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Court of Appeals
Division III
State of Washington

No. 95992-7

NO. 352161

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

JAMES AUSTIN YANCEY

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FORWALLA WALLA COUNTY
The Honorable M. Scott Wolfram

RESPONDENT'S BRIEF

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I. INTRODUCTION

James Austin Yancey (Mr. Yancey), by and through counsel, responds to the issue(s) raised in the State of Washington's (state) opening brief.

II. APPELLANT'S ASSIGNMENTS OF ERROR

The state assigns scrivener's error to the seriousness levels listed for counts 1 and 2 on the judgment and sentence. Although the trial court calculated the base standard sentence range correctly, the levels should read II, instead of I.

It also assigns error to the trial court's decision to grant a residential Drug Offender Sentencing Alternative (DOSA), when the midpoint of the total standard range is greater than 24 months. Br. Resp. 1.

III. STATEMENT OF THE CASE

We adopt the state's rendition of facts, as presented in its opening brief.

IV. ARGUMENT

THE RESIDENTIAL DRUG OFFENDER SENTENCING ALTERNATIVE IS LAWFUL BECAUSE THE TRIAL COURT WAIVED THE IMPOSITION OF A SENTENCE WITHIN THE STANDARD SENTENCE RANGE TO IMPOSE IT.

Standard of review

The state asks this court to review whether the trial court could have lawfully imposed a residential DOSA, under RCW 9.94A.660, when the midpoint of the standard sentence range is 40. Br. Resp. 4.

A court's fundamental objective when it reads a statute is to ascertain and carry out the legislature's intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). If a statute's meaning is plain on its face, then the court must give

effect to that plain meaning. Id. at 9–10, 43 P.3d 4. Under the plain meaning rule, such meaning is derived from all that the legislature has said in the statute and related statutes that disclose legislative intent about the provision in question. Id. at 11, 43 P.3d 4. A court should not adopt an interpretation that renders any portion of the statute meaningless or superfluous. State v. Keller, 143 Wash.2d 267, 277, 19 P.3d 1030 (2001). The meaning of a statute is a question of law this court must review de novo. State v. Mohamed, 187 Wash. App. 630, 637, 350 P.3d 671, 674 (2015).

Analysis

The purpose of RCW 9.94A.660, also known as the DOSA, is to provide meaningful treatment and rehabilitation incentives for those convicted of drug crimes, when the trial court concludes it would be in the best interests of the individual and the community. State v. Grayson, 154 Wash.2d 333, 343, 111 P.3d 1183 (2005); State v. Waldenberg, 174 Wash. App. 163, 166 n. 2, 301 P.3d 41 (2013). It authorizes trial judges to give eligible nonviolent drug offenders a reduced sentence, treatment, and increased supervision in an attempt to help them recover from their addictions. Grayson, 154 Wash.2d at 337, 111 P.3d 1183.

Under a DOSA sentence, the defendant serves only about one-half of a standard range sentence in prison and receives substance abuse treatment while incarcerated. Grayson, 154 Wash.2d at 337–38, 111 P.3d 1183. Afterward, he is released into closely monitored community supervision and treatment for the balance of the sentence. RCW 9.94A.660(7)(c). If an offender qualifies, the sentencing court may impose community custody in the form of a residential treatment-based DOSA sentence. See RCW

9.94A.660, .664, In re Bercier, 178 Wash. App. 147, 151, 313 P.3d 491, 492 (2013); State v. Hender, 180 Wash. App. 895, 900, 324 P.3d 780, 782–83 (2014).

Here, the state insists Mr. Yancey is ineligible for the residential DOSA the trial court imposed because the midpoint of his standard sentence range is 40, not 24. Br. Resp. 7-10. 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). However, 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 and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664(3). State v. Mohamed, 187 Wash. App. 630, 637, 350 P.3d 671, 674 (2015).

