

FILED
SUPREME COURT
STATE OF WASHINGTON
6/22/2018 10:10 AM
BY SUSAN L. CARLSON
CLERK

COA 35216-1-III

No. 95992-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

JAMES AUSTIN YANCEY,

Respondent.

PETITION FOR REVIEW

STATE'S PETITION

Respectfully submitted:



by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

P.O. Box 4242
Pasco, Washington 99302
(509) 545-3543

TABLE OF CONTENTS

	Page No.
I. <u>IDENTITY OF PETITIONER</u>	1
II. <u>CITATION TO COURT OF APPEALS DECISION</u>	1
III. <u>ISSUES PRESENTED FOR REVIEW</u>	1
IV. <u>STATEMENT OF THE CASE</u>	2
V. <u>SUMMARY OF ARGUMENT</u>	4
VI. <u>ARGUMENT</u>	5
A. <u>The Published Opinion Misinterprets the Plain Language of the DOSA Statute, Rendering an Entire Sentence Superfluous</u>	5
B. <u>The Decision Misinterprets <i>Mohamed</i> and Conflicts with Decisions of Other Courts</u>	10
C. <u>The Published Opinion Violates the Separation of Powers Doctrine</u>	15
VII. <u>CONCLUSION</u>	16

TABLE OF AUTHORITIES

State Cases

	Page No.
<i>Gutierrez v. Dep't of Corr.</i> , 146 Wn. App. 151, 188 P.3d 546 (2008)	3, 6, 11
<i>Hale v. Wellpinit Sch. Dist. No. 49</i> , 165 Wn.2d 494, 198 P.3d 1021 (2009)	5
<i>State v. Ammons</i> , 105 Wn.2d 175, 713 P.2d 719 (1986)	15
<i>State v. Conover</i> , 183 Wn.2d 706, 355 P.3d 1093 (2015)	11
<i>State v. Evans</i> , 177 Wn.2d 186, 298 P.3d 724 (2013)	8, 9
<i>State v. Goss</i> , 56 Wn. App. 541, 784 P.2d 194 (1990)	6, 14
<i>State v. J.P.</i> , 149 Wn.2d 444, 69 P.3d 318 (2003)	8
<i>State v. Le Pitre</i> , 54 Wash. 166, 103 P. 27 (1909).....	15
<i>State v. Mohamed</i> , 187 Wn. App. 630, 350 P.3d 671 (2015)	passim
<i>State v. Mulcare</i> , 189 Wash. 625, 66 P.2d 360 (1937).....	15
<i>State v. Murray</i> , 128 Wn. App. 718, 116 P.3d 1072 (2005)	passim
<i>State v. Onefrey</i> , 119 Wn.2d 572, 835 P.2d 213 (1992)	6, 9, 14
<i>State v. Rodriguez</i> , 183 Wn. App. 947, 335 P.3d 448 (2014)	5
<i>Zylstra v. Piva</i> , 85 Wn.2d 743, 539 P.2d 823 (1975)	16

Court Rules and Statutes

Page No.

RAP 13.4.....	10, 15, 16
RCW 9.94A.010	15
RCW 9.94A.190	9
RCW 9.94A.505	5, 6
RCW 9.94A.517	6
RCW 9.94A.518	6
RCW 9.94A.525	6
RCW 9.94A.589	6
RCW 9.94A.660	passim
RCW 9.94A.662	8, 9, 11, 12
RCW 9.94A.664	11, 12

I. IDENTITY OF PETITIONER

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

II. CITATION TO COURT OF APPEALS DECISION

The State seeks review of the Published Opinion, filed May 24, 2018. A copy of the decision is appended to this petition at pages A-1 through A-16. The relevant statutes are appended at pages B-1 through B-5.

III. ISSUES PRESENTED FOR REVIEW

1. Where, contrary to established case law regarding statutory construction, the Published Opinion misinterprets the plain language of the DOSA statute and renders a portion of the statute superfluous, shall this Court accept review?
2. Where the Published Opinion authorizes excluding (effectively dismissing) a sentencing enhancement in order to jury-rig a standard range which would result in a residential alternative, and where this is in direct conflict with opinions from the supreme court and court of appeals prohibiting such hybrid alternative/exceptional sentences, shall this Court accept review?

3. Where the Legislature has restricted the location of the DOSA (whether in the community or prison-based) as determined by the midpoint of the offender's standard range, does the court's refusal to respect that restriction and the limits of its sentencing authority violate the separation of powers doctrine?

IV. STATEMENT OF THE CASE

The Defendant/Respondent James Yancey was charged with two counts of delivering buprenorphine; each count included a school zone enhancement. CP 4-6. If convicted as charged, the Defendant faced a standard range of 36+ to 44 months. CP 62, 66. The evidence against the Defendant was obtained in a controlled buy with a confidential informant. CP 1-3. The prosecutor offered to recommend a 20 month prison-based Drug Offender Sentencing Alternative (DOSA) if the Defendant did not seek to unmask¹ the informant. CP 38-39. The Defendant rejected the offer and unmasked the informant. CP 39. Facing a prosecution with "substantial physical and technological evidence," the Defendant then

¹ In recent years, there have been three murders and various assaults related to the identification of confidential informants in Walla Walla County. CP 39. The Defendant himself had contracted to work as an informant for the police in 2008. CP 38-39.

pled guilty as charged. CP 9-19, 39.

