Supreme Court No. ___
(COA NO. 85526-3-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL WHITFIELD,

Petitioner.

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

PETITION FOR REVIEW

MATTHEW FOLENSBEE
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WASHINGTON APPELLATE PROJECT
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A. IDENTITY OF PETITIONER

Mr. Samuel Whitfield, petitioner here and below, asks this Court for review.

B. COURT OF APPEALS DECISION

Mr. Whitfield asks for review of the Court of Appeals' decision issued on November 25, 2024, for which reconsideration was denied on December 27, 2024, pursuant to RAP 13.3 and 13.4(b). App. A (slip opinion); App. B (order denying reconsideration).

C. ISSUE PRESENTED FOR REVIEW

Under the federal and state constitutions, a charging document must fairly notify the accused of both the elements of the crime charged, and of the particular facts alleged to have constituted the offense. The requirement to notify the accused of the particular facts underlying the charge ensures the individual's ability to prepare a defense against the government. Here, the information asserted that Mr. Whitfield

violated a court order, but failed to specify how he did so or reference any conduct by Mr. Whitfield. Was the information constitutionally insufficient because it failed to allege any particular facts to support an essential element of the crime charged?

D. STATEMENT OF THE CASE

Samuel Whitfield and Shannon Traxler dated for about five years, from 2016 until March of 2022. RP 615-16. Soon after the relationship ended, a domestic violence no-contact order was put in place by Tukwila Municipal Court, prohibiting Mr. Whitfield from having contact with Ms. Traxler. RP 528, 617; CP 22-25.

In addition to prohibiting hostile conduct such as assaults, threats, or surveillance, the order prohibited Mr. Whitfield from contacting Ms. Traxler "directly, indirectly, in person or through others, by phone, mail,

or electronic means," and prohibited him from being within 500 feet of her, among other restrictions. CP 22.

On June 8, 2022, Mr. Whitfield appeared in Tukwila Municipal Court for a court hearing. CP 27-28. Ms. Traxler also attended the hearing, accompanied by her victim advocate Lana Umbinetti and a neighbor who knew Mr. Whitfield. RP 528-29, 618.

When Mr. Whitfield recognized the neighbor sitting near Ms. Traxler, he brought over a folder and handed it to the neighbor, saying it was for Ms. Traxler. RP 533-34, 619-20. The folder contained a handwritten letter, which according to Ms. Traxler, "mentioned love and Bible scriptures." RP 622.

When Mr. Whitfield later saw that the neighbor had opened the folder and was reading the letter, he came back over to try to get it back. RP 536, 579. Ms.

Umbinetti took Ms. Traxler and the neighbor to a small conference room next to the courtroom. RP 621.

Though Mr. Whitfield never spoke with Ms. Traxler or sought to enter the conference room, Ms. Traxler said that he mouthed "I love you . . ." through the door's glass panel as he walked past it later. RP 570-75, 623-24, 640-41.

The State charged Mr. Whitfield with violating a domestic violence court order. CP 1-2. The State charged this as a felony, because Mr. Whitfield had two convictions for violating a 2009 court order involving a different person. Id.

The information in this case stated that Mr. Whitfield "did know of and willfully violate" the terms of the order naming Ms. Traxler on June 8, 2022. The information did not reference any conduct by Mr. Whitfield, what provision he allegedly violated, or

where in King County the charged violation allegedly occurred. Id.

Mr. Whitfield was convicted after a trial and sentenced to five years in prison. CP 169, 395. The Court of Appeals affirmed the conviction. Slip op. at 1.

E. WHY REVIEW SHOULD BE GRANTED

1. **This Court should accept review under RAP 13.4(b)(1) and (2) because the Court of Appeals' decision that the information charging Mr. Whitfield was sufficient, despite alleging no facts about his conduct, conflicts with precedent from this Court and the Court of Appeals.**

Review of this case is warranted because the Court of Appeals' decision conflicts with multiple prior decisions of this Court, which hold that a charging document must allege particular facts satisfying every element of the charged offense, in addition to listing the legal elements themselves. State v. Hugdahl, 195 Wn.2d 319, 324, 458 P.3d 760 (2020); State v. Zillyette, 178 Wn.2d 153, 163, 307 P.3d 712 (2013); State v.

