

65407-1

65407-1

NO. 65407-1-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

---

STATE OF WASHINGTON,

Respondent,

v.

CLAY L. WYANT,

Appellant.

APPELLANT'S BRIEF  
K

---

BRIEF OF RESPONDENT

---

MARK K. ROE  
Prosecuting Attorney

JOHN J. JUHL  
Deputy Prosecuting Attorney  
Attorney for Respondent

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

**TABLE OF CONTENTS**

I. ISSUES ..... 1

II. STATEMENT OF THE CASE..... 1

III. ARGUMENT.....3

    A. THE TRIAL COURT’S ORDER THAT WYANT NOT CONTACT THE LYNNWOOD POLICE DEPARTMENT OR JAIL UNLESS THERE IS A PUBLIC SAFETY OR HEALTH EMERGENCY IS A REASONABLE CRIME RELATED PROHIBITION THAT DIRECTLY RELATES TO THE CIRCUMSTANCE OF THE CRIME. ....3

    B. THE TRIAL COURT’S ORDER THAT WYANT NOT CONTACT THE LYNNWOOD POLICE DEPARTMENT OR JAIL UNLESS THERE IS A PUBLIC SAFETY OR HEALTH EMERGENCY DOES NOT VIOLATE HIS RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES. ....6

        1. Crime-Related Prohibitions May Restrict Fundamental Rights.... 7

        2. The Crime-Related Prohibition In This Case Is Not Unconstitutionally Vague.....8

IV. CONCLUSION.....9

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<u>In re Leach</u> , 161 Wn.2d 180, 163 P.3d 782 (2007).....	3
<u>Spokane v. Douglass</u> , 115 Wn.2d 171, 795 P.2d 693 (1990).....	8
<u>State v. Ancira</u> , 107 Wn. App. 650, 27 P.3d 1246 (2001).....	4
<u>State v. Armendariz</u> , 160 Wn.2d 106, 156 P.3d 201 (2007).....	3, 5
<u>State v. Bahl</u> , 164 Wn.2d 739, 193 P.3d 678 (2008).....	8
<u>State v. Blight</u> , 89 Wn.2d 38, 569 P.2d 1129 (1977).....	4
<u>State v. Riles</u> , 135 Wn.2d 326, 957 P.2d 655 (1998).....	7
<u>State v. Riley</u> , 121 Wn.2d 22, 846 P.2d 1365 (1993).....	4, 7
<u>State v. Smith</u> , 111 Wn.2d 1, 759 P.2d 372 (1988).....	8
<u>State v. Warren</u> , 134 Wn. App. 44, 138 P.3d 1081 (2006).....	7
<u>State v. Williams</u> , 157 Wn. App. 689, 239 P.3d 600 (2010).....	4

### FEDERAL CASES

<u>Kolender v. Lawson</u> , 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).....	8
<u>Malone v. United States</u> , 502 F.2d 554 (9th Cir. 1974).....	7
<u>United States v. Consuelo-Gonzalez</u> , 521 F.2d 259 (9th Cir. 1975)	7

### WASHINGTON STATUTES

RCW 9.94A.030(10).....	3
RCW 9.94A.505(8).....	3, 5

### COURT RULES

Lynnwood Municipal Code 2.36.030.....	6
Lynnwood Municipal Code 2.36.110.....	4

## **I. ISSUES**

(1) The defendant was convicted of assaulting two Lynnwood Police Officers at the Lynnwood municipal jail. The Lynnwood Police Department is located in the same building as the jail. At sentencing, the court imposed a requirement that the defendant not contact the Lynnwood Police Department or jail unless there is a public safety or health emergency. Does this requirement directly relate to the circumstance of the crime for which the defendant was convicted?

(2) Does this requirement violate the defendant's right to petition government for the redress of grievances?

## **II. STATEMENT OF THE CASE**

Clay Wyant was convicted of two counts of custodial assault for assaulting Officers Aaron Sanchez and Terri Conrad, custody officers for the Lynnwood Police Department. CP 26, 28, 71-72; RP 30, 62, 77. The assaults occurred at the Lynnwood municipal jail while Wyant was confined there on a warrant. Wyant lives in Fremont. RP 32-35, 62-63, 77, 112.

Officer Sanchez went to check on Wyant in cell 3 and discovered that a blanket was covering the window in the door. When Officer Sanchez removed the blanket Wyant punched Officer

Sanchez in the shoulder. Officers Sanchez, Collins, Conrad and McGinnis entered cell 3 to secure Wyant and transfer him to a cell with video surveillance. RP 35, 39-41, 64-66, 73, 79, 80-83, 94-95.

