IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANTHONY DUPREE ALEXANDER, Appellant.	No. 39419-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury convicted Anthony Dupree Alexander of unlawful possession of a stolen vehicle. He appeals his sentence, arguing that the trial court abused its discretion when it refused to grant him a drug offender sentencing alternative (DOSA), former RCW 9.94A.660 (2006). We affirm.[1]

FACTS

The vehicle in question belonged to Chun Cho. Chun's son, Glory Cho, drove it to work on January 14, 2008. He inadvertently locked his keys in the car and he left it in the parking lot overnight. When he returned the next morning, it was gone. He reported it stolen, and a Tacoma police officer stopped Alexander two days later and arrested him.

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

Alexander claimed that he had acquired the car from Glorya Cho (Glory Cho's sister) as collateral for $60 worth of rock cocaine. He explained that he had been using drugs and living on the streets. One night, a woman stopped and invited him into her car. She asked for some drugs. He testified that he did not know the woman, but she told him her name was Glorya Cho. She offered either herself or the car in exchange for drugs, and he agreed to let her have some of his drugs in return for the use of the car for two days.[2]

After his conviction, Alexander requested a DOSA, providing an evaluation that confirmed his eligibility and recommended treatment. The court held three hearings on the matter. The first occurred on April 17, 2009. The State opposed the DOSA and recommended a 57-month sentence, the top of the standard range.[3] The deputy prosecutor urged the court to take into account Alexander's 1998 second degree robbery conviction. A defendant is not eligible for a DOSA if he or she has committed a violent offense, such as second degree robbery, within 10 years of the current conviction. Former RCW 9.94A.660(1)(c). The prosecutor acknowledged that the robbery would not preclude a DOSA but argued that it was relevant because it exceeded the ten-year period by only four months. The prosecutor also asked the court to consider Alexander's failure to take advantage of numerous opportunities in the past to address his drug problem.

The court gave Alexander's pastor, his father, and several other members of Alexander's church an opportunity to speak on Alexander's behalf. It then set sentencing over so that Alexander could submit a more specific written plan for a DOSA.

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[2] Glory Cho testified that, at the time of the theft, his sister was in the Congo on an internship with International Rescue Committee.

[3] Alexander had an offender score of 9 and his standard range was 43 to 57 months.

The next hearing occurred on May 15, 2009, but was continued again because the court wanted Alexander to submit a more detailed plan for treatment and supervision. The last hearing occurred on June 5, 2009. The State reiterated its objections, also noting that Alexander had failed to seek treatment before his current conviction despite 11 months of freedom between his arraignment and the verdict. The State asserted that Alexander had not engaged in treatment during any of his prior periods of probation; he indicated an interest in dealing with his drug problem only when it could affect his sentence.

Defense counsel pointed out that Alexander had managed to stay clean in the year during which his trial was pending. Counsel argued that, despite past failures at staying drug free, Alexander had a good chance of success this time because he wanted be able to be a father to his children and he had a strong support network, including family and church.

The court noted that Alexander had had 20 years to make different choices and to seek treatment, but he had not shown any interest in treatment until he was facing this sentence. It denied the request for DOSA and imposed 57 months of confinement. Alexander contends that the court improperly added a new requirement to former RCW 9.94A.660, categorically denying DOSA to all defendants who had not sought treatment in the past.

ANALYSIS

Decisions regarding DOSA sentences rest within the trial court's discretion. *State v. Conners*, 90 Wn. App. 48, 53, 950 P.2d 519, *review denied*, 136 Wn.2d 1004 (1998). 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 considered. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). Where a defendant has requested

a sentencing alternative authorized by statute, the categorical refusal to consider the sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and it is subject to reversal. *Grayson*, 154 Wn.2d at 342. However, where the court has considered the evidence before it and has concluded that there is no basis for an exceptional sentence, it has exercised its discretion. The defendant may not appeal that ruling unless it is based on an impermissible ground, such as race, sex, or religion. *See State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), *review denied*, 136 Wn.2d 1002 (1998).

Here, the court held three sentencing hearings, providing repeated opportunities for Alexander to present his evidence and his arguments. Clearly, it considered his request. It found, essentially, that he had not demonstrated sufficient commitment to overcoming his addiction to warrant a DOSA. That was a finding particular to Alexander, not a category of persons, and it is an appropriate basis for the decision.

Affirmed.

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.

QUINN-BRINTNALL, J.

We concur:

HUNT, J.

PENOYAR, C.J.