Nonog, 169 Wn.2d 220, 226, 237 P.3d 250 (2010); State v. Kjorsvik, 117 Wn.2d 93, 98, 812 P.2d 86 (1991); RAP 13.4(b)(1).

The Court of Appeals' decision also conflicts with its own precedent. City of Seattle v. Termain, 124 Wn. App. 798, 103 P.3d 209 (2004). The Court of Appeals' misreading of Termain introduces inconsistency and confusion into the caselaw, and only this Court can restore clarity. RAP 13.4(b)(2).

a. An information is insufficient, and violates due process, where it fails to allege particular facts supporting an element of the crime charged.

"[T]he accused … has a constitutional right to be apprised of the nature and cause of the accusation against him." State v. Pry, 194 Wn.2d 745, 751, 452 P.3d 536 (2019) (internal quotations omitted); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. "This doctrine is elementary and of universal application,

and is founded on the plainest principle of justice." Pry, 194 Wn.2d at 751 (internal quotations omitted).

Due process guarantees that the accused will receive notice as to both the "nature and cause" of the charge. Id. Notice of both nature and cause is necessary to ensure that the accused is able to prepare a defense. State v. Leach, 113 Wn.2d 679, 688, 782 P.2d 552 (1998). Only where an information "sets forth all essential elements of the crime, statutory or otherwise, and the particular facts supporting them" does it provide notice. Hugdahl, 195 Wn.2d at 324.

An information that omits either the elements or a description of the specific conduct constituting the alleged offense is constitutionally insufficient. Id.; City of Auburn v. Brooke, 119 Wn.2d 623, 630, 836 P.2d 212 (1992).

"More than merely listing the elements, the information must allege the particular facts supporting them." Nonog, 169 Wn.2d at 226. This rule ensures that the person accused of a crime is not only "apprised of the elements of the crime charged," but also "the conduct of the defendant which is alleged to have constituted that crime." Kjorsvik, 117 Wn.2d at 98. The prosecution must sufficiently "allege facts supporting *every element* of the offense." Id. (emphasis added).

Where the information fails to allege particular facts supporting an element, the court must dismiss the information without prejudice to the government's ability to refile. Zillyette, 178 Wn.2d at 163. The remedy is the same on appeal; where the prosecution obtains a conviction after charging the accused under an insufficient information, the remedy is to vacate the

conviction and remand for dismissal without prejudice. Id. at 162-63.

Where the accused challenges an information for the first time on appeal, the reviewing court may construe the information liberally and analyze whether "the necessary facts appear in any form." Kjorsvik, 117 Wn.2d at 105. However, where the "particular facts necessary to charge [the accused] with [the charged offense] do not appear in any form, or by fair construction" in the information, the information is constitutionally insufficient even under a liberal standard. Zillyette, 178 Wn.2d at 162-63. In such cases, the appellant need not prove actual prejudice. Id.

Appellate courts review challenges to the sufficiency of the information de novo. Id. at 158.

b. The information against Mr. Whitfield failed to allege any particular facts that could constitute a willful violation of the order.

The information charging Mr. Whitfield with violation of a court order failed to allege any particular facts that could constitute "willfully violat[ing]" the order. Indeed, the information referenced no alleged conduct by Mr. Whitfield at all; it merely asserted the legal conclusion that he "did willfully violate" the order, which is the statutory element itself. CP 1-2; Former RCW 26.50.110(1). The Court of Appeals' finding that it was sufficient for the State merely to allege the bare element itself, without any particular facts to support it, cannot be squared with the established doctrine that, "[m]ore than merely listing the elements, the information must allege the particular facts supporting them." Nonog, 169 Wn.2d at 226.

The elements of felony violation of a court order under the former RCW 26.50.110(1) and (5) are as follows:

(1) There existed a court order applicable to the defendant.

