

65745-3

65745-3

NO. 65745-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

---

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW CLINE,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

---

BRIEF OF APPELLANT

---

GREGORY C. LINK  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, WA 98101  
(206) 587-2711

A handwritten signature in black ink is written over a vertical stamp. The stamp contains the text "FILED" at the top, "APR 11 2011" in the middle, and "COURT OF APPEALS" at the bottom. The signature appears to be "G. Link".

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR..... 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR ..... 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT.....2

THE TRIAL COURT ERRED AND EXCEEDED IS  
SENTENCING AUTHORITY BY APPARENTLY  
RELYING ON NONSTATUTORY FACTORS TO  
DENY MR. CLINE’S REQUEST FOR A DOSA..... 2

    1. The court must consider the mandatory  
        sentencing criteria when determining whether to  
        impose a DOSA..... 2

    2. Because the trial court abused its discretion this  
        Court should reverse Mr. Cline’s sentence ..... 5

E. CONCLUSION ..... 7

## TABLE OF AUTHORITIES

### **Washington Supreme Court**

<u>In re the Personal Restraint Petition of Carle</u> , 93 Wn.2d 31, 604 P.2d 1293 (1980) .....	2
<u>State v. Grayson</u> , 154 Wn.2d 333, 111 P.3d 1183 (2005) ..	2, 3, 5, 6
<u>State v. Mail</u> , 121 Wn.2d 707, 854 P.2d 1042 (1993) .....	6
<u>State v. Quismundo</u> , 164 Wn.2d 499, 192 P.3d 342 (2008) .....	6
<u>Wash. State Physicians Ins. Exch. &amp; Ass'n v. Fisons Corp.</u> , 122 Wn.2d 299, 858 P.2d 1054 (1993) .....	6

### **Washington Court of Appeals**

<u>State v. White</u> , 123 Wn.App. 106, 97 P.3d 34 (2004) .....	6
--	---

### **Court Rules**

RCW 9.94A.660 .....	2, 3, 5
---------------------	---------

A. ASSIGNMENT OF ERROR.

The trial court improperly denied Matthew Cline a Drug Offender Sentence Alternative (DOSA) by considering nonstatutory factors to determine his eligibility.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

A sentencing court must consider a request for a DOSA sentence and may not deny such a request based on a misunderstanding of the law or by failing to consider mandatory statutory criteria. Here, although Mr. Cline met the statutory eligibility requirements, the trial court refused to impose a DOSA. Did the court deny Mr. Cline a DOSA on an impermissible basis?

C. STATEMENT OF THE CASE.

Mr. Cline was convicted following guilty pleas to several counts of violation of no contact order. CP 11-35. Because of his drug addiction and its impact upon his relationship with his girlfriend, and resulting no-contact order violations, Mr. Cline requested the court impose a DOSA.

Although Mr. Cline met the statutory eligibility requirements, the trial court denied his request for a DOSA. 7/10/10 RP 6-9. The court did so concluding the alternative was not “appropriate under the statutory conditions.” 7/1/10 RP 10. The court added “I just

don't think that this is the type of case where the legislature intends the Court to impose a DOSA." Id.

D. ARGUMENT.

THE TRIAL COURT ERRED AND EXCEEDED IS SENTENCING AUTHORITY BY APPARENTLY RELYING ON NONSTATUTORY FACTORS TO DENY MR. CLINE'S REQUEST FOR A DOSA

1. The court must consider the mandatory sentencing criteria when determining whether to impose a DOSA. "A trial court only possesses the power to impose sentences provided by law." In re the Personal Restraint Petition of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Consistent with this general limitation on a court's sentencing authority, the DOSA statute structures a court's authority when considering a DOSA. State v. Grayson, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005). The program 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. See generally RCW 9.94A.660; Department of Corrections, Drug Offender Sentencing Alternative Fact Sheet.<sup>1</sup>

---

<sup>1</sup> Available at:  
<http://www.doc.wa.gov/aboutdoc/docs/p351ddosafactsheetsinglesheet.pdf>  
(explaining DOSA program administered by DOC).

