SUPREME COURT No. _____
COA No. 86118-2-I
(consolidated with COA No. 86119-1-I)

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTIAN GREENFIELD,

Petitioner.

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

The Honorable Bruce I. Weiss, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Christian Greenfield is the petitioner.

B. COURT OF APPEALS DECISION

Greenfield requests review of the decision in State v. Christian James Greenfield, Court of Appeals No. 86118-2-I (consolidated with No. 86119-1-I) (slip op. filed April 28, 2025).

C. ISSUE PRESENTED FOR REVIEW

Did the trial court abuse its discretion by declining Greenfield's request for a Drug Offender Sentencing Alternative based on the erroneous assumption it could not consider such a request in the absence of an updated evaluation and, to the extent it refused to entertain the request because it had already pronounced sentence, did the court err in that respect as well because the court's oral ruling was subject to revision?

D. STATEMENT OF THE CASE

a. Plea and Original Sentencing

In July 2018, Christian Greenfield pled guilty to possession of a stolen vehicle and theft of a motor vehicle under one cause number and possession of a stolen vehicle and possession of a controlled substance under a different cause number. RP (7/11/18) [1] 3-9; CP 230-51, 329-52.

In January 2019, the court entered orders to screen Greenfield for a Drug Offender Sentencing Alternative (DOSA), as well as a Parenting Sentencing Alternative (POSA), also known as a Family and Offender

[1] The verbatim report of proceedings is cited as follows: 1RP – 7/11/18; 2RP – 9/12/18; 3RP - eight consecutively paginated volumes consisting of 1/14/19, 2/27/19, 10/2/19, 1/30/20, 7/21/20, 8/31/20, 10/8/20, 2/4/21; 4RP – 7/11/19; 5RP – 11/3/20. The Court of Appeals granted Greenfield's motion to transfer the verbatim report of proceedings from appeal number 82345-1-I to the present appeal.

Sentencing Alternative.[2] RP (1/14/19) 6; CP 228-29, 327-28. The Department of Corrections submitted a DOSA risk assessment report in February 2019. CP 211-27, 310-26. A POSA risk assessment report was produced that same month. CP 37-98.

The court expressed dissatisfaction that the POSA statute only permitted 12 months of community custody because those with long-term addiction issues need more time to demonstrate they can stay clean and sober. RP (2/27/19) 15-16. For this reason, the court set review hearings to monitor Greenfield's status. RP (2/27/19) 16; RP (7/11/19) 5-10; RP (10/2/19) 20.

At the October 2, 2019 review hearing, Greenfield's attorney told the court that Greenfield had completed the Salvation Army treatment program in July and still had a sponsor. RP (10/2/19) 22-24. The court said the

[2] The court originally ordered a DOSA risk assessment report in July 2018 when the plea was entered. CP 361-62, 511-12.

requirement was that Greenfield remain in treatment, and having a sponsor was not treatment. RP (10/2/19) 22-24. Counsel said Greenfield was agreeable to entering another treatment program if that was what the court wanted. RP (10/2/19) 23-24. Counsel confirmed Greenfield's UA's were clean and he had no new criminal law violations. RP (10/2/19) 24-25. The court ordered a new POSA evaluation because "the other one is outdated." RP (10/2/19) 27. A second POSA report was produced in December 2019. CP 419-88.

At the January 30, 2020 hearing, defense counsel noted Greenfield had relapsed. RP (1/30/20) 33. The court ordered another DOSA evaluation. CP 209-10, 308-09. A second DOSA risk assessment report was filed in March 2020. CP 173-208, 290-307. The DOSA report recounted Greenfield's long struggle with substance abuse and its connection to the current offenses. CP 175-76, 292-93.

At the sentencing hearing, the court denied the POSA request because it was convinced that if the POSA evaluation was updated there would be an objection based on Greenfield's history. RP (2/4/21) 86-87.

The prosecutor commented "If the Court orders a prison-based DOSA, I think Mr. Greenfield obviously needs substance abuse treatment, whatever that may be, so be it." RP (2/4/21) 82. When asked his position on a prison-based DOSA, the prosecutor was "fine with it. I think Mr. Greenfield needs help." RP (2/4/21) 82-83. The court imposed a prison-based DOSA consisting of 25 months in confinement and 25 months of community custody, finding this alternative sentence to be "appropriate." RP (2/4/21) 87; CP 162, 279.

b. First Appeal

On appeal, Greenfield argued the trial court did not follow proper statutory procedure in failing to consider an updated POSA report before declining to impose a POSA.

