IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 62539-0-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
ADAM CRAIG HOLLINGSWORTH,	)	Unpublished Opinion
	)	
Appellant.	)	FILED: November 16, 2009
	)	

Lau, J. — Facing revocation of the special sex offender sentencing alternative (SSOSA) suspension of his 93-month sentence for first degree rape of a child, Adam Hollingsworth repeatedly asked the trial court to reconsider the length of his sentence based on the circumstances surrounding the crime and known at the time of sentencing. Because the trial court properly denied the initial request, Hollingsworth's mere repetition of the same request citing CrR 7.8(b)(5) as authority did not require additional procedures under CrR 7.8(c). We affirm.

FACTS

In February 2007, Adam Hollingsworth pleaded guilty to first degree rape of a

child based on incidents that occurred in 1999. Following the recommendation of the State and the defense, the trial court determined that a SSOSA sentence was appropriate and imposed a standard range sentence of 93 months of confinement and suspended the "execution of this sentence" based on certain conditions. In particular, the trial court ordered Hollingsworth to serve four months in confinement, placed him on community custody for the length of the suspended sentence, and ordered him to complete three years of sex offender treatment. Hollingsworth's judgment and sentence, filed March 12, 2007, provides, "Violation of the conditions or requirements of this sentence is punishable by revocation of this suspended sentence and commitment to the Department of Corrections."

In August 2007, the trial court imposed a sanction of 60 days' confinement based on Hollingsworth's admitted violations of his conditions, including ingesting alcohol, failing to engage in treatment, and failing to make payments on his legal obligations. By January 2008, the State alleged additional violations including failure to participate in and termination from his sex offender treatment program, failure to report for drug testing and treatment, use of marijuana, and failure to register as a sex offender. Hollingsworth failed to appear for a January review hearing and was arrested on a bench warrant in Oregon in July 2008.

At a hearing on October 2, 2008, the State asked the court to revoke the suspended sentence. Hollingsworth admitted the violations and did not oppose revocation of the suspended sentence. Instead, Hollingsworth asked the trial court to reconsider his original 93-month sentence imposed in the March 12, 2007 judgment

and sentence and impose an exceptional sentence below the standard range. In a written memorandum and at the hearing, defense counsel argued that the trial court should impose less than 93 months based on Hollingsworth's youth at the time of the incident, the difficult circumstances of his life, the fact that he would have been prosecuted as a juvenile if the incident had been reported and charged at the time it was committed, his admission of the offense, and the fact that he had committed no other crimes.

The State argued that the trial court lacked authority to resentence Hollingsworth and in the alternative, that the circumstances did not justify an exceptional sentence.

The trial judge stated, "I do not believe at this stage of the proceeding that the court should go back and revisit the earlier sentence that was instituted and impose a[n] exceptional sentence downward." Verbatim Report of Proceedings (VRP) (Oct. 2, 2008) at 19. The trial court then found that Hollingsworth's admissions and the evidence of violations in the record justified its decision to revoke the SSOSA sentence.

The following exchange then occurred:

> [Defense Counsel]: Your Honor, there's one other issue. If the sentence now is final for the 93 months under Criminal Rule 7.8(b)(5), the court is or can relieve a party of a final judgment if it finds for any reason that justifies relief. I think in this case, as I said, the basis of the circumstances surrounding this incident does indeed justify relief in this case. We're not asking that he does no time. We're just asking that 93 months is above time.
>
> THE COURT: Well, I thought to consider that also, [Counsel], although the—your sentencing memorandum really focuses upon a request to have an exceptional sentence downward rather than what you just referred to. But the—the fact is from the record that there was an opportunity to comply with the SSOSA sentence a couple of times and Mr. Hollingsworth had that opportunity and did not avail himself of that opportunity, and so the—the sentence that was

> previously imposed, I think, is the appropriate sentence that will be carried out at this time.
>
> Now, if you wish to file a supplemental motion along the lines that you just stated, a written motion, the court will grant you leave to do that, but at this time the SSOSA sentence is revoked.

VRP (Oct. 2, 2008) at 20–21.

On October 14, 2008, defense counsel signed[1] a written motion to modify Hollingsworth's "Judgment and Sentence to reduce the length [of] his sentence." Citing CrR 7.8(b)(5), defense counsel restated the same grounds presented in support of his request for an exceptional sentence at the revocation hearing. On October 17, 2008, the trial court filed an order stating, "Defendant's Motion to modify sentence is denied."

Hollingsworth appeals.

ANALYSIS

Hollingsworth claims that the trial court erred by failing to hold a show cause hearing under CrR 7.8(c)(3) before denying his motion to modify his sentence and by failing to consider his request for an exceptional mitigated sentence. He also claims that the trial court's irregular proceedings warrant relief under CrR 7.8(b)(5).

Hollingsworth's reliance on CrR 7.8 procedures is misplaced here. At the revocation hearing, Hollingsworth merely sought reconsideration of his sentence. Without citing any authority for his request, Hollingsworth asked the court to impose a new sentence based on circumstances known at the time of the original sentencing. The only circumstance that had changed since his March 2007 sentencing was that the

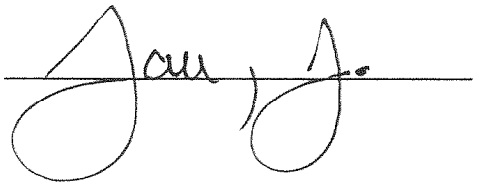
[1] Although defense counsel signed the motion to modify Hollingsworth's sentence on October 14, 2008, it did not appear in the trial court file until May 12, 2009.

State was requesting revocation of his SSOSA suspension.

The trial court properly denied Hollingsworth's request for resentencing at the hearing. Final judgments may be altered "only in those limited circumstances where the interests of justice most urgently require." State v. Shove, 113 Wn.2d 83, 88, 776 P.2d 132 (1989) (reversing trial court modification of judgment and sentence and release of defendant after she had served only 5 of the 12 months originally imposed). "Modification of a judgment is not appropriate merely because it appears, wholly in retrospect, that a different decision might have been preferable." Shove, 113 Wn.2d at 88.

Hollingsworth's mere invocation of the catchall provision of CrR 7.8 does not change the essential nature of his request, which was always a request to reconsider the length of his sentence based on the circumstances known to the parties and the court at the time of sentencing. Given the nature of the arguments presented at the hearing and in the written motion, the trial court properly denied Hollingsworth's repeated request for reconsideration and was not required to elevate form over substance by following CrR 7.8 procedures. Cf., CrR 7.8(c); State v. Smith, 144 Wn. App. 860, 863, 184 P.3d 666 (2008) (where superior court lacked authority to summarily deny motion, order vacated and matter remanded for further proceedings complying with CrR 7.8). Moreover, what Hollingsworth now complains of as irregular proceedings is only the result of his own repeated attempts to have the trial court improperly reconsider his sentence. Shove, 113 Wn.2d at 88.

Affirmed.



WE CONCUR: