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STATE OF WASHINGTON
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NO. 88140-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

PAMELA DESKINS,
Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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1 ORIGINAL

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I. STATEMENT OF ISSUES

1. Whether the trial court abused its discretion by ordering the defendant to make restitution to the owner's of a dog that was attacked by the defendant's dogs, when the defendant's dogs escaped from their enclosure?

2. Whether the trial court abused its discretion by ordering the defendant to reimburse some, but not all, of the extraordinary expenses incurred in her prosecution?

3. Whether the trial court abused its discretion by prohibiting the defendant from owning or residing with pets or livestock during the probationary period, where the evidence at trial established the defendant's inability to safely maintain animals?¹

II. STATEMENT OF THE CASE

The defendant, Pamela Deskins, resided on property located in a rural and agricultural neighborhood of Stevens County. RP 446. Michael Beson lives on the same property. RP 395. Deskins and Beson fenced the perimeter and portions of the interior of the property approximately 10 years ago. RP 397. The fences vary in height from 4 feet 6 inches to 7 feet tall. RP 78, 80, 143, 397, 400-01, 404, 406, 408.

¹This issue is moot. The prohibition upon pet or livestock ownership or residency with pets or livestock was imposed on February 26, 2010. RP 631; CP 2-4. The restriction, which was limited to 24 months in duration, was not stayed pending appeal. RP 637-38, 643. Pamela Deskins' animals were all re-homed or relocated as of April 13, 2010. RP 672. As a general rule, this Court will not review an issue if the Court can no longer provide effective relief.

Within these fenced areas, Deskins operates an "animal sanctuary." RP 418, 449. The animals on the property, which included dogs, llamas, horses, and donkeys, came from a number of sources. RP 155, 156. Some animals were "dumped" on the property by others. RP 417-18. Some animals came from the Humane Society. *Id.* Some were left behind when other Tennants moved out. *Id.* Some were brought to the property when Deskins first moved there. *Id.* Some of the dogs were offspring of pre-existing dogs that Deskins did not adopt out after she became attached to them as puppies. *Id.* Some of the animals on the property belong to Mr. Benson. RP 422.

Deskins kept a large number of dogs, between 25 and 30, in a fenced pen. *See* RP 182, 294. This pen contained no apparent water supply. RP 261, 291. This pen contained no shelter from the elements. RP 261, 292. The pen was fairly permeable, with dogs able to escape by jumping over the fence or burrowing under the fence. RP 79, 101-02, 104, 265, 312, 323, 408, 411. The dogs in the pen varied in age from days old to 13 years of age. RP 261, 308. The dogs in this pen varied by size and temperament. RP 292. It is dangerous to house animals in this way as the more dominant or aggressive animals will prey upon the more submissive or smaller animals. RP 210, 317, 389-91. Deskins was aware that there were fights between the dogs. RP 319. The fights, however, did not result in injuries when Deskins

was present because she was "alpha." RP 505.

Deskins relationship with her neighbors was strained. Deskins believed her neighbors encroached upon her property and her privacy rights. RP 88, 456-57. Her neighbors feared Deskins' dogs. RP 78. Their fear was the result of numerous incidents, including one in which some of Deskins' dogs "charged" a neighbor's visiting daughter on the neighbor's own property. RP 87, 201-02.

On the afternoon of May 6, 2008, one of Deskins' neighbors observed some of Deskins' dogs leave the pen by jumping over the fence. RP 146. Shortly thereafter, "Winnie", an Australian Shepherd mix owned by the Tennant family, was attacked by numerous dogs in the road near Deskins' property. RP 61, 68, 100. The attacking dogs, when approached by a neighbor's vehicle, left "Winnie" and entered Deskins' property, going over or under the fence. RP 101-102.

"Winnie" sustained multiple bite wounds all over her body. RP 43, 53, 102. These injuries, if not treated, would have resulted in "Winnie"'s death. RP 62. "Winnie", however, received timely treatment and was doing fine two years later. RP 59. The treatment cost "Winnie"'s owner nearly \$1500. RP 72.

During the summer of 2008, neighbors observed Deskins' dogs chasing and nipping at the donkeys that resided on Deskins' property. RP

155. The dogs also harassed the horses and llamas. RP 156. Some of these attacks were videotaped. RP 157-159. These attacks were reported to police. RP 169.

