

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 65745-3
Respondent,)	
)	DIVISION ONE
v.)	
)	
MATTHEW JOSEPH CLINE,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: <u>November 14, 2011</u>

Spearman, J. —Matthew Cline pleaded guilty to six counts of domestic violence felony violation of a court order and asked the court to impose a sentence under the Drug Offender Sentencing Act (DOSA). Cline argues that the court abused its discretion when it denied his request. We disagree and affirm.

FACTS

On May 13, 2010, Cline pleaded guilty to six counts of felony violation of a court order. Cline requested the court impose a DOSA sentence because of his drug addiction and its role in the crimes he committed. At the sentencing hearing, the State did not contest that Cline met the statutory eligibility requirements for a DOSA.

However, the State presented what it claimed was substantial evidence that Cline posed a significant danger to the victim and the community based on

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his prior conduct. Cline had an extensive history of domestic violence toward the victim in the present case, including three previous violations of no-contact orders and two assault convictions. In this case, one of the no-contact order violations to which Cline pleaded guilty was elevated to a felony based on his assault of the victim.

The State also presented evidence seeking to show, based on his past behavior, that Cline would not comply with the conditions of a DOSA. The acts underlying his six present convictions for violating a no-contact order took place when he was on probation and had a drug charge pending against him. Additionally, he had three prior convictions for violating no-contact orders. Finally, at the time of the sentencing hearing, Cline was serving a 300-day sanction imposed by Pierce County District Court resulting from the revocation of a suspended sentence and was facing revocation in three other cases in Tacoma Municipal Court.

The sentencing court acknowledged Cline had presented a compelling argument in support of his DOSA request and that there was significant evidence that he had a drug problem. Nonetheless, the court denied his request for a DOSA, noting that there were repeated violations of protection orders involving the same victim and concluding that it was not persuaded that a DOSA was appropriate. The court sentenced Cline to a standard-range sentence and ordered him to complete substance abuse treatment and domestic violence batterer's treatment.

DISCUSSION

Generally, the trial court's decision to deny imposing a DOSA sentence is not reviewable. State v. Bramme 115 Wn. App. 844, 850, 64 P.3d 60 (2003). “[A] standard range sentence, of which a DOSA is an alternate form, may not be appealed.” State v. Smith, 118 Wn. App. 288, 292, 75 P.3d 986 (2003); RCW 9.94A.585(1). However, “it is well established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies.” State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003). A trial court abuses its discretion when its decision is “manifestly unreasonable or based upon untenable grounds or reasons. . . .” State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). A decision is based on untenable grounds or made for untenable reasons when it was reached by applying the wrong legal standard. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

A sentencing court shall waive the imposition of a standard range sentence in favor of a DOSA sentence if it determines the offender meets the statutory eligibility requirements for an alternative sentence and an alternative sentence is appropriate. RCW 9.94A.660(3) (emphasis added.) Under a prison-based DOSA sentence, the defendant serves one-half of the standard-range sentence in prison while receiving substance abuse treatment.¹ RCW

¹ Cline was not eligible for a residential treatment-based DOSA sentence because the midpoint of his standard range sentence was more than 24 months. RCW 9.94A.660 (3).

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9.94A.662(1)(a)(2); State v. Grayson, 154 Wn.2d 333, 337-38, 111 P.3d 1183 (2005). The defendant is then released “into closely monitored community supervision and treatment” for the remainder of the sentence. Grayson, 154 Wn.2d at 338.

Here, Cline contends the sentencing court abused its discretion because it wrongly believed that he was statutorily ineligible for the sentencing alternative and as a result based its decision on the wrong legal standard.² But Cline’s eligibility for a DOSA was not a matter of dispute. The State never argued he was ineligible. The dispute at sentencing regarded the second statutory requirement, i.e. whether, in view of all the circumstances, an alternative sentence was appropriate in this case. In resolving this issue the court stated:

The defense presents a compelling argument for the Court’s imposing a DOSA sentence in this matter. There is a – and I think both parties agree that there is significant evidence of a drug problem, but it’s also coupled with repeated violations of protection orders involving the same victim at the time of the assaultive behavior in connection with Count I on October 22nd, 2009. The Court understands that that occurred during a time when the defendant already was on probation in connection with a drug Court opportunity and adjudication in Pierce County under 09-1-04038-1.

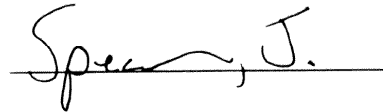
Taking everything into account, the Court is not persuaded that [this] is a case where the Court should allow a DOSA sentence. The Court does not believe that it is appropriate under the statutory conditions. As I say there are some compelling personal circumstances here, but I just do not think that this is the type of case where the legislature intends the Court impose a DOSA sentence.

² Cline also contends that the “court’s failure to limit its consideration of a DOSA to the statutory criteria requires reversal” But this argument ignores that one of the statutory criteria for imposition of a DOSA sentence is whether the alternative sentence is appropriate. Cline points to no authority suggesting that the factors the court considered in this regard were improper.

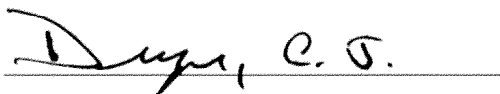
(Emphasis added.)

In making this ruling the sentencing court properly exercised its discretion as to the appropriateness of imposing a DOSA sentence. The court first discussed Cline’s drug addiction balanced against his extensive history of violations of court orders and abusive behavior. It then concluded that it would not grant Cline’s request for a DOSA sentence because it was not a situation where the court should allow an alternative sentence, and it was not the type of case where the legislature intended the courts to impose a DOSA. This reasoning addresses the appropriateness of a DOSA sentence in this case. Though the sentencing court’s use of the term “statutory conditions” was perhaps confusing in this context, it is evident that the court’s ruling was not based on an erroneous belief that Cline was statutorily ineligible for a DOSA sentence. The sentencing court did not abuse its discretion.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Dyer, C. S.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Schweinler, J.", written over a horizontal line.