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Division II Docket No. 56949-3-II

Wahkiakum Cy. Sup. Ct. Cause No. 21-1-00038-35

STATE OF WASHINGTON,

Plaintiff-Respondent,

-against-

JENNIFER A. RICHARDS,

Defendant-Petitioner.

**RESPONSE TO CROSS-PETITION FOR REVIEW BY
WASHINGTON SUPREME COURT**

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TABLE OF CONTENTS

I.	IDENTITY OF CROSS-RESPONDENT	1
II.	COURT OF APPEALS DECISION	1
III.	ISSUES PRESENTED FOR CROSS-REVIEW	1
IV.	ADDITIONAL STATEMENT OF THE CASE.....	2
V.	ARGUMENT REGARDING REVIEW.....	2
	1. HOUNDING <i>BASSETT</i>	7
	2. <i>FAINING</i> MERCY	12
	3. DOCTRINE OF UNCONSTITUTIONAL CONDITIONS	24
	CERTIFICATE OF COMPLIANCE	26

TABLE OF AUTHORITIES

CASES

<i>Butler v. Kato</i> , 137 Wash.App. 515 (2007)	25
<i>Dolan v. City of Tigard</i> , 114 S.Ct. 2309 (1994)	25
<i>Downey v. Pierce Cy.</i> , 16 Wash.App. 152 (2011)	8
<i>Hoesch v. Broward Cy.</i> , 53 So.3d 1177 (Fla.App.2011)	15
<i>Mansour v. King Cy.</i> , 131 Wash.App. 255 (2006)	8
<i>Matter of Monschke</i> , 197 Wn.2d 305 (2021)	13
<i>Matter of Williams</i> , 198 Wn.2d 342 (2021)	22, 23
<i>MS Rentals, LLC v. City of Detroit</i> , 362 F.Supp.3d 404 (E.D.Mich.2019)	26
<i>Pickford v. Masion</i> , 124 Wash.App. 257 (2004)	8
<i>Rabon v. City of Seattle</i> , 135 Wn.2d 278 (1998)	8
<i>Repin v. State</i> , 198 Wash.App. 243 (2017)	8
<i>Rhoades v. City of Battleground</i> , 115 Wash.App. 752 (2003)	8
<i>San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose</i> , 402 F.3d 962 (9 Cir.2005)	8
<i>State v. Bassett</i> , 192 Wn.2d 67 (2018)	6, 8
<i>State v. Fain</i> , 94 Wn.2d 387 (1980)	7
<i>State v. Whitfield</i> , 132 Wash.App. 878 (2006)	16
<i>State v. Witherspoon</i> , 171 Wash.App. 271 (2012)	13
<i>U.S. v. Scott</i> , 450 F.3d 863 (9 Cir.2006)	26
<i>Washington v. Olsen</i> , 194 Wash.App. 264 (2016)	6
<i>Womack v. Von Rardon</i> , 133 Wash.App. 254 (2006)	8

STATUTES/RULES

42 USC 3601.....7

42 USC 3604.....7

Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair
Housing Act, FHEO-2020-112

Clark Cy. Code 8.18.070.....20

Pierce Cy. Code 6.07.07019

RCWC 16.08.005.....17

SMC 12A.06.06020

SMC 9..25.08320

Snoh. Cy. Code 9.10.09019

Thurston Cy. Code 9.10.070.....20

I. IDENTITY OF CROSS-RESPONDENT

Jennifer A. Richards is Appellant/Cross-Respondent.

II. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is found in **Exhibit A** to the *Petition*.

III. ISSUES PRESENTED FOR CROSS-REVIEW

Without conceding the merits of any of the grounds urged by the County to accept review of its cross-issue (i.e., that the Court of Appeals erred by reversing the conditional death sentence imposed upon Thor), Ms. Richards invites Supreme Court review of all issues in this matter, the two articulated by Ms. Richards and the one by the County.

But, as explained below, she asks this Court to also take up the sentencing issues that were not reached by the Court of Appeals, having been mooted on its other stated grounds. *Decision 25* (“Given that we remand, we need not reach Richards’ constitutional argument that the punishment was cruel and unusual.”) Ms. Richards also raised the doctrine of

unconstitutional conditions relative to the sentence in question, for which she would request this Court entertain, as well.