On September 17, 2008, a number of Deskins' neighbors observed approximately 20 dogs biting a smaller dog within the fenced area on Deskins' property. RP 147-48, 151, 230. The neighbors could not go to the small dog's aid because the other dogs were too dangerous. RP 235. After the fight, Deskin enter the property, drove across a field and pick up the mauled dog. RP 147-48. Deskins threw the mauled dog's carcass into the truck bed and then confronted her neighbors, threatening to shoot them if they did not leave the roadway outside Deskins' property. RP 152, 21-32. Deskins' threats were videotaped and reported to the police. RP 153, 231.

On September 29, 2008, a number of Deskins' neighbors observed multiple dogs inside Deskins' pen attacking a smaller dog. RP 105, 153-54. The neighbors did not intervene while the small dog was horribly mauled, out of fear that the dogs would maul them. RP 106, 114. The neighbors did, however, film the incident from the road and reported the incident to the sheriff. RP 106-107.

On October 1, 2008, another dog was attacked by larger dogs within Deskins' pen. RP 107-08, RP 155, 215. The 6-8 attacking dogs repeatedly bit the smaller dog's neck and legs. RP 215, 216-17. The smaller dog

apparently died from its injuries,² with Deskins depositing the carcass in a ditch. RP 237-240, 243.

On October 2, 2008, Detective James Glover obtained a search warrant that allowed him to seize Deskins' dogs. RP 256. The warrant was executed at approximately 5:00 p.m, with the assistance of Spokanimal. RP 259. During the three visits it took to round up the 39 dogs, the dogs were fairly aggressive, with one biting an employee of Spokanimal. RP 259-260, 267, 289, 292, 294, 295.

Based upon the above facts, a jury convicted Deskins of one count of transporting or confining animals in an unsafe manner, one count of animal cruelty in the second degree, one count of harassment, and one count of tampering with physical evidence. RP 584. Sentencing immediately followed the verdict. RP 592.

The trial judge heard from all interested parties, including Deskins, prior to announcing the sentence. The neighbors spoke of the fear they experienced as a result of Deskins' failure to control her dogs. RP 595-604.

The damages inflicted by Deskins' failure to contain her dogs were established by "Winnie"'s owner, Cindy Tennant. Ms. Tennant explained that the ultimate vet bills for "Winnie"'s treatment came to \$1,400.00. RP

²The carcass might have belonged to the dog that was mauled to death on September 29, 2008, as the necropsy indicated that the 5-month-old pup had been dead for more than 3 days. RP 26-27, 29, 30.

604. The extraordinary costs of Deskins' prosecution included the cost of caring for the animals. The actual costs were established by Captain Gregory as \$5,940.00 incurred by Spokanimal and \$21,582.21 incurred by the Stevens County Sheriff's Department. RP 625.

Deskins explained the close connection she felt toward the dogs, which she characterized as her "children" or her "family." RP 615, 623. She took in so many animals because of an "innate sense to be a caregiver for these animals," which resulted in her placing the lives of her animals ahead of her own needs. 615, 623. Finally, Deskins asked for a stay of sentence, particularly of the requirement to forfeit her animals so she could try to find them homes in rescue groups. RP 616, 621. Her friend, Mr. Benson, assured the court that he was willing to find placements for the animals. RP 626-27.

The trial court specifically determined that Deskins was not indigent. RP 629. Deskins was ordered to reimburse the county for the costs of her three attorneys. RP 629-630. The court imposed jail time to be served on each count. RP 630-31. The court placed Deskins under the supervision of the probation department, which was to monitor Deskins' psychological counseling. RP 632. The court ordered restitution to the Tennants in the amount of \$1,400.00, to the Stevens County Sheriff's Department in the amount of \$21,582.21, and to the Stevens County District Court³ in the

³This item appears to be for expert witness costs. See RP 612-13.

amount of \$5,797.61. RP 631. The court acknowledged that this was less than “full restitution”. RP 640.

The trial court ordered Deskins to “not own, acquire or live with pets or livestock during the probationary period.” RP 631. Any animals remaining in Deskins’ possession seven days post sentencing were to be forfeited to the Stevens County Sheriff’s Department. RP 632, 635-36. The trial court refused to stay any portion of Deskins’ sentence, finding that to do so would unduly diminish the deterrent effect of the punishment and would cause unreasonable trauma to the victims of the crime. RP 633, 643.⁴

Deskins asked the court to reconsider the ruling regarding the animals, on the grounds that some of the livestock on the property and at least one of the dogs belonged to Mr. Benson. RP 634. The court clarified that the seizure would not include any animals for whom Mr. Benson could establish ownership. RP 636. The court further clarified, however, that Deskins could not live on the property if animals resided there, regardless of who owned them. RP 637. The prohibition upon owning and/or living with animals would expire 24 months from the date of sentencing. RP 638.

