.: I Crime: Theft In The First Degree
RCW: 9A.56.030(1)(b) and 9A.56.020(1)(a) Crime Code: 02518
Date of Crime: 03/03/2014 through 03/04/2014

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, 130.
- (h) Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) Aggravating circumstances as to count(s) _____.

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	11	II			43 to 57 months	10 yrs. and/or \$20,000

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE

- Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. The court would impose the same sentence on the basis of any one of the aggravating circumstances.
- An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
- An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) _____.

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

[] This offense is a felony firearm offense (defined in RCW 9.41.010). Having considered relevant factors, including criminal history, propensity for violence endangering persons, and any prior NGI findings, the Court requires that the defendant register as a firearm offender, in compliance with 2013 Laws, Chapter 183, section 4. The details of the registration requirements are included in the attached Appendix L.

4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
[X] Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
[X] Date to be set.
[X] Defendant waives right to be present at future restitution hearing(s).
[] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment in the amount of \$500 (RCW 7.68.035 - mandatory).
Defendant shall pay DNA collection fee in the amount of \$100 (RCW 43.43.7541 - mandatory).

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) [] \$ _____, Court costs (RCW 9.94A.030, RCW 10.01.160); [X] Court costs are waived;
(b) [] \$ _____, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); [X] Recoupment is waived;
(c) [] \$ _____, Fine; [] \$1,000, Fine for VUCSA [] \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); [X] VUCSA fine waived;
(d) [] \$ _____, King County Interlocal Drug Fund (RCW 9.94A.030); [X] Drug Fund payment is waived;
(e) [] \$ _____, \$100 State Crime Laboratory Fee (RCW 43.43.690); [X] Laboratory fee waived;
(f) [] \$ _____, Incarceration costs (RCW 9.94A.760(2)); [X] Incarceration costs waived;
(g) [] \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: The TOTAL FINANCIAL OBLIGATION set in this order is \$ 1000. Restitution may be added in the future. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [] Not less than \$ _____ per month; [X] On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested. [X] Court Clerk's trust fees are waived. [X] Interest is waived except with respect to restitution.

4.4 (a). **PRISON-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) : The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant as follows:

The defendant is sentenced to the following term(s) of confinement in the custody of the Dept. of Corrections (DOC) to commence immediately; by _____ at _____ a.m./p.m.:

25 months (if crime after 6/6/06, 12 month minimum) on Count No. 2 ;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____ ;
_____ months (if crime after 6/6/06, 12 month minimum) on Count No. _____ ;

The above term(s) of confinement represents one-half of the midpoint of the standard range or, if the crime occurred after 6-6-06, twelve months if that is greater than one-half of the midpoint.

The terms imposed herein shall be served concurrently.
The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to cause No(s) _____
13-1-15302-1 ENT

The term(s) imposed herein shall run CONSECUTIVE CONCURRENT to any previously imposed commitment not referred to in this judgment.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): _____ day(s) or days determined by the King County Jail.
 Credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.
 The court authorizes earned early-release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).
 Jail term is satisfied; defendant shall be released under this cause.

While incarcerated in the Department of Corrections the defendant shall undergo a comprehensive substance abuse assessment and receive, within available resources, appropriate treatment services.

COMMUNITY CUSTODY: The court further imposes 25 months, one-half of the midpoint of the standard range, as a term of community custody during which time the defendant shall comply with the instructions, rules and regulations promulgated by the Department for conduct of the defendant during community custody; shall perform affirmative acts necessary to monitor compliance, shall obey all laws and comply with the following mandatory statutory requirements:

- (1) The defendant shall undergo and successfully complete a substance abuse program approved by the Division of Alcohol and Substance Abuse of the Dept. of Social and Health Services;
- (2) The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

NON-COMPLIANCE. RCW 9.94A.660(5): If the defendant fails to complete the Department's special drug offender sentencing alternative program or is administratively terminated from the program, he/she shall be reclassified by the Department to serve the balance of the unexpired term of sentence. If the defendant fails to comply with the conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

The court further imposes an additional term of Community Custody of 12 months upon failure to complete or administrative termination from DOSA program if any of these offenses is a crime against a person (RCW 9.94A.411) or a felony violation of RCW 69.50/52. The defendant in this event shall comply with the conditions of Community Custody set forth in section 4.7 herein.

4.4 (b) **RESIDENTIAL TREATMENT-BASED SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA)**(for sentences imposed after 10-1-05) (available if the midpoint of the standard range is 24 months or less): The Court finds the defendant eligible pursuant to RCW 9.94A.660 and, having reviewed an examination report and concluded that a DOSA sentence is appropriate, waives imposition of sentence within the standard range and sentences the defendant on Count(s) _____ as follows:

The defendant shall serve 24 months in community custody under the supervision of the DOC, on the condition that the defendant enters and remains in residential chemical dependency treatment certified under RCW Ch. 70.96 for _____ (between 3 and 6) months. The DOC shall make chemical dependency assessment and treatment services available during the term of community custody, within available resources.

Pending DOC placement in residential chemical dependency treatment, the defendant is ordered to attend a DOC day reporting center and follow all applicable rules. The defendant shall report to DOC to begin the DOC day reporting program within 24 hours of release.

The defendant shall comply with the treatment and other conditions proposed in the examination report, as mandated by RCW 9.94A.665(2)(a). Frequency and length of treatment and monitoring plan are specified in the **EXAMINATION REPORT ATTACHED AS APPENDIX 1**.

A progress hearing is set in this court, during the residential treatment, for _____ (90 days from sentencing date). Additional progress hearings may be set.

A treatment termination hearing is set in this court three months before the expiration of the community custody term, for _____ (date).

Before the progress hearing and the treatment termination hearing, the treatment provider and the DOC shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, including recommendations regarding termination from treatment.

NON-COMPLIANCE. RCW 9.94A.665(4): At the progress hearing or treatment termination hearing, the court may modify the conditions of community custody, authorize termination of community custody status on expiration of the community custody term, or impose a term of total confinement equal to one-half the midpoint of the standard range, along with a term of community custody.

4.5 **ADDITIONAL COMMUNITY CUSTODY CONDITIONS OF DOSA SENTENCE:** The court further imposes the following non-mandatory conditions of Community Custody (if checked):

The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.

~~The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.~~

Devote time to a specific employment or training.

Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.

Report as directed to a community corrections officer.

Pay all court ordered legal financial obligations.

Perform _____ community restitution hours on a schedule set by DOC.

Stay out of designated areas as follows: _____

Other conditions as set forth in **APPENDIX F**.

4.6 **ADDITIONAL CONFINEMENT:** The court may order the defendant to serve a term of total confinement within the standard range at any time during the period of community custody if the defendant violates the conditions of sentence or if the defendant is failing to make satisfactory progress in treatment.

4.7 **CONDITIONS OF COMMUNITY CUSTODY IMPOSED AFTER TERMINATION OF DOSA:**

- The defendant shall not use illegal controlled substances and shall submit to urinalysis or other testing to monitor compliance.
- The defendant shall not use any alcohol or controlled substances without prescription and shall undergo testing to monitor compliance.
- Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment.
- Report as directed to a community corrections officer.
- Pay all court ordered legal financial obligations.
- Stay out of designated areas as follows: _____

Other conditions: _____

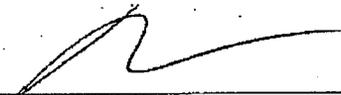
4.8 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in **APPENDIX G.**

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

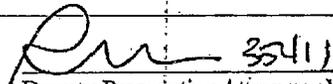
4.9 **OFF-LIMITS ORDER:** The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in **APPENDIX I** during the term of community supervision. **APPENDIX I** is attached and incorporated by reference into this Judgment and Sentence.

5.0 **NO CONTACT:** For the maximum term of 10 years, defendant shall have no contact with _____

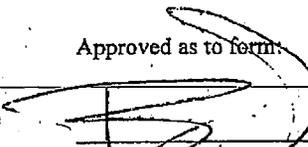
Date: 10-10-14



JUDGE
Print Name: _____

Presented by:


Deputy Prosecuting Attorney, WSBA # 33411
Print Name: _____

Approved as to form:


Attorney for Defendant, WSBA # 24701
Print Name: _____

1514 10675 KEMP
10/10/2014

FINGER PRINTS



RIGHT HAND
FINGERPRINTS OF:
MATTHEW RAYDOUGLAS
SCHLEY

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

M Schley
DO

Dated: 10/10/14

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

[Signature]

JUDGE

By: *[Signature]*

DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____
CLERK OF THIS COURT, CERTIFY THAT THE
ABOVE IS A TRUE COPY OF THE JUDGMENT AND
SENTENCE IN THIS ACTION ON RECORD IN MY
OFFICE.
DATED: _____

S.I.D. NO. WA15150497

DOB: _____

SEX: Male

RACE: White/Caucasian

CLERK
By: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 14-C-0184-2 KNT

vs.

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

MATTHEW RAY DOUGLAS SCHLEY,

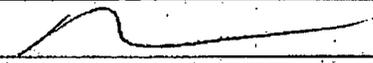
Defendant.

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
Felon In Possession Of Firearm And Ammunition	12-17-2002	AF	01-cr-02093	U.S. District Court Spokane WA
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explosive lic required	12-30-1999	AF	99-1-00899-0	Lewis Superior Court WA
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burg 2	09-22-1989	JF	89-8-00106-9	Mason Superior Court WA

The following prior convictions were counted as one offense in determining the offender score
(RCW 9.94A.525(5)):

Date: 10.10.14



JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MATTHEW RAYDOUGLAS SCHLEY,

Defendant.

No. 14-C-01874-2 KNT

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

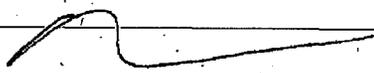
(2) **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 10.10.14



JUDGE, King County Superior Court

APPENDIX D



**CHEMICAL DEPENDENCY
DOSA AGREEMENT
(PRISON, RESIDENTIAL, AND COMMUNITY)**

The 1999 Legislature passed a Special Drug Offender Sentencing Alternative – SHB 1006. This legislation was effective on July 25, 1999, and applies to all offenders who committed their crime on or after that date.

1. Your Judgment and Sentence (J&S) indicates that the sentencing judge has granted you a Drug Offender Sentencing Alternative (DOSA).
2. A DOSA sentence requires that you participate in treatment offered by the Department of Corrections or a contracted community residential program. You will undergo a comprehensive substance abuse assessment and will receive treatment services based on custody level, capacity, length of total confinement, and treatment needs.
3. You will be required to maintain your current DOSA eligibility status as stated in DOC 670.655 Special Drug Offender Sentencing Alternative.
4. If you have a mental impairment that would prevent your participation and/or completion in any Chemical Dependency treatment modality, you will be referred to a community based treatment provider in order to ensure that the conditions of your DOSA sentence are met.
5. You will be on supervision in the community after release from Prison or residential treatment. During this time, you will be required to continue in substance abuse treatment on an outpatient basis. The length of your outpatient treatment will be determined by your treatment needs and the treatment provider but not less than six (6) months.
6. If you are approved to seek treatment resources outside of the Department and at your own expense, failure to pay for these services may constitute a violation of your supervision.
7. If you fail to successfully complete the requirements set forth in the J&S and/or conditions imposed by the Department, you will be subject to administrative sanctions by the Department, which may include the revocation of your DOSA sentence. The Department may reclassify you and impose the unexpired term of the original sentence, as imposed by the court.
8. As part of your DOSA sentence, the transferring facility will develop an appropriate transition plan. The plan may include transfer to a designated Work Release designed to accommodate your individual treatment needs.
9. If you refuse to abide by the terms and conditions imposed by the treatment program, which includes the use of any alcohol and/or drugs, you may be referred to the Department's Hearings Unit or the court for possible revocation of your DOSA sentence, which can result in reclassification to serve the remaining original balance of your sentence as imposed by the sentencing court.
10. For Prison DOSAs:

After alternatives to retain you in the program have been addressed and it has been concluded that termination is appropriate, you may be "administratively" terminated from the DOSA chemical dependency treatment program as determined and documented by the primary CD professional and based on:

- a) A pattern of behavioral issues that have been continual and responses to interventions have been unsuccessful.
- b) A lack of progression towards the goals of a treatment plan as determined by the primary CDP and staffed with his/her supervisor.
- c) Any major infraction that causes a change in custody level or the violation of condition(s) outlined in the CD Treatment Participation Requirements DOC 14-039 or the DOSA Agreement DOC 14-042.
- d) An offender's continual behavior that causes placement in an Intensive Management Unit for a length of time whereby s/he is unavailable to participate in CD treatment based on the offender's ERD and the triage for admission to CD services.