If the court determines a person is eligible for DOSA and that it is appropriate, the court shall waive a standard range sentence and impose a sentence which is one-half the midpoint of the standard range sentence in prison receiving chemical dependency treatment. RCW 9.94A.660(5)(a). Once the defendant has completed the custodial part of the sentence, he is released into closely monitored community supervision and treatment for the balance of the sentence. RCW 9.94A.660(2). The defendant has a significant incentive to comply with the conditions of a DOSA, since failure may result in serving the remainder of the sentence in prison. RCW 9.94A.660(8)(c); Grayson, 154 Wn.2d at 338.

The statute provides the court with mandatory criteria to evaluate in determining eligibility. RCW 9.94A.660.

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

Mr. Cline satisfied each of these eligibility requirements.

The State never argued Mr. Cline failed to meet these statutory criteria. Instead, the State initially argued the court should deny Mr. Cline's request because, in the deputy prosecutor's opinion, Mr. Cline's request failed to satisfy several nonstatutory factors which the State imagined applied. 7/1/10 RP 3. For instance the State argued the court had to consider whether there was sufficient nexus between the addiction and crime, whether the court had "some faith" that Mr. Cline would complete treatment,

and “community safety.” Id. But none of the State’s supposed criteria appear in RCW 9.94A.660.

In fact, 2005 amendments of RCW 9.94A.660 eliminated the requirement that a court conclude a DOSA will benefit the community and offender. See Former RCW 9.94A.660(2) amended by Laws 2005, ch. 460 § 1. Every legislative act is presumed to serve a material purpose. State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002). Thus, because the Legislature eliminated the community-benefit criteria that is no longer a requirement of a DOSA.

Beyond the deputy prosecutor’s misstatements there is no record of which criteria the trial court concluded were not met. Nonetheless, the court concluded “it is not appropriate under the statutory conditions.” Because Mr. Cline met each of the statutory eligibility requirements the trial court’s conclusion is wholly unsupported. The court’s decision to a DOSA was a clear abuse of the trial court’s discretion.

2. Because the trial court abused its discretion this Court should reverse Mr. Cline’s sentence. Generally, a trial court’s decision to deny a DOSA is not reviewable. Grayson, 154 Wn.2d at 338. But every defendant is entitled to ask the trial court for

meaningful consideration of a DOSA request. Id. at 342. A party may challenge a trial court's failure to exercise discretion where the trial court categorically or unreasonably denies a DOSA sentence. Id.; State v. White, 123 Wn.App. 106, 114, 97 P.3d 34 (2004).

A court abuses its discretion by using the wrong legal standard or by resting its decision upon facts unsupported by the record. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (quoting Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993)); see also State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993) (failure to follow statutory procedure is legal error reviewable on appeal). “[T]rial judges have considerable discretion under the SRA, [but] they are still required to act within its strictures and principles of due process of law.” Grayson, 154 Wn.2d at 338.

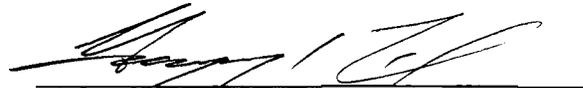
In this case, the court concluded a DOSA “was not appropriate under the statutory criteria” even where it is undisputed Mr. Cline satisfied each of those criteria. Instead, the court must have relied upon an undefined standard of appropriateness to deny him a DOSA. The court’s failure to limit its consideration of a DOSA to the statutory criteria requires of reversal of Mr. Cline’s sentence. Mr. Cline is entitled to resentencing at which a court

gives proper consideration to the guidelines for imposing a DOSA sentence.

E. CONCLUSION.

For the foregoing reasons, Mr. Cline respectfully requests this Court remand his case for a new sentencing hearing.

Respectfully submitted this 13<sup>th</sup> day of December 2010.



---

GREGORY C. LINK – 25228  
Washington Appellate Project  
Attorneys for Appellant