IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Postsentence Review of:	)	**No. 29596-6-III**
	)	**UNPUBLISHED OPINION**
RANDY JAMES JERRED	)	
	)	

Kulik, C.J.—The Department of Corrections (DOC) timely seeks postsentence review under RAP 16.18 of Randy James Jerred's sentence imposed for his 2010 Yakima County conviction upon plea of guilty to second degree assault—domestic violence. The sentencing court granted Mr. Jerred a drug offender sentencing alternative (DOSA) sentence, consisting of 12.75 months in total confinement (one-half of the 25.5-month midpoint of the standard range) and the remaining 12.75 months in community custody.

The DOC and the Yakima County Prosecutor (State) each contend that the sentencing court erred by granting Mr. Jerred a DOSA sentence because second degree assault is a violent offense, *see* former RCW 9.94A.030(50)(a)(viii) (2009), and offenders convicted of a violent offense are expressly ineligible for a DOSA sentence under

RCW 9.94A.660(1)(a) and (c). We agree and remand for resentencing to a non-DOSA sentence.

RCW 9.94A.660 provides in pertinent part:

> (1) An offender is eligible for the special drug offender sentencing alternative if:
>
> (a) The offender is convicted of a felony that is *not a violent offense* or sex offense *and* the violation does not involve a sentence enhancement under RCW 9.94A.533(3) or (4);
>
> . . . .
>
> (c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States.

(Emphasis added.)

Mr. Jerred contends the court properly gave him a DOSA sentence because he was not both convicted of a violent offense *and* found to be subject to a sentencing enhancement. He contends that under the plain language of RCW 9.94A.660(1)(a), use of the conjunctive term "and" means both criteria must be considered before a DOSA sentence can be denied. He, thus, concludes he is DOSA-eligible because he received no sentence enhancement. We disagree.

Statutory interpretation involves questions of law reviewed de novo. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Our primary objective when interpreting a statute is to determine the legislature's intent. *Id.* "'[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an

expression of legislative intent.'" *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). We also presume the legislature did not intend absurd results in a statute. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003)).

Use of the word "and" in RCW 9.94A.660(1)(a) plainly means that an offender must meet both criteria to be eligible for a DOSA sentence. *See W. Ports Transp., Inc. v. Emp't Sec. Dep't*, 110 Wn. App. 440, 452, 41 P.3d 510 (2002) ("Since the three requirements of the exemption are stated in the conjunctive, an employer must prove all three parts of the test."). Thus, to be DOSA-eligible an offender must not be convicted of a violent offense or sex offense. And even if the offender is not convicted of a violent offense or sex offense, the offender must also not have a sentence enhancement. Since second degree assault is a violent offense, Mr. Jerred is ineligible for a DOSA sentence by the plain terms of RCW 9.94A.660(1)(a).[1] We, therefore, need not address the DOC's other contentions that Mr. Jerred is also DOSA-ineligible under subsection RCW 9.94A.660(1)(c).

Mr. Jerred contends in the alternative that he should be allowed to withdraw his guilty plea as involuntary if his DOSA sentence is rescinded. This contention is beyond

[1] Moreover, as the DOC points out, under Mr. Jerred's interpretation an offender convicted of murder without a sentence enhancement could be DOSA-eligible. The legislature could not have intended such an absurd result.

the scope of review in this postsentence review procedure, which "shall be limited to errors of law." RAP 16.18; RCW 9.94A.585(7). Nothing in the record before us suggests Mr. Jerred pleaded guilty on the condition he was DOSA-eligible. His remedy, if any, is to challenge the knowing and voluntary entry of his guilty plea by separate collateral attack.

The DOC's petition is granted and the matter is remanded to the Yakima County Superior Court to impose a non-DOSA sentence.

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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Kulik, C.J.

WE CONCUR:

_____ _____
Sweeney, J. Korsmo, J.