I have read or have had read to me the terms and conditions of this agreement, and:

I agree that I will fully participate in all required substance abuse treatment programs.

I am refusing participation in the DOSA treatment program. I understand that a Department administrative hearing will be held and I may be reclassified and serve the unexpired term of my original sentence or I may be referred back to the sentencing court for reconsideration of my sentence.

MATTHEW SCHLEY

Name (print)

746992

DOC Number

Matthew Schley

Signature

01-~~18~~²¹-15

Date

GRAHAM DUNN

Staff Witness (print)

GRAHAM DUNN COP

Signature

01.21.2015

Date

The records contained herein are protected by the Federal Confidentiality Regulations 42 CFR Part 2. The Federal rules prohibit further disclosure of this information to parties outside of the Department of Corrections unless such disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2.

APPENDIX E



**CHEMICAL DEPENDENCY
TREATMENT PARTICIPATION REQUIREMENTS**

Program Branch Site: OCC
Treatment Modality: ITR/TC
Start Date, Days/Times: Wednesday 01.21.2015 8:30 am

TREATMENT PARTICIPATION EXPECTATIONS

In order to participate as a patient in the DOC Chemical Dependency treatment program, I HEREBY AGREE TO:

1. Remain free of alcohol and other drug use - I will provide documentation per DOC 420.380 Drug/Alcohol Testing for any prescribed medication.
2. Participate in UA and other drug testing per DOC 420.380 Drug/Alcohol Testing.
3. Refrain from any other criminal activity - I will report any subsequent arrests or legal proceedings while I am in treatment.
4. Refrain from any physical violence, threats or acts of physical violence, abusive arguing, or inappropriate language.
5. Attend all regularly scheduled individual and group sessions - I will arrive on time and remain until excused by my counselor.
6. Actively participate in counseling sessions, and in both planning and implementing my initial and continued care treatment plans.
7. Respect and protect the privacy, rights, and confidentiality of other patient/offenders.
8. Ask my treatment counselor to explain any program expectations, rights, or responsibilities that I do not fully understand, and acknowledge any difficulty I may have in reading, writing, or comprehending English
9. Sign and abide by DOC 14-042 Drug Offender Sentencing Alternative (DOSA) Agreement, if I received a DOSA sentence.
10. Recognize that I am receiving treatment in a correctional setting. I understand that there may be situations in which, due to safety and security, I may be viewed by individuals not engaged in chemical dependency treatment. I further understand that the information discussed in my group and individual treatment sessions will be maintained in the strictest confidentiality.

TREATMENT COMPLETION PROTOCOL: In order to successfully complete treatment:

1. I will attend and participate in treatment as scheduled and recommended by my assessment and admission counselor(s),
2. I will complete my individual treatment plan as agreed upon with my treatment counselor, and
3. I will remain in treatment for at least 3 months in the community and until I receive a successful completion certificate.

TREATMENT TERMINATION PROTOCOL: Chemical Dependency Professionals have the authority to request that I submit to drug testing per DOC 420.380 Drug/Alcohol Testing, and to dismiss patient/offenders from class, groups, or the program for violation of these rules or "just cause":

The following behaviors MAY result in termination from the Department's CD treatment program:

1. Misconduct which does not rise to the level of threatening behavior, but is harmful or disruptive to the treatment environment.
2. Two treatment absences within the same modality.
3. Failure to abide by the expectations outlined above, including failure to participate or make progress in treatment as prescribed and agreed upon in my individualized treatment plan.

The following behaviors WILL result in termination from the Department's CD treatment program:

1. Any threat or act of violence toward staff or another patient.
2. Possession of a weapon on or at the treatment site.
3. Gang related activities or harassment of staff or another patient.

4. Sexual misconduct toward staff or another patient.
5. Failure to appear and submit as directed to 3 urine/drug tests and/or receiving 3 positive tests within the same treatment modality. I understand that "positive" includes insufficient samples, adulterants, and non-prescribed or unreported medication.
6. Three absences within the same treatment modality. I understand that exceptions may be allowed in the event of a legitimate, verifiable reason for an absence, such as injury, illness, or incarceration.
7. Violating another patient's privacy and confidentiality treatment rights.

GRIEVANCE PROCEDURE: Should a patient/offender consider him/herself to have been treated unfairly, the DOC 550.100 Offender Grievance Program is available upon request.

I hereby agree to having read, or had read to me, all the above terms and conditions, and agree to abide by them.

Matthew Schley
 Patient/Offender Signature

1-21-15
 Date

K. Grady - Nurse COP
 Counselor Signature

01.21.2015
 Date

The records contained herein are protected by the Federal Confidentiality Regulations 42 CFR Part 2. The Federal rules prohibit further disclosure of this information to parties outside of the Department of Corrections unless such disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2.

APPENDIX F



SERIOUS INFRACTION REPORT

Facility: OCC

Infraction Group Number: 1

OMNI 1915

EMPLOYEE REPORT

Name: TANG, Enrico A. DOC #: 372961 Date: 1/26/2015
Number of rule(s) violated: 505 - FIGHTING Time: 0900
Place: Living Unit

Details in full: At the conclusion of an investigation, it was determined that, on 1-26-15 at approximately 0900 hours during an assigned Therapeutic Community Housing Unit Cleaning Day, Offender Tang, E #372961 got into a verbal argument with Offender Schley, M. #746992. Tang stated the verbal argument ended with Schley swinging at Offender Tang, but missing. Tang stated Schley then grabbed Tang's throat and arm. Tang then admitted that he hit Schley a couple of times then kicked him off the bed onto the floor. The body of this infraction is a summary of confidential information used as evidence to support this infraction.

Witnesses:

LORI K. LAWSON

Lori K. Lawson

Reporting Employee (Print)

Reporting Employee Signature

FACT FINDING DURING HEARING

Was offender informed of right to remain silent? [X] Yes [] No Date of Hearing: 2/9/2015

PLEA: GUILTY
NOT GUILTY 505
NO PLEA

Did the offender make statement after being informed of his/her rights? [X] Yes [] No
If so, what? Schley was arguing with another offender about a mop. Schley then started to argue with me calling me names. I told him if you're going to do something then do something. Schley swung at me and missed. He then grabbed my throat and left arm. When we were on the bed I hit him twice in the face. I finally kicked him off of the bed. We stopped and I apologized to him.

DECISION

FINDING: GUILTY 505
NOT GUILTY
DISMISSED
REDUCED

Facts and evidence found: Offender admits to telling another offender during a verbal argument that if you're going to do something then do it which resulted in a physical altercation between this offender and his combater.

Sanction(s): 15 days segregation applied
15 days loss of good conduct time applied

Reason for sanction(s): Credit for time served in Segregation. First infraction on record.

Recommendations (Non-Sanction): Request a suitability hearing with FRMT

Brian McPherson
Hearing Officer (Print)

[Signature]
Hearing Officer Signature

2/10/15
Date

John Aldana
Superintendent/designee (Print)

[Signature]
Superintendent/designee Signature

2/10/15
Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

SCANNER

APPENDIX G

Inmate: SCHLEY, Matthew Raydouglas (746992)

Gender: Male	DOB: [REDACTED]	Age: 39	Category: Regular Inmate	Body Status: Active Inmate
RLC: HV	Wrap-Around: No	Comm. Concern: No	Custody Level: Medium	Location: CRCC - A / AD061L
ERD: 08/02/2017				CC/CCO: Sawyer, Ann M

Details

Text

Date & Time Created: 04/16/2015 10:14 AM
 Offender Location At Occurrence: WCC-RC
 Date & Time Of Occurrence: 04/16/2015
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Soliz, Dominga
 Events: Hearings Appeal (HA)

Mailed appeal panel decision authored by appeal panel lead Sherry Ray to P this date. Panel decision was to affirm the decision of the hearing officer at hearing held on 4.2.15.

Date & Time Created: 04/02/2015 12:46 PM
 Offender Location At Occurrence: WCC-RC
 Date & Time Of Occurrence: 04/02/2015
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Jackson, Sheryl L
 Events: Hearings Officer (HR)

762 DOSA REVOCATION HEARING HELD THIS DATE AT WCC. CCI III TIPTON PRESENTED THE CASE. P FOUND GUILTY OF 1 ALLEGATION. 1) #762 O/A 02/10/2015. DOSA SENTENCE WAS REVOKED ON CAUSE #131153021.

Date & Time Created: 03/19/2015 12:41 PM
 Offender Location At Occurrence: WCC-RC
 Date & Time Of Occurrence: 03/19/2015
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Wichert, Kelly J
 Events: Hearings Officer (HR)

Was scheduled for 762 hearing at WCC. I determined that another Hearing Officer needed to hear as I heard the co-defendants hearing. Normally I could hear and remain non biased however not in this case. Will be set over for a couple weeks down rd. No loss of liberties as he is currently serving DOSA sentence as an Inmate. Schley agreed with the postponement and he was notified. Records also notified of reschedule.

Date & Time Created: 02/11/2015 07:43 AM
 Offender Location At Occurrence: OCC
 Date & Time Of Occurrence: 02/10/2015 05:00 PM
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Graham-Dunn, Kittle L
 Events: Substance Abuse (JH)

PO is discharged from LTT/TC due to non-chemically related rule violation with a recommendation to continue and complete LTT program. CC notified by email.

Date & Time Created: 01/29/2015 11:31 AM
 Offender Location At Occurrence: OCC
 Date & Time Of Occurrence: 01/28/2015 07:30 AM
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Graham-Dunn, Kittle L
 Events: Substance Abuse (JH)

PO is non-compliant with LTR/TC treatment expectations, due to placement in SHU for fighting with another program participant. CC notified by email.

Date & Time Created: 01/28/2015 06:35 AM
 Offender Location At Occurrence: OCC
 Date & Time Of Occurrence: 01/28/2015
 DOC No.: 746992
 Offender Name: SCHLEY, Matthew Raydouglas
 Author Name: Obenland, Sheri M
 Events: Behavioral (JA)

P and Offender Tang #372961 were placed in segregation for fighting on 1/27/15. Both fighters had entered into the TC program prior to the fight.

Details

Date & Time Created: 01/27/2015 02:53 PM
Offender Location At Occurrence: OCC
Date & Time Of Occurrence: 01/22/2015 08:00 AM
DOC No.: 746992
Offender Name: SCHLEY, Matthew Raydouglas
Author Name: Graham-Dunn, Kittle L
Events: Substance Abuse (JH)

Text

PO attended the scheduled first LTR group activity on 01.22.2015. P is assigned to CDP Dunn. CC notified by email.