The Court of Appeals agreed and remanded both cases for resentencing. State v. Greenfield, 21 Wn. App. 2d 878, 886-88, 508 P.3d 1029 (2022); State v. Greenfield, 22 Wn. App. 2d 1013 (2022) (unpublished). The Court of Appeals also vacated the controlled substance conviction based on State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021). Greenfield, 21 Wn. App. 2d at 888.

c. Resentencing

A resentencing hearing took place on November 30, 2023. RP (11/30/23). By this time, Greenfield was serving a sentence of confinement based on a Nevada conviction. CP 87-88. The State conceded that the court had discretion to run the Washington sentence concurrent to the Nevada sentence. RP (11/30/23) 4-5. The State, however, requested that the Washington sentence be run consecutive to the Nevada sentence, contending Greenfield would suffer no consequence if the sentences were run concurrently. RP (11/30/23) 5-7.

Defense counsel requested that the Washington sentences be run concurrently to the Nevada sentence. RP (11/30/23) 9-15. Counsel argued Greenfield was being punished because he had gone from a two-and-a-half-year term of confinement on his originally imposed DOSA to looking at no time at all if he had gotten a POSA to now being subject to a minimum five-year enhancement as part of his Nevada sentence. RP (11/30/23) 10-11. Consequently, Greenfield was unable to care for his 10-year-old autistic son, for whom he had been the primary caregiver, and imposing a Washington sentence consecutive to the Nevada sentence would extend time away from his family. RP (11/30/23) 11-12. Running the sentences concurrently would enable Greenfield to engage in Nevada's treatment program, which would be in the best interest of the community to which he will eventually return. RP (11/30/23) 12-15. A consecutive sentence would take that treatment option off

the table, and he would end up serving a sentence doing nothing in terms of rehabilitation. RP (11/30/23) 13-15.

The court agreed with the State that "there would essentially be no punishment" if the sentences were concurrent, pointed to Greenfield's high offender score, questioned whether treatment would stop Greenfield from committing crimes, cited Greenfield's relapses, and said it did not know if substance use was related to committing crimes because he was able to refrain from committing them "for a short period of time" while he was using. RP (11/30/23) at 20-22. The court orally ruled it would impose a standard sentence of 43 months, to run consecutive to the Nevada sentence. RP (11/30/23) 22-23.

Defense counsel then made an alternative request for a DOSA. RP (11/30/23) 24. The court responded: "There's no way that I can consider that today. I have no evaluation. The reason why my first sentence was reversed for the parenting offender sentencing alternative

was, even though I had two evaluations done, they said I needed to have one. So I can't even consider that today." RP (11/30/23) 24. The court added: "I've already sentenced him. If that was going to be your request, it should have been requested I guess previously." RP (11/30/23) 24.

Defense counsel pointed out "the Court does have the previous evaluation." RP (11/30/23) 25. The court responded:

> I'm not going off a previous evaluation. I had a previous evaluation for the parenting offender sentencing alternative. The statute says you need an evaluation. I had two. My sentence was reversed because I essentially didn't have a current one, is the way I read it, because the statute requires one and I had two. And if you recall, there actually were two different rulings in this case. The first opinion was unpublished and said the statute says one and there were two. The next one said that I didn't have an evaluation. And it's clear from the record I had two. So their position was I didn't have anything current. That's the only way that I can interpret that. So I am not going to consider a DOSA today for this

> sentence when I have no current evaluation. RP (11/30/23) 25.

The court asked the prosecutor's position "in relation to a request for a prison-based DOSA? I can't do it today. I am not -- there's no way I can do it today. What's your position in relation to that once I've already indicated my sentence?" RP (11/30/23) 26. The prosecutor said "the Court's already proceeded with the sentencing" and did not think it was a good use of DOC resources to impose a prison-based DOSA when the Nevada sentence was an indeterminate sentence of 5-15 years. RP (11/30/23) 26. The court responded "All right. I'll deny it." RP (11/30/23) 26.