When the Defendant indicated that he would be requesting a residential DOSA, the prosecutor explained that the Defendant was ineligible by reason of his high standard range. CP 34, 61-63. "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).

The Defendant's base range for each count of delivery was 12+ to 20 months; the enhancements added 24 months. CP 62, 66. Because the standard range is calculated by including the enhancement, the Defendant's standard range was 36+ to 44 months. CP 62 (citing *Gutierrez v. Dep't of Corr.*, 146 Wn. App. 151, 188 P.3d 546 (2008)); CP 66. The midpoint of 36+ to 44 is 40 months. CP 62. Because 40 months is not less than 24 months, the Defendant was not eligible for a residential DOSA. CP 62.

Notwithstanding the State's memorandum or the acknowledged standard range, the court granted the Defendant a residential DOSA. CP 69. The State appealed. CP 78-79.

The holding in the majority opinion is that "a sentencing court may waive the enhancements as part of the standard sentencing

range under a DOSA.” Published Opinion at 6 (quoting *State v. Mohamed*, 187 Wn. App. 630, 641, 350 P.3d 671 (2015)). The decision would remand “to the sentencing court to either confirm or exercise waiver of the enhancements.” Pub. Op. at 7. The two paragraph legal analysis relied upon what it believed to be the ruling of *State v. Mohamed*. Pub. Op. at 6-7.

The dissenting opinion explains that the majority’s interpretation of *Mohamed* is error, conflicts with other decisions of the Court of Appeals, and violates the doctrine of the separation of powers. Dissent at 1. “The governing case here is actually *Murray*.” Dissent at 8 (citing *State v. Murray*, 128 Wn. App. 718, 116 P.3d 1072 (2005)).

V. SUMMARY OF THE ARGUMENT

The legislature has provided for a treatment alternative for eligible offenders who suffer from drug addiction where that addiction contributes to criminal conduct. RCW 9.94A.660(1). Courts have discretion to impose that alternative sentence on eligible offenders. RCW 9.94A.660(3) (the sentencing court determines if a DOSA is “appropriate”). However, whether that treatment is served in prison or

in the community is not discretionary upon the court but dependent on the offender's standard range. *Id.* (residential alternative only available if the midpoint is twenty-four months or less). The sentencing court is not authorized to exclude sentencing enhancements in order to manufacture a standard range to permit a residential DOSA.

VI. ARGUMENT

A. THE PUBLISHED OPINION MISINTERPRETS THE PLAIN LANGUAGE OF THE DOSA STATUTE, RENDERING AN ENTIRE SENTENCE SUPERFLUOUS.

The Sentencing Reform Act (SRA) is a complex framework, difficult to navigate. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 510, 198 P.3d 1021, 1029 (2009) ("made more complex each time the SRA is amended"); *State v. Rodriguez*, 183 Wn. App. 947, 954, 335 P.3d 448, 452 (2014). The dissenting opinion provides a careful, step-by-step explanation of how the DOSA statute operates and where the superior court (and majority opinion) took a misstep.

Generally, under the SRA, a trial judge is expected to impose a standard range sentence. RCW 9.94A.505(2)(a)(i). In this case, the presumption would be for a sentence between 36+ to 44 months in

prison. CP 66.

When there is no enhancement, the range is determined by the defendant's offender score and the seriousness level of the offense. RCW 9.94A.517; RCW 9.94A.518; RCW 9.94A.525; RCW 9.94A.589(1)(a). Where, as here, there is a sentencing enhancement, "the enhancement is *added* to the range rather than treated as a separate sentencing provision." *Gutierrez v. Dep't of Corr.*, 146 Wn. App. 151, 155, 188 P.3d 546 (2008).

There are exemptions from the standard range: exceptional sentences, sentencing alternatives, persistent offenders, and serious sex offenders. RCW 9.94A.505(2)(a)(ii)-(xi). These exemptions are not used in conjunction with each other. Accordingly, consecutive sentences (a type of exceptional sentence) cannot be imposed together with a SSOSA or DOSA. *State v. Onefrey*, 119 Wn.2d 572, 576-77, 835 P.2d 213 (1992); *State v. Murray*, 128 Wn. App. 718, 726, 116 P.3d 1072 (2005); *State v. Goss*, 56 Wn. App. 541, 544, 784 P.2d 194 (1990).

When the court considers an alternative sentence, it must proceed by steps. Dissent at 3. Under the DOSA statute, first, the court considers statutory eligibility. RCW 9.94A.660(1). There is no

dispute that the Defendant Yancey was eligible under subsection (1).