Date & Time Created: 01/22/2015 08:29 AM
Offender Location At Occurrence: OCC
Date & Time Of Occurrence: 01/21/2015 08:30 AM
DOC No.: 746992
Offender Name: SCHLEY, Matthew Raydouglas
Author Name: Graham-Dunn, Kittle L
Events: Substance Abuse (JH)

PO (patient/offender) attended scheduled Substance Use treatment Admit appointment on 01.21.2015. P to begin treatment groups on 01.22.2015@OCC. PO is assigned to CDP Dunn. Consistent with DOC FORM 14-039, Treatment Participation Requirements, DOC patient/offenders (PO) involved in substance abuse treatment are required to abstain from all mood altering substance including cannabis and alcohol. The PO was informed of this requirement during the admission appointment and signed DOC for 14-039. Please complete an admission urinalysis test for baseline and as part of the patient's ongoing drug testing requirements, please include testing for cannabis. I am requesting an admit UA. CC notified by email on 01.22.15.

Date & Time Created: 01/12/2015 08:44 AM
Offender Location At Occurrence: OCC
Date & Time Of Occurrence: 01/09/2015
DOC No.: 746992
Offender Name: SCHLEY, Matthew Raydouglas
Author Name: Capp, Lori R
Events: Comment (CM)

Offender has signed DOC 21-992 "New Offender Orientation Checklist" and completed the OCC Orientation on 01/09/14. Hard copy of DOC 21-992 scanned to OnBase.

Date & Time Created: 01/08/2015 07:16 AM
Offender Location At Occurrence: OCC
Date & Time Of Occurrence: 01/08/2015
DOC No.: 746992
Offender Name: SCHLEY, Matthew Raydouglas
Author Name: Gillespie, Thomas F
Events: Comment (CM) ,
Release Planning/Issues (RP)

Offender Schley says he is willing to program while in prison and knows as part of his DOSA sentence he will need to participate in CD tx. He says he has family/community support in King Co (his country of origin is Mason). He has no firm release plan at this time. He says he has a home he owns in S. King Co but he is unsure if he will be able to go there or not. He says he completed the 11th grade and ultimately obtained a GED. He says he has worked as a millwright, electrician and welder in the community. Offender Schley was present for the intake interview with CC3 Gillespie and participated in the process. He stated that he understood all facility expectations and will comply with his facility plan. I have reviewed the in-effect plan and verified that risk areas are identified. He has been given a copy of his signed letter of expectation. He arrived at OCC on 1/7/15. He met with me and his classification questions were answered. His risk areas have been identified on the ONA and they are appropriate. He was referred for programming to address needs areas. Separation concerns were addressed and prohibited placement at WSP, AHCC, and AHCC-MS. He has been apprised that he can purchase his criminal conviction record from WSP. He was notified of his NCO's and he understands he will be held accountable for any violations. He is currently eligible for 10 day release. He was targeted MI1 by HQ at his initial on 4/23/14. An ORP will be submitted 6 months before his ERD.

APPENDIX H



**CHEMICAL DEPENDENCY
CLINICAL STAFFING**

ERD: 10.23.2015 (court ordered)

ISRB Other DOSA

P/O Name: SCHLEY, Matthew

DOC#: 746992

Level of care/ Phase: 111.3 / Discharge

Date: 02.10.2015

Drug of choice: Methamphetamine

Last use: 02.05.2014

Facility: OCC

Admitted: 01.22.2015

Purpose for Staffing:

Infraction TX Plan C/I Info Sharing Phase Up

(Only Complete Dimensions With Clinical Concerns)

Dimension 1: Withdrawal: 0; Admit UA requested.
Dimension 2: Biomedical Complications: 0; no current problems identified. TB screen completed.
Dimension 3: Emotional/Behavioral Complications: 2; P has dx in this dimension and receiving monitoring and rx. P has substance use-related anti-social behaviors, STG suspected White Supremacist/Nationalist. P continued substance use against medical advice, and has family relationship problems due to his substance use, parental rights terminated in 2002, Significant Other is currently receiving tx for substance abuse.
Dimension 4: Readiness for Change: 3; P in Precontemplation stage of change, tx motivated by DOSA. PO received WAC505-Fighting during first week of tx.
Dimension 5: Relapse Potential: 3; P reports ability to maintain abstinence in controlled environment. 20x attempts to discontinue use, unsuccessful.
Dimension 6: Recovery Environment (For transfer to community): 3; P has poor job hx due to substance use, continues association w/ anti-social peers, significant family hx of substance use, homeless, minimal family support from an Aunt.
Specific Question/Statement for Staff: Notification of Removal/Discharge from LTR/TC due to non-chemically related rule violation.
Action Plan: <i>Remove / administrative termination from LTR/TC</i> Discharge on 02.10.2015, prepare TARGET Discharge, Chrono. <i>Kgd COP</i>

Treatment Plan Written Yes No Problem #: 1,2 Dimension #: 3

Staff Signature	Date	Staff Signature	Date
<i>Kghaton-Dunn COP</i>	<i>02.10.15</i>	<i>St. Peter</i>	<i>2/10/15</i>
<i>JZ COP</i>	<i>2-10-15</i>	<i>JSS COP</i>	<i>2/10/15</i>
<i>Shea, COP</i>	<i>2-10-15</i>	<i>Noni Lawson cus</i>	<i>2/10/15</i>
<i>James Walsh COP</i>	<i>2/10/15</i>	<i>Allice</i>	<i>2/10/15</i>
<i>E</i>	<i>2/10/15</i>		

APPENDIX I



INITIAL SERIOUS INFRACTION REPORT

Date of Infraction 02/19/15	Offender Name (Last, First) SCHLEY, Matthew	DOC Number 746992	Housing Assignment WCC-RC R5- 5F10U
Rule Violation #(s) 762			
Time Occurred 12:00 pm	Place of Incident (Be Specific) OCC- Ozette Programming Complex	Date Occurred 02/10/15	
Witness (1)	Days Off	Witness (3)	Days Off
Witness (2)	Days Off	Witness (4)	Days Off

NARRATIVE

State a concise description of the details of the rule violations, covering all elements and answering the questions of When? Where? Who? What? Why? and How? Describe any injuries, property damage, use of force, etc. Attach all related reports.

On 02/10/15, the Multi-Disciplinary Team (MDT) made the decision to terminate Inmate (I/M) Schley from his mandatory DOSA Substance Abuse Treatment program. I/M Schley violated conditions of the DOSA Agreement and DOC 670.655 Special Drug Offender Sentencing Alternative, Page 8, VI -A.-1. -c. by incurring any major infraction that causes a change in custody level or the violation of conditions outlined in the CD Treatment Participation Requirements (DOC 14-039) or the DOSA agreement (DOC 14-042). Specifically, the Department has established a zero-tolerance policy with regard to violence within its CD programs, as reflected in the CD Treatment Participation Requirements, which state that threats or violence toward staff or another patient WILL result in termination from the Department's CD treatment program.

I/M Schley arrived at OCC on 01/07/15 serving two King County DOSA sentences.

On 01/21/15 I/M Schley was assessed at a III.3 Level of Care, and reviewed and signed the DOSA Agreement and CD Treatment Requirements, agreeing to participate, on that date. He began programming in the OCC Therapeutic Community Long-Term Treatment Chemical Dependency Program on 01/22/15.

On 01/27/15, I/M Schley was placed in the OCC Secured Housing Unit (SHU) On Administrative Segregation status, pending investigation of his involvement in a fight with another offender, after both were found to have injuries consistent with involvement in a physical altercation. Investigation determined that the incident occurred in the living unit on an assigned Therapeutic Community Housing Unit Cleaning Day, after a verbal argument escalated when Schley threw a punch which missed, and then grabbed the other offender by the throat and arm. The other offender hit Schley twice in the face and then kicked him off the bed onto the floor. Both were subsequently found guilty of violating WAC 505 (fighting), with sanctions including 15 days disciplinary segregation. He was transferred to WCC-RC on 02/11/15. The disciplinary findings were affirmed upon appeal, on 12/17/15.

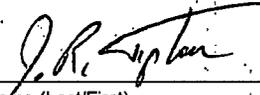
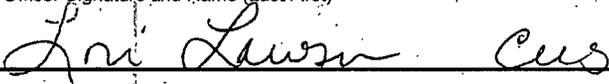
2/17/15

On 02/10/15, I/M Schley was administratively terminated from the OCC Therapeutic Community Chemical Dependency Treatment Program, due to his violation of mandatory Treatment Programming Requirements, specifically violence against another community member.

At the time of his termination, I/M Schley had made no progress in treatment, and remained in Phase One of the program after only a few days enrollment in the program.

I/M Schley is in violation of WAC 762 (DOSA failure) due to administrative termination from his DOSA Substance Abuse Treatment Program for the above noted violation of the DOSA Agreement and mandatory CD Treatment Participation Requirements.

Reporting Staff Name (Last, First) (Print Name) Tipton, J. R.		Shift Days	Days Off Sat-Sun
Evidence Taken <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Evidence Case Number	Evidence Locker Number	Photo Submitted <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Disposition Of Evidence (If Not Placed In Locker)		Placed in: Pre-Hearing Confinement <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date _____ Administrative Segregation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date _____	
NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT			
Last, First 1)	<input type="checkbox"/> Staff	<input type="checkbox"/> Volunteer/Visitor/Other	<input type="checkbox"/> Offender DOC#
Last, First 2)	<input type="checkbox"/> Staff	<input type="checkbox"/> Volunteer/Visitor/Other	<input type="checkbox"/> Offender DOC#
RELATED REPORTS ATTACHED <input checked="" type="checkbox"/> Supplemental <input type="checkbox"/> Medical <input type="checkbox"/> Staff Witness Statements <input type="checkbox"/> Other (Specify)			

Reporting Staff Signature 	Date 02/19/15
Infraction Review Officer Signature and Name (Last/First)  Cus	Date 2/19/15

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

APPENDIX J



**DRUG OFFENDER SENTENCING ALTERNATIVE
NOTICE OF ALLEGATION, HEARING,
RIGHTS, AND WAIVER**

(FOR USE IN PRISON AND WORK RELEASE)

Offender Name Schley, Matthew	DOC # 746992	Date 03/03/15	Present Location WCC-RC — R5 / 5F10U
Type of Hearing: DOSA REVOCATION HEARING <input checked="" type="checkbox"/> 762			
Revocation of your DOSA sentence is under consideration for the following alleged violation(s): Failure to complete or administrative termination from a DOSA substance abuse treatment program on or about: 02/10/15			
You are hereby notified that a Department of Corrections hearing is scheduled for:			
Hearing Date 3/19/15	Time 4-2-15 (LL) : TSD	Location WCC	Cause # 13-1-15302-1 14-C-01874-2

- The Department of Corrections intends to present the following documents / reports and / or call the following witnesses during the hearing:
- A. Initial Serious infraction report citing infraction #762 dated 02/19/15
 1. Warrant of Commitment(s) dated 10/13/14
 2. Judgment and Sentence(s) dated 10/10/14
 3. Facility Plan (2) dated 11/06/14, 01/08/15
 4. Drug Offender Sentencing Alternative (DOSA) Agreement dated 01/21/15
 5. Substance Abuse Recovery Unit Compound Release of Info dated 01/21/15
 6. Chemical Dependency Dimensional Analysis Assessment dated 11/04/14 3.3, updated 02/11/15
 7. Chemical Dependency Assessment Summary updated 01/02/15 ASAM 3.3, updated 02/11/15
 8. CD Treatment Participation Requirements dated 01/21/15
 9. Patient/Offender Contract for Change dated 01/21/15
 10. Treatment Plans (2)
 11. Community Rules: Cardinal, Major, House
 12. Cardinal Rule Violation dated 01/27/15
 13. TC Awareness To/From log, TC Push-Up Written log, TC Push-Up Received log
 14. Progress notes, significant event notes chronological order
 15. Infraction History
 16. Big Brother/Little Brother Orientation sheet 01/21/15 and Role Induction Sheet dated 01/21/15
 17. Signed staffing form from multidisciplinary treatment team dated 02/10/15
 18. Chemical Dependency Discharge Summary dated 02/10/15

You have been charged with the above alleged violation(s) of your Drug Offender Sentencing Alternative (DOSA) Sentence. You have the following rights:

- ◆ To receive written notice of the alleged violation of your DOSA sentence.
- ◆ To have an electronically recorded hearing conducted within 5 working days of service of this notice.
- ◆ To have a neutral hearing officer conduct your hearing.
- ◆ To examine, no later than 24 hours before the hearing, all supporting documentary evidence which the Department of Corrections intends to present during the hearing.
- ◆ To admit to the allegation. This may limit the scope of the hearing.

