

NO. 40721-3-II

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

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STATE OF WASHINGTON,

Respondent,

v.

AMANDA DOBBS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Kitty-Ann Van Doorninck, Judge

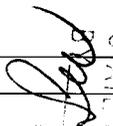
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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by imposing a crime-related prohibition that exceeded the statutory maximum sentence.

2. Pursuant to RAP 10.1(g), Appellant Amanda Dobbs adopts all of the assignments of error set forth in co-appellant Joseph Dobbs' "Appellant's Brief" at page 1.

Issues Pertaining to Assignments of Error

1. Appellant was convicted of animal cruelty in the first degree, a Class C felony. The statutory maximum sentence for a class C felony is 60 months. The court imposed a 30-day sentence and converted the time into community service hours. Additionally, the court permanently prohibited Dobbs from owning or caring for horses. Did the trial court lack authority to impose a lifetime crime-related prohibition where the statutory maximum sentence is five years?

2. Pursuant to RAP 10.1(g), Appellant Amanda Dobbs adopts the issue pertaining to assignments of error set forth in co-appellant Joseph Dobbs' "Appellant's Brief" at pages 1-2.

B. STATEMENT OF THE CASE

1. Procedural Facts

The Pierce County Prosecuting Attorney charged appellant Amanda Dobbs with one count of animal cruelty in the first degree and

two counts of animal cruelty in the second degree. CP 37-38. Specifically, the State alleged that during the period between November 1, 2008 and February 26, 2009, Amanda Dobbs acted with criminal negligence and did “starve . . . an animal and, as a result, cause[d] substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering or death[.]”<sup>1</sup> The State charged Amanda’s former husband, Joseph Dobbs, with the same crimes. CP 65.<sup>2</sup>

Both parties waived their rights to a jury trial. RP 7-10. Following a bench trial before the Honorable Kitty-Ann van Doorninck, both Amanda and Joseph were found guilty of first degree animal cruelty, but acquitted of second degree animal cruelty. CP 69-70. The court sentenced Amanda to 30 days of confinement and converted this sentence into 224 hours of community restitution. CP 54. Additionally, the court permanently barred Amanda from ever owning horses again: “Defendant is permanently prohibited from owning or caring for same or similar animals to these involved in this case (horses).” CP 57.

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<sup>1</sup> Since the defendants share the same last name, this brief refers to each party using their first names.

<sup>2</sup> The trial court’s findings of fact and conclusions of law (CP 64-71) have been attached as an appendix to this brief.

2. Substantive Facts

a. *Trial Testimony*

Amanda and her husband Joseph purchased three horses in the summer of 2007. CP 65. The Dobbs were living on base at Fort Lewis when they purchased the horses, so they boarded the horses at nearby Destiny Farms. RP 282-83. In June 2008, the family purchases a house with some acreage in Roy. RP 359. The Dobbs moved the horses from Destiny Farms to their new property in October 2008.

The family relationship began to breakdown when Amanda moved out of the family home in November 2008. CP 65. Joseph and their three children remained living in the family home; the horses remained on the property. RP 285. The horses were in good physical shape and weight at the time Amanda moved out. CP 65.

Amanda testified that she went to the house and fed the horses three or four times per week. RP 287. Finances were very tight during this time. RP 293. Joseph had contacted the horses' prior owner to see if they wanted the horses back, but did not receive a response. RP 287. Amanda was trying to find a different pasture to keep them in until she was in a position to care for the horses again on her own. RP 293. Amanda and Joseph were unable to agree on what to do with the horses. RP 287.

On February 24, 2009, Amanda received a telephone call from her teenage daughter telling her that one of the horses had fallen down and become tangled in a fence. RP 294. Amanda immediately went over to help, but they were unable to get the horse up. RP 295. Eventually, Dr. John Dugan, a local veterinarian was called to assist. CP 65. Dr. Dugan noted that the horse was thin and very weak from struggling under the fence. CP 65. Dr. Dugan left pain medication for the horse. RP 296-97. Dr. Dugan had instructed Joseph to call the office the next morning to report on the condition of the fallen horse and to receive some information on horse rescue organizations. RP 208. When Dr. Dugan did not receive a call from either Joseph or Amanda, he contacted animal services. RP 208.

When officers from Pierce County Animal Control went to the residence on February 26, 2009, the horse was dead. CP 65. Dr. Linda Hagerman performed a necropsy on the deceased horse and found no evidence of disease or infection as a cause of death. CP 65-66. Dr. Hagerman concluded that the horse's death was caused by a metabolic disease caused by a lack of food and/or exposure to the elements. CP 66. The other two horses on the property were thin; Amanda surrendered the horses to animal control and transferred their registrations so that they could be adopted. RP 164.