Next, the court considers whether it is “appropriate,” i.e. the defendant’s fitness for the alternative sentence. RCW 9.94A.660(3). There is no dispute that the sentencing court had discretion to find a DOSA was appropriate in Mr. Yancey’s case.

Finally, the court determines whether the sentence shall be served in prison or in the community. That is determined by the defendant’s standard range.

If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of ***either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.***

RCW 9.94A.660(3) (emphasis added). Where the standard range is long (greater than 24 months), the DOSA shall be served in prison. Where the standard range is short, the DOSA shall be served in the community, i.e. a residential DOSA. When the court imposes a prison-based DOSA, the offender is confined for no less than 12

months. RCW 9.94A.662(1)(a) (“one-half the midpoint of the standard range or twelve months, whichever is greater”).

This is where the superior court and court of appeals erred. Statutes are interpreted to give effect to all language in the statute and to render no portion meaningless or superfluous. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). But the decision renders the last sentence in RCW 9.94A.660(3) superfluous. The court lacks authority from the legislature to impose a *residential* DOSA. “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). “[T]he trial court followed the statutory commands to a point, but then faltered.” Dissent at 3. The Defendant was eligible for a DOSA, but not a *residential* DOSA.

Even when examining the plain language of a statute, the courts must consider “the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.” *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013). How the DOSA statute differentiates between residential versus prison-based DOSA recipients parallels how the legislature differentiates between whether a sentence is

served in state prison versus a county jail. Dissent at 3 (discussing the “jail-prison dichotomy”). An offender who is granted a DOSA may have his sentence reduced by half. RCW 9.94A.662(1)(a) (confinement is for one-half the midpoint of the standard range but no less than 12 months). If the offender’s standard range is more than 24 months, then half the midpoint (i.e. the DOSA) is more than 12 months. And a sentence of 12+ months is served in a state facility under the Department of Corrections. RCW 9.94A.190(1)). However, if an offender’s standard range is 24 months or less, then half the midpoint is no more than 365 days. And a sentence for a term of 12 months or less) is served in a county jail. *Id.*

In analyzing the special sex offender sentencing alternative (SSOSA), this Court noted that a sentencing alternative “is indeed discretionary.” *State v. Onefrey*, 119 Wn.2d at 577. But if the court does impose the alternative, the statute dictates the term of supervision. *Id.* The court’s discretion is limited to choosing the alternative, not to shaping it.

A court’s fundamental objective in reading a statute is to ascertain and carry out the legislature’s intent. If a statute’s meaning is plain on its face, then the court must give effect to that plain meaning. 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. A court should not adopt an interpretation that renders any portion of the statute meaningless or superfluous. The meaning of a statute is a question of law that the court reviews de novo.

State v. Mohamed, 187 Wn. App. 630, 637, 350 P.3d 671 (2015).

Because the Published Opinion's interpretation of the statute renders a sentence superfluous, its interpretation is not lawful. Because this interpretation conflicts with established rules in various cases regarding statutory construction thereby usurping legislative authority, this Court must accept review. RAP 13.4(b)(1)-(4).

B. THE DECISION MISINTERPRETS *MOHAMED* AND CONFLICTS WITH DECISIONS OF OTHER COURTS.

In making its error, the Majority Opinion claimed it was relying upon *State v. Mohamed*, 187 Wn. App. 630, 350 P.3d 671 (2015). This misperceives the analysis in *Mohamed* entirely.

In that case, the defendant was convicted of four counts of delivery with three school zone enhancements. *State v. Mohamed*, 187 Wn. App. at 635. He asked for both² an alternative sentence (PSA or DOSA) and a mitigated exceptional sentence. *Id.*

² Hybrid DOSA/exceptional sentences are not authorized under the SRA. *State v. Murray*, 128 Wn. App. at 726.

At the sentencing hearing, the trial court made clear that it believed it had no authority to waive the enhancements if it chose to impose an alternative sentence, stating, “There has to be a 72-month sentence [enhancement]. I have no choice in the matter.”

State v. Mohamed, 187 Wn. App. at 635–36. The sentencing court’s denial evidenced several³ errors. The court of appeals’ opinion addressed only one of these errors. *Mohamed*, 187 Wn. App. at 6-4146. The lower court mistakenly believed that the sentencing enhancements were something separate and apart from the standard range. In fact, they are part of the standard range. *Gutierrez v. Dep’t of Corr.*, 146 Wn. App. at 155. Therefore, if the court decided to grant a DOSA, the court would be waiving the standard range *including enhancement* and then imposing only half that total as the term of incarceration. *State v. Mohamed*, 187 Wn. App. at 637 (quoting RCW 9.94A.660(3) (“shall waive”)); RCW 9.94A.662(1)(a); RCW 9.94A.664(4)(c).

³ The law does not require that school zone enhancements run consecutively to each other but only consecutively to the base sentence. *State v. Conover*, 183 Wn.2d 706, 355 P.3d 1093 (2015). The length of a defendant’s sentence is only disqualifying of a DOSA insofar as it may be *too small* to accommodate meaningful treatment. RCW 9.94A.660(1)(f) (to be eligible, an offender’s standard range must be greater than one year).

