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Supreme Court No. _____ Case #: 1042353

COA No. 59046-8-II

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSE RICO COLON,

Appellant

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

PETITION FOR REVIEW

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A. INTRODUCTION

Jose Colon has been deprived of proper consideration of a Mental Health Sentencing Alternative (MHSA) on two separate occasions. First, in his original sentencing following trial, the court mistakenly denied his request based on incorrect criteria. On remand, the court again denied the MHSA, this time imposing a nexus requirement between Mr. Colon's mental illness and the crime, and concluding that the lack of nexus meant a MHSA would not benefit the community.

This Court should grant review to make clear that a lack of nexus between a person's mental illness and the crime is an improper basis on which to deny a MHSA. This is an issue of substantial public interest that is likely to recur and is currently pending before the Court of Appeals in at least one other case¹.

¹ *State v. Antonio Aaron*, No. 86680-0-I.

B. IDENTITY OF MOVING PARTY AND DECISION
BELOW.

Pursuant to RAP 13.4(b), Jose Colon, the petitioner, asks this Court to grant review of the Court of Appeals decision dated April 29, 2025, affirming the superior court's sentencing order denying his request for a mental health sentencing alternative.

C. ISSUES PRESENTED FOR REVIEW

1. A sentencing court may not deny a sentencing alternative for improper reasons. *State v. Sims*, 171 Wn.2d 436, 445, 256 P.3d 285 (2011). RCW 9.94A.695(1) provides the eligibility criteria for the mental health sentencing alternative (MHSA). The criteria does not require a nexus between the person's mental illness and the crime for which they are being sentenced. Here, the sentencing court denied Mr. Colon's request for a MHSA due to a lack of nexus between his mental illness and the crime. Should this Court grant

review to decide whether a lack of nexus is an improper basis on which to deny a MHSA?

2. This Court has held that a remand for resentencing may be necessary when a sentencing court puts significant weight on an inappropriate factor, even when some of the bases for the decision were valid. Here, in finding the sentencing court did not abuse its discretion by denying the MHSA, the Court of Appeals reasoned that the sentencing court gave other reasons supporting its denial. Should this Court grant review where the Court of Appeals decision conflicts with this Court's decisions stating that where the sentencing judge has placed considerable weight on an improper factor, remand may be necessary?

D. STATEMENT OF THE CASE

Mistakenly under the impression that a no contact order between he and his ex-wife had been lifted, Mr. Colon went to his ex-wife's home and spoke with his children from outside

the window. RP 29. Mr. Colon was charged and convicted by jury of one count of felony violation of a protection order. CP 10.

At sentencing, Mr. Colon requested a MHSA, but the court denied this request due to a mistaken belief that it had to find Mr. Colon met the criteria for an exceptional sentence in order to impose the MHSA. CP 75-76. The Court of Appeals reversed and remanded “for consideration of Colon’s request for a MHSA within the framework required by the statute.” CP 78.

On remand, Mr. Colon again requested a MHSA. RP 4. In support of this request, Mr. Colon presented evidence showing that he met all of the statutory eligibility criteria for the MHSA. This included diagnoses of complex post-traumatic stress disorder and borderline personality disorder, and the opinion of the diagnosing professional that “treatment would be helpful to address his continuing problems with the law.” RP 29, 10. Mr. Colon presented additional evidence regarding the

programming he had taken advantage of in prison prior to the remand. RP 26-27. Mr. Colon told the court he was motivated to complete treatment in order to improve both his and his children's lives. RP 22-28.

The State opposed the MHSA, arguing in part a lack of evidence that Mr. Colon was suffering from a mental illness at the time of the crime. RP 6. The court also considered a letter from Mr. Colon's ex-wife, arguing against the MHSA and his release. RP 19.

The court again denied Mr. Colon's request for a MHSA. Despite finding him "technically eligible," the court focused on the lack of nexus between Mr. Colon's mental illness and the crime, stating:

"there was no evidence at trial that Mr. Colon was suffering from any mental health issues during the incident. So no nexus between the behavior and the mental health diagnosis," and

"there was no evidence that the community, or, frankly, Mr. Colon would benefit from the mental health sentencing alternative as there wasn't the

nexus between the facts and the behaviors that led to his conviction and his mental health diagnosis.”