The court entered a judgment and sentence reflecting concurrent terms of 43 months confinement for the offenses in both cases, to run consecutively to the Nevada sentence. CP 26, 263.

d. Appeal Following Resentencing

On appeal, Greenfield argued the trial court abused its discretion in failing to meaningfully consider Greenfield's DOSA request. The Court of Appeals rejected the argument on the ground that Greenfield never moved for a DOSA, or did not move for one properly. Slip op. at 1, 6-7.

E. WHY REVIEW SHOULD BE ACCEPTED

1. The trial court abused its discretion in failing to meaningfully consider Greenfield's DOSA request.

The trial court failed to recognize it had discretion to order a DOSA in the absence of an updated evaluation. Where a court fails to recognize it has discretion to impose an alternative sentence, its failure to do so is reversible error.

Greenfield seeks review under RAP 13.4(b)(4). This Court should determine what constitutes a motion for a

DOSA and whether such a request must be in some predetermined "proper" form before it is considered.

a. A DOSA can be imposed without a report, and the trial court abused its discretion in rejecting Greenfield's DOSA request based on the mistaken belief that an updated report was a prerequisite for consideration of this sentencing alternative.

When defense counsel requested a DOSA, the judge responded "There's no way that I can consider that today. I have no evaluation." RP (11/30/23) 24. When counsel reminded the judge that a DOSA evaluation had already been done, the judge declared "I am not going to consider a DOSA today for this sentence when I have no current evaluation." RP (11/30/23) 25. The judge misunderstood its sentencing authority.

The DOSA statute lists the eligibility criteria for a DOSA sentence. Former RCW 9.94A.660(1) (Laws of 2016, ch. 29, § 524).[3] "If the sentencing court determines

[3] Greenfield cites to the version of the DOSA statute in

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." Former RCW 9.94A.660(3).

A previous version of the DOSA statute was interpreted to require an examination report before a DOSA could be considered based on former RCW 9.94A.660(4) (2006), which stated "After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a [DOSA]." State v. Harkness, 145 Wn. App. 678, 683-84, 186 P.3d 1182 (2008). This is

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effect at the time of offense in 2017/2018.

no longer the law. The legislature removed this provision of the DOSA statute in 2009. Laws of 2009, ch. 389 § 3.

The updated DOSA statute applicable to Greenfield's case provides: "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." Former RCW 9.94A.660(4)(a) (2016) (emphasis added).[4]

Consistent with subsection (4)(a), another subsection provides: "If the court is considering imposing a sentence under the residential substance use disorder treatment-based alternative, the court *may order* an examination of the offender by the department." Former RCW 9.94A.660(5) (2016) (emphasis added).

[4] The current version of the statute is identical. RCW 9.94A.660(4)(a) (Laws of 2021, ch. 215 § 102).

When interpreting statutes, "words like 'may' are permissive and discretionary." State v. Stivason, 134 Wn. App. 648, 656, 142 P.3d 189 (2006), review denied, 160 Wn.2d 1016, 161 P.3d 1027 (2007). The plain language of these provisions, in employing the phrase "may order," shows a report is not a prerequisite for eligibility, and one need not be considered before imposing a DOSA. "RCW 9.94A.660 is clear: a trial court need not order or consider any report in deciding whether an offender is an appropriate candidate for an alternative sentence." State v. Guerrero, 163 Wn. App. 773, 778, 261 P.3d 197 (2011), review denied, 173 Wn.2d 1018, 272 P.3d 247 (2012).

The trial court here labored under a mistaken belief that it could not consider the DOSA request in the absence of an updated report. RP (11/30/23) 24-25. Given that no report needs to be produced before considering a DOSA, it follows that an updated report is not needed either. The court's error stems from its

conflation of the report requirement of the POSA statute with the DOSA statute. RP (11/30/23) 24-25. Under the POSA statute, an updated report is required. Greenfield, 21 Wn. App. 2d at 886-88. Under the DOSA statute, no report is required, let alone an updated one. Guerrero, 163 Wn. App. at 778.

The "outright refusal of a trial court to consider sentencing argument is error." State v. Mutch, 171 Wn.2d 646, 654 n.1, 254 P.3d 803 (2011). Further, a "failure to exercise discretion is an abuse of discretion." Bowcutt v. Delta North Star Corp., 95 Wn. App. 311, 320, 976 P.2d 643 (1999).