- ◆ To be present during the fact-finding and disposition phases of the hearing.
- ◆ To present your case to the Hearing Officer. If there is a language or communication barrier, the Hearing Officer will appoint a person qualified to interpret or otherwise assist you. However, no other person may represent you in presenting your case. There is no statutory right to an attorney or counsel and without prior written approval from the Hearings Program Administrator, no attorney will be permitted to represent you.
- ◆ To confront and cross-examine witnesses appearing and testifying at the hearing.
- ◆ To present documentary evidence on your behalf.
- ◆ To testify during the hearing or to remain silent. Your silence will not be held against you.
- ◆ To have witnesses provide testimony on your behalf, either in person or in a witnessed statement / affidavit. However, outside witnesses may be excluded due to institutional concerns. The Hearing Officer may also exclude persons from the hearing upon a finding of good cause. In addition, the Hearing Officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of your presence when there is a substantial likelihood that the witness will not be able to

give effective, truthful testimony in your presence during the hearing. In either event, you may submit a list of questions to ask the witness(es). Testimony may be limited to evidence relevant to the issues under consideration.

- ◆ To receive a written Hearing and Decision Summary including the evidence presented; a finding of guilty or not guilty; and the reasons to support the findings of guilt; and the sanction imposed, immediately following the hearing or, in the event of a deferred decision, within 2 days unless you waive this timeframe.
- ◆ To request a copy of the audio recording of the hearing.
- ◆ To appeal a sanction to the Regional Appeals Panel, in writing, within 7 calendar days of your receipt of the Hearing and Decision Summary. You may also file a personal restraint petition to appeal the Department's final decision through the Court of Appeals.
- ◆ If I waive my right to be present at the hearing, I understand that the Department of Corrections may conduct the hearing in my absence and may impose sanctions that could include loss of my liberty and / or reclassification / revocation of my DOSA sentence.
- ◆ To waive any or all of the above rights.

DOC REGIONAL APPEALS PANEL
 1016 So. 28th Street 3rd Floor
 Tacoma, WA 98409

This is the same address used to request a copy of the audio recording as well.

Admission to Allegation

I admit to the following allegation:		
Offender Signature	Date	Time
Witness Signature/Position	Date	Time

Waiver of Hearing

Offender Signature	Date	Time
Witness Signature/Position	Date	Time

In admitting the violation(s) and waiving the hearing, I understand that the Department of Corrections may still schedule and conduct a hearing to accept my waiver. I further understand that if I am found guilty, the Department may respond by imposing:

1. A loss of earned early release credits; and / or
2. Recommending transfer to another facility; or
3. Reclassifying / revoking the sentence structure in this case to require that the remaining balance of the original sentence be served.

I have read and understand the allegation, the hearing notice, and my rights as described:

ms 3-30-15 9:36 AM ms

Offender Signature <i>Matthew Schley</i>	Date 3-16-15	Time 10:30
Witness Signature/Position <i>Laura Cole</i>	Date 3-16-15	Time 10:30

3-30-15 9:35 AM
he le

TYPIST/CCO/09-244
DATE

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: ORIGINAL - Hearing File COPY - Offender

APPENDIX K



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

DOSA 762 INFRACTION HEARING REPORT

OFFENDER NAME: SCHLEY, Matthew
CRIME: Burglary 2nd Degree
Theft 1st Degree

DATE: 04/02/2015
DOC NUMBER: 884527

COUNTY OF
CONVICTION: King

CAUSE #: Cause#
131153021 Burglary
2nd Degree
141018742 Theft in
the 1st Degree

A DOSA 762 Hearing was held on 04/02/2015, at the Washington Corrections Center (WCC), regarding the following alleged infraction of the conditions of DOSA for Mr. Mathew Schley. The hearing was conducted by Hearing Officer Sheryl Jackson and parties present for the hearing were: Class Counselor III (CCIII) Tipton; Community Correctional Officer (CCO) Laura Cole and Mr. Schley. Those who will be telephonically testifying are; Chemical Dependency Program Manager (CDPM) Tamera Zander; Correctional Program Manager (CPM) Jason Bennett; Correctional Unit Supervisor (CUS) Lorie Lawson.

Upon convening the hearing, I determined that Mr. Schley had received proper service of the Notice of Allegations, Hearing, Rights, and Waiver and was served notice on 03/30/2015. I found that he had previously been provided with copies of all of the documentary evidence to be used against him during the hearing. CCO Cole reported that at WCC there is a policy prohibiting any offender from having access to any legal documentation within their specific units. Offenders are served notification of discovery and given an opportunity to review discovery at time of service. If additional time is needed, discovery documents are logged into the Law Library for offenders to have access. CCO Cole testified that she served Mr. Schley and gave him adequate time to review his discovery packet. At the time of the hearing I confirmed with Mr. Schley if he felt he had sufficient time to review his discovery and if he in fact felt comfortable to proceed with his hearing as scheduled. Mr. Schley acknowledged he was ready to proceed.

1

I provided Mr. Schley with notice of the right to appeal, the address for filing the appeal and an optional form to be used to file an appeal. Mr. Schley acknowledged that he understood his hearing and appeal rights.

Preliminary Matters:

None reported.

The Department of Corrections alleged that the following **infraction** was committed:

1. 762 - Infraction - Failure to complete or administrative termination from a DOSA substance abuse treatment program on or about 02/10/15.

The offender entered the following **plea** to each infraction:

1. Not Guilty

The hearing officer made the following **findings** as to each infraction:

1. Guilty

Evidence Relied Upon:

CCIII Tipton On 02/10/15, the Multi-Disciplinary Team (MDT) made the decision to terminate Inmate (I/M) Schley from his mandatory DOSA Substance Abuse Treatment program. I/M Schley violated conditions of the DOSA Agreement and DOC 670.655 Special Drug Offender Sentencing Alternative, Page 8, VI -A.-1. -c. by incurring any major infraction that causes a change in custody level or the violation of conditions outlined in the CD Treatment Participation Requirements (DOC 14-039) or the DOSA agreement (DOC 14-042). Specifically, the Department has established a zero-tolerance policy with regard to violence within its CD programs, as reflected in the CD Treatment Participation Requirements, which state that threats or violence toward staff or another patient WILL result in termination from the Department's CD treatment program.

I/M Schley arrived at Olympic Correctional Center (OCC) on 01/07/15 serving two King County DOSA sentences.

On 01/21/15 I/M Schley was assessed at a III.3 Level of Care, and reviewed and signed the DOSA Agreement and CD Treatment Requirements, agreeing to participate, on that date. He began programming in the OCC Therapeutic Community Long-Term Treatment Chemical Dependency Program on 01/22/15.

On 01/27/15, I/M Schley was placed in the OCC Secured Housing Unit (SHU) On Administrative Segregation status, pending investigation of his involvement in a fight with another offender, after both were found to have injuries consistent with involvement in a physical altercation. Investigation determined that the incident occurred in the living unit on an assigned Therapeutic Community Housing Unit Cleaning Day, after a verbal argument escalated when Schley threw a punch which missed, and then grabbed the other offender by the throat and arm. The other offender hit Schley twice in the face and then kicked him off the bed onto the floor. Both were subsequently found guilty of violating WAC 505 (fighting), with sanctions including 15 days disciplinary segregation. He was transferred to WCC-RC on 02/11/15. The disciplinary findings were affirmed upon appeal, on 02/17/15.

On 02/10/15, I/M Schley was administratively terminated from the OCC Therapeutic Community Chemical Dependency Treatment Program, due to his violation of mandatory Treatment Programming Requirements, specifically violence against another community member.

At the time of his termination, I/M Schley had made no progress in treatment, and remained in Phase One of the program after only a few days enrollment in the program.

I/M Schley is in violation of WAC 762 (DOSA failure) due to administrative termination from his DOSA Substance Abuse Treatment Program for the above noted violation of the DOSA Agreement and mandatory CD Treatment Participation Requirements.

Mr. Schley pled not guilty to the listed allegation. He reported that in fact there was no altercation between himself and another offender. Mr. Schley indicated that any marks on his physical body were from him having a nightmare and believes he injured himself in his sleep. Mr. Schley believed that the specific inmates (Confidential Informants - CI) heard rumors about an altercation and reported said information to staff. This is why Mr. Schley believes he received the infraction.

At the time of the infraction Mr. Schley supplied 5 witness statements that stated they did not see any altercation between Mr. Schley and another offender. Mr. Schley felt that the Prison Hearing Officer found him guilty solely on the word of the CI and photographs that were not consistent with a fight but in fact are marks resulting from his sleep disorder.

I asked Mr. Schley if he understood that the major infraction #505 was not the matter at hand for this current hearing process and that the evidence presented during the major infraction hearing concerning the #505 could not be in essence re-heard today. I also explained to Mr. Schley that what is being considered today was the totality of his behavior that lead the treatment program to take action and began the termination process thus the #762 DOSA revocation hearing. Mr. Schley stated he understood but the #505 is what the Hearing Officer found him guilty of which generated the treatment program to take action. Mr. Schley also believes the #505 major infraction should not be the basis for a revocation because the standard of evidence was only "some" evidence.

Mr. Schley discussed case law believing that the infraction is not sufficient evidence to terminate his DOSA sentence.

CUS Lawson testified that DOC's prison standard of evidence is "some evidence" and the information was reviewed by her however, she did not score the evidence. The specific documents of the major infraction packet in which she did score, did meet the some evidence standard as required. CUS Lawson denies receiving anything information from the Mental Health counselor, per a statement made by Mr. Schley at the hearing. She testified that she believed that the some evidence standard was met based on her training and professional experience, and in essence Mr. Schley engaged in a fight as the major infraction information indicated.

CPM Bennett testified that he reviewed Mr. Schley's appeal information, the original infraction packet, and a full copy of the CI information received. CPM Bennett feels confident that DOC's policies and procedures concerning the process was followed properly.

CDPM Zander testified that Mr. Schley had only been in the DOSA program for approximately 7 days however, the program has a no tolerance to violence in the program and Mr. Schley was fully informed of this fact via several ways prior to his entering into the program but also through the DOSA agreement he signed, Treatment participation requirements, and through the Big Brother/Little Brother orientation form. Offenders are orientated a day prior to entering the program. CDPM Zander also testified that some major program rule violations include: violence and sexually acting out." CDPM Zander quoted from the Big Brother/Little Brothers orientation from. "I have been orientated to the rules, requirements and procedures of the TC program, any questions I had were answered by my Big brother or an orientation member. I have been informed; any act or threat of violence places me in jeopardy of termination from treatment. I have been instructed how to report threats/acts of violence and to avoid altercations." Mr. Schley initialed each item on said orientation form and signed the form 01/21/2015.