IV. ADDITIONAL STATEMENT OF THE CASE

No new facts need be articulated beyond those stated in Ms. Richards's original *Petition*, though she does refute the County's suggestion that more than one animal was allegedly victimized by Thor. At *Answer* 33-34, the County refers to "a dog that has twice attacked animals no doubt beloved by the petitioner's neighbors at least as much as the petitioner presumably loves her own." However, only one dog was involved, Fritz, living with Ms. Richards's adjacent neighbor.

V. ARGUMENT REGARDING REVIEW

Whether accepted under RAP 13.4(b)(1) or (4) matters not to Ms. Richards subject to the previously stated proviso that no concession on the merits should be implied nor is intended. If accepted, however, this Court should reach fallback issues that were not needed to be taken up by the Court of Appeals, but which are nonetheless briefed here.

In addition to Richards’s challenges to the underlying conviction, she takes grave issue with the district court’s sentencing her conditionally in such an abusive manner. Comm. Bears observed that the superior court “left unaddressed” the “purging condition, which requires the dog’s surrender with no opportunity to cure within 20 days,” leading her to conclude that “examin[ing] the sentence in its entirety in light of the punishment and penalty scheme set out by state law and adopted by the court, it is unclear how it satisfies at least three [*Fain*] factors,” prompting the Court of Appeals to grant review under RAP 2.3(d)(2), (d)(3), and RAP 2.3(e). *Ruling Granting Review*, 8-9.

The conditional nature of the sentence renders it inseverable. The trial court would never have imposed the maximum period of imprisonment for a strict liability offense¹ (not able to be converted to EHD or community service,

¹ Thor never left the premises, did not bite or injure any person or animal, and was accidentally allowed outside when Ms. Richards raced to the pharmacy to get life-saving medication for her daughter before it closed.

unsuspended as of 9.29.21 at 3 p.m., and requiring her to “remain in custody until she provides such proof [of surrendering Thor]”) absent the purging condition. **CP 177**. Indeed, the illusory nature of the imprisonment sentence is borne by the fact that Ms. Richards would have needed to serve not a minute of jail time if she delivered her daughter’s assistance animal to the humane society for undoubted euthanasia within 24 hours. The punishment was intended to take the form of confiscation, with imprisonment a cruel motivator; the punishment was not jail time, with surrender an expression of merciful benevolence. As incarceration and dispossession were inextricably intertwined, Ms. Richards sought review *in toto*, not piecemeal.

It should concern this court that a trial judge would sentence an unsuspended maximum of 364 days in jail for a victimless, restitutionless offense involving a dog who has been properly confined and any control deficiencies corrected since the date of violation. But it went one step further than improvidently imposing the statutory maximum for incarceration

to commence the day after sentencing regardless of Ms. Richards's station as a single mother caring for a disabled daughter: the judge conditioned jail time on surrendering Thor to be killed, even though no part of RCWC 16.08.050 or 16.08.090 required euthanasia upon conviction.

And while State law contemplates destruction, this is only for dogs deemed "dangerous" under State law (which, again, does not apply to Thor) and, then, only if there has been no corrective action taken in 20 days after notice given to so cure (again, Richards received no such 20-day notice, but she cured any restraint deficiencies the day of the incident). It thus follows that such conditional sentence, aside from its abhorrent, coercive nature, far exceeded any rational authority. **Further, it shores up Ms. Richards's argument that State dangerous dog law constitutionally preempts and conflicts with municipal laws, and especially so where the County code at issue explicitly invokes State dangerous dog law for purposes of punishment.**

While a district court judge has broad discretion to impose sentencing conditions tending to prevent future commission of crimes (*Washington v. Olsen*, 194 Wash.App. 264, 268 (2016); RCW 3.66.067), there is no justness in ordering the relinquishment of Thor as a condition of imprisonment, where far less draconian conditions exist: such as demanding compliance with county dangerous dog conditions over the period of probation; banishing Thor outside the jurisdiction during pendency of the appeal; or remanding Thor to the custody of a secure facility (e.g., a kennel) pending appeal. Hitching Ms. Richards’s personal freedom to the tormenting choice to kill her and her daughter’s dog is beyond cruel and unusual. **CP 65 [VRP 37:19-21]** (Bigelow acknowledging that person who will “suffer most” is Richards’s disabled daughter).