Accordingly, the court of appeals remanded so that the sentencing court could reconsider its sentence with a better understanding of “the full range of available options.” *Mohamed*, 187 Wn. App. at 646.

In our own case, the Majority misinterpreted *Mohamed* to hold that the DOSA statute authorizes a court to *exclude a portion* of the standard range, specifically the enhancement.

If we exclude James Yancey’s sentence enhancements, the midpoint of his standard range is sixteen months. If we include the sentence enhancements, the midpoint rises to forty months.

Pub. Op. at 5. The statute does not purport to “exclude” any “portion” of the standard range. This would effectively result in dismissing the enhancement that Mr. Yancey pled guilty to. The statute conveys authority to choose an alternative sentence in lieu of a standard range sentence, not to tinker with portions of the standard sentence. Dissent at 6. If the DOSA is imposed, the legislature has prescribed what the incarceration period under DOSA will be. It will be half the standard range. RCW 9.94A.662(1)(a) (prison-based DOSA is half the midpoint of the standard range); RCW 9.94A.664(4)(c) (a

revocation of a residential DOSA results in a term of half the midpoint of the standard range).

The Majority misinterpreted that the *Mohamed* decision authorized consideration of a *residential* DOSA.

Despite the fact that Mohamed’s midpoint range with the sentence enhancements ***exceeded twenty-four months***, the court remanded the case for resentencing so the trial court could explore a DOSA. We discern no reason to reject the ruling in *State v. Mohamed*.

Pub. Op. at 6. The Majority’s interpretation is not supported in the actual language of the *Mohamed* opinion. The word “residential” is used exactly once in *Mohamed* and only in quoting the full subsection. *Mohamed*, 187 Wn. App. at 637 (quoting RCW 9.94A.660(3)). The *Mohamed* court was remanding for consideration of a DOSA, not a residential DOSA. It is not within a court’s discretion to choose *where* the DOSA will be served (whether in the community or in prison), but only *if* a DOSA will be granted. In Mohamed’s case, as here, it would necessarily be a prison-based DOSA as prescribed by statute.

The Majority would remand for the sentencing court “to determine whether to expressly waive enhancements ***in order to*** impose a DOSA.” Pub. Op. at 8 (emphasis added). Again, this misperceives the holding in *Mohamed* – and the law. The court does

not need to waive enhancements “in order to impose a DOSA.” A court’s authority to grant a DOSA is *not* limited by the high range resulting from an enhancement. RCW 9.94A.660(1)(f) (limited only by an excessively low range).

This language in the Majority suggests that the court believes it can first impose an exceptional sentence (to exclude the enhancement) in order to craft a range which would result in a residential DOSA. This would be an impermissible hybrid of exemptions. It conflicts with decisions from the supreme court and courts of appeals. *State v. Onefrey*, 119 Wn.2d at 576 (in imposing a sentencing alternative “the trial court is not permitted to fashion conditions” to circumvent statutory directive as to length of term); *State v. Murray*, 128 Wn. App. at 726; *State v. Goss*, 56 Wn. App. at 544.

The question in *Mohamed* was whether enhancements are or are not considered to be part of the “standard range.” They are part of the standard ranges, per *Gutierrez*. *Mohamed*, 187 Wn. App. at 640 (“We agree with and expressly adopt the reasoning of *Gutierrez*.”). Therefore, when the court waives the standard range and imposes the midpoint of the standard range, it is cutting

everything in half, i.e. halving both the base range and the enhancement.

The State requests this Court take review to clarify the plain language of the statute, which the Majority has muddied. Such review is required by RAP 13.4(b)(1)-(4).

C. THE PUBLISHED OPINION VIOLATES THE SEPARATION OF POWERS DOCTRINE.

The Washington Supreme Court “has consistently held” that the fixing of legal punishments for criminal offenses is a legislative, rather than a judicial, function. *State v. Ammons*, 105 Wn.2d 175, 180, 713 P.2d 719 (1986) (citing *State v. Le Pitre*, 54 Wash. 166, 169, 103 P. 27 (1909)). The power of the legislature in that respect is plenary. *State v. Mulcare*, 189 Wash. 625, 628, 66 P.2d 360 (1937). The trial court’s discretion is limited to that given by the legislature. *State v. Ammons*, 105 Wn.2d at 181; RCW 9.94A.010 (Sentencing Reform Act (SRA) “structures, but does not eliminate, discretionary decisions affecting sentences”).

If the judicial power does not follow the laws prescribed, it encroaches on the legislative authority. *State v. Le Pitre*, 54 Wash. at 629. When the activity of one branch threatens the independence or

integrity or invades the prerogatives of another, there is a violation of the separation of powers doctrine. *Zylstra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1975).

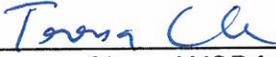
Insofar as the Majority Opinion authorizes a waiver of an admitted enhancement in order to craft a new standard range, this encroaches on the Legislature's authority. RAP 13.4(b)(3)-(4). The law does not authorize either exclusion of the admitted enhancement or hybrid exemptions.

