

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

DONALD GEORGE BECKWITH,

Appellant.

No. 42147-0-II

UNPUBLISHED OPINION

Johanson, J. — Donald Beckwith appeals the trial court’s denial of a “Special Sex Offender Sentencing Alternative” (SSOSA), RCW 9.94A.670, on two counts of first degree child molestation. Concluding that the trial court did not abuse its discretion in denying his request for a SSOSA, we affirm.<sup>1</sup>

**FACTS**

On September 20, 2010, the State charged Beckwith with five counts of first degree child molestation. The victim was the nine-year-old daughter of a family friend. On March 17, 2011, Beckwith pleaded guilty in exchange for the State recommending SSOSA and amending the information to charge two counts of first degree child molestation.

Beckwith was examined by two medical experts as well as the Department of Corrections (DOC) to determine his suitability for SSOSA. Beckwith first underwent a neuropsychological

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

examination, conducted by Kenneth Muscatel, Ph.D., because he had a history of spinal meningitis which led to neurological problems. Dr. Muscatel's report noted that Beckwith appeared to exhibit symptoms consistent with mild traumatic brain injury caused by his bout with spinal meningitis. Particularly, Dr. Muscatel noted, "[Beckwith's] cognitive deficits, while not dramatic, likely are focused in the right hemisphere of the brain, as well as the frontal lobes. A frontal lobe injury adversely affects emotional regulation, judgment and impulse control." Clerk's Papers (CP) at 62. The report concluded that Beckwith had "sufficiently intact cognitive skills to benefit from therapy, and should be able to learn new skills that would reduce his risk of reoffending." CP at 63.

Joseph A. Jensen, Ph.D., also evaluated Beckwith for SSOSA eligibility. Dr. Jensen concluded that Beckwith "presents as a marginal candidate for sexual deviance treatment primarily due to his uneven presentation in clinical interviews regarding his sexual offending history." CP at 161. The report further noted that Beckwith's responses to Dr. Jensen's questions were evasive until he was told that he was risking his opportunity for a SSOSA recommendation.

A DOC investigator wrote a presentence investigation (PSI) report following an interview with Beckwith. Beckwith denied molesting the victim, maintaining that he was not guilty of the offenses. When describing the offense, Beckwith said that he "was just goofing around" during the incident and that he only pleaded guilty upon the recommendation of his attorney. CP at 132. The presentence report concluded that Beckwith was not a suitable candidate for SSOSA due to his minimization of the offense and his refusal to admit guilt.

Beckwith sent a letter to the sentencing court dated April 17, 2011. The letter read:

With respect to this Honorable Court, I would like to say I Donald Beckwith [truly] apologize for any and all of my actions that has shame[d] this Honorable Court as well as myself and my family. I understand that whatever punishment I [receive] is entirely at your discretion but I am writing this correspondence with the hopes that you will take this in[to] considerati[on] when deciding your decision. Your Honor I am not trying to down play my actions by any means as you already know I plead guilty which I believe is the first step in taking responsibility for my wro[ng] doing; I plead[ed] guilty on March 17, 2011 because I knew that it was the right thing to do and because I believed that with proper help I could fix any problems that I may have that is why I beg upon this court for mercy and to allow me to enter into the [SSOSA] program to help me fix any problems I may have. Your Honor I am a 64 year old elderly man and I know me being elderly is no excuse but I beg of you to please take that into consideration. As I stated I believe I can be helped and that the [SSOSA] program could be just the help I need to get my life back on track, as you may know this is my very first felony and I can promise you this will be my las[t] felony. My parents are elderly and retired both are in their mid 80's please let me try to bring some honor back to my family getting the help I need which will also help to restore some hono[r] within myself. Please and Thank You.

CP at 64.

At sentencing, the State and defense jointly recommended a SSOSA. The victim's mother vehemently expressed her opposition to a SSOSA. Her family was concerned with Beckwith's return to the victim's small community were the court to impose a SSOSA disposition. The DOC officer also noted that Beckwith was not forthcoming during the PSI process and that Beckwith believed that he would continue to have a relationship with the victim, her family, and the church they attended together.

The trial court denied Beckwith's request for a SSOSA. In doing so, the judge recalled an instance in his courtroom in which a 78-year-old woman was questioned during voir dire in another case:

I think one of the stories that I will never forget was we had a trial with

questioning jury members and we were doing that privately if they had been involved in some type of sexual abuse in the past and we had a 78 year old woman who was being questioned and she had been abused as a young child by one of her relatives, sexually abused, and as she sat there and talked about it, there were tears flowing down her eyes so at 78 years old it still had an impact on this lady so there is no question that [the victim] is going to deal with this for the rest of her life.