Disposition:

The disposition **recommendation** of the Classification Counselor:

CCIII Tipton recommended that Mr. Schley's DOSA sentence be revoked.

The disposition **recommendation** of the offender:

Mr. Schley appeared frustrated but stated that he still does not believe his DOSA sentence should be jeopardized based on an infraction where the standard was "some" evidence.

Hearing Officer **Disposition**, decision, and reasons:

I found Mr. Schley guilty of the 762 based on the preponderance evidence standard and the testimony and evidence presented at the time of the hearing. CCIII Tipton provided sufficient evidence for a guilty finding which included the testimony of the witnesses he included. CUS Lawson reviewed the #505 infraction information and deemed to have met the expectations of DOC's policies for addressing infractions CPM Bennett reviewed the appeal Mr. Schley brought forth which included all evidence presented to the prison hearing officer. CPM Bennett felt the hearing officer made a sound decision and affirmed the guilty finding of the #505. Although the #505 major infraction in and of itself was not reheard, I allowed the testimony of CUS Lawson and CPM Bennet to testify based on their training and experience with prison based infractions. I considered their testimony to be reliable and credible and expressed the DOC's procedures were properly followed. Their testimony spoke to the process and procedure of how DOC conducts prison based hearings. When Mr. Schley appealed the hearing officer's decision is was affirmed through the appeal process.

The most significant witness testimony and evidence presented at the hearing came from CDPM Zander who testified why a #762 major infraction was considered the appropriate means of addressing the actions of Mr. Schley. CDPM Zander testified that based on the physical violence Mr. Schley was found guilty of, this action is what put him in direct violation of the treatment program's cardinal rule: "no tolerance for violence." This cardinal rule was presented to Mr. Schley prior to him entering the treatment program.

I imposed the 762 infraction and, as a result, Mr. Schley's DOSA sentence was revoked. An official start time and remaining days will need to be determined by DOC records.

Mr. Schley was given a chance by the sentencing judge when he allowed Mr. Schley the opportunity to complete a DOSA treatment program. This opportunity allowed him to avoid approximately half his prison sentence in exchange for his agreement to comply and participate

in chemical dependency treatment. This was clearly explained to Mr. Schley at sentencing and again when he entered into the therapeutic chemical dependency program where he signed his DOSA Agreement.

Mr. Schley entered the orientation phase of the program on 01/22/2015, and the altercation took place on 01/27/2015 – not a long time within the program however, time enough to review the expectations of the program and know that violence will not be tolerated. Mr. Schley was given multiple opportunities realize the program had a no tolerance to violence and yet within 7 days of the program he received a major infraction for fighting. Mr. Schley placed his DOSA sentence in jeopardy by his behaviors and unfortunately will not be allowed to participate in treatment per his DOSA sentence.

Given his reported risk factors, risk management identification classification, criminal record, and disciplinary history, I believe this sanction holds Mr. Schley appropriately accountable under the rules and expectations of his DOSA Sentence.

Sheryl Jackson

Sheryl Jackson

DATE

HEARING OFFICER SIGNATURE

CCO/TYPIST/ A hearing report triple extra copy
DATE

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APPENDIX L

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

IN RE PERSONAL RESTRAINT
PETITION OF

MATTHEW SCHLEY

)
)
) DOC 746992
)
) Appeal No. 73872-1
) No. 13-1-15302-1
) No. 14-1-01874-2

DOC DISCIPLINARY HEARING

APRIL 2, 2015, 9:22 A.M.

APPEARANCES:

SHERYL JACKSON
Hearing Officer
Department of Corrections

Also Present:

LAURA COLE
RAY TIPTON
AMBER ZANDER (Telephonically)
LAURIE LOFTON (Telephonically)
JASON BENNETT (Telephonically)

PREPARED BY:

R.V. WILSON
Wilson Transcription Services
(425) 391-4218
rosiewilson@yahoo.com

P R O C E E D I N G S

APRIL 2, 2015

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MS. JACKSON: Mr. Schley --

MR. SCHLEY: Yes.

MS. JACKSON: -- my name is Sheryl Jackson. I'm a hearing officer here with the Department of Corrections to address this 762 DOSA revocation hearing processor on your behalf.

The name I have is Matthew R. Schley, DOC 746992. And, sir, if I'm correct, I have a birth date of ?

MR. SCHLEY: Yes.

MS. JACKSON: As you can see, this session is being tape-recorded and the tape will be saved for approximately five years.

Now, that particular document that's been placed in front of you is a form in which you could, you know, order a copy of the tape if you were interested. Sending that particular document in as a request will provide you a copy free of charge.

Now, that same document can also be used as an appeal form. Down at the bottom where the address is, right above that, it will tell you you have seven calendar days from today's date in order to file for

1 the appeal. Okay?

2 MR. SCHLEY: Okay.

3 MS. JACKSON: Today is officially the 2nd of April,
4 the year 2015. Do you have a watch on, sir?

5 MR. SCHLEY: I do.

6 MS. JACKSON: The time we have is --

7 MR. SCHLEY: Is 9:22.

8 MS. JACKSON: -- 9:22. And this particular 762
9 DOSA revocation process is taking place here at the
10 Washington State Correction Center.

11 Now, currently, we have three parties present, and I
12 believe we have some who are going to be testifying
13 telephonically. Can I get everyone in the room to
14 first acknowledge their name and position and then
15 we'll move forward to those who are telephonically
16 present. Starting with you, sir.

17 MR. SCHLEY: My name is Matthew Schley, 746992.

18 MS. JACKSON: Okay.

19 MS. COLE: Laura Cole, CCO.

20 MR. TIPTON: Ray Tipton, Classification Counselor 3.

21 MS. JACKSON: Now, who do we have on the line?

22 MS. ZANDER: Amber Zander, Program Manager.

23 MS. LOFTON: Laurie Lofton, CUS.

24 MR. BENNETT: Jason Bennett, Corrections Program
25 Manager.

1 MS. JACKSON: Okay. What I'm going to do, sir, is
2 conduct this hearing in three separate phases. I say
3 three separate phases, it will be more like two, but
4 I'll explain to you what I mean by that.

5 The first phase will determine whether you were
6 properly served notification of this hearing. Now, I
7 have a Notice of Allegation Hearings Rights & Waiver
8 that appears to have been signed by yourself and
9 Officer Cole here at the end of the table on 3/30 of
10 2015. Sir, does that sound about correct?

11 MR. SCHLEY: Yes.

12 MS. JACKSON: So would it be fair to say that you've
13 had at least -- it's been at least 24 hours since
14 you've known of this violation process?

15 MR. SCHLEY: Yes.

16 MS. JACKSON: Now, Officer Cole, for the record, if
17 you could state kind of the process of service
18 paperwork here at Washington State Correction Center
19 for the record.

20 MS. COLE: I met with Mr. Schley, informed him that
21 he had the opportunity to spend time the day that I met
22 with him to take the discovery packet and continue to
23 research it, look it over to his comfort level. He had
24 had previously the opportunity of gaining the
25 information via the law library and accessing it and

1 reviewing it there.

2 He was reminded of the date and the time that we
3 would be meeting and signed the document, and he
4 understood that he was meeting [INAUDIBLE].

5 MS. JACKSON: Okay. And, Mr. Schley, the only
6 reason why I asked Officer Cole to acknowledge that is
7 because here at WCC they do things just a little bit
8 differently, okay. Normally, what would happen is a
9 person would receive their discovery packet and you
10 would just have access to it.

11 Because legal documents are not allowed to be in the
12 hands of offenders within this institution, I just
13 wanted to make sure that you, number one, were properly
14 served, whether you received this paperwork, and
15 whether or not you had an opportunity to overview it.

16 So I'll have to ask you that question, sir. Did you
17 have a chance?

18 MR. SCHLEY: Yes, I have.

19 MS. JACKSON: Okay. And do you feel satisfied to be
20 able to move forward at this time?

21 MR. SCHLEY: Yes, I do.

22 MS. JACKSON: Okay. And the next phase, what I'll
23 do is take into consideration this one particular
24 allegation, okay. Class. Counselor 3 Tipton is going
25 to read this particular allegation and then you offer a

1 plea, okay?

2 MR. SCHLEY: Okay.

3 MS. JACKSON: After you've offered a plea, I'll then
4 hear testimony and evidence in reference to this
5 particular allegation, and at that time you can ask
6 questions, cross-examine any of the supporting evidence
7 that Class. Counselor 3 Tipton will be presenting or
8 present anything that you might have, okay?

9 Is there a need to contact witnesses, sir, on your
10 behalf?

11 MR. SCHLEY: No, there should be documentation of
12 their statements.

13 MS. JACKSON: Okay. So I'm assuming that that's all
14 a part of my discovery; is that what you're saying?

15 MR. SCHLEY: I believe so, I don't know.

16 MS. JACKSON: Where would these documents have come
17 from?

18 MR. SCHLEY: They were present during the hearings
19 of the original infraction for the 505. They were
20 present. It states that they are -- in the infraction
21 it says that there were statements taken.

22 MS. JACKSON: Okay. So keep in mind, whatever the
23 infractions were that were addressed one way, that's
24 not necessarily what we're dealing with today. You do
25 know that?

1 MR. SCHLEY: Right.

2 MS. JACKSON: Okay. All right. So I just want to
3 make sure. And as we move through this particular
4 process, any questions or concerns that you have, bring
5 it up at that time, okay, so that I can make sure that
6 every -- each and every one of your concerns are being
7 addressed. Okay?

8 MR. SCHLEY: Okay.

9 MS. JACKSON: My decision today is going to be based
10 on a preponderance-of-evidence standard. And in
11 essence what that means is is that Class. Counselor 3
12 Tipton's evidence will need to meet the standard of 51
13 percent more evidence than not. Does that make sense?

14 MR. SCHLEY: Yes.

15 MS. JACKSON: Hearsay evidence is admissible,
16 however, I base no decision solely upon hearsay.

17 In the event you are found guilty, then we'll take a
18 -- well, actually, this is where I say normally it's
19 three phases, and then we'll look -- after you're found
20 guilty, we'll look at how well things have gone for
21 you, but we're going to actually be dealing with the
22 program and how things are going all along, okay. And
23 then after all is said and done, you'll acknowledge --
24 you'll have an opportunity to acknowledge what you
25 would like for the outcome of today's hearing.

1 MR. SCHLEY: Okay.

2 MS. JACKSON: And so, too, will Class. Counselor 3
3 Tipton, okay?

4 MR. SCHLEY: Okay.

5 MS. JACKSON: So, sir, that's the process and how
6 this particular hearing is going to be conducted. Any
7 questions or concerns that you have at this point?

8 MR. SCHLEY: No, ma'am.

9 MS. JACKSON: A preliminary matter is something that
10 you consider critical to bring to my attention. Is
11 there anything like you feel like you need to bring to
12 my attention?

13 MR. SCHLEY: No, I have it all written down.

14 MS. JACKSON: Okay. And, Class. Counselor 3 Tipton,
15 I don't think I asked you if you had a witness. I'm
16 assuming you're --

17 MR. TIPTON: Potentially. Ms. Lawson and CPM
18 Bennett.

19 MS. JACKSON: Okay. Now, are those the ones that
20 are currently --

21 MR. TIPTON: Yes, they're present. They're present.

22 MS. JACKSON: Okay. Okay. No problem. Okay.

23 In order for me to acknowledge jurisdiction -- and
24 I'll just state some information that I know -- I can
25 see two open causes, an AF and an AG, both out of the

1 Superior Court, County of King. This first cause,
2 13-1-15302-1, where you were convicted of burglary in
3 the second degree.