All defendants have the right to the trial court's consideration of available sentence alternatives. In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 334, 166 P.3d 677 (2007). "Remand for resentencing is often necessary where a sentence is based on a trial court's erroneous interpretation of or belief about the governing

law." State v. McGill, 112 Wn. App. 95, 100, 47 P.3d 173 (2002). When judicial discretion is called for, the judge must exercise meaningful discretion. State v. Grayson, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005). The failure to exercise discretion at sentencing based on a lack of understanding that such discretion exists constitutes an abuse of discretion. Id. at 335.

In Grayson, the Supreme Court held the trial court erred when it failed to consider a DOSA sentence when the defendant requested it. Grayson, 154 Wn.2d at 343. The Court noted "there were ample other grounds to find that Grayson was not a good candidate for DOSA." Id. at 342. Despite these facts, the Court left it to the "able hands of the trial judge on remand to consider whether Grayson" was a suitable candidate for a DOSA sentence. Id. at 343. "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.

In Mulholland, the trial court concluded it did not have discretion to run the defendant's sentences concurrently because the law required it to run them consecutively. Mulholland, 161 Wn.2d at 326. The Supreme Court remanded for resentencing, holding the plain language of the governing sentencing statutes gave discretion to the trial court to impose an exceptional sentence and run the sentences concurrently. Id. at 330.

In State v. O'Dell, the trial court erroneously believed it had no authority to impose an exceptional sentence downward based on youth as a mitigating factor. State v. O'Dell, 183 Wn.2d 680, 696, 358 P.3d 359 (2015). In actuality, the trial court did have the authority to grant the request. Id. The trial court's failure to meaningfully consider the request for an exceptional

sentence required reversal and remand for resentencing. Id. at 697.

The sentencing judge in Greenfield's case committed the same kind of error. It expressly refused to consider the DOSA request in the absence of a current evaluation. RP (11/30/23) 24-25. Erroneously believing a DOSA request could not be considered absent an updated evaluation, the court did not meaningfully consider Greenfield's request and did not exercise its discretion on whether to grant a DOSA. "This failure to exercise discretion is itself an abuse of discretion subject to reversal." O'Dell, 183 Wn.2d at 697. The remedy for this type of sentencing error is reversal and remand for resentencing to enable the trial court to exercise its discretion. Id. Greenfield therefore requests remand for resentencing so that the trial court may meaningfully consider his request for a DOSA.

In denying Greenfield relief, the Court of Appeals claimed "Greenfield never moved for a DOSA." Slip op. at 1. That is not how the trial court understood it, and the trial court's view of the matter is dispositive. The trial court expressly stated not once but twice that it would not consider a DOSA. RP (11/30/23) 24-25. Trial courts do not refuse to consider a sentence that was never requested. The trial court expressly denied Greenfield's DOSA request. RP (11/30/23) 26. Trial courts do not deny motions that were never made.

The Court of Appeals wrote that Greenfield "told the court that given his current circumstances, the opportunity for a DOSA 'is no longer before him.'" Slip op. at 6. This is taken out of context. Defense counsel said "he had an opportunity to ask for an alternative sentence, and that opportunity is no longer before him." RP (11/30/23) 11. Counsel was talking about no longer having the opportunity for a parenting sentencing alternative, as it

was the parenting sentencing alternative that he had sought at the original sentencing.

The Court of Appeals opined Greenfield did not make a "proper motion" for a DOSA because he did not notify the State or the court that he intended to request one, offered no information supporting his eligibility, and made no argument that such a sentencing alternative was appropriate. Slip op. at 6-7.

Notably, the Court of Appeals only cited authority for what constitutes a "proper motion" is an unpublished case, State v. Francis, 31 Wn.App.2d 10662024 WL 3424036, at *13 (2024) (unpublished). Francis itself cites to no authority for the idea that a sentencing alternative request must be in "proper" form before it will be considered, which is unsurprising because the statute does not specify what a "proper" motion would be.

Moreover, the Court of Appeals glosses over the fact that the trial court granted a DOSA at the original

sentencing hearing because it was appropriate. RP (2/4/21) 87; CP 162, 279. At resentencing, the trial court had two DOSA evaluations from the previous sentencing proceedings before it, so it did have information supporting eligibility. CP 173-208, 211-27, 290-307, 310-26. The Court of Appeals resolution of the issue is a triumph of form over substance.

b. The trial court erred to the extent it refused to consider the DOSA request on the basis that it had already orally pronounced its sentence.