Wyant was flailing his legs and kicking while the officers were trying to secure him. Officer Collins was kicked in the jaw, collar bone and stomach. Wyant bit onto Officer Conrad's finger and would not let go; Wyant did not comply with verbal commands, compliance holds or pain techniques and had to be dry-stunned twice with a taser before he would release his bite on Officer Conrad. RP 44-50, 67-70, 84-86, 89-90, 96-100, 102, 115.

The Fire Department Aid responded. Officers Collins and Conrad were sent to the hospital to be checked out. Officer Collins suffered a bulging disc and back pain. Officer Collins was given antibiotics and treatment for the bite. RP 70, 87.

The Lynnwood Police Department and Jail are located in the same building. RP 32. Wyant knows that Officers Sanchez and Conrad work at the Lynnwood Police station. RP 117-118. Officers Sanchez, Collins, Conrad and McGinnis testified at trial. RP 30-61, 62-76, 76-92, 92-104.

The trial court included the following requirement in Wyant's sentence: "Do not contact or go to the Lynnwood Police Dept. or

jail unless there is a public safety or health emergency.” (Emphasis in original.) CP 21. The trial court made certain at sentencing that Wyant understood the requirement:

THE COURT: Let me tell Mr. Wyant directly. Mr. Wyant, it’s kind of a sensitive issue here because if you have an emergency where you need help, then obviously you can contact the City of Lynnwood authorities. But you may not contact the authorities at the Lynnwood Municipal Jail or Lynnwood City Jail or any of the officers individually unless it’s an emergency. No one wants you to be in an emergency situation and feel like there is no help available.

So obviously if it’s an emergency you can contact people. But if it’s not an emergency, you just can’t, okay? Do you understand that?

THE DEFENDANT: Yes.

RP (5/3/10) 19.

### **III. ARGUMENT**

#### **A. THE TRIAL COURT’S ORDER THAT WYANT NOT CONTACT THE LYNNWOOD POLICE DEPARTMENT OR JAIL UNLESS THERE IS A PUBLIC SAFETY OR HEALTH EMERGENCY IS A REASONABLE CRIME RELATED PROHIBITION THAT DIRECTLY RELATES TO THE CIRCUMSTANCE OF THE CRIME.**

A trial court may impose a sentence that is authorized by statute. In re Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). RCW 9.94A.505(8) authorizes the imposition of crime-related prohibitions. State v. Armendariz, 160 Wn.2d 106, 112, 156 P.3d 201 (2007). RCW 9.94A.030(10) defines “crime-related prohibition” as a court order prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been

convicted. Witnesses to a crime are “directly connected to the circumstances of the crime.” State v. Ancira, 107 Wn. App. 650, 656, 27 P.3d 1246 (2001). The assignment of crime-related prohibitions has “traditionally been left to the discretion of the sentencing judge.” State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). The imposition of crime-related prohibitions is reviewed for abuse of discretion; thus, a sentence will be reversed only if it is “manifestly unreasonable” such that “no reasonable man would take the view adopted by the trial court.” Id. quoting State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977); *see also* State v. Williams, 157 Wn. App. 689, 691, 239 P.3d 600 (2010).

The jury convicted Wyant of assaulting Officers Sanchez and Conrad. CP 26, 28, 71-72. The assaults occurred at the Lynnwood municipal jail. RP 32-35, 62-63, 77. The Lynnwood municipal jail is under the supervision of the Lynnwood Chief of Police. Lynnwood Municipal Code (LMC) 2.36.110. Officers Sanchez and Conrad are custody officers for the Lynnwood Police Department. RP 30, 62, 77. Wyant knows that Officers Sanchez and Conrad work at the Lynnwood Police station. RP 118. Four custodial officers testified at trial. RP 30-61, 62-76, 76-92, 92-104. The Lynnwood Police

Department and the Lynnwood Jail are located in the same building. RP 32.

The requirement, that Wyant not contact the Lynnwood Police Department and Jail, was reasonable in the present case. Limiting Wyant's access to the Lynnwood Police Department and Jail is directly related to the circumstances of the crimes he was convicted of—assaulting two custodial officers in the jail—while allowing Wyant unlimited access would facilitate his assaulting or harassing custody officers in the future. The Court authoritatively construed the provisions of RCW 9.94A.505(8) in the context of a no-contact order involving a witness who testified at trial. State v. Armendariz, 160 Wn.2d 106, 156 P.3d 201 (2007). The Court unanimously concluded that the statute expressly empowered trial courts to prohibit defendants from contacting witnesses for up to the statutory maximum time period for the offense. Armendariz, 160 Wn.2d at 118-120. The requirement in the present case prohibits Wyant from contacting the victims and witnesses of the assaults committed at the Lynnwood Jail.

