

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RICHARD ALLEN REYNOLDS,

Appellant.

No. 39747-1-II
(Consolidated with 39757-9-II)

UNPUBLISHED OPINION

Armstrong, P.J. — Richard Reynolds appeals from the sentence imposed following his pleas of guilty to one count of second degree burglary, one count of first degree theft, two counts of residential burglary, and one count of attempted residential burglary. He argues that the trial court abused its discretion when it denied his request for a drug offender sentencing alternative (DOSA), former RCW 9.94A.660 (2005), sentence. We affirm.¹

In two separate Lewis County cause numbers, Reynolds pleaded guilty as stated above. He was already serving a 122-month sentence for crimes committed in Cowlitz County. The State asked the trial court to impose a 63-month sentence for the residential burglaries, run all the other sentences for the Lewis County crimes concurrent with that sentence, and run all those

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

sentences consecutive to the 122-month sentence he was already serving. Reynolds asked the court to impose a 63-month DOSA sentence for the residential burglaries, run all the other sentences for the Lewis County crimes concurrent with that sentence, and run all those sentences concurrent with the 122-month sentence he was already serving. Under such a DOSA sentence, Reynolds would serve 37 months in confinement and 37 months in community custody. Former RCW 9.94A.660(5). The court declined to make the sentences for the Lewis County crimes concurrent with the sentences for the Cowlitz County crimes or to impose a DOSA sentence for the Lewis County crimes. Reynolds appeals his sentence.

Ordinarily, the trial court's decision not to impose a DOSA sentence is not reviewable on appeal. *State v. Bramme*, 115 Wn. App. 844, 850, 64 P.3d 60 (2003). However, a trial court's "categorical refusal to consider [a DOSA] sentence, or the refusal to consider it for a class of offenders, is effectively a failure to exercise discretion and is subject to reversal." *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). Reynolds argues that the trial court categorically refused to impose a DOSA sentence for an offender who was already serving a term of confinement for other convictions. But the trial court's refusal to impose a DOSA sentence was specific to Reynolds's situation, not categorical:

I don't see the benefits of [DOSA] because the problem I see with this is this, the purpose of an in custody [DOSA] is that you load up on the amount of community custody, after he's released, which is why you do pick the midpoint and you do half the midpoint of standard range in custody, then, you do the other half on intensive community custody. That's not going to work in a situation, where somebody has got a sentence of 122 months

. . . .
. . . The purpose of intensive community custody under [DOSA] is that he benefit from treatment that he got in the institution, so assuming for the sake of argument that I gave him prison [DOSA] and assuming for the sake of argument that [the Department of Corrections] went along with it and started treating him in [DOSA], there's going to be this time lag, where he's going to be doing nothing to

take advantage of all the treatment that he was given in the institution, because [he has] to wait to get out [following the end of his Cowlitz County sentences].

Report of Proceedings (Sept. 2, 2009) at 9-11.

Because the trial court's decision not to impose a DOSA sentence was case-specific, not categorical, Reynolds may not challenge it on appeal. 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.

ARMSTRONG, P.J.

We concur:

QUINN-BRINTNALL, J.

VAN DEREN, J.