Deskins came before the court, seeking modifications in her sentence, on April 13, 2010. RP 647. Specifically, Deskins requested that her remaining jail term be converted to home detention. She also requested

⁴All of Deskins’ animals were removed prior to the March 5, 2010, deadline. RP 672.

permission to return to her property, despite the presence of Mr. Benson's dog and horse. RP 648-52. Deskins did not request any alterations in the restitution award or other legal financial obligations. The State's request for restitution to Spokanimal was rejected so long as the amount was contested by Deskins. RP 685-86.

Deskins appealed her convictions, successfully getting three reversed. *See State v. Deskins*, 170 Wn. App. 1021, at ¶¶ 1, 14, 33, and 54 (2012), *review granted*, 176 Wn.2d 1027 (2013). The only remaining conviction is that for violating RCW 16.52.080.⁵ Deskins also unsuccessfully challenged the sentencing restrictions related to animal ownership and the restitution obligations to the Tennants and to the Stevens County Sheriff's Office. *Deskins, supra* at ¶¶ 34-53. This Court granted Deskins' petition for review, but limited the scope of review to forfeiture, prohibition and restitution issues.

⁵RCW 16.52.080 states that:

Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefor by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty.

III. ARGUMENT

A. **A District Court May Impose Restitution for Injury Resulting from the Defendant's Conduct and for Extraordinary Costs Incurred by the State in Investigating or Prosecuting the Crimes the Defendant Was Convicted of Committing.**

District courts, like municipal courts, have the authority to order convicted defendants to pay restitution. This authority is derived, in part, from RCW 3.66.010(1)⁶ which grants district courts “all the necessary powers which are possessed by courts of record⁷ in this state.” *Cf. City of Seattle v. Fuller*, 177 Wn.2d 263, 270, 300 P.3d 340 (2013) (statutes which grant municipal courts concurrent jurisdiction with and the general powers of superior courts confers upon them the authority to impose restitution). Restitution is also authorized by RCW 3.66.120 and .130. *Fuller*, 177 Wn.2d at 274. Restitution may also be imposed pursuant to RCW 3.66.068.⁸ *Cf.*

⁶RCW 3.66.010(1) provides, in pertinent part, that:

The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. . . .

⁷Superior courts are courts of record. See Wash. Const. art. IV, § 11.

⁸RCW 3.66.068 currently states, in relevant part, that:

For a period not to exceed . . . two years after imposition of sentence for all other offenses, the court has continuing jurisdiction and authority to

Fuller, 177 Wn.2d at 275-76 (RCW 35.20.255(1), which allows a municipal court to “fix the terms” of any deferral or suspension of sentence confers restitution authority).

A district court may also impose restitution pursuant to RCW 9A.20.030(1). *Fuller*, 177 Wn.2d at 276. Restitution pursuant to this statute is not restricted to those cases in which a fine is not imposed. *Id.* at 277-78.

A district court may also order restitution for the “expenses specifically incurred by the state in prosecuting the defendant.” RCW 10.01.160(2). The expenses that are awarded pursuant to this section, however, “cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.” *Id.* The State concedes that the costs associated with seizing and storing most evidence connected with a crime is not recoverable. But unlike drugs, stolen property, or biological

suspend or defer the execution of all or any part of its sentence upon stated terms, including installment payment of fines. . . .

The version of RCW 3.66.068 that was in effect when Deskins both committed her offense and was sentenced, the relevant section of RCW 3.66.068 was identical:

For a period not to exceed . . . two years after imposition of sentence for all other offenses, the court has continuing jurisdiction and authority to suspend or defer the execution of all or any part of its sentence upon stated terms, including installment payment of fines. . . .

Former RCW 3.66.068 (Laws of 2001, ch. 94, § 2).

samples that may be stored on a shelf in a secure room, dogs and other sentient beings require daily feeding, watering, and socialization. These additional duties and associated expenses⁹ can be linked to a specific prosecution and should be recoverable pursuant to RCW 10.01.160(2).