State v. Bassett, 192 Wn.2d 67 (2018) holds that the Washington State Constitution’s cruel punishment clause (Wash.Const. Art. I, § 14) provides greater protection than the Eighth Amendment, as the former refers to merely “cruel”

punishments while the latter “cruel and unusual.” *Id.*, 80. Both State and federal constitutional provisions are invoked here. Traditionally, a proportionality analysis under *State v. Fain*, 94 Wn.2d 387 (1980) applies, though a categorical challenge may arise based on the characteristics of the offender class. *Bassett*, 83.

1. Hounding Bassett

While Ms. Richards is not a child (the class considered in *Bassett*), she does own an emotional support animal for her disabled daughter and, thus, possesses distinctive characteristics of the class of owners and harborers of assistance animals protected under federal [Federal Fair Housing Act,² Americans with Disabilities Act, Air Carrier Access Act] and state

² Ms. Richards maintains that the sentence violates the Federal Fair Housing Act, 42 U.S.C. § 3601, for the order to turnover Thor to be killed would “make unavailable or deny” the Richards family the same ability to enjoy a dwelling within County limits as nondisabled counterparts, “discriminating” against them in the “terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,” violating 42 U.S.C. § 3604(f)(1) and (2) [protecting not just the renter but “a person residing in or intending to reside in that dwelling” and to “any person associated with that buyer or renter”]. Failing to reasonably accommodate that class of individuals (e.g., letting her keep Thor subject to proper control restrictions) also states a violation of 42 U.S.C. § 3604(f)(3)(B).

[Washington Law Against Discrimination] law.³ The categorical bar analysis “[r]equires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question,” and whether the sentence “serves legitimate penological goals.” *Bassett*, 83-84 (quoting *Graham v. Florida*, 560 U.S. 48, 67 (2010)). Under a categorical bar analysis, imposing a death sentence upon an emotional support animal because he was

³ Indeed, Washington courts and the Ninth Circuit have acknowledged the special value associated with companion animals, putting aside their ameliorative characteristics as assistance animals. See *Mansour v. King Cy.*, 131 Wash.App. 255 (2006) (recognizing that “the bond between pet and owner often runs deep and that many people consider pets part of the family,” as well as the “emotional importance of pets to their families.”); *Rabon v. City of Seattle*, 107 Wash.App. 734, 744 (2001) (recognizing that liberty interest more apposite than property interest in evaluating due process rights in person’s dog and, in any event, is greater than same interest in a car); *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9 Cir.2005) (“The emotional attachment to a family’s dog is not comparable to a possessory interest in furniture.”); *Rhoades v. City of Battleground*, 115 Wash.App. 752, 766 (2003), which, in examining procedural due process in light of whole species bans, states as a matter of law that “pets are not fungible” and the private interest in keeping pets is “greater than a mere economic interest.”; *Downey v. Pierce Cy.*, 165 Wash.App. 152, 165 (2011) (accord with *Rhoades*); *Pickford v. Masion*, 124 Wash.App. 257, 263 (2004) (“Pickford, with good reason, maintains that Buddy is much more than a piece of property; we agree.”); *Womack v. Von Rardon*, 133 Wash.App. 254, 263 (2006) (creating new cause of action for malicious injury to pet, allowing for emotional distress damages and predicated on intrinsic value measure); *Repin v. State*, 198 Wash.App. 243, 284 (2017, Fearing, C.J., conc.) (pet owners “hold a personal interest, not simply an economic interest, in companion animals. Pets possess an enormous hold on Washington residents ... Many decisions, including Washington decisions, recognize the bond between animal and human and the intrinsic and inestimable value of a companion animal.”)

unattended on the defendant's premises for a brief period as she ran out to get medicine for the disabled daughter who the dog supported is categorically beyond the pale. And that this judge imposed the same cruel sentence upon a prior defendant raises a significant concern of judicial recidivism.

