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NO. 65407-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

CLAY WYANT,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The court erred in imposing a sentencing condition prohibiting Clay Wyant from having contact with the Lynwood Police Department or Lynwood Jail officers.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A sentencing condition that encroaches on fundamental constitutional rights must be narrowly drawn to achieve a compelling government interest. The state and federal constitutions protect the right to petition government, and protect against the enforcement of vague sentencing conditions. Where a sentence condition that Mr. Wyant have no contact with the Lynwood Police Department infringes upon those fundamental rights, is the condition narrowly tailored to serve a compelling government interest?

C. STATEMENT OF THE CASE

Mr. Wyant was convicted of two counts of custodial assault. CP 15. The charges arose from a struggle between Mr. Wyant and personnel at the Lynwood Jail while Mr. Wyant was confined there. RP 38, 4-85.

The court imposed as a condition of sentence that Mr. Wyant:

Do not contact or go to the Lynwood Police Dept. or jail unless there is a public safety or health emergency.

(Emphasis in original.) CP 21.

D. ARGUMENT

THE NO CONTACT CONDITION EXCEEDS THE TRIAL COURT'S SENTENCING AUTHORITY AND IMPERMISSIBLY INFRINGES UPON MR. WYANT'S CONSTITUTIONAL RIGHTS.

1. The condition that Mr. Wyant not contact the Lynwood Police Department is not crime related. The superior court's authority to sentence an offender is governed by statute. In re the Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Under the Sentencing Reform Act (SRA) the sentencing court may impose and enforce "crime-related prohibitions and affirmative conditions as provided in this chapter." RCW 9.94A.505(8); State v. Armendariz, 160 Wn.2d 106, 112, 156 P.3d 201 (2007). RCW 9.94A.030(10) provides:

"Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

The assaults in this case involved custody officers at the Lynwood Jail. While they are employed by the Lynwood Police Department, none of the victims were commissioned police officers nor otherwise engaged in law-enforcement activity. Nonetheless, the trial court's order prohibits Mr. Wyant's contact with the whole of the police department. That broad restriction is not crime related. Moreover, in light of the substantial public policy implications of restricting a person's ability to access law enforcement, a narrower restriction was available - that Mr. Wyant refrain from contacting jail staff and the officers involved in the present case. The broader restriction is not crime related and, as set forth below, violates Mr. Wyant's constitutional rights.

2. The condition that Mr. Wyant not contact the Lynwood Police Department violates his right to petition government and is not narrowly tailored. A more demanding review is required where sentencing conditions interfere with a fundamental constitutional right. State v. Riles, 135 Wn.2d 326, 347, 957 P.2d 655 (1998). When a sentencing condition interferes with a fundamental right, the condition must be reasonably necessary to accomplish the essential needs of the State and public order. Id. Thus, the courts have invalidated community custody prohibitions that have

restricted fundamental rights absent a showing of a compelling state interest and that the prohibition is necessary to accomplish that interest. See e.g., Id. at 350 (restriction on sex offender's contact with minors held unconstitutional limitation of freedom of association where crime did not involve minors); State v. Letourneau, 100 Wn.App. 424, 442, 997 P.2d 436 (2000) (striking condition prohibiting convicted sex offender from having unsupervised contact with her biological children where record did not support inference she would offend against them).

The Fourteenth Amendment of the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." The clause includes a substantive component, which provides heightened protection against government interference with certain fundamental rights and liberty interests. Troxell v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Further, the unqualified right of aggrieved citizens to petition the government for redress is enshrined in both the federal and state constitutions. U.S. Const. Amend. I; Const. art. I, § 4; Const. art. I, § 5. The historical roots of the petition clauses can be traced to the Magna Carta and Declaration of Rights of 1689. MacDonald v. Smith, 472

U.S. 479, 482, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985); Richmond v. Thompson, 130 Wn.2d 368, 380-81, 922 P.2d 1343 (1996). The Washington Supreme Court has construed the constitutional protections provided under Article I, section 4 to be coextensive with those afforded by the First Amendment. Richmond, 130 Wn.2d at 383.

While the petition clauses do not confer an absolute privilege on citizens to utter baseless or libelous falsehoods, the courts are nonetheless loath to sanction state action that chills First Amendment activities. In re the Personal Restraint of Addleman, 139 Wn.2d 751, 755, 991 P.2d 1123 (2000). “Specifically, the First Amendment prohibits the State from silencing speech it disapproves, particularly silencing criticism of government itself.” State ex rel. Public Disclosure Comm’n v. 119 Vote No! Comm., 135 Wn.2d 618, 626, 957 P.2d 691 (1998). The submission of complaints and criticism to nonlegislative and nonjudicial agencies, such as police departments, constitutes protected petitioning activity within the meaning of the Petition Clause. Gable v. Lewis, 201 F.3d 769, 771 (6th Cir. 2000) (citing California Transport v. Trucking Unlimited, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972)).

By the court's order, Mr. Wyant could not ask a Lynwood police officer for directions. The order would not permit Mr. Wyant to respond to questions put to him by an officer if they were not plainly related to a "public safety or health emergency." Under the order, it is debatable whether Mr. Wyant could provide information regarding a past crime as no emergency exists. The condition imposed is far broader than reasonably necessary to accomplish the essential needs of the State and public order. The order would not allow Mr. Wyant to file a complaint of police misconduct with department administrators.

The individual victims in this case were custody officers at the jail, and not otherwise involved in the broader law enforcement activities of the Lynwood Police Department. A more focused condition barring contact with jail staff alone would serve the State's interest in preventing Mr. Wyant from initiating further contact. In the normal course of government operations, citizens generally come into contact with jailers only after an arrest. A limitation on self-initiated contact with jail staff does not present the same constitutional or policy concerns while at the same time serving the State's interests. As written, however, the condition infringes upon

Mr. Wyant's right to petition government and is not narrowly tailored.

The trial court attempted to explain the reach of the condition, saying:

obviously if it's an emergency you can contact people.
But if it's not an emergency, you just can't?

5/3/10 RP 19. But the court offered no explanation of what circumstances are sufficient to establish an emergency permitting Mr. Wyant to seek the assistance of law enforcement. Thus, both he and law enforcement are left to guess what the condition allows and what it does not.

Sentencing conditions are subject to vagueness challenges. State v. Bahl, 164 Wn.2d 739, 753, 193 P.3d 678 (2008). In deciding whether a term is unconstitutionally vague, the terms are not considered in a "vacuum," rather, they are considered in the context in which they are used. Spokane v. Douglass, 115 Wn.2d 171, 180, 795 P.2d 693 (1990). A condition is vague if persons of ordinary intelligence must guess at what is prohibited. Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983); Bahl, 164 Wn.2d at 754.

The condition imposed here is not narrowly tailored and leaves both Mr. Wyant and law enforcement to guess at its meaning. The court's condition impermissibly infringes upon Mr. Wyant's constitutional rights. The Court must strike the condition.

E. CONCLUSION

Because it is not crime related and because it impermissibly infringes upon Mr. Wyant's constitutional rights, this Court must strike the sentencing condition that Mr. Wyant not contact the Lynwood Police Department.

Respectfully submitted this 19th day of October, 2010.



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DIVISION ONE**

STATE OF WASHINGTON,)
)
Respondent/Cross-appellant,)
)
)
CLAY WYANT,)
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Appellant/Cross-respondent.)

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DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20TH DAY OF OCTOBER, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> CLAY WYANT
(NO VALID ADDRESS)
C/O COUNSEL FOR APPELLANT
WASHINGTON APPELLATE PROJECT | <input type="checkbox"/> U.S. MAIL
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