IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THE STATE OF WASHINGTON, Respondent, v. JAMES LEVI HILLEY, Appellant.	No. 39723-4-II UNPUBLISHED OPINION

Worswick, J.—James Levi Hilley appeals from the sentence imposed following his pleas of guilty to three counts of first degree child molestation and two counts of unlawful imprisonment. He argues that the trial court abused its discretion when it denied his request for a Special Sex Offender Sentencing Alternative (SSOSA) sentence. We affirm.[1]

Hilley's girlfriend informed the police that she had walked in on Hilley with his penis in the mouth of three-year-old girl whom he was babysitting. During an investigation, Hilley admitted to that conduct and admitted to other sexual contact with that child and with two other children under the age of six.

The State initially charged Hilley with three counts of first degree rape of a child and one count of first degree child molestation. As part of plea agreement, Hilley agreed to plead guilty to three counts of first degree child molestation and two counts of unlawful imprisonment. The agreement allowed the State to argue for a standard range sentence while Hilley argued for a

[1] A commissioner of this court initially considered Hilley's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

SSOSA sentence. The standard range for Hilley was a minimum term of 129 to 171 months and a maximum term of life. Under the SSOSA sentence, Hilley would serve one year in jail and then have the remaining 131 months of his sentence suspended on compliance with the conditions of that sentence.

Hilley underwent a psychological evaluation by Kevin McGovern, Ph.D. Dr. McGovern opined that "Hilley appeared to be an eligible candidate for a SSOSA outpatient therapy." CP 66. The Department of Corrections conducted a pre-sentence investigation, in which it recommended against a SSOSA sentence because Hilley: (1) had had similar sexual contact with young girls when he was a teenager; (2) blamed his recent sexual contact with the three young girls on an "unusual sexual relationship" with his girlfriend; (3) showed no remorse for his acts; and (4) directed or taught the young girls how to engage in the sexual contact he desired. CP 57-58.

At sentencing, the trial court considered these reports. It considered four letters submitted in support of a SSOSA sentence. And it considered objections to a SSOSA sentence made by counsel for one of the victims and made by the mother of two of the victims. The State argued for a minimum term of 171 months of confinement. RP 22. Hilley argued for a SSOSA sentence. The court denied Hilley's request for a SSOSA sentence and imposed a minimum term of 150 months of confinement, stating:

> In reading through the materials, I must confess I could not imagine a grown man, a young woman, having oral sex with a three-year-old sitting there, and then later having oral sex with the three-year-old. The . . . some two years in duration in which this – aggravated issues are taking place. And we have several young children who are entrusted to Mr. Hilley.
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> The families were very trusting. They had him baby-sit. They held a complete acceptance that he would be a – protective and would show the same concerns as they as parents would show towards their children. It's a major breach of trust, there's no question of that.

> And so it really gets to the point do – is there anything I can basically say that would not – for findings that would not go against the families and their position . . . .
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> [Hilley's counsel] suggested there was no bodily harm, but I can't say that this type of activity and actions toward a child of this nature would not have long-lasting effects. It's just a situation that is not something that is going to go away, leaving the child significantly damaged and in need of counseling and work.
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> So, in viewing the various situation [sic], yes, you may very well be a reasonable candidate for SSOSA. You also have committed such acts that the Court feels goes beyond that which would normally be or entitled to be in that type of program, and that – the number of people and their ages, the breach of trust, I feel that as such I am going to sentence you to the Department of Institutions [sic].

RP 40-41.

We review a trial court's refusal to impose a SSOSA sentence for an abuse of discretion. *State v. Osman*, 157 Wn.2d 474, 482, 139 P.3d 334 (2006); *State v. Onefrey*, 119 Wn.2d 572, 574, 835 P.2d 213 (1992). A trial court abuses its discretion if it denies a sentencing request on an impermissible or untenable basis. *State v. Khanteechit*, 101 Wn. App. 137, 139, 5 P.3d 727 (2000); *State v. Jamison*, 105 Wn. App. 572, 590, 20 P.3d 1010, *review denied*, 144 Wn.2d 1018 (2001).

Hilley argues that the trial court abused its discretion because, after finding that he was a reasonable candidate for a SSOSA sentence, it denied his request for a SSOSA sentence because of the number of victims and because of their young ages. But considering all of the trial court's reasoning, we conclude it had permissible and tenable bases for denying Hilley's request for a SSOSA sentence. The trial court noted the severe abuse of trust by Hilley in committing his crimes and the harm to the victims. And, most notably, it noted that the victims opposed Hilley's request for a SSOSA sentence. RCW 9.94A.670(4) provides that "[t]he court shall give great weight to the victim's opinion whether the offender should receive a [SSOSA sentence]." The

trial court appears to have given the victims' opposition the appropriate weight when it denied Hilley's request for a SSOSA sentence. It did not abuse its discretion.

In a Statement of Additional Grounds, under RAP 10.10, Hilley states that he pleaded guilty only to become eligible for a SSOSA sentence and that his girlfriend's story changed five or six times. Neither statement is a grounds for reviewing his pleas of guilty or his sentence.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Van Deren, J..

Penoyar, C.J.