The Legislature has recognized that the costs associated with animal abuse cases are unique. A separate statute, RCW 16.52.200(4),¹⁰ specifically recognizes that the costs incurred in the investigation of violations of Chapter 16.52 RCW and in the care of animals involved in the crimes may be recovered from the defendant. *See also State v. Peterson*, COA No.

⁹Prosecuting animal hoarding cases can easily bankrupt a community. *See generally* Lisa Avery, *From Helping to Hoarding to Hurting: When Acts of "Good Samaritans" Become Felony Animal Cruelty*, 39 Val. U.L. Rev. 815, 838-39 (2005) (describing cases in which the boarding and veterinarian bills ranged between \$45,000 and \$450,000); Megan L. Renwick, *Animal Hoarding: A Legislative Solution*, 47 U. Louisville L. Rev. 585, 590-91 (Spring 2009) ("Veterinary and boarding expenses alone can amount to tens or even hundreds of thousands of dollars").

The relatively modest \$27,522.21 expended upon Deskins' case by the Stevens County Sheriff's Office and Spokanimal was achieved solely through the entry of a written agreement between the State and Deskins. The December 24, 2008, agreement allowed for the release of the majority of Deskins' dogs to Spokanimal in exchange for Deskins' reacquiring possession of thirteen dogs. RP 658-59. Absent this agreement, the State would arguably have been required to maintain all of the dogs as evidence in the 1 year, 4 months, and 22 days between the October 2, 2008, seizure and the February 24, 2010, trial.

¹⁰Former RCW 16.52.200(4) (Laws of 2003, ch. 53, § 113(4)) provided as follows:

In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

Former RCW 16.52.200(4) is now codified as RCW 16.52.200(6).

66876-5-I, slip op. at ¶ 82, ___ Wn. App. ___, ___ P.3d ___ (May 20, 2013) (plain language of RCW 16.52.200(6) allows a court to order a convicted defendant to pay the costs incurred by the county in carrying for the abused animals). Finally, RCW 16.52.080, itself, authorizes the imposition of the expenses incurred in taking charge of animals that are confined in a manner that jeopardizes other animals or the public.

A trial court's order of restitution will not be disturbed on appeal absent abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). The trial court's award must be based upon sufficiently reliable evidence. *State v. Kisor*, 68 Wn. App. 610, 610-20, 844 P.2d 1038, *review denied*, 121 Wn.2d 1023 (1993). Finally, restitution is limited to losses that are "causally connected" to the crimes charged. *Tobin*, 161 Wn.2d at 524.

Here, the trial court awarded \$1,400 to the Tennants for the vet bills incurred in treating their dog "Winnie" for injuries inflicted when some of Deskins' dogs got free from their pen. These vet bills were clearly "causally connected" to Deskins' violation of RCW 16.52.080. The amount of the bill and the scope of the treatment provided to "Winnie" was established by sworn testimony during Deskins' trial.¹¹ *See* RP 43-45, 51, 54-58, 61-62, 72.

¹¹Larry Tennant testified during trial that the vet bill came close to \$1,500. RP 72. Cindy Tennant's unsworn statement during sentencing was that the bill came to \$1,400. RP 604. The trial court exercised its discretion to award the lower figure. In doing so, the court acknowledged that the \$1,400 was less than full restitution. RP 640.

This award should be affirmed.

The cost of caring for the 39 dogs removed from Deskins' property on October 2nd and 3rd, 2008, fell upon both the Stevens County Sheriff's Department and Spokanimal. The trial court declined to order restitution to Spokanimal as Deskins' disputed the amount that was paid to that organization. *See* RP 685-86. The expenses incurred by the Stevens County Sheriff's Department were testified to by Captain George. He supported his request for \$21,582.21, with a statement that was reviewed by the trial court. RP 625. Deskins did not challenge the contents of Captain George's testimony or statement during the sentencing hearing or during the hearing to amend the sentence. This restitution award should be affirmed.

B. The Restrictions Upon Ownership of and Residing With Pets and Livestock During the Probationary Period Was Reasonably Related To Prevent the Future Commission of Crimes.

Sentencing conditions are reviewed for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court must act within the limits of the sentencing statutes when setting probationary conditions and it commits reversible error when it exceeds its sentencing authority. *State v. Farmer*, 39 Wn.2d 675, 679, 237 P.2d 734 (1951).