It is unclear whether the trial court alternatively refused to consider the DOSA request because that request came after the court had orally stated the sentence. RP (11/30/23) 24, 26. If the record is read in this manner, then the trial court erred by basing its decision on a misunderstanding of the law.

In Washington, "oral pronouncements of judgment and sentence are not conclusive or final." State v.

Hampton, 107 Wn.2d 403, 406, 728 P.2d 1049 (1986) (citing State v. Dailey, 93 Wn.2d 454, 458-59, 610 P.2d 357 (1980)). A trial court's oral statements are "no more than a verbal expression of (its) informal opinion at that time … necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned." Dailey, 93 Wn.2d at 458 (quoting Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963)).

The trial court was therefore free to consider Greenfield's DOSA request after the judge orally pronounced the sentence, as the oral ruling was subject to modification and abandonment. See State v. Hatchie, 133 Wn. App. 100, 118, 135 P.3d 519 (2006), aff'd, 161 Wn.2d 390, 166 P.3d 698 (2007) (defendant was given meaningful opportunity to allocute *after* the judge orally pronounced sentence because a court's oral opinion is no more than an expression of the court's informal opinion at

the time rendered); State v. Davis, 125 Wn. App. 59, 67-68, 104 P.3d 11 (2004) ("judgment" under CrR 4.2 occurs when the sentence is signed and filed with the clerk, not when the sentence is orally pronounced).

A defendant may even move to reconsider a sentence that has been reduced to writing in a judgment and sentence. In State v. Allyn, the trial court erred in concluding that it lacked the authority to correct a sentence through a motion to reconsider. State v. Allyn, 63 Wn. App. 592, 594-96, 821 P.2d 528 (1991), overruled on other grounds by In re Pers. Restraint of Sietz, 124 Wn.2d 645, 880 P.2d 34 (1994).

It necessarily follows that a court can reconsider its sentence where, as here, it has merely pronounced an oral sentence and the defense asks the court to consider an alternative sentence during the same hearing. The court erred to the extent it refused to entertain the DOSA request based on a mistaken belief that once a sentence

was orally pronounced no further sentencing requests could be considered. Again, the remedy is remand for resentencing to enable the court to meaningfully consider the DOSA request.

The Court of Appeals wrote that Greenfield was "incorrect" that the trial court abused its discretion by refusing to hear his motion for a DOSA after it sentenced him, complaining that Greenfield "points to no authority that a trial court abuses its discretion when it refuses to hear a sua sponte motion that the moving party did not brief. We presume that he found none." Slip op. at 7.

The trial court did not refuse to entertain Greenfield's DOSA request on the ground that it was not briefed, which is understandable, as there is no statute or court rule that requires a sentencing motion in written form before it will be heard at the hearing. See RCW 9.94A.660(2) ("A motion for a special drug offender

sentencing alternative may be made by the court, the offender, or the state.").

By the Court of Appeals logic, a trial court could refuse to entertain a party's oral request for any sentence, including somewhere within the standard range sentence, on the ground that it was not made in writing. Since it is the Court of Appeals that advanced this novel theory, it is incumbent on the Court of Appeals to provide some authority for it.

There are no magic words that need to be uttered to make an oral motion. The dispositive point is that the trial court treated it as a request to consider a DOSA. RP (11/30/23) 24-26. The trial court believed the request for a DOSA had been made and refused to entertain it on legally erroneous grounds.

F. CONCLUSION

For the reasons stated, Greenfield respectfully requests that this Court grant review.

I certify that this document was prepared using word processing software and contains 3892 words excluding those portions exempt under RAP 18.17.

DATED this 27th day of May 2025.

Respectfully submitted,

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

STATE OF WASHINGTON, Respondent, v. GREENFIELD, CHRISTIAN JAMES, Appellant.	No. 86118-2-I (consolidated with No. 86119-1-I) UNPUBLISHED OPINION

BOWMAN, A.C.J. — In this consolidated appeal, Christian James Greenfield appeals his sentences for two counts of possessing a stolen vehicle and one count of theft of a motor vehicle. He argues the court abused its discretion by not meaningfully considering his request for a drug offender sentencing alternative (DOSA) and by entering findings to revoke his driver's license without statutory authority. Because Greenfield never moved for a DOSA, we affirm his standard-range sentences. But because the court relied on a former version of RCW 46.20.285 when ordering the Department of Licensing (DOL) to revoke Greenfield's driver's license, we reverse those findings, and remand for further proceedings.