4 This next cause, 14-1-01874-2, where you were
5 convicted of theft in the first degree. Okay. These
6 two particular causes the judge sentenced you and at
7 the point of him sentencing you he also gave you a DOSA
8 sentence. Okay.

9 MR. SCHLEY: Okay.

10 MS. JACKSON: And part of the expectation of that
11 DOSA sentence is for the ultimate, you know, level of
12 treatment and compliance. So that's kind of what this
13 hearing is about. I'm acknowledging these two
14 particular causes here because this is what gives DOC
15 jurisdiction. You're a ward of the State, and we'll be
16 addressing this accordingly. Any questions about that?

17 MR. SCHLEY: No.

18 MS. JACKSON: Okay. If I can ask those who are
19 going to be testifying to raise their right hands.

20 (WITNESSES SWORN.)

21 MR. SCHLEY: I do.

22 MS. JACKSON: Class. Counselor 3 Tipton.

23 MR. TIPTON: I do.

24 MS. JACKSON: Okay. Ms. Zander?

25 MS. ZANDER: Yes.

1 MS. JACKSON: Okay. And we haven't determined
2 whether or not the others are going to be testifying.

3 MR. TIPTON: Right. We could swear them in and if
4 they're necessary, then they're sworn in.

5 MS. JACKSON: Okay. So same question applies to
6 everyone. Just because this is all being
7 tape-recorded, if you can acknowledge your name and
8 then respond to the question: Do you swear or affirm
9 any testimony that will be acknowledged will be true?

10 MS. LOFTON: This is Laurie Lofton. I do so swear.

11 MS. JACKSON: Okay.

12 MR. BENNETT: Jason Bennett. I do so swear.

13 MS. JACKSON: All right. Thank you very much.

14 Okay. Your supporting evidence, sir.

15 MR. TIPTON: The infraction is failure to complete
16 or administration termination from a DOSA substance
17 abuse treatment program on or about 2/10/15.

18 MS. JACKSON: Okay. Sir, your plea?

19 MR. SCHLEY: Not guilty.

20 MS. JACKSON: All right. Supporting evidence,
21 please.

22 MR. TIPTON: All right. I'll read the body of the
23 infraction. On 2/10/15, the multi-disciplinary team
24 made the decision to terminate Inmate Schley from his
25 mandatory DOSA substance abuse treatment program.

1 Inmate Schley violated conditions of the DOSA
2 agreement and DOC 670.655, Special Drug Offender
3 Sentencing Alternative, Page 86A1C, by incurring any
4 major infraction that causes a change level or the
5 violation of conditions outlined in the CD treatment
6 participation requirements, DOC 140.39, or the DOSA
7 agreement, DOC 140.42.

8 Specifically, the Department has established a
9 zero-tolerance policy with regard to violence within
10 its CD programs as reflected in the CD participation
11 requirements which state that threats or violence
12 towards staff or another patient will result in
13 termination from the Department's CD Program.

14 Inmate Schley arrived at OCC on 1/7/15, serving two
15 King County DOSA sentences.

16 On 1/21/15, Inmate Schley was assessed at a 3.3
17 level of care and reviewed and signed the DOSA
18 agreement and CD treatment requirements, agreeing to
19 participate on that day.

20 He began programming the OCC therapeutic community
21 long-term treatment chemical dependency program on
22 1/22/15.

23 On 1/27/15, Inmate Schley was placed in the OCC
24 secured housing unit on administrative segregation
25 status pending investigation of his involvement in a

1 fight with another offender after both were found to
2 have injuries consistent with involvement in a physical
3 altercation.

4 Investigation determined that the incident occurred
5 in the living unit on an assigned therapeutic community
6 housing unit cleaning day after a verbal argument
7 escalated when Schley threw a punch which missed and
8 then grabbed the other offender by the throat and arm.
9 The other offender hit Schley twice in the face and
10 then kicked him off the bed onto the floor.

11 Both were subsequently found guilty of violating WAC
12 505, fighting, with sanctions including 15 days'
13 disciplinary segregation.

14 He was transferred to WCC on 2/11/15. The
15 disciplinary findings were affirmed upon appeal. On --
16 that's a typo. It should be 2/17/15. It reads
17 12/17/15.

18 MS. JACKSON: Okay.

19 MR. TIPTON: On 2/10/15, Inmate Schley was
20 administratively terminated from the OCC therapeutic
21 community dependency treatment program due to his
22 violation of mandatory treatment programming
23 requirements, specifically violence against another
24 community member.

25 At the time of his termination, Inmate Schley had

1 made no progress in treatment and remained in Phase 1
2 of the program after only a few days' enrollment in the
3 program.

4 Inmate Schley is in violation of WAC 762, DOSA
5 failure due to administrative termination from his DOSA
6 substance abuse treatment program for the above-noted
7 violation of the DOSA agreement and mandatory CD
8 treatment participation requirements.

9 MS. JACKSON: I have a couple questions for you, two
10 questions. First of all, right here where it says that
11 he was only a few days enrolled into the program.

12 MR. TIPTON: Correct.

13 MS. JACKSON: So it's not -- excuse me. Phase 1, it
14 was appropriate for him to be in Phase 1, correct?

15 MR. TIPTON: Yes.

16 MS. JACKSON: Correct?

17 MR. TIPTON: Yes.

18 MS. JACKSON: Okay. The way that was kind of
19 acknowledged, it sounded like he was there and hadn't
20 made any kind of progress, but he was only there for a
21 couple of days.

22 MR. TIPTON: He was only in a few days. He started
23 programming on 1/22, the incident happened on 1/27.

24 MS. JACKSON: Okay. And my next question. In this
25 paragraph where you talk about the actual behaviors.

1 It's very specific in here in reference to the throwing
2 of punches and things like that. Where does this
3 information come from?

4 MR. TIPTON: It's contained in the body of the
5 infraction and was the result of an investigation and
6 confidential information received during the
7 investigation.

8 MS. JACKSON: Okay. Okay. Okay. Is there anything
9 more you want to acknowledge at this time?

10 MR. TIPTON: No.

11 MS. JACKSON: Okay. Sir, you heard the testimony
12 that Classification Counselor 3 Tipton just
13 acknowledged. What do you have to say?

14 MR. SCHLEY: Well, I've got a few pages here.

15 First, I would like to cite some case law that
16 supports my defense. 127 Wn.App.165, 2005, Laura McKay
17 case, 542125-1. The State concedes that the serious
18 nature of a proceeding resulting --

19 MS. JACKSON: Okay. Hold on. Hold on. I have no
20 problem with you taking the time to read anything and
21 everything that you want to read, but you first need to
22 respond to what we have at hand.

23 MR. SCHLEY: Okay.

24 MS. JACKSON: Okay?

25 MR. SCHLEY: Okay.

1 MS. JACKSON: Because case law is not what we're
2 dealing with right now. What we're dealing with is
3 this particular process that happened. You heard the
4 testimony that he just acknowledged. And I entered a
5 plea of not guilty on your behalf. I need you to talk
6 to me here and then you feel free to -- you know,
7 because I have all day, okay?

8 MR. SCHLEY: Okay.

9 MS. JACKSON: So then you can read that, but --

10 MR. SCHLEY: Okay.

11 MS. JACKSON: -- what happened here?

12 MR. SCHLEY: Nothing. There was no altercation
13 between me and the other inmate, and there is no
14 actual, physical evidence. They're saying that he hit
15 me and that we both had marks. We had no marks. He
16 has no pictures of any marks. There was no marks on
17 him at all.

18 MS. JACKSON: Uh-huh.

19 MR. SCHLEY: There was only a scratch on my lower
20 back right here which my psychiatrist had already
21 verified that I had already told him prior to this
22 about it. Because we went into -- I told him I was
23 having nightmares. For my sleeping disorder, I take
24 pills for. I told him I was having nightmares and I
25 woke up and I was halfway sleep-walking and I had

1 scratched my back on the bunk. And he wrote it all
2 down.

3 And then after this incident happened, I sent a kite
4 to him and he had called up to see Wes and told him
5 about it.

6 MS. JACKSON: Okay. So I have a question. Why in
7 the world would the facility choose you and another
8 inmate there and make accusations?

9 MR. SCHLEY: They didn't. It was a -- it was
10 confidential informants who went in and volunteered
11 this information who came forward with this -- there's
12 only one firsthand informant, the others are secondhand
13 informants. We heard rumors, and supposedly rumors are
14 some kind of something. But there's only one guy that
15 went in there and says he saw us fighting.

16 And I had problems. I had already notified here at
17 Shelton, I had already tried two keep-separates on two
18 people down there at OCC. They denied my
19 keep-separates, wouldn't allow them.

20 I went down there, noticed they were both there. I
21 already talked to one guy and he said, look, I'm not
22 going to do anything so I'm going to lose my DOSA with
23 you, da, da, da, da. And I said okay.

24 Well, all of a sudden his buddies, he had been there
25 for quite a while, all of a sudden his buddies were,

1 you know, doing this and that. Next thing you know I'm
2 being accused fo this.

3 MS. JACKSON: Okay. So the two keep-separates that
4 you put forth before you went to OCC, and you said both
5 of those individuals were there?

6 MR. SCHLEY: They were there.

7 MS. JACKSON: Were either of these particular
8 individuals a part of this situation?

9 MR. SCHLEY: No, they weren't directly part of it,
10 but it was their --

11 MS. JACKSON: Okay. Okay.

12 MR. SCHLEY: -- friends' informants that came in
13 and did this --

14 MS. JACKSON: Okay.

15 MR. SCHLEY: -- to get rid of me.

16 MS. JACKSON: Okay. Anything more you want me to
17 know in reference to this process?

18 MR. SCHLEY: Yeah. I can skip the --

19 MS. JACKSON: You don't have to skip anything. This
20 is actually your hearing, okay.

21 MR. SCHLEY: Okay.

22 MS. JACKSON: I just wanted to know the details in
23 reference to what Class. Counselor 3 Tipton just
24 acknowledged and what you can say.

25 MR. SCHLEY: Okay.

1 MS. JACKSON: So according to you, nothing actually
2 happened, but there was some accusations that took
3 place?

4 MR. SCHLEY: Right, right. Right. Okay. I'll skip
5 to the facts for consideration and skip the case law.

6 Okay. Facts for consideration. I did supply five
7 witness statements from inmates that were actually at
8 -- in the pod at the time in G Bay during the cleaning
9 unit. They were there, they were present, they were
10 firsthand witnesses, and they all stated nothing
11 happened. They didn't see any altercation happen at
12 all there.

13 They only have one saying they did. I have five
14 saying they didn't. It didn't make any sense how I got
15 found guilty.

16 The hearing officer acting as prosecutor in this
17 case based his decision solely on the confidential
18 informant's statements, to which only one of them
19 claims to have witnessed it. The others are secondhand
20 with rumors as defined as hearsay.

21 The only physical evidence presented was a series of
22 photographs that do not show any injuries except for
23 scratches on my lower back which were verified as
24 caused by my sleeping disorder and are not consistent
25 with fighting injuries as they are not on face, hands,

1 head, knuckles, anything. They took pictures of all
2 that, and there's nothing there.

3 Also, I'd like to draw your attention to the serious
4 infraction report with the details in full which
5 clearly states, quote: The body of this infraction is
6 a summary of confidential information used as evidence
7 to support this infraction.