(2) The defendant knew of the existence of the order.

(3) The defendant willfully violated a provision of the order.

(4) At the time, the defendant had two prior convictions for violating a court order.

(5) The defendant's act occurred in Washington.

Former RCW 26.50.110(1) (2019), repealed by LAWS OF 2021, ch. 215, § 170 (repeal effective July 1, 2022) (emphasis added); CP 154; WPIC 36.51.

Mr. Whitfield's information read as follows:

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the

State of Washington, do accuse SAMUEL WHITFIELD of the following crime[s]: Domestic Violence Felony Violation Of A Court Order, committed as follows:

Count 1 Domestic Violence Felony Violation Of A Court Order

That the defendant SAMUEL WHITFIELD in King County, Washington, on or about June 8, 2022, ***did know of and willfully violate*** the terms of a court order issued on 3/15/2022 by the Tukwila Municipal Court pursuant to RCW chapter 10.99, for the protection of Shannon Renee Traxler, and at the time of the violation having at least two prior convictions for violating the provisions of an order issued under RCW chapter 10.99, 26.50, 26.09, 26.10, 26.26 or 74.34, or under a valid foreign protection order as defined in RCW 26.52.020;

Contrary to RCW 26.50.110(1), (5), and against the peace and dignity of the State of Washington.

CP 1-2 (emphasis added).

This information alleges no facts that could constitute a willful violation of the order. It merely asserts, without referencing any conduct by Mr. Whitfield, that something he did amounted to a willful violation. "Did . . . willfully violate" is the actus reus of

this offense in every case, and could, as a matter of law, be properly copied and pasted into any other information brought under the statute. Former RCW 26.50.110(1); WPIC 36.51. Indeed, any information for this offense would have to include this stock "willfully violate" language, or it would be insufficient for failing to list a legal element. Id. Willful violation is an element, not a "particular fact" supporting an element, and this information failed to allege any particular facts about Mr. Whitfield's conduct.

The finding by the Court of Appeals that the information "sufficiently informed [Mr. Whitfield] about the essential elements of his charges," even if correct, does not address Mr. Whitfield's challenge. Slip op. at 7. Mr. Whitfield does not argue that the information failed to identify willful violation as an element. Br. of App. at 9. The information recited the

element, but failed to allege any particular facts about Mr. Whitfield's conduct that could satisfy it. CP 1-2. This Court has explained that the accused must not only be "apprised of the elements of the crime charged," but also of "the conduct of the defendant which is alleged to have constituted that crime." Kjorsvik, 117 Wn.2d at 98.

The information in this case only did the former. It made no effort to do the latter by alleging any facts about Mr. Whitfield's conduct, let alone facts that could constitute a willful violation.

c. The Court of Appeals' decision misapplies its own precedent of Termain, and ignores this Court's holding that a charging document must contain facts supporting every element.

The opinion of the Court of Appeals focused on whether City of Seattle v. Termain is applicable to Mr. Whitfield's case. Slip op. at 6-7; 124 Wn. App. 798. Though Termain correctly understood and applied this

Court's precedents, the Court of Appeals in this case did not.

Termain applied this Court's holding that, even where an information alleges a generic element of the offense, it is still insufficient if it fails to "'allege facts supporting every element of the offense, in addition to adequately identifying the crime charged.'" 124 Wn. App. at 802 (quoting Kjorsvik, 117 Wn.2d at 98).

One of the elements of violation of a court order is that there was a valid court order restricting the defendant at the time of the offense. Former RCW 26.50.110(1); CP 154; Slip op. at 5-6. In Termain, the charging document alleged that an order existed against the defendant, but failed to specify the order, its date of issuance, or the protected party; information that could have identified the alleged order. 124 Wn. App. at 803. Thus, even though the charging document

identified the legal element that an order existed, it was insufficient for failing to allege any case-specific facts that could satisfy that element. Id.