FACTS

In July 2018, Greenfield pleaded guilty to possession of a stolen vehicle and theft of a motor vehicle under Snohomish County cause number 18-1-00875-31, and to possession of a stolen vehicle and possession of a controlled

substance under Snohomish County cause number 18-1-00874-31. In February 2021, the trial court sentenced Greenfield under both cause numbers. It denied his request for a parent offender sentencing alternative (POSA) but granted his request for a prison-based DOSA, imposing a sentence of 25 months in confinement and 25 months in community custody for the possession of a stolen vehicle and theft of a motor vehicle convictions under cause number 18-1-00875-31. The trial court also imposed a concurrent, prison-based DOSA of 25 months in confinement and 25 months in community custody for Greenfield's possession of a controlled substance and possession of a stolen vehicle convictions under cause number 18-1-00874-31, to run concurrently with 18-1-00875-31.

Greenfield separately appealed both sentences, arguing, among other things, we should remand for resentencing because the court erred by denying his request for a POSA. As to cause number 18-00874-31, we vacated Greenfield's conviction for possession of a controlled substance under *Blake*,[1] and for the remaining conviction of possession of a stolen vehicle, we remanded for the trial court to reconsider Greenfield's POSA request under the statutory framework. *State v. Greenfield*, 21 Wn. App. 2d 878, 888, 508 P.3d 1029 (2022). As to cause number 18-1-00875-31, we adopted the analysis and conclusion of *Greenfield*, 21 Wn. App. 2d at 882-88, and vacated the judgment and sentence for possession of a stolen vehicle and theft of a motor vehicle for the trial court to reconsider Greenfield's request for a POSA. *State v. Greenfield*, No. 82346-9-I

[1] *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

(Wash. Ct. App. May 31, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/823469.pdf.

In September 2023, Greenfield pleaded guilty to a new offense in Nevada. The Nevada court imposed an indeterminate sentence of 60 to 150 months' imprisonment. In November 2023, while Greenfield was serving his Nevada sentence, the Snohomish County trial court resentenced him on cause numbers 18-1-00874-31 and 18-1-00785-31.

In his presentencing memorandum for cause number 18-1-00874-31 and at the resentencing hearing for both cause numbers, Greenfield asked the trial court to impose low-end, standard-range, concurrent sentences to also run concurrently with his Nevada sentence. Greenfield did not move for a POSA or a DOSA. And he acknowledged at the resentencing hearing that while he previously "had an opportunity to ask for [those] alternative sentence[s]," that "opportunity is no longer before him." The State argued that because Greenfield has a high offender score, has had several opportunities for alternative sentences, and continues to commit new offenses, the court should impose high-end standard-range sentences to run consecutively to the Nevada sentence.

The court sentenced Greenfield to low-end, standard-range, concurrent sentences under both cause numbers, with a total of 43 months' confinement, to run consecutively to the Nevada sentence. And it found "a motor vehicle was involved in the commission of the offense[s], and [Greenfield] will lose his ability to drive until it's reinstated."

After the court sentenced Greenfield, it asked the parties whether "anything else . . . needs to be clarified." Greenfield's attorney responded, "I don't need any clarification. The alternative request that I had considered making was to sentence Mr. Greenfield to a DOSA but consecutively." The court said, "There's no way that I can consider that today." It explained, "I have no evaluation," and "I've already sentenced him. If that was going to be your request, it should have been requested I guess previously." The court briefly discussed staying the resentencing hearing so Greenfield could ask for a DOSA after his release from Nevada. But the State objected, and the court rejected the idea.

Greenfield appeals.

ANALYSIS

Greenfield argues the trial court abused its discretion by refusing to meaningfully consider his DOSA request and by applying "a defunct version" of RCW 46.20.285 when it considered whether to revoke his driver's license.

1. DOSA

Greenfield argues the trial court abused its discretion by "failing to meaningfully consider" his DOSA request. According to Greenfield, the trial court denied his request under "the mistaken belief" that an updated evaluation was necessary for consideration of the sentencing alternative. The State contends

Greenfield did not properly move for a DOSA.[2] We agree with the State.