RP 30-31. Due to this lack of nexus, the court concluded, “I still do not find Mr. Colon eligible for a mental health sentencing alternative.” RP 33.

On appeal, the Court of Appeals affirmed the sentencing court’s decision, noting the “lack of authority on the MHSA ‘benefit to the community’ factor.” App. at 5. The Court of Appeals concluded the sentencing court did not abuse its discretion because it considered the lack of nexus in the context of the relevant statutory factors, and its conclusion “was based on the lack of benefit to both Colon and the community.” App. at 7. The Court of Appeals also pointed to the fact that the sentencing court considered other factors in addition the lack of nexus. App. at 6.

E. ARGUMENT

- 1. This Court should grant review to make clear that a lack of nexus between a person's mental illness and the crime is an improper basis for a sentencing court to deny a MHSA.**

The MHSA allows a court to waive the imposition of a standard range sentence and instead impose a term of community custody of up to 36 months. RCW 9.94A.695(4). The sentence may be revoked, and a term of confinement imposed, if the defendant violates the terms of community custody or fails to make satisfactory progress in treatment. RCW 9.94A.695(10)(a), (b), (11)(c).

At issue in this case is whether it is improper for a sentencing court to deny a defendant's request for a MHSA due to a lack of nexus between the defendant's mental illness and the crime for which he is being sentenced. This Court should grant review and hold that the imposition of such a nexus requirement is indeed improper.

a. A court may not deny a sentencing alternative for improper reasons.

The decision whether to impose a sentencing alternative is generally within the discretion of the sentencing court. *State v. Mohamed*, 187 Wn. App. 630, 638, 350 P.3d 671 (2015).

However, a sentencing court may not deny a sentencing alternative for improper reasons. *State v. Sims*, 171 Wn.2d 436, 445, 256 P.3d 285 (2011). Similarly, a court abuses its discretion when it denies a sentencing alternative based on a misinterpretation of the statute or by applying an incorrect legal standard. *State v. Adamy*, 151 Wn. App. 583, 587, 213 P.3d 627 (2009).

If a defendant is eligible for a sentencing alternative, a court may not categorically refuse to consider the alternative for impermissible reasons. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). In *Grayson*, this Court found it improper for the sentencing court to deny the defendant's request for a Drug Offender Sentencing Alternative (DOSA) based on the funding issues that existed for that program. *Id.* at 337. This

Court reasoned that the refusal to consider a sentencing alternative at all, or for a class of offenders, “is effectively a failure to exercise discretion and is subject to reversal.” *Id.* at 342. Ultimately, this Court reversed because, by relying on the impermissible basis, the sentencing judge did not meaningfully consider the DOSA. *Id.* at 343.

Here, the sentencing court did not meaningfully consider the MHSA, because it erroneously imposed a nexus requirement that does not exist in the statute.

b. A lack of nexus between a person’s mental health and the crime is an improper reason to deny a MHSA.

RCW 9.94A.695(1) provides the eligibility criteria for the mental health sentencing alternative. They include:

- a) The defendant is convicted of a felony that is not a serious violent offense or sex offense;
- b) The defendant is diagnosed with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;

- c) The defendant and the community would benefit from supervision and treatment, as determined by the judge; and
- d) The defendant is willing to participate in the sentencing alternative.

The statute further provides that, after considering the defendant's eligibility, "the court shall consider whether the defendant and the community will benefit from the use of this sentencing alternative." RCW 9.94A.695(4). The court must also consider the opinion of the victim on the matter. *Id.*

The statute does not require a nexus between the defendant's criminal activity and the crime for which they are being sentenced. It does not even require the person be diagnosed with a mental illness at the time of the crime, only at the time of sentencing. RCW 9.94A.695(1)(b). Because the legislature did not include a nexus requirement in the statute, a lack of nexus is an improper reason for a court to deny a MHSa. *See State v. Yancey*, 193 Wn.2d 26, 32, 434 P.3d 518

(2019) (this Court will not “add words where the legislature has chosen not to include them.” (internal citation omitted)).

Here, the sentencing court based its conclusion that a MHSA would not benefit the community on its perceived lack of nexus between Mr. Colon’s mental illness and the crime. In affirming the sentence, the Court of Appeals pointed to the “lack of authority on the MHSA ‘benefit to the community’ factor.” App. at 5 This is an issue of substantial public interest that is likely to recur, and is already pending before the Court of Appeals in another case.² This Court should grant review. RAP 13.4(b)(4).

c. The Court of Appeals erroneously concluded the sentencing court’s reliance on the lack of nexus was not improper.