8 I'd also like to point out that there are no marks
9 consistent with an altercation on either Tang or
10 myself. In definition, injuries consistent with
11 fighting occurred upon the hands, head, knuckles, head,
12 et cetera. Mr. Tang had absolutely no marks and no
13 scratches.

14 The scratches on my lower back were from my bunk and
15 were reported by my psychiatrist at OCC while
16 discussing my sleeping disorder prior to this incident.

17 Now, I'd like to direct the committee's attention to
18 the confidential information review checklist. This is
19 the review checklist -- it's the standard used in
20 verifying the validity and reliability of the
21 confidential informant's statements or person.

22 MS. JACKSON: Okay. Let me also help you with one
23 little piece, okay. What I heard from Class. Counselor
24 3 Tipton, he said this altercation took place, an
25 investigation went forward, it was determined by a

1 separate hearing officer that there was a guilty
2 finding.

3 I also heard Class. Counselor 3 Tipton say that
4 appeals went forth, I'm assuming on your behalf and the
5 other person, and that those appeals were -- those
6 decisions were affirmed, okay. Did I hear that
7 correctly?

8 MR. SCHLEY: That's correct.

9 MS. JACKSON: Okay. So what won't help in this
10 situation, and I just need to be honest with you,
11 because we're not trying whether or not you should have
12 or should have not been found guilty. That's already
13 been determined somewhere else. That's not what I have
14 before me. Okay.

15 MR. SCHLEY: Uh-huh.

16 MS. JACKSON: What he did acknowledge is that that's
17 what literally changed your level, and the facility
18 itself has made a decision to terminate. That's what
19 we're looking at here.

20 MR. SCHLEY: Right.

21 MS. JACKSON: Okay. So there's absolutely nothing I
22 can do -- I just need you to know this, okay. It's
23 still your hearing. I want you to take the time,
24 finish doing whatever you want to do, but I can do
25 absolutely nothing about the mere fact that you were

1 found guilty by another hearing office and your appeal
2 was upheld.

3 MR. SCHLEY: Right, I know that the infraction is
4 going to be upheld, I know that.

5 MS. JACKSON: Okay. Yeah, I can't do anything with
6 that.

7 MR. SCHLEY: I just know that it has a reflection
8 upon this, revocation of my DOSA, so I was explaining
9 how there is not a preponderance of evidence enough to
10 take my DOSA. I already know the infractions are going
11 to stand because they only need some evidence.

12 MS. JACKSON: Okay. So then where we actually are
13 as far as whether or not there's sufficient evidence is
14 ultimately did this occur, did it change the actual --
15 your level, and did the actual program terminate you.
16 Because, see, that's what we need to -- that's what we
17 need to be looking at.

18 MR. SCHLEY: Right, right. Whether or not they are
19 trying to terminate me legitimately. Now, they do have
20 the infractions to uphold, but they didn't have a
21 preponderance of evidence in the whole case in whole.

22 MS. JACKSON: Okay. So I can't confirm or deny
23 whether the hearing officer who heard the specific
24 allegations has a responsibility for a preponderance.

25 MR. SCHLEY: No, they only have some.

1 MS. JACKSON: So that's them.

2 MR. SCHLEY: So that's the whole infraction here.

3 MS. JACKSON: This is where we are. I'm doing the
4 preponderance.

5 MR. SCHLEY: Right, right.

6 MS. JACKSON: Okay?

7 MR. SCHLEY: Right, okay. Okay.

8 MS. JACKSON: Does that makes sense.

9 MR. SCHLEY: Okay. So nothing that has to do with
10 that infraction has to do with this or ...

11 MS. JACKSON: No, no, no. It sounded almost to me
12 -- and this is just a question to you -- that you were
13 in essence retrying that whole piece.

14 MR. SCHLEY: Oh, no, no. I was just pointing out
15 that there was really no evidence to uphold the
16 infraction even though it got upheld because they only
17 need some evidence --

18 MS. JACKSON: Okay. But, see, but, see, that
19 happens in the appeal regarding that matter. Do you
20 see what I'm saying?

21 MR. SCHLEY: Yes.

22 MS. JACKSON: You know. And what I can tell you for
23 sure is based upon that, for whatever the reason, the
24 facility has made a determination, this program has
25 made a determination that based upon the mere fact that

1 you were found guilty and your appeal was affirmed,
2 that they were going to terminate you from the program.
3 So, see, there's kind of where we are. If that makes
4 sense again.

5 MR. SCHLEY: Right, right.

6 MS. JACKSON: Okay?

7 MR. SCHLEY: But there is case law that is almost
8 exactly like this where the lady had her DOSA taken
9 because of infractions during -- in prison, and those
10 infractions did not have a preponderance of evidence so
11 that they had to give her DOSA back. They actually --
12 they gave her her DOSA back. And that was the Appeals
13 Court that did that.

14 MS. JACKSON: Okay.

15 MR. SCHLEY: And that's why I was citing that case
16 law that supports that.

17 MS. JACKSON: Feel free, state it. Let me kind of
18 just sit back. Unfortunately, I left my coffee in the
19 car, but go ahead.

20 MR. SCHLEY: Okay. The case law is 127 Wn.App. 165,
21 2005, Laura McKay, Case 5421251. It states: Concede
22 the serious nature of the proceeding resulting in
23 revocation of DOSA requires a preponderance of the
24 evidence. We know this.

25 Also, Page 110 P.3d, A56127, Wn.App.165, McKay,

1 2005: The assessment depends upon the extent of which
2 an individual be condemned to suffer a grievous loss.
3 And also quotes: The decision must be based on
4 verified facts and accurate knowledge.

5 Okay. Now, the reason I say this and the reason I
6 put it forth like this is because the infractions that
7 resulted from this hearing do not meet the criteria to
8 be considered a preponderance of evidence.

9 And because of the extent to which I will be
10 condemned to suffer grievous loss, this case is not
11 qualified to justify a revocation of my DOS and is not
12 based upon verified facts or accurate knowledge.

13 And I state in here: Seeing the statements made by
14 the confidential informants do not support the known
15 facts of this case and the statements made by inmates,
16 convicted criminals, is unreliable and not considered
17 accurate knowledge as defined by McNeil,
18 99 Wn.App. 628, 994 P.2d. 890, and the summary report
19 and other evidence used in this infraction does not
20 meet the criteria to be considered a preponderance of
21 evidence.

22 I have an appeal to the committee. I appealed to
23 the committee on behalf of my family and myself to
24 allow me the opportunity to continue with my DOSA
25 programming so that I can receive the help I need to

1 become a clean and sober productive member of society
2 and better serve my family as a father and husband.

3 The facts -- I'm not trying to defend the
4 infractions, but the reasons I want to point out the
5 preponderance of evidence which should be considered as
6 did this incident happen, is there evidence of this
7 incident happening, is there proof of this incident
8 happening. And we have to use that as a determination
9 of whether or not I could get my DOSA taken.

10 Okay. Well, there is no evidence at all, no
11 physical evidence. There's just hearsay by one
12 confidential informant and four other people who said
13 they heard a rumor or backed him up but came in after
14 him, his friends or whatever.

15 That's why I'd also like to -- the serious
16 infraction report which I pulled out before has
17 multiple inconsistencies with it. The form that the
18 CUS has to mark to verify the validity of the
19 informant's information has multiple inconsistencies
20 and he even writes right next to them that they're not
21 right. He even admits that, that they're not right.

22 MS. JACKSON: Hold on one second. Class Counselor
23 Tipton, is that one of the people who --

24 MR. TIPTON: Ms. Lawson conducted the investigation.

25 MS. JACKSON: Okay.

1 MR. TIPTON: CUS Bennett reviewed the appeal.

2 MS. JACKSON: Okay. Okay. So I want to be able to
3 have those two parties who are ready and available to
4 telephonically testify in just a second. I'll hear
5 from them.

6 Was there anything more you wanted me to know?

7 MR. SCHLEY: Yeah. I have a copy of the
8 confidential information checklist, and I'm not sure if
9 they have to all be legitimized before they can
10 consider this confidential informant reliable, but he
11 writes right next to it in his own handwriting, know or
12 unknown, which contradicts number one.

13 And he admits right here there's only one firsthand
14 information when it clearly states they have to be all
15 firsthand information, but it goes, only one is
16 firsthand and the others are secondhand rumors.

17 That would seem to me that he's even admitting that
18 the information wasn't reliable.

19 MS. JACKSON: Okay. Well, we do have him available,
20 so are we ready now to hear from him?

21 MR. SCHLEY: Yes.

22 MS. JACKSON: Okay.

23 MR. TIPTON: The hearings officer himself is not
24 here, he's on vacation --

25 MS. JACKSON: Okay. Okay.

1 MR. TIPTON: -- for another week or two.

2 MS. JACKSON: That's fine. But what we do have is
3 the person who --

4 MR. TIPTON: Conducted the original investigation.

5 MS. JACKSON: And that's Ms. Larson (sic)?

6 MR. TIPTON: That's Ms. Lawson.

7 MS. JACKSON: Ms. Lawson.

8 Ms. Lawson?

9 MS. LAWSON: Yes.

10 MS. JACKSON: Were you able to fully hear what
11 Mr. --

12 MR. SCHLEY: Schley.

13 MS. JACKSON: -- Mr. Schley was acknowledging and
14 some of his concerns?

15 MS. LAWSON: Yes.

16 MS. JACKSON: Can you speak to those for the record,
17 please.

18 MS. LAWSON: Yes, I can.

19 Again, I would just like to say that DOC, um, is
20 some evidence, not a preponderance, so, um, I did
21 review the confidential information, um. I am not able
22 to testify that I was the one that scored out all of
23 the confidential information because that does not have
24 to be done by the investigator. It can be done by any
25 supervisor, um, but the ones that I did score, I did

1 rate according to my training, and they were submitted
2 as part of the evidence.

3 Um, I will also say that, um, Mr. Schley is saying
4 that part of the packet was information that was given
5 to me from his counselor -- or from his mental health
6 counselor, and that is not accurate information. That
7 was not given to me as part of the investigation.

8 MS. JACKSON: So in the midst of your doing the
9 investigation, do you feel relatively confident that
10 the particular infractions that were brought forward
11 were accurate infractions, and do you feel
12 comfortable/confident in the guilty findings that were
13 established at the time?

14 MS. LAWSON: Yes, I do.

15 MS. JACKSON: Okay.

16 MS. LAWSON: I absolutely believe that there was
17 some evidence there that he participated in a fight.

18 MS. JACKSON: Okay. And the other person? Oh, that
19 was --

20 MR. TIPTON: Yeah, that was CPM Bennett, and he
21 reviewed the appeal and --

22 MS. JACKSON: Okay. CPM Bennett, can you tell me in
23 reference to your process of reviewing the appeals,
24 what is it that you can speak to concerning any of Mr.
25 Schley's concerns regarding the process of how all that

1 was done?

2 MR. BENNETT: Sure. During the course of the
3 appeal, I reviewed his information that he supplied,
4 and in addition to his information I reviewed the
5 original infraction packet, and I also received the
6 full copy of all of the confidential information that
7 was used for the hearing. And I feel confident that
8 the hearing was held in accordance with policy and the
9 Washington Administrative Code.

10 And after reviewing it all, I affirmed the decision.

11 MS. JACKSON: Okay. Are there ever often times when
12 you receive these appeals and after having reviewed
13 things you determine that there wasn't sufficient
14 reason to move forward with a specific allegation?

15 MR. BENNETT: Yes, I've done -- there's been
16 previous infractions where I've reviewed the
17 information and after review I've made a determination
18 either that the hearing was not held appropriately and
19 I return it for a new hearing.