To assist in addiction recovery, the DOSA program authorizes trial judges to sentence eligible, nonviolent offenders to reduced confinement time in exchange for their participation in substance use disorder treatment and increased supervision. *State v. Grayson*, 154 Wn.2d 333, 337, 111 P.3d 1183 (2005); *see* RCW 9.94A.660. The court may impose a DOSA if it determines that the defendant is eligible and that a DOSA is appropriate. RCW 9.94A.660(3). A defendant is not entitled to a DOSA, but "every defendant *is* entitled to ask the trial court to consider such a sentence and to have [it] actually considered." *Grayson*, 154 Wn.2d at 342.

We review a trial court's decision about whether to impose a DOSA for abuse of discretion. *See State v. Smith*, 118 Wn. App. 288, 292, 75 P.3d 986 (2003). A trial court has broad discretion in determining whether to grant a DOSA. *Grayson*, 154 Wn.2d at 341-42. And, generally, that decision is not reviewable. *State v. Lemke*, 7 Wn. App. 2d 23, 27, 434 P.3d 551 (2018). But a defendant may seek appellate review "if the trial court refused to exercise discretion at all or relied on an impermissible basis in making the decision." *Id.*; *Grayson*, 154 Wn.2d at 342 (a categorical refusal to consider a defendant's

[2] The State also argues that because Greenfield did not timely move for a DOSA, he waived his argument under RAP 2.5. But RAP 2.5 does not apply because Greenfield is not raising the argument for the first time on appeal. *See* RAP 2.5(a). The State also argues the invited error doctrine prevents Greenfield from obtaining relief. The invited error doctrine applies when a defendant affirmatively assents to, materially contributes to, or benefits from an error. *State v. Kelly*, 25 Wn. App. 2d 879, 885, 526 P.3d 39 (2023), *aff'd*, 4 Wn.3d 170, 561 P.3d 246 (2024). While Greenfield commented at resentencing that a DOSA was no longer an "opportunity . . . before him," he did not invite the court to otherwise refuse to let him belatedly move for a DOSA.

request for a sentencing alternative authorized by statute is an abuse of discretion).

Greenfield points to *Grayson* in support of his argument that the trial court improperly denied his request for a DOSA. In that case, the defendant moved for a DOSA, and the parties argued at sentencing about whether he was a "good candidate" for it. *Grayson*, 154 Wn.2d at 336. The trial court categorically denied the DOSA request because the state no longer had sufficient funds to treat people in a DOSA program. *Id*. at 336-37. Our Supreme Court reversed and remanded for the trial court to "meaningfully consider" the DOSA request. *Id*. at 343.

This case is different than *Grayson* because Greenfield never moved the court to impose a DOSA sentence. In his presentence report and at sentencing, Greenfield asked for only low-end, standard-range, concurrent sentences. Indeed, he told the court that given his current circumstances, the opportunity for a DOSA "is no longer before him."

Still, Greenfield argues his attorney sufficiently requested a DOSA after the court issued its oral ruling at resentencing, and the court refused to meaningfully consider that request. But Greenfield misconstrues the discussion. After the court issued Greenfield's sentences, it asked the parties if it needed to clarify its rulings. Only then did Greenfield's attorney inform the court that she "had considered" asking it to impose a DOSA consecutive to Greenfield's Nevada sentence. But that postsentence comment does not amount to a proper motion for a sentencing alternative—Greenfield did not notify the State or the

court that he intended to request a DOSA, offered no information supporting his eligibility, and made no argument that such a sentencing alternative was appropriate. *See State v. Francis*, No. 57963-4-II, slip op. at 26 (Wash. Ct. App. July 16, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2057963-4-II%20Unpublished%20Opinion.pdf (holding the trial court did not err by refusing to consider the defendant's request for a sentencing alternative when he "did not make a proper motion," only "a quick statement with no supporting eligibility information," and did not file his pro se motion until after sentencing).[3]

And, as much as Greenfield argues the trial court abused its discretion by refusing to hear his motion for a DOSA after it sentenced him, he is incorrect. Trial courts have "inherent authority to control and manage their calendars, proceedings, and parties." *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012). And Greenfield points to no authority that a trial court abuses its discretion when it refuses to hear a sua sponte motion that the moving party did not brief. We presume that he found none. *See State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (When a party fails to cite supporting authority, we may assume he diligently searched and found none.).

Greenfield fails to show that the trial court abused its discretion at sentencing.