The Court of Appeals’ restatement of the sentencing court’s reasoning makes clear its reliance on this improper

² This issue is currently pending before the Court of Appeals in *State v. Antonio Aaron*, No. 86680-0-I.

nexus requirement. The Court of Appeals characterized the sentencing court's reasoning as follows:

“The court reasoned that if the underlying conduct of the conviction was not at least in some way caused by a mental health issue, ameliorating Colon's mental health condition via MHSA treatment would have no impact on preventing similar conduct.”

App. at 5. In other words, if there is not a nexus between the mental illness and the crime, MHSA is not appropriate. In concluding the sentencing court did not abuse its discretion, the Court of Appeals stated the nexus requirement was “not an additional element, but simply one way to consider whether the community would benefit from treatment...” App. at 5. But a sentencing court is not free to interpret the statutory eligibility criteria in a way that imposes additional, improper restrictions on the imposition of the sentencing alternative. And that is what happened here; the sentencing court reasoned that the absence of a nexus meant the MHSA would not benefit the community. This Court should grant review to make clear that a lack of nexus is an improper basis to deny a MHSA.

2. The Court of Appeals decision conflicts with this Court's decisions holding that remand is necessary when a sentencing court bases its decision on an invalid basis.

In addition to approving of the sentencing court's consideration of the lack of nexus, the Court of Appeals pointed to the fact that the sentencing court gave other reasons to support its conclusion that a MHSA would not benefit the community. App. at 6. These included Mr. Colon's criminal history, the victim's position, and Mr. Colon's prior noncompliance with community custody conditions. App. at 6. But the fact that the sentencing court may have also relied on proper bases for denial of the MHSA does not cure its reliance on the improper nexus requirement.

In *Pryor, Fisher, and Dunaway*, this Court has made clear that “[g]enerally, remand is necessary when the trial court places significant weight on an inappropriate factor...” *State v. Pryor*, 115 Wn.2d 445, 456, 799 P.2d 244 (1990); *State v. Fisher*, 108 Wn.2d 419, 430 n. 7, 739 P.2d 683 (1987); *State v. Dunaway*, 109 Wn.2d 207, 220, 743 P.2d 1237 (1987). This

includes scenarios such as this one, where the sentencing court utilizes a combination of both valid and invalid bases to impose a sentence. *Dunaway*, 109 Wn.2d at 220. Where the sentencing court “obviously placed considerable weight” on an improper factor, remand is warranted. *Fisher*, 108 Wn.2d at 430 n.7.

Here, the sentencing court’s language makes clear that considerable weight was placed on the lack of nexus. The court stated, “there was no evidence that the community, or, frankly, Mr. Colon would benefit from the mental health sentencing alternative *as there wasn’t the nexus* between the facts and the behaviors that led to his conviction and his mental health diagnosis.” RP 31 (emphasis added).

The court clearly believed that the determination of whether a MHSA would benefit the community could not be satisfied absent a nexus between Mr. Colon’s diagnosis and the crime. Despite the court’s consideration of additional factors, this Court cannot be confident that the court would still have denied the MHSA absent the erroneous nexus requirement, and

the Court of Appeals conclusion conflicts with this Court's decisions. This Court should grant review. RAP 13.4(b)(1).

F. CONCLUSION

This Court should grant review pursuant to RAP 13.4(b)(1) and (4) to decide this issue of substantial public interest and because the Court of Appeals opinion conflicts with this Court's decisions in *Sims*, *Grayson*, *Pryor*, *Fisher*, and *Dunaway*.

This brief is in 14-point Times New Roman, contains 2,312 words, and complies with RAP 18.17.

Respectfully submitted this 29th day of May, 2025.

A handwritten signature in cursive script, reading "Eleanor Knowles".

ELEANOR KNOWLES (61862)
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APPENDIX

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April 29, 2025

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

STATE OF WASHINGTON,

Respondent,

v.

JOSE RICO COLON,

Appellant.