Although Termain concerned the element that an order existed, there is no logical basis for restricting Termain's holding to that element alone. Nothing in Termain suggests that a charging document can omit the facts necessary to support one element, as long as it includes facts relevant to some other element. Such a holding would baldly reject this Court's precedents, including the holding that the information must "allege facts supporting every element of the offense." Kjorsvik, 117 Wn.2d at 98.

Mr. Whitfield's information was insufficient because it failed to allege any particular facts supporting the claim that he "willfully violate[d]" his order, not because it failed to adequately allege that an

order existed. CP 1-2. Just as the Termain charging document alleged that a valid order existed, but failed to allege a particular basis in fact for that element, Termain, 124 Wn. App. at 803, Mr. Whitfield's information alleged that he willfully violated the court order, but failed to allege any particular basis in fact for that element. CP 1-2. Here, the Court of Appeals itself recognized that the existence of a valid order, and the willful violation of that order, are separate elements. Slip op. at 5; Former RCW 26.50.110(1), (5).

Nevertheless, the Court of Appeals found the information in this case distinguishable from Termain because "[t]here, the charging document . . . did [not] identify the underlying domestic violence order, the date of issuance, the name of the protected person, or any other facts about the order," whereas here, the information identified the order. Slip op. at 6-7. The

Court of Appeals held that a charging document need only identify *either* "the order alleged to have been violated, *or* must include other sufficient facts to apprise the defendant of the actions supporting the charges." Slip op. at 6 (emphasis added).

Neither this Court's precedents, nor Termain, hold that an information is sufficient if alleges facts to support some elements. Though Mr. Whitfield's information identified the predicate order, that fact only supports the element that a valid order existed against him. See slip op. at 7; CP 1-2. The existence of a valid order says nothing about whether or how Mr. Whitfield allegedly violated it. This information failed to "allege facts supporting every element of the offense." Kjorsvik, 117 Wn.2d at 98.

Nor is this an instance where the facts alleged in support of an element can be deemed sufficient under a

liberal construction. See Kjorsvik, 117 Wn.2d at 105. The State did not describe Mr. Whitfield's conduct vaguely, or describe several acts by Mr. Whitfield without clearly specifying which one the charge was based on. Rather, the State failed to allege any conduct at all.

The State merely asserted the legal conclusion that Mr. Whitfield, some way or another, violated the order. CP 1-2. A court cannot construe sufficiently "particular facts" constituting a willful violation from no alleged facts about the accused's conduct at all. Zillyette, 178 Wn.2d at 163. An information is insufficient, even under a liberal construction, where "particular facts necessary to charge [the defendant]… do not appear in any form, or by fair construction." Id.

If it is sufficient merely to allege that the defendant committed an element, with no mention of

any facts in support, then this Court's persistent holding that the information must allege both the element and the particular facts is null. See Kjorsvik, 117 Wn.2d at 98; Nonog, 169 Wn.2d at 226; Zilleyette, 178 Wn.2d at 163; Hugdahl, 195 Wn.2d at 324. See also Termain, 124 Wn. App. at 802.

The information was constitutionally insufficient for failing to allege any facts about Mr. Whitfield's conduct, let alone facts that could constitute a willful violation of a court order. The Court of Appeals placed an imprimatur of law on this error, misconstruing its own precedent and contradicting those of this Court. This Court should accept review. RAP 13.4(b)(1), (2).

F. CONCLUSION

This Court should accept review because the decision of the Court of Appeals contradicts that court's

own precedent, and the precedents of this Court. RAP 13.4(b)(1), (2).

Per RAP 18.17(c)(10), the undersigned certifies this petition for review contains 2,795 words.

DATED this 27th day of January, 2025.

MATTHEW FOLENSBEE (WSBA # 59864)

Washington Appellate Project (91052)

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APPENDIX A:
Opinion of the Court of Appeals

FILED
11/25/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. SAMUEL WHITFIELD, Appellant.	No. 85526-3-I DIVISION ONE UNPUBLISHED OPINION

BIRK, J. — Samuel Whitfield appeals his conviction, arguing the charging document was constitutionally deficient and the trial court erred in failing to exercise its discretion to meaningfully consider a drug offender sentencing alternative (DOSA), RCW 9.94A.660. Whitfield also argues, and the State concedes, the trial court erred in ordering community custody conditions and imposing the victim penalty assessment (VPA) fee. We affirm Whitfield's conviction and remand for the trial court to strike the community custody conditions and the VPA fee.