[3] While unpublished opinions of this court have no precedential value and are not binding on any court, parties may cite an unpublished opinion filed after March 1, 2013 for its "persuasive value." GR 14.1(a). And we may cite an unpublished opinion for its "reasoned decision." GR 14.1(c).

2. Driver's License Revocation Findings

Greenfield argues, and the State concedes, that the trial court erred by applying former RCW 46.20.285(4) (2005) when it determined that Greenfield used a motor vehicle to commit his offenses and then directed the DOL to revoke his driver's license. We agree, and accept the State's concession.

Because trial courts have discretion in sentencing matters, we review their decisions with deference, and reverse only for a "clear abuse of discretion or misapplication of the law." *State v. Elliott*, 114 Wn.2d 6, 17, 785 P.2d 440 (1990). Under former RCW 46.20.285(4), the DOL had to revoke a defendant's driver's license whenever it received a record of conviction showing that the defendant was convicted of "[a]ny felony in the commission of which a motor vehicle was used."

But in 2020, the legislature amended RCW 46.20.285(4) to direct the DOL to revoke a defendant's driver's license only for felonies where the sentencing court determines that in the commission of the offense, the defendant used a motor vehicle "*in a manner that endangered persons or property*." LAWS OF 2020, ch. 16, § 1. The amendment took effect on January 1, 2022. *Id.* And we have since determined that the amendment to RCW 46.20.285(4) is remedial and applies to all sentencings after that date. *See State v. Gamez*, No. 86172-7-I, slip op. at 10 (Wash. Ct. App. Mar. 25, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/861727.pdf (concluding that because RCW 46.20285(4) "sets forth a remedial sanction and not a criminal punishment . . . , it was applicable at the time of sentencing") (citing *City of Spokane v. Wilcox*, 143 Wn.

App. 568, 572, 179 P.3d 840 (2008); *State v. Pillatos*, 159 Wn.2d 459, 473, 150 P.3d 1130 (2007)).

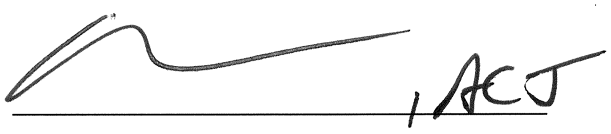
The State concedes the court erred by applying former RCW 46.20.285(4) instead of the 2022 amended statute at Greenfield's November 2023 resentencing. And it concedes that the facts under cause number 18-1-00874-31 do not support a finding that Greenfield used a motor vehicle "in a manner that endangered persons or property."[4] RCW 46.20.285(4). So, we remand cause number 18-1-00874-31 for the trial court to strike its finding under RCW 46.20.285(4).

But the State argues that the facts in cause number 18-1-00875-31 support a finding under RCW 46.20.285(4) that Greenfield used a motor vehicle during the commission of a felony "in a manner that endangered persons or property." Greenfield argues the facts do not support such a finding. We decline to resolve this dispute. We reverse the trial court's findings under cause number 18-1-00875-31 and remand for the trial court to apply the facts of that incident to the current version of RCW 46.20.285(4) to determine whether to revoke Greenfield's driver's license.

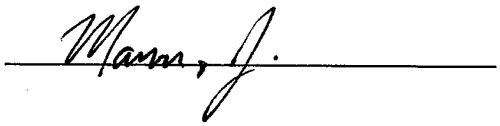
We affirm Greenfield's standard-range concurrent sentences to run consecutive to his Nevada conviction. But we remand for the trial court to strike its RCW 46.20.285 finding in cause number 18-1-00874-31 and to apply the

[4] We note that under this cause number, the court checked the box at the top of the judgment and sentence that states, "Defendant Used Motor Vehicle." But it did not check the box in the body of the judgment and sentence ordering the DOL to revoke Greenfield's license. Because the DOL could interpret the judgment and sentence as a record of felony conviction showing the use of a motor vehicle, we address it as an order to revoke.

statutory amendment to RCW 46.20.285(4) to the facts in cause number 18-1-00875-31. If the trial court concludes that the facts under 18-1-00875-31 do not support a license revocation finding under the current statute, it must strike its findings from the judgment and sentence and notify the DOL that Greenfield's driver's license is not subject to revocation.



WE CONCUR:



NIELSEN KOCH & GRANNIS P.L.L.C.

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