

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RYAN ANTHONY LOUGH,

Appellant.

No. 40013-8-II

UNPUBLISHED OPINION

Worswick, J. — A jury found Ryan Lough guilty of first degree rape of a child. The victim was his then seven-year-old daughter. The trial court rejected his request for a sentence under the special sex offender sentencing alternative (SOSSA), RCW 9.94A.670, and imposed a standard range sentence. He appeals from the rejection of the SSOSA. We affirm.¹

FACTS

After the jury found Lough guilty of first degree rape of a child, the Department of Corrections prepared a presentence investigation report. That report concluded that SSOSA “could be an option if Mr. Lough were to receive a psychosexual evaluation that finds him amenable to treatment and deemed safe to be in the community while receiving treatment” Clerk’s Papers (CP) at 87. Lough underwent a psychological evaluation by Vincent Gollogly, Ph.D. Dr. Gollogly assessed Lough as “being amenable to treatment by sex offender treatment providers” and concluded that he was “at a low risk for sexual and general dangerousness.” CP at 150.

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

Lough requested a SSOSA sentence. He submitted letters from the victim asking that he be allowed to return to the family home. The State opposed Lough's request, arguing that both Lough and his family lied during their testimony and that Lough had not accepted responsibility for his actions. The trial court denied Lough's request, stating:

I think it's—these are always hard cases, but from my point of view, [the victim] has been victimized multiple times, so you did this to her; she had to have a forensic interview; she had to have a doctor's examination twice and she had the defense interview; and then she had the pretrial hearing, and then she had to testify at trial.

You had the opportunity to see her interview. I'm sure [defense counsel] showed the DVD to you previous to trial, you saw it at the pretrial hearing and then saw it again at trial. You absolutely had the right to go to trial. Everybody has the right to go to trial and make sure that the State proves the case beyond a reasonable doubt. But what you don't have a right to do is lie, and you lied when you testified. You had your wife lie, you had your mother lie, and I don't think [the victim] will be safe unless you spend time in prison.

And I'm not going to give you a SSOSA. That's a privilege that I don't think you deserve because she's been re-victimized, and I don't believe that your family can protect her if you are out. I honestly don't. I know it's hard for everybody. It's hard for me, too, and I hate this for [the victim] because she's totally confused, and I don't believe she gets the support she needs at home, either. She didn't prior to this and she won't now.

I'm going to sentence you to the low end of the standard range, 93 months. I'll order you get sex offender treatment within the Department of Corrections, as well as alcohol treatment.

So you'll get your treatment, and I'm hoping when you get out that I can feel [the victim] will be safe, as well as other small children.

....

A SSOSA is an option; it's a privilege. You don't re-victimize a child and get that privilege, not in this court.

Report of Proceedings (Oct. 23, 2009) at 20-21.

ANALYSIS

Lough contends that the trial court either failed to exercise its discretion or relied on untenable grounds or reasons in denying his request for a SSOSA sentence. The imposition of a

SSOSA sentence is solely within the trial court's discretion. *State v. Frazier*, 84 Wn. App. 752, 753, 930 P.2d 345 (1997). But the trial court must actually consider the request for a SSOSA sentence and may not categorically refuse requests for SSOSA sentences or refuse such requests from certain classes of offenders. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

In considering a request for a SSOSA sentence, the trial court is to

consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

RCW 9.94A.670(4). The court is also to give "great weight" to the victim's opinion about whether a SSOSA sentence should be imposed. RCW 9.94A.670(4).

Lough argues that because Dr. Gollogly concluded that he was amenable to treatment and presented a low risk of re-offense, because his family and community supported a SSOSA sentence, the trial court failed to consider the factors contained in RCW 9.94A.670(4) and so abused its discretion in denying his request for such a sentence. He also argues that the trial court engaged in an improper categorical refusal of SSOSA sentences for those who had re-victimized a child by exercising their right to trial. But the trial court based its decision primarily on Lough's decisions to lie during his testimony and to have his family lie for him during their testimony. A defendant's decision to lie during trial is a recognized ground for rejecting a request for a SSOSA sentence. *Frazier*, 84 Wn. App. at 754. Given that a successful SSOSA sentence depends on the offender's truthfulness during treatment, the trial court did not abuse its discretion in rejecting

Lough's request for a SSOSA sentence. Nor does Lough show that the trial court engaged in a categorical rejection of his request. Rather, it based its decision on the specific actions of Lough. Finally, the trial court gave the appropriate weight to the request of Lough's victim, his then eight-year-old daughter, that he be allowed to return home.

We affirm the trial court's rejection of Lough's request for a SSOSA sentence.

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:

Penoyar, C.J.

Van Deren, J.