20 I've reduced an infraction because I've received a
21 hearing where it was submitted and after looking at the
22 material, either the [INAUDIBLE] didn't match or the
23 decision didn't match, and so I have had occasions to
24 where there's been a different outcome than what the
25 previous hearings officers made.

1 MS. JACKSON: Okay. And according to your reviewing
2 of this particular matter, you feel comfortable and
3 confident to affirm the hearing officer's decision was
4 the appropriate and/or right thing to do?

5 MR. BENNETT: Absolutely.

6 MS. JACKSON: Okay. And one last question. Not
7 that you have to respond to this, but how long have you
8 been an appeals panelist person?

9 MR. BENNETT: Overall, I have reviewed appeals as
10 the correctional counselor here for five and a half
11 years and then I also reviewed appeals for the last two
12 years. Absent of the superintendent, I review in his
13 place, and most recently it's become -- I'm the regular
14 designee for this particular task.

15 MS. JACKSON: Okay. Thank you very much.

16 Now, Ms. Zander, in light of everything that has
17 taken place, can you tell me why the program decided to
18 bring forth this 762 on behalf of Mr. Schley?

19 MS. ZANDER: Yes, I can. Unfortunately, Mr. Schley
20 was only in the program for seven days, which is really
21 no time for us to have made any -- any mark at all on
22 his treatment progress, but we have a zero tolerance
23 for any violence in the program, and Mr. Schley was
24 informed of that in the many -- the myriad ways in
25 which we inform the offenders when they're admitted to

1 the program through the DOSA agreements, the treatment
2 participation requirement form that he signed, and also
3 through the Big Brother/Little Brother orientation
4 form.

5 And they get orientated on the Sunday before they
6 come into the program on Monday, and if you will allow
7 me to, I'll read to you the whole thing that speaks
8 specifically to the violent portion because it is so
9 important. We have some very strict Thou Shall Nots,
10 and we talk to the men about there are just some things
11 that you cannot do because you will put your DOSA at
12 risk and you will put your treatment at risk because we
13 can't keep you in the program. And one of those is
14 violence. Others are sexually acting out.

15 But the blurb is: I have been orientated to the
16 rules, requirements and procedures of the CC program.
17 Any questions I have have been answered by my Big
18 Brother or an orientation member. I have been informed
19 any act or threat of violence places me in jeopardy of
20 termination from treatment. I have been instructed how
21 to report, address acts of violence and to avoid
22 altercations.

23 And then there's a note that says the Big Brothers
24 need to go over all of these with your Little Brother
25 and make sure they understand and initial each line,

1 then propose this to their CUP. And it was signed by
2 Mr. Schley on 1/21/15.

3 MS. JACKSON: Okay. Mr. Schley, you've heard the
4 testimony that has been offered by the investigator, by
5 the person doing the appeal who reviewed the appeal,
6 the program manager. CC Class. Counselor 3 Tipton has
7 presented the supporting evidence that he has, and you
8 have acknowledged yours.

9 Is there anything more that you think I need to
10 hear? Do you have a question on behalf of any of those
11 who just testified? I want to just give you this last
12 opportunity.

13 MR. SCHLEY: I'd just like to point out that Ms.
14 Lawson also stated in her own words that she had what
15 she considers some evidence which is enough to convict
16 me of the infraction, but, as we know, enough to take
17 my DOSA, we need more than some evidence from the whole
18 thing.

19 MS. JACKSON: And remember I told you I'm the
20 preponderance person.

21 MR. SCHLEY: Right, right, right. I know you're to
22 determine that, I just wanted to let you know that she
23 said it herself.

24 MS. JACKSON: Right.

25 MR. SCHLEY: She had some, not a preponderance.

1 MS. JACKSON: Okay. Are you ready?

2 MR. SCHLEY: Yes.

3 MS. JACKSON: I want to make sure. The other thing
4 I want everyone to know, due to an injury in and with
5 my hand, I am recording everything and I'm being very
6 careful and very specific about my communication
7 because I cannot write in detail everything that was
8 said here in the midst of our hearing, but it's all
9 recorded and ultimately there will be a typed report.
10 Okay? So I didn't write, but I want you to know I
11 listened to everything that was acknowledged by you, by
12 the investigator, by the officer -- I mean, the
13 captain -- I'm sorry.

14 MR. TIPTON: CPM.

15 MS. JACKSON: -- CPM, the CPM who did the actual
16 appeals. I listened to everything carefully. That's
17 again part of my job, and I listened for the
18 preponderance.

19 Believe it or not, it's a really interesting process
20 when you hear a preponderance, which means it tips the
21 scale, okay.

22 MR. SCHLEY: Okay.

23 MS. JACKSON: But I don't -- what I have is this. I
24 have an infraction that took place, okay, that was all
25 based on some evidence, okay. And then we have also

1 that that particular infraction that was appealed --
2 and I have the appeals panelist that affirmed it. And
3 based upon that, the program, looking at the behavior
4 who says with no uncertainty there's a zero tolerance
5 to any kind of fighting, you were already there within
6 the program. This took place within a very short
7 period of time of you being there, and they can't
8 tolerate it. Okay.

9 The specific infraction reads, the 762 infraction:
10 Failure to complete or administrative termination from
11 a DOSA substance abuse program on or about 2/10 of '15.
12 Now, that's the specific infraction that I have.

13 Did Classification Counselor Tipton, Class.
14 Counselor 3 Tipton -- boy, I don't know, I struggle
15 with that, but anyway --

16 MR. TIPTON: It's long.

17 MS. JACKSON: -- did he meet that preponderance
18 standard based upon the supporting evidence that he
19 has? Okay. What he has -- and he made available the
20 additional witnesses that addressed the why and
21 how-come with the particular infraction. So did the
22 infraction take place you were found guilty of? Yes.
23 Was the appeal affirmed? Yes. Did that big-picture
24 process cost your position within the program? Those
25 are the things that I need to hear.

1 Now, what I heard is the zero tolerance for the
2 program itself, and there's where they have met the
3 preponderance standard, okay, based upon what was
4 presented here.

5 So I will find you guilty of the 762, which reads,
6 and I'll read it one more time: Failure to complete or
7 administrative termination from a DOSA substance abuse
8 treatment program. That is what ultimately took place.

9 I feel comfortable and confident myself based upon
10 the supporting evidence that was presented to include
11 feeling quite comfortable that the witnesses that
12 Class. Counselor 3 Tipton used were considered
13 credible, and, you know, matter of fact, kind of a
14 process that they went through.

15 So I will find you guilty of this particular,
16 specific allegation. Okay.

17 Is there anything more that we want to acknowledge?
18 I guess, Ms. Zander, is there much more that you can
19 acknowledge as far as his involvement in the program,
20 is that correct, or is there anything more you want to
21 acknowledge?

22 MS. ZANDER: No, not really. Like I say, he wasn't
23 in the program long enough to make any progress. He
24 did identify a couple of treatment plans that were very
25 appropriate for him to begin working on, but he had no

1 time to begin them really.

2 MS. JACKSON: Okay. All righty. And one of the
3 other things that I do remember is that based upon some
4 actions or behaviors that would put you in a position
5 within the program, which is ultimately what happened,
6 as to why the termination, okay. So, Class. Counselor
7 3 Tipton, I'll assume based upon you bringing this
8 forward that the recommendation is for DOSA revocation?

9 MR. TIPTON: Yes, per the RCW 9.94A.662, present day
10 drug offender sentencing alternative, if the Department
11 finds that conditions of community custody have been
12 willfully violated, the offender may be reclassified to
13 serve the term of the remaining balance of the original
14 sentence.

15 An offender who fails to complete the program or who
16 is administratively terminated from the program shall
17 be reclassified to serve the unexpired term of his or
18 her sentence as ordered by the sentencing court.

19 MS. JACKSON: Okay. Now, I will give you an
20 opportunity to acknowledge if you feel like there
21 should be some different type of a recommendation. Do
22 you have anything more you want me to know?

23 MR. SCHLEY: Well, it doesn't look like I'm -- it
24 looks like I'm swimming upstream here. It doesn't
25 really matter what the truth is. Obviously, it says

1 right in here, the truth is I never fought with nobody,
2 and they have no proof of it, no evidence, no nothing,
3 but that doesn't matter, I guess, I just get my DOSA
4 taken.

5 MS. JACKSON: The truth is that you were
6 administratively terminated out of the program, okay.
7 That again is what I had before me, okay. You were
8 administratively terminated from the program based upon
9 actions and behaviors and this is ultimately --

10 MR. SCHLEY: Do they have to prove the actions and
11 behaviors?

12 MS. JACKSON: Yeah. What was proven to me is that
13 the program terminated you, and you being terminated,
14 that qualifies for a DOSA revocation.

15 MR. SCHLEY: For 29 more months in prison?

16 MS. JACKSON: Whether it's 29 or two, okay. I'm not
17 looking at numbers. Because if I allowed the numbers
18 to be the ruling factor, then that would kind of make
19 me not to be fair or impartial, and that absolutely is
20 my desire/goal/responsibility.

21 MR. SCHLEY: You realize that we have a big, large
22 thing going on here at OCC and other places that have
23 DOSA where inmates who don't like other inmates just X
24 them out by writing kites on them or false statements,
25 boom, they're gone, because they know, there's no way

1 to win these revocation hearings. As soon as they get
2 the infraction, boom, they're done.

3 MS. JACKSON: You know, I have to say, having sat
4 here and done quite a few 762 revocation processes,
5 that is not at all what I see ultimately happening,
6 where you have a handful of offenders who are
7 ultimately trying to get a person terminated out of the
8 program. That typically doesn't happen.

9 MR. SCHLEY: Well, there is in this one. I have --

10 MS. JACKSON: I know that's how you see it and
11 that's how you feel, but I want you to know just like
12 the CPM did the information, I'm critically listening,
13 okay, critically, critically, critically listening to
14 all of the evidence. Do I feel that a preponderance
15 was presented? Yeah, I do.

16 MR. SCHLEY: I don't think the Appeals Court will
17 agree, but --

18 MS. JACKSON: Well, but, see, that's why you have
19 that document that I gave to you. What you want to do
20 is fill it out based upon how you see it, okay. My
21 name Sheryl is spelled with an S, okay. So just fill
22 it out according to how you see it and then we go from
23 there. You're familiar with the appeals process.

24 MR. SCHLEY: Yeah, I know exactly how they work. By
25 the time I get done doing my 29 months --

C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF KING)

I hereby declare under penalty of perjury that the foregoing transcript of proceedings was prepared by me from electronic recordings of the proceedings, monitored by me and reduced to typewriting to the best of my ability;

That the transcript is, to the best of my ability, a full, true and correct record of the proceedings, including the testimony of witnesses, questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the proceedings;

That I am neither attorney for, nor a relative or employee of any of the parties to the actions; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

(Date)

R.V. WILSON

APPENDIX M



HEARING AND DECISION SUMMARY REPORT

SUMMARY OF FACTS PRESENTED/ REASONS FOR FINDINGS:

For details of hearing please
order a copy of the recorded hearing

H.O. has an injured hand

SANCTIONS AND REASONS FOR SANCTION:

DOSA revocation on case #131153001
and AG 141018742

- **Obey all Facility Rules
- **Failing to comply with CCO, CCS, and Hearing Officer directives
- **Report in Person to CCO Within one Business Day of Release

Offender Name (Last, First):

Schley

DOC #

746992

Not present to sign (Mey Attitude)

Offender Signature

4/2/15

Date

[Handwritten Signature]

Hearing Officer Signature

Stuckson

Hearing Officer Name (Print)

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