I

Whitfield and Shannon Traxler met in 2016 and dated for approximately five years. On March 15, 2022, the Tukwila Municipal Court issued a domestic violence no-contact order prohibiting Whitfield from, among other things, contacting Traxler "directly, indirectly, in person, or through others." The order was valid for five years.

On June 8, 2022, Traxler went to the Tukwila Municipal Court to attend a hearing. Traxler, accompanied by her friend, met her victim advocate, Lana Umbinetti, and all three entered the courtroom. Whitfield was already in the courtroom when they arrived. After a few minutes, Whitfield walked over to Traxler's friend and handed her a green folder. Traxler testified she heard Whitfield say that " 'it was for Shannon.' " The friend showed the folder to Umbinetti, who reviewed it and testified it contained a letter, which was addressed to Traxler. A few minutes later, Whitfield walked back over and tried unsuccessfully to grab the folder from Traxler's friend, stating, " 'That's not for you.' " Umbinetti left the courtroom with Traxler and called the records department to connect to the nonemergency dispatch to report the violation of a no-contact order. An officer responded to the courthouse and arrested Whitfield for violating the domestic violence no-contact order.

The State charged Whitfield with one count of domestic violence felony violation of a court order. The information alleged

> [t]hat the defendant [Whitfield] in King County, Washington, on or about June 8, 2022, did know of and willfully violate the terms of a court order issued on 3/15/2022 by the Tukwila Municipal Court pursuant to RCW chapter 10.99, for the protection of [Traxler], and at the time of the violation having at least two prior convictions for violating provisions of an order issued under RCW chapter 10.99, 26.50, 26.09, 26.10, 26.26, or 74.34, or under a valid foreign protection order as defined in RCW 26.52.020.
>
> Contrary to RCW 26.50.110(1),(5), and against the peace and dignity of the State of Washington.
>
> And further do accuse [Whitfield], at said time of committing the above crime against an intimate partner as defined in RCW

> 26.50.010(7), which is a crime of domestic violence as defined in RCW 10.99.020.

Whitfield never challenged the information as insufficient, asked for a bill of particulars, or objected that he had not been adequately informed of the charges against him. Whitfield was convicted following a jury trial.

Upon Whitfield's request, the trial court ordered a DOSA screening and presentence examination. Whitfield filed a presentence report in which he requested the trial court impose a DOSA as an alternative to a determinate sentence. The Department of Corrections completed a residential DOSA examination report. The report found that Whitfield was "assessed and diagnosed per RCW 9.94A.660," without treatment there was a probability of future criminal behavior, and Whitfield would benefit from treatment. The defense supported its filing with medical records and statements from Whitfield's primary care doctor, LEAD[1] program case manager, and a social worker.

At sentencing, Whitfield argued a DOSA was appropriate because he had turned back to drugs when his relationship with Traxler ended, and he was "using substances" when he wrote the letter. The State agreed Whitfield was eligible for a DOSA, but argued it was not appropriate because there was no evidence presented that Whitfield's actions in the case resulted from the influence of drugs. Traxler described injuries she had received from Whitfield in the past and expressed continued fear. The trial court stated it had "carefully considered the parties' written submissions, also the arguments and statements that were made

[1] "LEAD" stands for "Law Enforcement Assisted Diversion." https://leadkingcounty.org/ - what-we-do.

at our last sentencing hearing[2] . . . and . . . considered the arguments made today." The trial court both denied Whitfield's request for an exceptional downward sentence based on the purposes of the Sentencing Reform Act of 1981, chapter 9.94A RCW, and concluded "this is not an appropriate case for a DOSA disposition." The trial court sentenced Whitfield to the standard range term of 60 months, also the statutory maximum, imposed the $500 VPA fee, and waived all nonmandatory fees and costs. The judgment and sentence also checked "Appendix H for Community Custody conditions," which listed, but did not check, conditions specific to domestic violence offenses. Whitfield appeals.