What makes the conditional sentence here categorically unconstitutional is not just its gross disproportionality, but that it has imposed a punishment not remotely contemplated by State or local law. Ordering *confiscation* and *forfeiture* of personalty, much less sentient, and even lesser still one serving as an ESA, for virtually certain *death*, as punishment for a gross misdemeanor, directly violates RCW 9A.20.021,⁴ which maximizes the punishment at 364 days and/or \$5000. The categorical bar, therefore, springs from RCW 9A.20.021 itself (in only allowing for imprisonment and fine), which bolsters the further categorical antidiscriminatory prohibition against

⁴ The *Complaints* expressly invoke RCW 9A.20.021.

disabled dependents, a protected class. Indeed, not even a forfeiture statute applies like RCW 16.52.085 or RCW 69.50.505.

To ascertain whether such punishment runs aground under the categorical test of *Bassett*, this Court must take into account the national consensus against imposing sentences that result in physical and psychic harm to individuals with qualifying disabilities, as protections against disparate treatment or discrimination against disabled persons is codified by the ADA, Federal Fair Housing Act, and Washington Law Against Discrimination. Although Ms. Richards herself is not disabled, she is associated with, and parents, a disabled minor child. In the employment context, 42 USC § 12112(b)(4) of the ADA declares it unlawful to deny equal jobs and benefits to qualified individuals due to a known disability of an individual with whom a qualified individual has a relationship or association. And in the housing context, 42 USC § 3604(f)(1)(C) and 3604(f)(2)(C) of the Federal Fair Housing Act declare it unlawful to

discriminate in the sale, rental, terms, conditions, or privileges of sale or rental, or to otherwise make unavailable or deny a dwelling to a buyer or renter due to a handicap of any person associated with that buyer or renter.

As Ms. Richards's sentence "ma[de] unavailable" Richards's residence to her disabled daughter because it denied her the privilege and condition of being able to reside with her family's emotional support animal, it violated the FFHA. *See App. Brief*, fn. 9. But, more than that, it transgressed the categorical bar that would seek to protect disabled defendants, and disabled family members associated with those defendants, from discrimination in a such an irreversible fashion, one that permanently severs the connection to a dog of a different legal pedigree; not merely a "pet," but an assistance animal.

While indubitably the FFHA were never intended to permit accommodations for incorrigible curs who present a clear and present danger, that is not the case here, and the County's citation to federal cases to suggest otherwise suffers from

superficial assessment failing to ascertain whether any purported “direct threat” could be mitigated or eliminated by actions to control behavior, such as “keeping the animal in a secure enclosure.” *See Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, FHEO-2020-01 (1.28.20), at 13-14. In other words, even mouthy assistance animals are entitled to flexibility before they are excluded from the premises, much less killed.

It is no stretch to request this court to find a categorical bar to sentences that take service or assistance animals away from families with individuals suffering from qualifying disabilities when the operative animal code itself does not require forfeiture or euthanasia. Indeed, State and County dangerous dog codes evince a legislative purpose that is far less lethal, and quite a bit more benevolent and humane, than the approach taken by the prosecuting attorney’s office and trial judge, favoring Ms. Richards in any *Fain* analysis.

2. Faining Mercy

The proportionality analysis also compels this result. A sentence is cruel if grossly disproportionate to the offense, after due consideration of the **(1)** nature of the offense, **(2)** legislative purpose behind the statute, **(3)** punishment the defendant would have received in other jurisdiction, and **(4)** punishment meted out for other offenses in the same jurisdiction. *State v. Moretti*, 193 Wn.2d 809, 819 (2019) (citing four *State v. Fain*, 94 Wn.2d 387, 397 (1980) factors). No one factor is dispositive. A sentence is grossly disproportionate if it is clearly arbitrary and shocking to the sense of justice. *State v. Witherspoon*, 171 Wash.App. 271, 301 (2012). Cruelty also turns on “evolving standards of decency.” *See Matter of Monschke*, 197 Wn.2d 305, 316-317 (2021).

The County attempts to distinguish *Fain*, which involved three convictions for passing bad checks, whereas this was a first alleged criminal offense (the two prior incidents were not charged as criminal and are not properly considered in ascertaining proportionality as to the only putative crime charged

– i.e., straying off the porch without restraint while remaining on Ms. Richards’s premises). Further, there was no “victim,” even though, from the County’s perspective, one was “sighted” – i.e., the deputies who came on the premises but were never attacked or hurt. The prosecution argues that were this sentence “traditionally presented” as a suspended sentence, Ms. Richards would end up in jail for the full term and would have no basis to object to the sentence on any grounds given the trial judge’s full discretion to impose the maximum for a gross misdemeanor, and, further, that such sentence could not be cruel and unusual in the least. *Resp. Brief*, 37.