VII. CONCLUSION

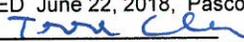
Based upon the forgoing, the State respectfully requests this Court accept review.

DATED: June 22, 2018.

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 June 22, 2018, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201
---	---

APPENDICES

A. PUBLISHED OPINION

State v. Yancey, -- Wn. App. 2d --, 418 P.3d 157, 2018 WL 2348475
(May 24, 2018) (No. 35216-1-III)

- Majority, A-1 through A-8
- Dissent, A-9 through A-16

B. Relevant Statutes

- RCW 9.94A.660
- RCW 9.94A.662
- RCW 9.94A.664

FILED
MAY 24, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 35216-1-III
Appellant,)	
)	
v.)	
)	
JAMES AUSTIN YANCEY,)	PUBLISHED OPINION
)	
Respondent.)	

FEARING, J. — The State appeals from the sentencing court’s grant of James Yancey’s request of a residential drug offender alternative sentence (DOSA). We remand for further consideration by the sentencing court of the sentencing alternative.

FACTS

James Yancey sold suboxone strips, for which he held a prescription, to a confidential informant. A day later, Yancey repeated his misconduct.

A-1

PROCEDURE

The State of Washington charged James Yancey with two counts of delivering a controlled substance, each with a sentence enhancement of selling within one thousand feet of a school bus stop. Yancey pled guilty to both counts and the enhancements.

During the sentencing process, James Yancey sought a residential drug offender sentencing alternative. The State registered its opposition and argued that Yancey lacked eligibility for a residential DOSA due to a high standard range.

RCW 9.94A.525(1) states that convictions entered or sentenced on the same date as the conviction, for which the sentencing court computes the offender score, shall be deemed “other current offenses” within the meaning of RCW 9.94A.589. Therefore, Yancey accrued an offender score of only one despite pleading guilty to two counts. The standard range for each charge was twelve to twenty months. The school zone enhancement added twenty-four months to the range, raising the total standard range to thirty-six to forty-four months. Under a Washington statute, an offender loses eligibility for a residential DOSA if the midpoint of his standard range exceeds twenty-four months.

James Yancey argued before the sentencing court that a judge may waive imposition of school zone enhancements if the defendant is otherwise eligible for a sentencing alternative. In a declaration submitted with the brief, defense counsel averred that he had attended court sessions where prosecutors removed enhancements on drug delivery cases involving methamphetamine so that the defendant might qualify for a

residential DOSA. The State of Washington responded by arguing that Yancey lacked eligibility for the sentencing alternative because the mid-point of Yancey's standard range exceeded twenty-four months. The trial court granted Yancey's request for the residential DOSA.

LAW AND ANALYSIS

DOSA Sentence

The State of Washington appeals James Yancey's residential DOSA sentence. RCW 9.94A.660, a section of the historic Sentencing Reform Act of 1981, chapter 9.94A RCW, allows alternative sentences for drug offenders. *State v. Grayson*, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005). The statute reads, in part:

- (1) An offender *is eligible* for the special drug offender sentencing alternative if:
 - (a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);
 - (b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);
 - (c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;
 - (d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) *If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.*

RCW 9.94A.660 (emphasis added).

RCW 9.94A.660, known as DOSA, provides meaningful treatment and rehabilitation incentives for those convicted of drug crimes, when the trial judge concludes that the sentence would serve the best interests of the individual and the community. *State v. Grayson*, 154 Wn.2d at 343 (2005); *State v. Waldenberg*, 174 Wn. 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 addictions. *State v. Grayson*, 154 Wn.2d at 337. The offender has significant incentive to comply with the conditions of a DOSA sentence,

since failure may result in serving the remainder of the sentence in prison. RCW 9.94A.660(2); *State v. Grayson*, 154 Wn.2d at 338.

RCW 9.94A.660 allows the offender to serve the DOSA sentence either in prison or in a residence. Nevertheless, the offender cannot serve his or her time in a residence if the midpoint of the standard range exceeds two years. If we exclude James Yancey's sentence enhancements, the midpoint of his standard range is sixteen months. If we include the sentence enhancements, the midpoint rises to forty months.

The State impliedly concedes that James Yancey qualifies for a DOSA, but not for a residential DOSA. The State, on appeal, contends the trial court lacked authority to grant the residential DOSA because the court must include the sentence enhancements in the calculation of the midpoint. In turn, Yancey argues that the trial court held authority to waive the sentence enhancements in order to impose a residential DOSA.

