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Court of Appeals
Division III
State of Washington

No. 95992-7

35216-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

JAMES AUSTIN YANCEY,

Respondent.

STATE'S DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

REPLY BRIEF OF APPELLANT

Respectfully submitted:

by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

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I. IDENTITY OF APPELLANT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Appellant herein.

II. ARGUMENT IN REPLY

The Defendant/Respondent acknowledges: "Granted, the residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less. RCW 9.94A.660(3)." Respondent's Brief (BOR) at 3. Here the midpoint was not 24 months or less. It was 40 months. This means the DOSA was not available. The Defendant is ineligible for the DOSA which the lower court erroneously imposed. The sentence must be reversed.

The Defendant notes: "***if*** the sentencing court determines the offender is eligible for an alternative sentence under the DOSA statute and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range." BOR at 3 (emphasis added). Because the Defendant is not eligible, the condition precedent is not met. Absent this necessary "if" condition, there is no "then" subsequent.

RCW 9.94A.664 does not allow a court to waive imposition of a standard range sentence ***absent*** the necessary eligibility condition.

III. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court reverse the DOSA sentence and remand for resentencing.

DATED: September 19, 2017.

Respectfully submitted:

Teresa Chen, WSBA#31762
Deputy Prosecuting Attorney

Tanesha La Trelle Canzater Canz2@aol.com	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED September 19, 2017, Pasco, WA **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**

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