II

Whitfield argues for the first time on appeal that the information was constitutionally deficient for failing to allege particular facts supporting a domestic violence felony violation of a court order.

We review challenges to the sufficiency of the information de novo. State v. Zillyette, 178 Wn.2d 153, 158, 307 P.3d 712 (2013). When a challenge to the constitutional sufficiency of a charging document is raised for the first time on appeal, we construe the charging document liberally. State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). Reviewing courts apply a two step inquiry: (1) do the necessary facts appear in any form, or by fair construction can they be found in the charging document, and if so, (2) can the defendant show that they were nonetheless actually prejudiced by the inartful language, which caused a lack of

[2] Whitfield's first sentencing hearing was continued to allow for additional briefing regarding Whitfield's proper offender score.

notice. State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991). If the necessary elements are not found or fairly implied, we presume prejudice and reverse without reaching the second prong and the question of prejudice. Zillyette, 178 Wn.2d at 163. Whitfield does not attempt to show prejudice, and argues instead that the information lacks all of the essential elements.

Under the Sixth Amendment and article I, section 22 of the Washington Constitution, charging documents must contain all of the essential elements of the charged crime. State v. Pry, 194 Wn.2d 745, 751, 452 P.3d 536 (2019). "The information is constitutionally adequate only if it sets forth all essential elements of the crime, statutory or otherwise, and the particular facts supporting them." State v. Hugdahl, 195 Wn.2d 319, 324, 458 P.3d 760 (2020). An "essential element is one whose specification is necessary to establish the very illegality of the behavior" charged. State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992). We distinguish between charging documents that are constitutionally deficient and those that are merely "vague." State v. Leach, 113 Wn.2d 679, 686, 782 P.2d 552 (1989). An information that states each statutory element of a crime, but is vague as to some other significant matter, may be corrected under a bill of particulars. Id. at 687. A defendant may not challenge an information for vagueness on appeal if they did not request a bill of particulars at trial. Id.

Felony violation of a court order has five essential elements: (1) the existence of a no-contact order applicable to the defendant, (2) the defendant knew of the existence of the no-contact order, (3) the defendant knowingly violated a provision of the no-contact order, (4) that at the time of the violation, the defendant

had twice been previously convicted for violating the provisions of a court order, and (5) the defendant's act occurred in Washington. Former RCW 26.50.110(1),(5) (2019), repealed by LAWS OF 2021, ch. 215, § 170 (repeal effective July 1, 2022).[3]

Whitfield argues the information was insufficient because it failed to allege in what manner he violated the terms of the court order and where the alleged violation took place. Relying on City of Seattle v. Termain, 124 Wn. App. 798, 103 P.3d 209 (2004), Whitfield argues a charging document is constitutionally deficient when it does not allege what violative conduct was being charged. Whitfield's reliance on Termain is misplaced. In Termain, we held that a complaint alleging a misdemeanor violation of a domestic violence order must identify the order alleged to have been violated, or must include other sufficient facts to apprise the defendant of the actions supporting the charges to satisfy the essential elements rule. 124 Wn. App. at 805. There, the charging document recited apparently statutory language listing various statutes authorizing no-contact orders, but did not identify the specific statute under which the order alleged to have been violated was issued. Id. at 803. Nor did it identify the underlying domestic violence order, the date of issuance, the name of the protected person, or any other facts about the order. Id. at 805. Even applying the liberal construction standard, id. at 802, we concluded that absent this information, the defendant could not fairly imply what

[3] Although the legislature has repealed this statutory provision since the date of Whitfield's crimes, this change does not affect our analysis.

actual conduct was being charged and had to guess at the crime he was alleged to have committed, id. at 806.