Because RCW 9.94A.664 allows a trial court to waive a sentence within the standard sentence range, if the court believes an offender is eligible for an alternative sentence, it also authorizes the trial court to waive sentencing enhancements, if it chooses to impose a DOSA. State v. Mohamed, 187 Wash. App. 630, 636, 350 P.3d 671, 674 (2015). This is possible because, as this court held in Gutierrez v. Department of Corrections, 146 Wash. App. 151, 155-157, 188 P.3d 546 (2008), a "standard sentence range" includes the base sentence range plus enhancement of such range. Therefore, to impose a DOSA, a trial court may waive enhancements as part of the standard sentence range. State v. Mohamed, 187 Wash. App. 630, 641, 350 P.3d 671, 676 (2015).

The state's argument, here, overlooks this authorizing aspect of RCW 9.94A.660, and instead focuses on the midpoint of the standard sentence range and how it was

calculated. Br. Resp. 6-7. Because the facts in Gutierrez, 146 Wash. App. 151, 188 P.3d 546 (2008) are like the facts here, it relies on that case to point out how the trial court erred when it calculated the midpoint of Mr. Yancey's standard sentence range.

Like Mr. Yancey, the defendant in Gutierrez pleaded guilty to delivery of a controlled substance and, also stipulated to accompanying enhancements. Id. at 152–53, 188 P.3d 546. The enhancements added 24 months to a sentence range that otherwise would have been 12 to 20 months. Id. at 153, 188 P.3d 546. The trial court recognized a new range of 36 to 44 months at sentencing and imposed a midrange sentence of 40 months. The court then suspended half of that time, which effectively required the defendant to serve 20 months in prison and 20 on community custody. Id.

On review, the Department of Corrections (DOC) challenged how the trial court computed the defendant's DOSA sentence. Id. DOC argued the statutory scheme required the defendant to serve the entire 24-month enhancement in total confinement and the DOSA portion of his sentence should be based on a 16-month sentence-the midpoint of the original 12-to 20-month range. Id. This court disagreed with the DOC and upheld the trial court's calculation. It affirmed a standard sentence range, under the DOSA statute, included the base sentence range plus any enhancements. Id. at 157.

Here, we agree with the state that the judgment and sentence contains the wrong seriousness levels for counts 1 and 2. Given the trial court calculated the total standard range correctly, we believe the errors are scrivener's errors. State v. Davis, 160 Wash. App. 471, 478, 248 P.3d 121 (2011); *see also* Presidential Estates Apartment Assocs. v. Barrett, 129 Wash.2d 320, 326, 917 P.2d 100 (1996). In fact, notwithstanding the scrivener's errors, the judgement and sentence shows the trial court, here, used the same

method to calculate Mr. Yancey's standard sentence range, as the trial court used in Gutierrez.

Like the trial court in Gutierrez, the trial court here took the base range of each of Mr. Yancey's counts as 12+- 20, and added 24 months for the enhancements. That put Mr. Yancey's standard sentence range at 36+- 44 months. CP 65-76. Whereas the trial court in Gutierrez suspended half of the defendant's time so he would serve 20 months in prison and 20 months on community custody to impose a sentencing alternative, the trial court, here, waived imposition of the standard range sentence to do so. State v. Mohamed, 187 Wash. App. 630, 641, 350 P.3d 671, 676 (2015).

V. CONCLUSION

The trial court correctly calculated Mr. Yancey's standard range sentence at 36 +- 44 months. And when it determined Mr. Yancey was eligible for a residential DOSA, it waived imposition of a sentence within that standard sentence range and imposed an alternative sentence. Given the trial court did not err when it imposed the residential DOSA, we ask this court to uphold its decision.

Furthermore, if this court agrees the seriousness levels for counts 1 and 2 on judgment and sentence are scrivener's errors, we ask this court to remand the judgement sentence to the trial court for correction. State v. Makekau, 194 Wash. App. 407, 421, 378 P.3d 577 (2016); CrR 7.8(a).

Submitted this 20th day of September, 2017.

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DECLARATION OF SERVICE

September 20, 2017

Court of Appeals Case No. 352161

Case Name: *State of Washington v. James Austin Yancey*

I declare under penalty and perjury of the laws of Washington State that on **Wednesday, September 20, 2017,** I filed the attached respondent's brief with Division Three Court of Appeals and served copies to:

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