However, though misnomered a “suspended sentence,” it was not even “untraditionally presented” as one. Ms. Richards should never have been ordered to remand herself to jail the next afternoon without being given a revocation hearing, and lost the due process that attaches whenever a court seeks to unsuspend a sentence. Instead, the court imposed what amounted to 364 days in jail without suspension on 9.28.21, but provided that if Thor

were delivered by 9.29.21, the 364 days would “re-suspend.” **CP 271-272.** Thus, the court penalized Ms. Richards by imposing not just 364 days, but confiscation of her property, i.e., Thor. And it made sure Ms. Richards would face the full impact of the unsuspended sentence for as long as she refused to give up Thor, suffering a more severe escalating penalty with each day of her recalcitrance.

Tying the duration of incarceration to the life of her dog, aside from being deeply repugnant to any notion of justice, makes the dog’s forfeiture the actual penalty; State law, however, is clear that only imprisonment and fines may be leveled. No allowance is made for confiscation as a penalty. In that regard, it must be stricken. But, additionally, if there is any degree of ambiguity in the falsely denominated “suspended sentence,” the rule of lenity rears itself relative to interpreting the court’s “364 days of jail, susp. 0* days” term as an unconstitutional and statutorily impermissible penalty, not as a suspensory condition.

CP 271.

As to the **first factor** [“nature of the offense”], the alleged crime is conceptually *de minimis*, did not involve a serious and violent offense against a person⁵ and, in fact, was completely victimless. The superior court confused the *actual charged offense* – i.e., failure to comply with dangerous dog restrictions by Thor being outside a proper enclosure and not under physical restraint – with *uncharged* incidents immaterial to the elements-to-be-proved, not before either the trial or RALJ court, having been previously adjudicated. The *Fain* factors look to the offense at bar. And that offense did not involve Thor biting another dog.

Fain approvingly cited to *Rummel II*, 445 U.S. 263, 295 (1980), to hold that Fain’s defrauding crimes were of such nonserious nature as to render the punishment of life imprisonment as an habitual offender cruel and unusual. *Fain*, 398 (quoting *Rummel II*, observing that none of the crimes

⁵ Cf. *State v. Whitfield*, 132 Wash.App. 878, 901 (2006).

“involved injury to one’s person, threat of injury to one’s person, violence, the threat of violence, or the use of a weapon”). Here, the charged crime – which is the only one upon which the RALJ court should focus under *Fain* – was noninjurious, nonviolent, and utterly unlike a drunk driver who could kill and maim pedestrians and other drivers.

As to the **second factor** [“legislative purpose behind the statute”], the ordinance’s purpose is “*to enforce minimum standards of conduct for dogs and dog owners,*” while describing:

the highest and best standard of conduct is for each dog owner to keep his or her dogs on his or her own property and only allow them to leave the property under leash or other direct control

[RCWC 16.08.005] – which Richards and Thor abided (for he never left her premises). Ms. Richards adhered to the “the highest and best standard of conduct” for she kept Thor “on ... her own property” and “only allow[ed Thor] to leave the property under leash or other direct control,” complying with RCWC 16.08.005.

And contrary to the superior court’s holding that Thor “has now three times threatened the community,” the charging document did not allege that Thor menaced, threatened, or attacked anyone; rather, Thor was simply not within his enclosure.

As for the **third factor** [“punishment the defendant would have received in other jurisdictions”], a similar transgression would never be dealt with so harshly in other jurisdictions, including densely populated residential metropolises like Seattle. Other than Seattle, which expressly conditions euthanasia upon conviction for negligent control of an animal or owning a vicious animal, no other jurisdictions known to this author (including Wahkiakum County) have codified such lethal penalty. Accordingly, Wahkiakum County’s canine-ticket-out-of-jail sentencing regime is an idiosyncratic aberration and nowhere approximates regional norms.