This court, in *State v. Mohamed*, 187 Wn. App. 630, 350 P.3d 671 (2015), adopted James Yancey's argument. A jury convicted Ali Mohamed of four counts of delivery of a controlled substance. The jury also found the special allegation for three of the counts that the crimes occurred within one thousand feet of a school. Based on the offender score and seriousness level, both parties agreed Mohamed's base standard range for the delivery charges was twenty to sixty months. Both parties also agreed the twenty-four months' school zone enhancement applied to three of the four charges. Mohamed asked the court to ignore a standard sentence and instead sentence him to a DOSA. The State

No. 35216-1-III
State v. Yancey

argued the judge may waive the standard range part of the sentence, but that Mohamed must be sentenced to at least seventy-two months' confinement for the three school zone enhancements. The sentencing court deemed it lacked authority to award a DOSA and sentenced Mohamed to concurrent sentences of twenty months for the delivery charges and seventy-two months for the three enhancements for a total sentence of ninety-two months' confinement.

This court, in *State v. Mohamed*, held that the trial court mistakenly concluded that it lacked authority to waive the school zone enhancement if it chose to impose a DOSA and that the trial court erred when it failed to consider waiving the school zone enhancements to impose a DOSA. We explained that RCW 9.94A.660 permits waiver of a sentence within the standard sentence range. "Because standard sentence range means the base sentence range plus enhancement of such range, *a sentencing court may waive the enhancements as part of the standard sentence range under a DOSA* or [parenting sentencing alternative]." *State v. Mohamed*, 187 Wn. App. at 641 (internal quotation marks omitted) (emphasis added). Despite the fact that Mohamed's midpoint range with the sentence enhancements exceeded twenty-four months, the court remanded the case for resentencing so the trial court could explore a DOSA. We discern no reason to reject the ruling in *State v. Mohamed*.

In James Yancey's appeal, the State relies on *In re Postsentencing Review of Gutierrez*, 146 Wn. App. 151, 188 P.3d 546 (2008) for support on how to accurately

calculate James Yancey's standard and midpoint range. We find this decision unhelpful because our appeal does not ask how to calculate the standard range. *Gutierrez* does not address waiving imposition of the enhancement to return the midpoint range to within the twenty-four months' restriction stated in the statute.

Unfortunately, this reviewing court lacks a transcript of James Yancey's sentencing hearing. Therefore, we do not know if the trial court expressly waived the requirements of the sentence enhancements in order to grant a DOSA. Therefore, we remand to the sentencing court to either confirm or exercise waiver of the enhancements or to resentence Yancey if the court did not intend to waive the enhancements.

Scrivener Error

Both parties concede the judgment and sentence contains an error as to the seriousness levels for both convictions. James Yancey pled guilty to delivery of a Schedule III non-narcotic controlled substance under RCW 69.50.401(2)(c). Thus, the seriousness level for each count should be a II, not a I as indicated on the judgment and sentence. RCW 9.94A.518. Despite this error, the sentencing court calculated the correct standard range. Yancey asks this court to remand the judgment and sentence to the trial court for correction of this slight mistake. We grant this request.

No. 35216-1-III
State v. Yancey

CONCLUSION

We remand this appeal to the sentencing court to determine whether to expressly waive sentence enhancements in order to impose a DOSA and to correct the seriousness level of the convictions.

Fearing, J.

Fearing, J.

I CONCUR:

Pennell, J.

Pennell, A.C.J.

No. 35216-1-III

KORSMO, J. (dissenting) — *State v. Mohamed*, 187 Wn. App. 630, 350 P.3d 671 (2015), misreads the drug offender sentencing alternative (DOSA) statute and should not be followed. *Mohamed* also conflicts with this court's decision in *State v. Murray*, 128 Wn. App. 718, 725-26, 116 P.3d 1072 (2005) and is inconsistent with other decisions. The statute's grant of permissive authority to impose a DOSA sentence instead of a standard range sentence is not a grant of authority to override the legislative eligibility determination. The sentence imposed by the trial court should be reversed.

Courts have no inherent sentencing authority, but can only exercise the authority granted by the legislature. *State v. Pillatos*, 159 Wn.2d 459, 469, 150 P.3d 1130 (2007) (no inherent authority for courts to adopt sentencing procedure necessary to comply with United States Supreme Court mandate); *State v. Ammons*, 105 Wn.2d 175, 180, 713 P.2d 719, 718 P.2d 796 (1986) (legislature has plenary authority over setting punishments); *State v. LePitre*, 54 Wash. 166, 169, 103 P. 27 (1909) (similar).

Under our Sentencing Reform Act of 1981, chapter 9.94A RCW, a trial judge is expected to impose a standard range sentence. RCW 9.94A.505(2)(a)(i). The standard range sentence is computed by looking at the intersection of the seriousness level of the offense and the defendant's offender score. RCW 9.94A.510, .517. In cases where a

A-9

sentencing enhancement was proved, the enhancement is added to the range specified by the seriousness level, resulting in a new (enhanced) standard range. *Mohammed*, 187 Wn. App. at 638-45; *In re Postsentencing Review of Gutierrez*, 146 Wn. App. 151, 154-55, 188 P.3d 546 (2008).

