IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28150-7-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
BRYAN SCOTT JEWELL,	)	**UNPUBLISHED OPINION**
	)	
Respondent.	)	
	)	

Brown, J. — Bryan S. Jewell appeals his standard-range sentence for first degree molestation of his nine year old daughter, M.J. He contends the court erred by not entering written findings of fact to support its sentence, ignoring his daughter's wishes in violation of RCW 9.9A.670, and in not granting his continuance request so he could obtain a second psychosexual evaluation. Pro se, Mr. Jewell contends his first psychosexual evaluator was biased against him, and, like his appellate counsel, complains that the court ignored his daughter's wishes. Because the trial court did not impose a Special Sex Offender Sentencing Alternative (SSOSA), the trial court did not misapply RCW 9.9A.670(4) when exercising its sentencing discretion. We reject Mr.

Jewell's other contentions, and affirm.

FACTS

Mr. Jewell pleaded guilty to first degree molestation of M.J. The State agreed to recommend a SSOSA if, after evaluation, it was determined Mr. Jewell was amenable to treatment.

Marshall Kirkpatrick, M.A., a licensed mental health counselor and a certified sex offender treatment provider, evaluated Mr. Jewell. In his psychosexual evaluation report, Mr. Kirkpatrick diagnosed Mr. Jewell with Axis One-sexual abuse of a minor pedophilia and Axis Two–personality disorder with antisocial and histrionic features. Mr. Kirkpatrick followed up with a letter to the court stating, "It is the professional opinion of this evaluator that Mr. Jewell is currently not amendable to community based treatment." Clerk's Papers (CP) at 77. Before sentencing, M.J. hand-wrote a letter to the court asking the court not to send her dad to jail, "Because he needs to help me, my Brothers [sic], and my mom with money." CP at 42.

At sentencing, the court denied Mr. Jewell's request for a continuance to obtain a second psychosexual evaluation. Without entering written findings of fact, the court denied Mr. Jewell's request for a SSOSA sentence. Instead, the court imposed a standard-range sentence. Mr. Jewell appealed.

ANALYSIS

A. Sentencing

The issue is whether Mr. Jewell's standard-range sentence is appealable considering the sentencing procedures set in RCW 9.9A.670 and the court's decision not to enter written findings of fact after the victim expressed her desire that Mr. Jewell not have jail time. A defendant may challenge a standard-range sentence only if the sentencing court failed to follow proper sentencing procedures. RCW 9.94A.585(1); *State v. Autrey*, 136 Wn. App. 460, 469, 150 P.3d 580 (2006).

Mr. Jewell first contends the court violated RCW 9.94A.670 when it failed to enter written findings. Under RCW 9.94A.670(4), the trial court must consider several factors in determining whether to grant a SSOSA. In part, it must consider the impact on the community, whether the sentence is too lenient, the offender's amenability to treatment, risks to the victim or others of a similar age and circumstance as the victim, and the victim's opinion regarding whether to grant a SSOSA. RCW 9.94A.670(4). Further, under the statute, "[t]he court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition." RCW

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9.94A.670(4).[1]

Mr. Jewell argues this language requires the trial court to enter written findings of fact, but the plain language of the statute contradicts this position. We disagree. In the statute, the phrase "treatment disposition" is synonymous with a SSOSA. RCW 9.94A.670(4). Mr. Jewell's interpretation would impermissibly render the final portion of the sentence, "for imposing the treatment disposition," meaningless and superfluous. RCW 9.94A.670(4). Such interpretations are invalid as "courts do not engage in statutory interpretation of a statute that is not ambiguous." *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001). RCW 9.94A.670(4) requires the trial court to enter written findings when it orders a SSOSA against the victim's wishes; it does not require written findings when the trial court chooses not to impose a SSOSA.

Mr. Jewell next contends the trial court erred by denying his continuance request to obtain a second psychosexual evaluation. We review the denial of a continuance for an abuse of discretion. *State v. Flinn*, 154 Wn.2d 193, 199, 110 P.3d 748 (2005). A court abuses its discretion when it bases its decision on untenable or unreasonable grounds. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

As reasoned above, one factor in deciding whether to grant a SSOSA is whether

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the offender is amenable to treatment. RCW 9.94A.670(4). The facts show Mr. Kirkpatrick, a licensed and certified evaluator, diagnosed Mr. Jewell with pedophilia and a personality disorder in an extensive report. Mr. Kirkpatrick followed up with a letter to the court stating, "It is the professional opinion of this evaluator that Mr. Jewell is currently not amenable to community based treatment." CP at 77.

Mr. Jewell argues *State v. Young*, 125 Wn.2d 688, 888 P.2d 142 (1995) supports another opinion, but because Mr. Kirkpatrick is professionally qualified to render his opinion, *Young* does not compel a second evaluation and opinion. In *Young* the concern was inexperienced or untrained evaluators; that is not a concern here. While RCW 9.9A.670(3)(c) permits a second evaluation, considering Mr. Kirkpatrick's credentials a second evaluation was unnecessary. A second evaluation was unnecessary because Mr. Kirkpatrick is both licensed and certified to render his professional opinion. In sum, Mr. Jewell fails to show an improper sentencing procedure. Therefore, the trial court did not abuse its discretion when denying Mr. Jewell's continuance request.

B. Statement of Additional Grounds for Review

In his statement of additional grounds for review, Mr. Jewell first argues Mr. Kirkpatrick was biased against him and the sentencing court erred by not considering the victim's wishes. The record discloses no information showing Mr. Kirkpatrick was biased. If Mr. Jewell has evidence outside this court's record to support his argument,

the proper procedure is a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995).

Next, Mr. Jewell argues the court abused its discretion by not considering the victim's preference that he remain in the community and earn money to support his family. The court reviewed Mr. Jewell's presentence investigation report with the victim's letter attached before the hearing. As reasoned above, a victim's opinion carries great weight under RCW 9.94A.670(4), but it is the trial court that makes the final determination whether to grant a SSOSA. Absent a showing of an abuse of discretion, we will not disturb the court's determination on appeal. *State v. White*, 123 Wn. App. 106, 114, 97 P.3d 34 (2004). The trial court does not abuse its discretion by disagreeing with a victim; the court has other factors it must also weigh. RCW 9.94A.670(4). Here, the court weighed the community interests, the seriousness of the offense, Mr. Jewell's amenability to treatment, and the risk to the victim when it imposed a standard-range sentence. In weighing these factors and deciding on a standard-range sentence, the trial court did not abuse its discretion.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, A.C.J.

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Sweeney, J.