Construed liberally, and in favor of validity, Whitfield's information sufficiently informed him about the essential elements of his charges. The information alleges that on or about June 8, 2022, Whitfield (1) knew of the terms of the March 15, 2022 court order issued by the Tukwila Municipal Court for the protection of Traxler, (2) willfully violated that court order, (3) at the time of the violation, had at least two prior convictions for violating the provisions of a court order, and (4) this occurred in King County, Washington. Unlike Termain, the information specifies the underlying order, its date of issuance, and the name of the protected person. While the information does not explicitly define in what manner Whitfield violated the March 15, 2022 court order, "the culpable act necessary to establish the violation of a no-contact order is determined by the scope of the predicate order." Id. at 804. By identifying the predicate order, the State placed Whitfield on notice of his violative conduct. If Whitfield had believed the charge against him was vague, his recourse was to request a bill of particulars. Leach, 113 Wn.2d at 687.

Whitfield makes a passing claim that he is entitled to reversal of his conviction because the lack of detail in the information exposes him to being recharged with the same offense in violation of his right to be free from double jeopardy. Whitfield's double jeopardy argument is insufficiently developed to satisfy the requirements of RAP 10.3(a)(6). It therefore does not warrant review on the merits. Brownfield v. City of Yakima, 178 Wn. App. 850, 876, 316 P.3d 520

(2013) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.").

III

Whitfield argues the trial court erred by failing to exercise its discretion to meaningfully consider a DOSA. We disagree.

Trial courts have "considerable discretion" when determining whether an alternative sentence is appropriate. State v. Hender, 180 Wn. App. 895, 900-01, 324 P.3d 780 (2014). While a trial judge's decision whether to grant a DOSA is not generally reviewable, an offender may always challenge the procedure by which a sentence was imposed. State v. Grayson, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005). "While no defendant is entitled to an exceptional sentence below the standard range, every defendant *is* entitled to ask the trial court to consider such a sentence and to have the alternative actually considered." Id. at 342. A court that fails to consider a requested alternative abuses its discretion. Id.

In Grayson, the trial court's stated reason for denying a DOSA request was because it thought the program was underfunded. Id. Our Supreme Court held that a court's "categorical refusal to consider [a DOSA] sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal." Id. The court held that the trial court did not meaningfully consider a DOSA sentence because the trial court did not articulate any other reasons for denying the DOSA except its belief that the program was underfunded. Id. The court remanded for the trial court to consider whether Grayson was an appropriate candidate for a DOSA. Id. at 343.

Here, unlike Grayson, the trial court did not categorically refuse consideration of Whitfield's DOSA sentence request. The trial court meaningfully considered the sentencing alternative by requesting a DOSA report from the Department of Corrections and hearing argument from the parties, including the State's argument there was a lack of evidence that Whitfield's actions were a result of drug abuse. The trial court subsequently decided a DOSA sentence was not appropriate. The trial court did not abuse its discretion in denying Whitfield's DOSA request.

IV

Whitfield argues the trial court erred in ordering community custody conditions in excess of the statutory maximum for the offense and the trial court further erred in imposing the VPA fee. The State concedes remand is appropriate to strike both the community custody conditions and the imposition of the VPA. We accept the State's concessions and remand for both the fee and the community custody conditions to be stricken as a ministerial matter.

We affirm Whitfield's conviction and remand to allow the trial court to strike the community custody conditions and imposition of the VPA as a ministerial matter.

Bjorgen, J.

WE CONCUR:

Díaz, J.

Smith, C.J.

APPENDIX B:
Order Denying Reconsideration

FILED
12/27/2024
Court of Appeals
Division I
State of Washington

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

THE STATE OF WASHINGTON,

Respondent,

v.

SAMUEL WHITFIELD,

Appellant.

No. 85526-3-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Samuel Whitfield, filed a motion for reconsideration. The court has considered the motion pursuant to RAP 12.4 and a majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Birk, J.

Judge

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 85526-3-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☒ petitioner

☐ Attorney for other party

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Date: January 27, 2025

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Appellate Court Case Number:	85526-3
Appellate Court Case Title:	State of Washington, Respondent v. Samuel Whitfield, Appellant

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