The penalty provisions for a violation of RCW 16.52.080 are scattered among a number of statutes. First, RCW 16.52.080 states that the offense is a “misdemeanor.” Second, RCW 16.52.165 provides that a misdemeanor violation of RCW 16.52.080 is punishable by up to 60 days in jail and up to a \$100 fine and the costs of prosecution. Third, former RCW 16.52.200(1)¹² expressly authorized the trial court to exercise all of the powers granted in RCW 3.66.067 and 3.66.068. The legislature, however, restricted the court’s discretion with regard to the length of the probationary period.¹³

The district court’s authority under RCW 3.66.067 and 3.66.068 extends to the imposition of probation conditions that “bear a reasonable relationship to the defendant’s duty to make restitution or that tend to prevent the future commission of crimes.” *State v. Williams*, 97 Wn. App. 257, 263, 983 P.2d 687 (1999), *review denied*, 140 Wn.2d 1006 (2000) (citing *State v. Summers*, 60 Wn.2d 702, 707, 375 P.2d 143 (1962)).

¹²Former RCW 16.52.200(1) (Laws of 2003, ch. 53, § 113(1)), provided that:

The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

Current RCW 16.52.200(1) (Laws of 2011, ch. 172, § 4(1)) is identical.

¹³In other sections of former RCW 16.52.200, the legislature imposed other minimum sanctions. *See* Former RCW 16.52.200(3) (Laws of 2003, ch. 53, § 113(3)). Deskins does not contend that the sentencing court’s order fell below the minimum requirement. Her complaint is that the court exceeded the minimum. *See* Petition for Review at 10-13. Deskins, however, lacks standing to complain about the forfeiture order as the record establishes that none of her animals were actually forfeited under the judgment and sentence to the Stevens County Sheriff’s Office. *See* RP 672.

Here, the restriction upon possessing any pets or livestock at the property where Deskins' inadequate fencing allowed her dog pack to prey upon the community, each other, and other resident livestock, is clearly designed to prevent the commission of similar crimes.¹⁴ The restriction upon living with pets or livestock during the probationary period was clearly designed to facilitate supervision of compliance.¹⁵ This restriction precluded Deskins from transferring "title" to the animals to another, while continuing to be responsible for the animals' day to day needs. Given Deskins' efforts to transfer her assets into a shell corporation in order to qualify for a public defender,¹⁶ the trial court did not abuse its discretion in fashioning language that foreclosed similar attempts to evade the reasonable no animal restriction. The now-expired probationary conditions should be affirmed.

¹⁴The recidivism rate among animal hoarders is almost one hundred percent. *See generally* Lisa Avery, *supra* at 833; Megan L. Renwick, *supra* at 588 (Spring 2009).

¹⁵The Hoarding of Animals Research Consortium stresses the importance that any court-order contain language "to discourage the hoarder from transferring care, supervision, or ownership of animals to a friend or family member to circumvent the intention of the agreement on a technicality." Gary J. Patronek, Lynn Loar, and Jane N. Nathanson, *Animal Hoarding: Structuring Interdisciplinary Responses to Help People, Animals and Communities at Risk* at 28 (2006) (available at <http://www.tufts.edu/vet/hoarding/pubs/AngellReport.pdf> (Last visited June 28, 2013)).

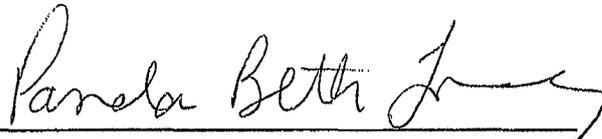
¹⁶*See* RP 629-630, 678.

IV. CONCLUSION

The trial court did not abuse its discretion in setting restitution or probationary conditions. The judgment and sentence should be affirmed.

Respectfully Submitted this 28th day of June, 2013.

TIM RASMUSSEN
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PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 28th day of June, 2013, I deposited in the mails of the United States of America, postage prepaid, a copy of the document to which this proof of service is attached in an envelope addressed to:

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On the 28th day of June, 2013, I e-mailed a copy of the document to which this proof of service is attached to

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

Signed this 28th day of June, 2013, at Olympia, Washington.


PAMELA B. LOGINSKY
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Dear Clerk and Counsel:

Attached for filing is the State's Supplemental Brief. Please let me know if you should encounter any difficulty in opening this document.

Sincerely,

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