IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ERIC SERGIO BATACAN, Appellant.	No. 41479-1-II UNPUBLISHED OPINION

Van Deren, J. — Eric Batacan appeals from the trial court's denial of his request for a sentence under the special sex offender sentencing alternative (SSOSA), RCW 9.94A.670. He argues that the court abused its discretion and relied upon a statutory amendment that did not apply to his crime. We affirm.[1]

The State charged Batacan with three counts of first degree rape of a child, three counts of first degree incest, and two counts of first degree child molestation. The crimes were alleged to have been committed between January 1, 2008, and September 1, 2009. The State and Batacan entered into a plea agreement in which Batacan would plead guilty to two counts of first degree rape of a child. He agreed that the trial court could consider the statement of probable

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

cause to establish a factual basis for the plea. He admitted to having committed the elements of first degree rape of a child but did not make any other admissions. The court accepted his plea of guilty. It then ordered that a presentence investigation (PSI) report be prepared. On advice of counsel, Batacan did not speak with or provide any information to the PSI report writer. The report recommended against a SSOSA sentence because Batacan had not admitted to his crimes.

Batacan underwent a psychosexual evaluation. He admitted to the evaluator that he had sex with his ten-year-old stepdaughter "three or four different times within a couple of weeks." Clerk's Papers (CP) at 96. He said, "I was drinking and one thing led to another, apparently I can't control my drinking." CP at 96. He also said the sexual assaults occurred after his wife told him she was having an affair. He denied the allegation that he sexually molested his seven-year-old stepson while showering with him. The evaluator concluded that he was amenable to sex offender treatment.

At sentencing, the State opposed a SSOSA sentence and asked the trial court to impose a standard range of sentence of a minimum term of 160 months. In rejecting the State's contention that Batacan had not admitted to his crimes, his counsel argued that "when it came time for him to make admissions, he did. He made his admissions to me; he made his admissions to the polygrapher; and he made his admissions to [the evaluator]. Those are the admissions that are important." Report of Proceedings (RP) (October 28, 2010) at 16.

The trial court rejected Batacan's request for a SSOSA sentence. It noted that (1) Batacan had violated a no-contact order as to the children while on bail; (2) Batacan had not recognized or admitted that the contacts with his stepson might have been inappropriate; (3) "[t]here was no admission at the time of his plea, except an admission to guilt"; (4) Batacan had

only in the last few weeks made admissions of wrongdoing to the evaluator; (4) Batacan had not made any statements to the PSI report writer; and (5) "[t]his is about the least responsibility I have seen someone take for a crime who is requesting a SSOSA." RP (October 28, 2010) at 23-24. The court concluded that Batacan was not an appropriate candidate for a SSOSA sentence and imposed a standard range sentence with a minimum 140 months confinement and maximum of life imprisonment.

We review the trial court's denial of a SSOSA sentence for an abuse of discretion. *State v. Adamy*, 151 Wn. App. 583, 587, 213 P.3d 627 (2009) (citing *State v. Onefrey*, 119 Wn.2d 572, 575, 835 P.2d 213 (1992)). Batacan argues that the trial court abused its discretion when it denied a SSOSA sentence. He contends that the violation of the no-contact order, the failure to recognize the inappropriateness of contact with his stepson (which he denied) and the absence of an admission to the PSI report writer (which was on the advice of counsel) were not proper bases for rejecting a SSOSA sentence. And he contends that he made sufficient admissions to the crimes. RCW 9.94A.670(2)(a) requires that, for an offender who has pleaded guilty to be eligible for a SSOSA sentence,

> the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976).

Batacan admitted to having committed the elements of the crimes. But the trial court may still exercise its discretion in deciding whether to grant a SSOSA sentence. Batacan's statements during his psychosexual evaluation suggested that he was blaming his crimes on his drinking and

on his wife's affair. The trial court did not abuse its discretion in rejecting Batacan's request for a SSOSA sentence.

Batacan also argues that the trial court erred in relying on the admission requirement contained in RCW 9.94A.670(2)(a) because that requirement was added in a 2008 amendment that became effective August 1, 2009, which was after some of the dates of his crimes. Laws of 2008, ch. 231, § 31. However, the admission requirement was actually added in 2006 and became effective June 7, 2006. Laws of 2006, ch. 133, § 1. The court did not err in relying on it.

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 in accordance with RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Armstrong, J.

Johanson, J.