**B. THE TRIAL COURT'S ORDER THAT WYANT NOT CONTACT THE LYNNWOOD POLICE DEPARTMENT OR JAIL UNLESS THERE IS A PUBLIC SAFETY OR HEALTH EMERGENCY DOES NOT VIOLATE HIS RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES.**

Wyant's right to petition for redress of grievance is not violated by the requirement of the trial court's order that he not contact the Lynnwood Police Department or Jail unless there is a public safety or health emergency. The Lynnwood Police Chief is appointed by and serves at the pleasure of the mayor. LMC 2.36.030. The proper channel and procedure for any complaint or criticism of the police department would, therefore, be through the mayor's office. The trial court's order does not prohibit Wyant from contacting the Mayor. Wyant has not cited any authority to support his contention that the right to petition for redress of grievance includes asking a police officer for directions. Appellant's Brief 6.

Under the plain language of the trial court's order Wyant is only prohibited from contacting the Lynnwood Police Department and Jail; he is not prohibited from contacting police officers in general. Since Wyant lives in Fremont, he has limited reasons to contact Lynnwood police officers. RP 112. Additionally, Wyant is clearly allowed to contact the authorities, including the Lynnwood Police Department or Jail regarding a public safety or a health

emergency. CP 21. The trial court made this clear at sentencing when it imposed the requirement. RP (5/3/10) 19.

### **1. Crime-Related Prohibitions May Restrict Fundamental Rights.**

Crime-related prohibitions which limit fundamental rights are permissible provided the restrictions are reasonably necessary and narrowly drawn. Riley, 121 Wn.2d at 38, 846 P.2d 1365 (*citing United States v. Consuelo-Gonzalez*, 521 F.2d 259, 265 (9th Cir. 1975)); Malone v. United States, 502 F.2d 554, 556 (9th Cir. 1974). A reviewing court looks to whether the order prohibits “a real and substantial amount of protected conduct in contrast to the statute's legitimate sweep.” State v. Riles, 135 Wn.2d 326, 346-347, 957 P.2d 655 (1998); State v. Warren, 134 Wn. App. 44, 70-71, 138 P.3d 1081 (2006). A convicted defendant's freedom may be restricted only to the extent it is reasonably necessary to accomplish the essential needs of the state and public order. Riles, 135 Wn.2d at 347 (*quoting Riley*, 121 Wn.2d at 37-38); Warren, 134 Wn. App. at 71.

The trial court's order does not prohibit a real and substantial amount of protected conduct; it only prohibits Wyant from contacting the Lynnwood Police Department and Jail, the location

directly related to the circumstances of the assaults on the custodial officers. This is within the legitimate sweep of crime-related prohibitions and is reasonably necessary to accomplish the essential needs of the state and public order.

## **2. The Crime-Related Prohibition In This Case Is Not Unconstitutionally Vague.**

While courts have applied the vagueness doctrine to sentencing conditions, imposing conditions is within the discretion of the sentencing court and will be reversed only if manifestly unreasonable. State v. Bahl, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). If persons of ordinary intelligence can understand what is proscribed, notwithstanding some possible areas of disagreement, the condition is sufficiently definite. Bahl, 164 Wn.2d at 754 (*citing* Spokane v. Douglass, 115 Wn.2d 171, 179, 795 P.2d 693 (1990)). The vagueness test does not demand impossible standards of specificity or absolute agreement. Spokane v. Douglass, 115 Wn.2d at 179 (*citing* Kolender v. Lawson, 461 U.S. 352, 361, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)). In other words, “vagueness in the constitutional sense is not mere uncertainty.” State v. Smith, 111 Wn.2d 1, 10, 759 P.2d 372 (1988). When asked by the

sentencing court, Wyant stated that he understood the requirement.

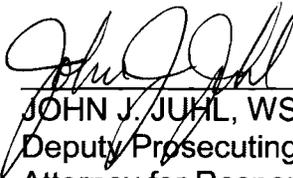
RP (5/3/10) 19. The trial court's order is sufficiently definite.

**IV. CONCLUSION**

For the reasons stated above the appeal should be denied.

Respectfully submitted on January 4, 2011.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
JOHN J. JUHL, WSBA #18951  
Deputy Prosecuting Attorney  
Attorney for Respondent