No. 59046-8-II

PUBLISHED OPINION

VELJACIC, A.C.J. — Jose Rico Colon appeals his sentence for felony violation of a no-contact order. Colon argues that the sentencing court abused its discretion by denying his request for a mental health sentencing alternative (MHSA) on a non-statutory, impermissible basis. Colon asks us to reverse and remand for resentencing within statutory limitations. Because we find that the court did not abuse its discretion, we affirm.

FACTS

I. BACKGROUND

On April 21, 2021, Colon violated two no-contact orders by going to his ex-wife and children’s apartment. This also violated the terms of his community custody under a drug offender sentence alternative (DOSA), which Colon was serving at the time. Colon was convicted of felony violation of a no-contact order. Colon requested a MHSA, but the trial court denied his request

and sentenced Colon to a standard range sentence of 60 months. Colon, in his first appeal,¹ challenged the trial court's denial, arguing that the sentencing court failed to meaningfully consider his request for a MHSA and rejected it based on a misinterpretation of the law. Division I of this court agreed and remanded for resentencing to consider Colon's request for a MHSA within the statutory framework.

II. RESENTENCING COURT'S ORAL RULING

On remand, the resentencing court issued its oral ruling after hearing from the parties, the victim, and Colon. The court framed its ruling around the statutory requirements for a MHSA, listed at RCW 9.94A.695(1)(a)-(d). The court found Colon technically eligible because he met most of the statutory requirements.

However, the court denied Colon's request, finding a MHSA inappropriate. The court concluded neither the community nor Colon would benefit from a MHSA for several reasons: there was no nexus between Colon's mental health diagnoses and his conduct underlying his conviction; the victim's opposition to a MHSA and her history with Colon; and Colon was a poor fit for a MHSA because of his criminal history, non-compliance with court orders, and limited history of engagement in mental health treatment. Even so, the court acknowledged a mental health evaluation in the presentence report that indicated a nexus between the crime and Colon's mental health diagnosis.

The court also discussed Colon's criminal history and history of non-compliance with court orders, including four no-contact order violations and eight domestic violence convictions, all with the same victim. The court mentioned Colon's knowing violation of the DOSA terms by leaving

¹ *State v. Colon*, No. 85043-1-I, (Wash. Ct. App. July 10, 2023) (unpublished), <https://www.courts.wa.gov/opinions/pdf/850431.pdf>.

the county of his residence and traveling to the victim's county. Additionally, the court noted the law violations in this case were two no-contact order violations by Colon.

The court recognized Colon's previous mental health treatment and services, referencing Colon's engagement for three to four months in 2015 with court-ordered treatment. The court discussed Colon's current engagement in treatment within the Department of Corrections (DOC) and how the court believed that such treatment would better serve Colon to change his behavior than a MHSA.

The court found "little history of compliance with community custody and participation in services," and it did "not see a benefit to the community or a willingness on Mr. Colon's part to comply with services." Rep. of Proc. (RP) at 33. The sentencing court ultimately denied Colon's request for a MHSA and resentenced Colon to 60 months within the DOC.

Colon appeals.

ANALYSIS

I. THE COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE MHSA.

Colon argues that the sentencing court abused its discretion by requiring a nexus between Colon's crime and his mental health diagnoses. He asserts the nexus requirement is a non-statutory, impermissible basis. We disagree.

A. Standard of Review

Generally, a trial court must impose a sentence within the standard sentencing range. RCW 9.94A.505(2)(a)(i); *State v. Yancey*, 193 Wn.2d 26, 30, 434 P.3d 518 (2019). "A defendant may appeal a standard range sentence if the sentencing court failed to comply with procedural requirements of the [Sentencing Reform Act of 1984 (SRA)]." *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006). While courts "have considerable discretion under the SRA, they are

still required to act within [statutory] strictures and [in accordance with] principles of due process of law.” *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

Courts “may deviate from the standard range in statutorily specified circumstances,” such as for a MHSA. *Yancey*, 193 Wn.2d at 30; RCW 9.94A.695. Granting an alternative sentence is entirely within the sentencing court’s discretion, so long as the court does not abuse its discretion by categorically refusing to consider the request or by denying the request on an impermissible basis. *See State v. Sims*, 171 Wn.2d 436, 445, 256 P.3d 285 (2011). The sentencing court must meaningfully consider the request for a discretionary sentence in accordance with the applicable law. *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017).