The 364-day sentence was not decreed in a vacuum, but affixed to a confiscatory purging condition. As such an aberrant sentence has never previously been heard of by this author

anywhere in the State, much less nation (nor, apparently, the County, except for the prior dog who died because the prosecutor persuaded the same district court judge under the same code), Ms. Richards more than met her obligation of furnishing the court with authority with the only two codes that even spoke to euthanasia as a punishment: RCW 16.08.100(1) and two SMC crimes, neither of which is comparable to the crime at bar. Asking her to provide an exhaustive appendix reviewing over 200 city and county dangerous dog codes to determine whether they include a euthanasia-upon-conviction provision is quite the task, one that would prove extremely labor-intensive and undoubtedly echo the County's silence in failing to provide this court (or the superior court below) with a single code anywhere in the country that would permit what the district court judge did here.⁶ The County is not excused from coming forward with a counterexample.

⁶ Yet, Ms. Richards offers the following as examples of County codes that provide a cure period before euthanasia or that codify euthanasia arising from a criminal charge for violating restraint conditions. None applies as Ms. Richards did not knowingly violate any code and enjoyed no cure period. Snoh. Cy. Code 9.10.090(2),(3) (gross misdemeanor but

This Court is presented with an unrefuted argument that Ms. Richards would not have received the punishment of lethal forfeiture anywhere in Washington. Seattle is not comparable since it bans dangerous dogs completely⁷ and because its negligent control crime requires proof of injury, which never was even alleged here.⁸ The closest code to the County's is RCW 16.08.100(1), with which it actually charged Richards, and it only authorizes killing upon conviction after a 20-day opportunity to cure period, which the County did not give.

As to the **fourth factor** [“punishment meted out for other offenses in the same jurisdiction”], other offenses under Ch.

giving 15 calendar day notice and opportunity to cure before euthanasia, unless timely appeal filed); Pierce Cy. Code 6.07.070(C) (gross misdemeanor for knowing violation of dangerous dog restraints and expressly permitting euthanasia where dog attacks human or animal and is a continuing threat of serious harm); Thurston Cy. Code 9.10.070(F)(1),(4)(gross misdemeanor and potential of board or designee to petition court to dispose of dangerous dog if restrictions not cured in 10 days); Clark Cy. Code 8.18.070(1)(gross misdemeanor but allowing recovery of confiscated dog on payment of civil fine and impoundment fees).

⁷ “It is unlawful to own a dangerous animal (other than a licensed guard or attack dog) with knowledge that the animal is dangerous, or with reckless disregard of the fact that the animal is dangerous.” SMC 9.25.083(A).

⁸ “A person is guilty of negligent control of an animal if he or she has possession, custody or control of an animal that, because of the person's negligence, inflicts bodily injury on or kills another person or another animal.” SMC 12A.06.060(A).

16.08 RCWC are alternatively resolved by civil infraction [RCWC 16.08.090(C)]. Further, RCWC 16.08.050 and .090 do not remotely speak of or encourage euthanasia, and RCW 16.08.100(1), the very statute invoked in the *Amended Criminal Complaint*, orders euthanasia only upon failure to cure the confinement restriction within 20 days, and then for dogs who had done far worse than as alleged against Thor. Both provide strong authority for the view that this sentence was cruel, as well as unusual. Additionally, that the prosecutor sought no jail time or fine independent of it being used to coerce surrender of Thor to be killed makes clear that the sentence was not at all about punishment but, instead, the worst form of extortion because abusively imposed by one who should know better, a sitting judge. While at this time there is no fundamental right to possess animals, the right to possess a service or emotional support animal is buoyed by federal and state statutory law.

Again, the constitutional question is not whether it is disproportionate to charge a gross misdemeanor, but whether

imposing the punishment of confiscation and euthanasia of the dog is. In this respect, Ms. Richards has provided unrefuted authority of striking disequilibrium. In addition to ignoring RCW 16.08.100(1) completely, the County fails to address the cruelty and unusualness of the *condition* associated with the sentence for 364-days confinement, per *Matter of Williams*, 198 Wn.2d 342 (2021). *Matter of Williams* held that Washington’s cruel punishment clause is more protective not only with respect to sentencing, but also confinement conditions. *Id.*, 354-362. The more liberal test adopted by the Supreme Court speaks to the context of a PRP but proves judicious here, given the trial court conditioning ongoing incarceration of a single mother with a disabled daughter on relinquishing the family’s emotional support animal to be slain, creating an intolerable risk of great psychic harm to Ms. Richards.