Exemptions from the requirement that felony offenders be sentenced within a standard range include persistent offenders, many sex offenders, exceptional sentences, and alternative sentences. RCW 9.94A.505(2)(a)(ii)-(xi). The only mechanism for altering a standard range sentence is the authority to declare an exceptional sentence when “substantial and compelling reasons” justify doing so. RCW 9.94A.535. The exceptional sentence authority cannot be used in conjunction with an alternative DOSA sentence. *State v. Onefrey*, 119 Wn.2d 572, 576-77, 835 P.2d 213 (1992); *Murray*, 128 Wn. App. at 726; *State v. Goss*, 56 Wn. App. 541, 544, 784 P.2d 194 (1990). It likewise cannot be used to make someone eligible for an alternative sentence, since the legislature is the body with the power to determine eligibility. *Onefrey*, 119 Wn.2d at 577.

Alternative sentences typically follow the same requirements—the court must determine eligibility for the alternative sentence, determine that the defendant is a fit candidate for the alternative sentence, and determine whether or not to impose the alternative sentence. *E.g.*, RCW 9.94A.650 (first time offenders); RCW 9.94A.655 (custodial parents); RCW 9.94A.660 (drug offenders); RCW 9.94A.670 (sexual

offenders). The decision to impose an alternative sentence typically is reviewed for abuse of discretion. *E.g., Onefrey*, 119 Wn.2d at 575.

The DOSA sentence alternative follows this pattern. First, the trial court determines whether the statutory eligibility factors (sentence length, type of crime) are present and that disqualifying factors (previous serious offenses, prior DOSA sentences) are not present. RCW 9.94A.660(1). Upon motion, the court then considers the offender's fitness for the alternative sentence. RCW 9.94A.660(2), (4), (5)(a). The court then determines whether to impose the alternative sentence. RCW 9.94A.660(3). Whether the DOSA will be served in prison or the community is determined by the midpoint of the offender's standard range. *Id.* (last sentence). A midpoint of 24 months or less is served locally in residential treatment. RCW 9.94A.664. A midpoint of greater than 24 months dictates that the sentence is served in prison. RCW 9.94A.662. This approach parallels the jail-prison dichotomy in standard range sentences. Terms of greater than 12 months are served in prison, while terms less than that are served locally. RCW 9.94A.190(1).

Here, the trial court followed the statutory commands to a point, but then faltered. It determined that Mr. Yancey's current offense was eligible for DOSA and had a sufficiently long standard range to qualify for treatment. The court determined that Mr. Yancey's prior offenses and immigration status did not disqualify him from consideration. Thus, the court correctly determined Mr. Yancey was eligible for a DOSA

sentence. RCW 9.94A.660(1). The court then determined Mr. Yancey would be an appropriate person for treatment under DOSA. RCW 9.94A.660(4), (5). The court then exercised its discretion to impose a DOSA sentence. RCW 9.94A.660(3).

So far, so good. However, the court then failed to follow the statute when it chose to ignore the legislative determination that offenders with long standard range terms, such as Mr. Yancey's, must serve their sentences in prison instead of in the local community: "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). At this point the court apparently turned to *Mohamed*.

The problem in *Mohamed* concerned the interplay of the DOSA statute and the stacking of enhancements required by RCW 9.94A.533(6).¹ *Mohamed* involved four sentences, three of which were partly concurrent and partly consecutive due to the stacking of enhancements. 187 Wn. App. at 633-34. Application of an alternative sentence such as DOSA in this context is problematic because eligibility for alternative sentences typically is concerned primarily with the standard range for a particular offense, while the total sentence range for all charges is dependent on other statutes governing the

¹ Both the history and purpose of this provision were discussed in detail by *Mohamed*, 187 Wn. App. at 642-43, and *Gutierrez*, 146 Wn. App. at 155-57.

ordering and enhancement.² No statutory instruction has been given for how, or even whether,³ consecutive sentencing impacts a decision to impose an alternative sentence.

Instead, and without any discussion of legislative purpose, the *Mohamed* court found in the first sentence of RCW 9.94A.660(3) an ability to alter the standard range in order to make an offender fit within a residential DOSA rather than a prison DOSA. In my opinion, this was error. The statute read:

If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, **the court shall waive imposition of a sentence within the standard sentence range** and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

RCW 9.94A.660(3), with emphasis supplied by *Mohamed*, 187 Wn. App. at 637-38.

Using this authority, the trial judge here altered the standard range in order to make Mr. Yancey fit in a local treatment program instead of the state prison program.

² When it addressed the issue in *Gutierrez*, this court faced only a single count and, therefore, had a fairly straightforward issue in computing a single standard range. 146 Wn. App. at 153-57. Understandably, the State correctly argues *Gutierrez* as the more appropriate case to apply here rather than *Mohamed*.

³ Without briefing on legislative history, I would not want to express a firm opinion on the topic, but it appears that a strong argument can be made that an alternative sentence is not concerned with the order in which standard range sentences are to be served. The trial court's choice to select an alternative sentence arguably renders the ordering of standard range sentences irrelevant.