B. Legal Principles

A MHSA has four eligibility requirements:

- (a) The defendant is convicted of a felony that is not a serious violent offense or sex offense;
- (b) The defendant is diagnosed with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;
- (c) The defendant and the community would benefit from supervision and treatment, as determined by the judge; and
- (d) The defendant is willing to participate in the sentencing alternative.

RCW 9.94A.695(1).

Whether to grant a MHSA is entrusted to the sentencing court’s discretion:

After consideration of all available information and determining whether the defendant is eligible, the court shall consider whether the defendant and the community will benefit from the use of this sentencing alternative. The court shall consider the victim’s opinion whether the defendant should receive a sentence under this section. If the sentencing court determines that a sentence under this section is appropriate, the court shall waive imposition of the sentence within the standard range.

RCW 9.94A.695(4).

C. Analysis

The record does not support Colon's contention that the sentencing court abused its discretion in denying his request for a MHSA by requiring a nexus between his conduct and his mental health diagnoses as an additional non-statutory factor.

It is apparent from the record that the court considered a connection between Colon's diagnosis and offense as a way of determining whether there would be a benefit to the community, a permissible consideration under RCW 9.94A.695.

The court reasoned that if the underlying conduct of the conviction was not at least in some way caused by a mental health issue, ameliorating Colon's mental health condition via MHSA treatment would have no impact on preventing similar conduct. This is not an additional element, but simply one way to consider whether the community would benefit from treatment aimed at controlling symptoms arising from Colon's mental health diagnoses that could lead to criminal conduct in the community.

There is a lack of authority on the MHSA "benefit to the community" factor. DOSA cases, however, may be instructive by analogy. In *State v. Williams*, 199 Wn. App 99, 112, 398 P.3d 1150 (2017), the defendant requested a DOSA but was denied because of the lack of evidence of drug use. The *Williams* court held that this consideration was not an abuse of discretion. *Id.* Similar to *Williams*, here the trial court did not find a nexus between Colon's conduct and his mental health diagnoses. Thus, the court did not abuse its discretion when it considered this factor in connection with whether a MHSA would benefit the community.

Additionally, the sentencing court gave other reasons supporting its determination that a MHSA would benefit neither Colon nor the community. These include the victim's opinion, Colon's criminal history, Colon's noncompliance with community custody, and Colon's participation in treatment and services.

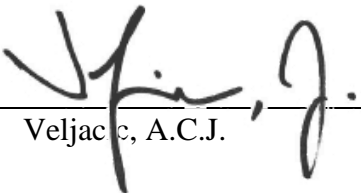
The court acted within its discretion when it considered Colon's criminal history to support its ruling that granting a MHSA would not benefit the community. In *Grayson*, 154 Wn.2d at 342, our Supreme Court stated that the defendant could have been denied a DOSA based on his extensive criminal history and his continued offenses while on conditional release. Similarly, in this case, the sentencing court noted Colon's recidivism in the form of repeated no-contact order violations and his domestic violence convictions, as well as his knowing violation of his community custody. The court cited this evidence to support a lack of community benefit. The court acted within its discretion when considering this evidence in finding a MHSA inappropriate. *See id.* at 341-343.

The court acted within its discretion when it determined that continued treatment within DOC was more suitable than a MHSA. The court considered Colon's recidivism and mental health and treatment history in relation to which sentence and corresponding treatment best benefits him and the community. The court believed his DOC treatment to be better suited to changing his behavior. These considerations speak to the court weighing Colon's prospective treatment and how to protect the community, considerations that fall under whether a MHSA would benefit both Colon and the community. Therefore, the court did not abuse its discretion.

The court did not abuse its discretion in denying Colon's request for a MHSA based on its consideration of a nexus between Colon's mental health diagnoses and his conduct. Instead, the court considered the relevant statutory factors and made clear that its conclusion was based on the lack of benefit to both Colon and the community.

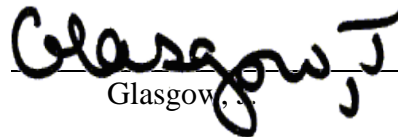
CONCLUSION

Accordingly, we affirm Colon's sentence.



Veljacek, A.C.J.

We concur:



Glasgow, J.



Price, J.

WASHINGTON APPELLATE PROJECT

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