Williams held that “the text and history of Washington law recognizes that the State has a nondelegable obligation to provide for the health, safety, and well-being of prisoners under

its jurisdiction” irrespective of whether the deprivation of human dignity occurs “intentionally or accidentally.” *Id.*, 366. As “conditions of confinement are inherently part of the punishment imposed on prisoners,” and subject to Art. I, § 14 analysis (*Id.*, 367), this court should take further into account the far-reaching impact of this conditional sentence and, further, whether any legitimate penological justifications exist. As the trial court clearly did not intend to punish Ms. Richards at all (otherwise, why erase all jail time and impose no fines or probation upon release of Thor?), the only “justification” for conditioning extinguishment of 364 days in jail is unreasonable, untenable, and extortionate.

This district court judge previously imposed a similar conditional sentence involving an allegedly dangerous dog, making Ms. Richards the second victim of this cruel and unusual conditional sentence. Even Bigelow acknowledged “*[i]t’s a horrible thing to ask.*” CP 66 [VRP 38:9]. It is also unconstitutionally disproportionate and repugnant to the

evolving standards of decency marking the progress of a maturing society for it involves the unnecessary and wanton infliction of emotional pain attending the relinquishment of a beloved family member for death.

The County's attempt to take the sting out of the 364-day sentence by characterizing it as a dog-for-days exchange, akin to making an ATM deposit, elides the fact that turning over a beloved family member (who also serves as an ESA) is no less a punishment than a year (or more) in jail, which the court's conditional sentence understood with keen emotional manipulation. Such regard for a dog is hardly unusual, recalling the extent to which flood victims chose to remain behind with their pets in the midst of Hurricane Katrina despite the threat of drowning.⁹

3. Doctrine of Unconstitutional Conditions

⁹ Indeed, in July 2022, a 17-year-old did the same. <https://www.cnn.com/2022/07/29/us/kentucky-floods-teenager-roof-rescue/index.html>.

This is not a question of the court imposing conditions to incentivize compliance because if Thor is dead, compliance becomes moot. Here, the forfeiture of Thor was inseverable and, with its illegality, the entire sentence falters. So, what does one call what the County admitted was not “traditionally presented”? Ms. Richards suggests that it be declared a sentence violative of the doctrine of unconstitutional conditions. Under this doctrine, the government may not require a person to give up a constitutional right in exchange for a discretionary benefit. *Dolan v. City of Tigard*, 114 S.Ct. 2309, 2317 (1994); *Butler v. Kato*, 137 Wash.App. 515 (2007) (defendant’s agreement to order violating 5th Amendment right to remain silent and right to autonomous decisionmaking in exchange for pretrial release violated doctrine of unconstitutional conditions). The doctrine prohibits government from abusing its disproportionate power over individuals who rely on a government service or grant of leniency:

Giving the government free rein to grant conditional benefits creates the risk that the government will abuse its power by attaching strings strategically, striking lopsided deals and gradually eroding constitutional protections.

U.S. v. Scott, 450 F.3d 863, 866-67 (9 Cir.2006). The doctrine stems from the right to substantive due process. *MS Rentals, LLC v. City of Detroit*, 362 F.Supp.3d 404, 413 (E.D.Mich.2019) (citing Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1415-16 (1989)). An “agreement” to submit to a seizure of a federally protected assistance animal relied upon by a disabled family member in exchange for no jail time and no fine violates this doctrine because it conditions Ms. Richards’s very liberty on relenting to a Fourth Amendment seizure and Fourteenth Amendment deprivation of property. Clearly, she did not agree to such a sentence, but the fact that even agreeing to such a sentence would prove unconstitutional makes the involuntary circumstances at play here all the more offensive.

Dated this 1.12.24,
[Certified RAP 18.17(c)(10) compliant at under 5000 words]

ANIMAL LAW OFFICES, PLLC

A stylized, handwritten signature in black ink, appearing to read 'A. Karp', with a long horizontal flourish extending to the right.

Adam P. Karp, WSB No. 28622
Attorney for Jennifer A. Richards

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 1.12.24, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

ACORDS portal

Daniel Bigelow (bigelowd@co.wahkiakum.wa.us)


Adam P. Karp, V/SBA No. 28622

ANIMAL LAW OFFICES OF ADAM P. KARP

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