The error is three-fold. First, nothing in the emphasized language above conveys authority to alter a standard range sentence. Instead, it is the standard language used by the legislature in conveying the authority to trial judges to choose an alternative sentence in lieu of a standard range sentence. *See, e.g.*, RCW 9.94A.650(2) (first offenders: “may waive the imposition of a sentence within the standard sentence range”); RCW 9.94A.655(4) (parenting alternative: “shall waive imposition of a sentence within the standard sentence range”).⁴

Second, the interpretation of the emphasized language is inconsistent with both parts of the remainder of the statute. The initial clause of the first sentence recognizes the trial court’s role in finding the offender eligible and fit for an alternative sentence under the preceding provisions of the statute; it is incongruous and inconsistent to then read the next clause as empowering the trial judge to ignore and alter the standards governing the eligibility decision. It also is inconsistent to interpret the emphasized language as *Mohamed* did because the remainder of the statute expressly tells the court how to apply its decision to invoke the alternative sentence—it shall choose a local or a prison DOSA based on the length of the midpoint of the standard range sentence. It does not say “standard range as altered by the trial court” or otherwise suggest that the legislative

⁴ For special sexual offenders sentenced under RCW 9.94A.670(4), the language is a bit different, directing that the court “shall then impose” a sentence and granting permissive authority to suspend some of the sentences.

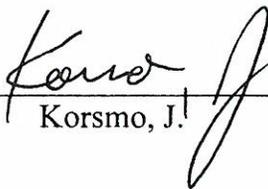
directive is somehow limited by a discretionary choice of the judge to alter the eligibility standards.

Finally, the *Mohamed* interpretation is erroneous because it reads in an exceptional sentence authority that is inappropriate. First, our courts have long made clear that the exceptional sentence authority applies only to standard range sentences and does not apply to alternative sentences. *Onefrey*, 119 Wn.2d 572; *Murray*, 128 Wn. App. 718; *Goss*, 56 Wn. App. 541. If the legislature was breaking with its longstanding approach, it did so in an oblique manner and in a strange location. Second, allowing the trial judge to change its eligibility criteria also would be a significant change for the legislature that has consistently exercised its power to define crimes and punishments rather than delegate that authority to the court. Third, if it intended to allow trial judges to change the eligibility criteria, the legislature likely would have placed that authority in the eligibility subsection in order to expressly acknowledge the possibility. It also could have greatly simplified the language of the eligibility section, RCW 9.94A.660(1), if it intended its criteria to be advisory rather than mandatory. Fourth, where the legislature has granted courts power to alter the standard range by declaring an exceptional sentence, it has expressly limited that authority to cases where compelling reasons exist. The DOSA statute, as interpreted by *Mohamed*, sets forth no criteria on which its exceptional sentence authority is to be exercised.

For all of those reasons, the interpretation given by *Mohamed* should be rejected. The governing case here is actually *Murray*. There, this court overturned a similar effort by a trial judge to use the exceptional sentence authority to change the midpoint on which a DOSA sentence was based. 128 Wn. App. at 721-22. This court expressly rejected the effort, noting that an exceptional sentence was not available when imposing an alternative DOSA sentence. *Id.* at 725-26. Such “hybrid” sentences simply were not authorized. *Id.*

Although it is distinguishable in the context of a single conviction, *Mohamed* also was wrongly decided and should not be followed. The majority’s decision effectively, although silently, overrules *Murray*.

The decision of the trial court should be reversed and the matter remanded for the trial court to consider either a prison-based DOSA or a standard range sentence. Thus, I respectfully dissent.


Korsmo, J.

RCW 9.94A.660

Drug offender sentencing alternative—Prison-based or residential alternative.

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504 (6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

B-1

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 71.24.580.

[2016 sp.s. c 29 § 524; 2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

NOTES:

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

Effective date—2009 c 389 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

B-2

Expiration date—2009 c 389 § 2: "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Effective date—2006 c 73: See note following RCW 46.61.502.

Application—2005 c 460: "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

Effective date—2005 c 460: "This act takes effect October 1, 2005." [2005 c 460 § 3.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

Intent—2002 c 290: See note following RCW 9.94A.517.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

B-3

RCW 9.94A.662**Prison-based drug offender sentencing alternative.**

(1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

[2009 c 389 § 4.]

NOTES:

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

B-4

RCW 9.94A.664

Residential chemical dependency treatment-based alternative.

(1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under *chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody.

[2009 c 389 § 5.]

NOTES:

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, effective April 1, 2018, 601, and 701.

Effective date—2009 c 389 §§ 1 and 3-5: See note following RCW 9.94A.505.

B-5

June 22, 2018 - 10:10 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: State of Washington v. James Austin Yancey (352161)

The following documents have been uploaded:

- PRV_Petition_for_Review_20180622101014SC707106_7968.pdf
This File Contains:
Petition for Review
The Original File Name was 352161 Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Canz2@aol.com
- jnagle@co.walla-walla.wa.us
- tcanzater63@gmail.com

Comments:

Sender Name: Teresa Chen - Email: tchen@co.franklin.wa.us
Address:
PO BOX 4242
PASCO, WA, 99302-4242
Phone: 509-545-3543

Note: The Filing Id is 20180622101014SC707106