Sentencing Hearing (SH) at 18-19. Further, the court noted that it scrutinizes the presentence investigation report because “the Department has kind of an insight into these things because they have to deal with them quite often.” SH at 19. The court explained that it was also heavily influenced by Beckwith’s letter to the court, which made no mention of the impact of his actions on the victim or her family. The court also considered Dr. Jensen’s report, which expressed concern regarding Beckwith’s minimization of his offense. Concluding that Beckwith was not an appropriate candidate for a SSOSA, the court sentenced him to 84 months’ confinement.

#### ANALYSIS

Beckwith contends that the trial court abused its discretion by denying his request for a SSOSA because it placed undue weight on the opinion of the victim’s mother. Beckwith also argues the trial court should have given more deference to the expert reports and the recommendation of the prosecuting attorney, and less deference to the DOC’s PSI report. Under SSOSA, certain first-time sex offenders may receive a suspended sentence if they meet the statutory requirements and comply with a treatment program as ordered by the court. RCW 9.94A.670(2), (5); *State v. Montgomery*, 105 Wn. App. 442, 444, 17 P.3d 1237, 22 P.3d 279 (2001). If the court finds an offender eligible for SSOSA, the court may order an examination to determine whether the offender is amenable to treatment. RCW 9.94A.670(3). In deciding whether to grant a SSOSA, the court considers (1) the SSOSA evaluator’s report; (2) the risk the

offender would present to the community, to the victim, and to other persons of similar age and circumstances as the victim; (3) the victim's opinion; (4) whether the offender and the community will benefit from the program; (5) whether the alternative is too lenient in light of the extent and circumstances of the offense; (6) whether the offender has additional victims; and (7) whether the offender is amendable to treatment. RCW 9.94A.670(3), (4). Further, the trial court must give great weight to the opinion of a victim with respect to granting a SSOSA. RCW 9.94A.670(4).

We review the denial of a SSOSA for an abuse of discretion. *State v. Frazier*, 84 Wn. App. 752, 753, 930 P.2d 345, *review denied*, 132 Wn.2d 1007 (1997). A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or for untenable reasons. *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981). "Even if an offender is eligible for SSOSA, the decision to grant it is discretionary on the part of the sentencing judge." *Montgomery*, 105 Wn. App. at 444. The sentencing court need not provide a reason for its denial, nor is it bound by expert opinion. *State v. Hays*, 55 Wn. App. 13, 15, 776 P.2d 718 (1989); *State v. Toomey*, 38 Wn. App. 831, 837, 690 P.2d 1175 (1984), *review denied*, 103 Wn.2d 1012, and *cert. denied*, 471 U.S. 1067 (1985).

The trial court did not lack discretion to deny a SSOSA simply because the State and defense jointly recommended that disposition and the sexual deviancy evaluators found that Beckwith was a marginal candidate. The court properly considered all the facts and circumstances, including the PSI, the victim's family's opposition to SSOSA, and Beckwith's letter to the court. *See Frazier*, 84 Wn. App. at 754. It was also not bound by the recommendations in Dr. Jensen or Dr. Muscatel's reports. *See Toomey*, 38 Wn. App. at 837.

The record before the court at sentencing included the PSI, which stated that Beckwith intended to continue teaching children of the victim's age at Sunday school. The report noted that this was "of great concern" to the corrections officer. CP at 137. The information in the PSI further suggested that Beckwith downplayed the events leading to his conviction. This attitude was also evidenced in Beckwith's letter to the court, which neglected to mention the impact of his actions on the victim. While his reply brief suggests that his medical conditions (post-spinal meningitis and diabetes) may interfere with his ability to express remorse, nothing in Dr. Jensen's or Dr. Muscatel's reports supports that suggestion. Dr. Jensen's report concluded that Beckwith was a "marginal candidate for sexual deviance treatment," and noted that Beckwith was resistant to admit to the facts of his offense. CP at 161. Finally, the victim's family was adamant that Beckwith not receive a SSOSA. These facts constitute reasonable grounds supporting the sentencing court's decision to deny Beckwith's request for a SSOSA.

Beckwith further contends that the trial court improperly relied on its experience by noting the lifelong impact of childhood sexual abuse and by commenting that the DOC "has kind of an insight into [SSOSA recommendations] because they have to deal with them quite often." SH at 19. Sentencing judges need not "make decisions in a factual vacuum." *State v. Grayson*, 154 Wn.2d 333, 339, 111 P.3d 1183 (2005). Rather, judges are expected to bring their common sense to bear in making sentencing determinations. *Grayson*, 154 Wn.2d at 339. Here, the sentencing court properly considered the effect that childhood sexual abuse potentially has throughout a victim's lifetime. The court further did not err in noting that the DOC has a unique amount of experience in evaluating offenders for SSOSA.

No. 42147-0-II

We affirm the trial court's decision not to sentence Beckwith under SSOSA.

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.

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Johanson, J.

We concur:

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Quinn-Brintnall, J.

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Worswick, A.C.J.