

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JEREMY ALLEN FINE,

Appellant.

No. 40739-6-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Jeremy Fine appeals the trial court’s denial of his request to be sentenced under the Drug Offender Sentencing Alternative (DOSA), RCW 9.94A.660. Holding that the trial court meaningfully considered his request before denying it, we affirm.<sup>1</sup>

**FACTS**

A jury found Fine guilty of one count of residential burglary, six counts of unlawful possession of a firearm in the second degree, and six counts of theft of a firearm. The Department of Corrections concluded that he was eligible for a prison DOSA sentence. Fine requested that the court impose a DOSA sentence because of his drug abuse history. The State asked the court to impose the maximum sentence under the standard range. The trial court considered the victim’s written statement and the number of Fine’s felony convictions, and then denied Fine’s request for a DOSA sentence, stating “The time for [DOSA] was before, was to enter treatment or get some help here before you picked up felony numbers, what would it be, [six] through [nineteen], something of that nature.” Report of Proceedings (May 10, 2010) at 19.

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

ANALYSIS

Fine argues that the trial court erred when it failed to meaningfully consider his request for a DOSA sentence. The trial court's decision of whether to grant a DOSA is ordinarily not reviewable on appeal. *State v. Grayson*, 154 Wn.2d 333, 338, 111 P.3d 1183 (2005); RCW 9.94A.660. Review of such a decision is limited to circumstances where the trial court categorically refused to exercise its discretion to impose a DOSA, or relied on an impermissible basis for refusing to impose a DOSA, such as religion, race, or gender. *Grayson*, 154 Wn.2d at 342; *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997).

After hearing from the State, Fine's attorney, and Fine himself, the trial court articulated its reason for denying Fine's request for a DOSA sentence. It did not categorically refuse, without considering the facts. And it did not rely on an impermissible reason, such as race, gender or religion, in denying the request. We affirm the trial court's denial of Fine's request for a DOSA 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.

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Worswick, A.C.J.

We concur:

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Hunt, J.

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Van Deren, J.

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