The trial court concluded that Amanda was guilty of animal cruelty in the first degree for failing to supply an adequate amount of food to the horse that had died. CP 69-70. The court concluded that Amanda was not guilty animal cruelty in the second degree, however, as she met the burden of showing that the failure to provide adequate food and shelter for the horses was due to economic distress beyond her control. CP 70.

b. *Sentencing*

The prosecutor requested the court sentence both Amanda and Joseph to jail time and to enter an order prohibiting them from owning horses:

Under [RCW] 16.52.[205] since the case did result in the death of one of the animals, I would ask that the Court enter an order that prohibits either party from owning a same or similar type of animal. It is a permanent barment [sic] for owning a same or similar type of animal.

RP 462. Following this recommendation, court entered the following crime-related prohibition on the judgment and sentence: “Defendant is permanently prohibited from owning or caring for same or similar animals to these involved in this case (horses).” CP 57 (emphasis added).

C. ARGUMENTS

1. THE TRIAL COURT LACKED AUTHORITY TO IMPOSE A LIFETIME CRIME-RELATED PROHIBITION AND RESENTENCING IS THEREFORE REQUIRED.

“The imposition of a crime-related prohibition is generally reviewed for abuse of discretion.” State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (citing State v. Ancira, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001)). “If the trial court exceeds its sentencing authority, its actions are void.” State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006) (citing State v. Phelps, 113 Wn. App. 347, 355, 57 P.3d 624 (2002)). ““A sentence imposed without statutory authority can be addressed for the first time on appeal, and this court has both the power and the duty to grant relief when necessary.”” Paulson, 131 Wn. App. at 588 (quoting State v. Julian, 102 Wn. App. 296, 304, 9 P.3d 851 (2000)).

Animal cruelty in the first degree is a class C felony. RCW 16.52.205(4). The maximum sentence for a class C felony is five years. RCW 9A.20.021(1)(c). The permanent prohibition barring Amanda from ever owning or caring for horses amounts to punishment that exceeds the statutory maximum allowable term of 60 months.

The portion of the sentence permanently prohibiting Amanda from owning or caring for horses is a crime-related prohibition. A “crime-

related prohibition” is statutorily defined as “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted . . . .” RCW 9.94A.030(10). See Armendariz, 160 Wn.2d at 112-12 (a five year no-contact order imposed as part of the defendant’s sentence for assault was a crime-related prohibition). The animal cruelty statute specifically gives the court authority to issue such a crime-related prohibition: “In addition to the penalty imposed in subsection (4) of this section, the court may order that the convicted person do any of the following: (a) Not harbor or own animals or reside in any household where animals are present[.]” RCW 16.52.205(5).

However, “a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.” RCW 9.94A.505(5). Although crime-related prohibitions are not specifically mentioned in the statute, the Supreme Court has ruled, “it is reasonable to subject these conditions to the same time limit as applies to all other aspects of a defendant’s sentence.” Armendariz, 160 Wn.2d at 119.

In Armendariz, the court upheld the imposition of a five-year no-contact order where the defendant had been convicted of third-degree

assault, a class C felony. Armendariz, 160 Wn.2d at 108. “[T]he terms of a defendant’s sentence may not exceed the statutory maximum.” Armendariz, 160 Wn.2d at 119. “[T]he statutory maximum for the defendant’s crime is the appropriate time limit for a no-contact order imposed with the sentence.” Armendariz, 160 Wn.2d at 120.

Here, the trial court abused its discretion by imposing a lifetime crime-related prohibition where the statutory maximum sentence for the crime was five years. Remand for entry of a corrected judgment and sentence is necessary. Phelps, 113 Wn. App. at 358.

2. THE EVIDENCE WAS INSUFFICIENT TO CONVICT AMANDA OF FIRST DEGREE ANIMAL CRUELTY.

Pursuant to RAP 10.1(g), Appellant Amanda adopts the argument set forth in co-appellant Joseph Dobbs' "Appellant's Brief" at pages 8-11.

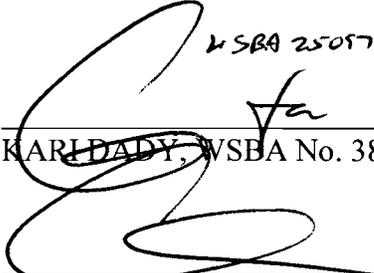
D. CONCLUSION

For the reasons presented, reversal and dismissal is required. In the alternative, remand for resentencing is required.

DATED this 7<sup>th</sup> day of December 2010.

Respectfully submitted,

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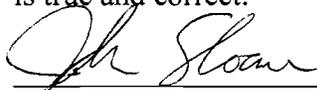
Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to:

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Containing a copy of the brief of appellant, in State v. Amanda Dobbs,  
Cause No. 40721-3-II, in the Court of Appeals, Division II, for the state of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



John Sloane  
Done in Seattle, Washington

12-7-10  
Date

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