

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	No. 65407-1-I
	)	
Respondent,	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
CLAY L. WYANT,	)	
	)	
Appellant.	)	FILED: September 26, 2011

Schindler, J. — A jury convicted Clay Wyant of two counts of custodial assault of Lynnwood City Jail Custody Officer Aaron Sanchez and Custody Officer Terri Conrad. Wyant challenges imposition of a community custody condition to the extent that it prohibits him from contacting the Lynnwood Police Department unless there is a public safety or health emergency. Because we conclude the court erred by prohibiting contact with commissioned officers of the Lynnwood Police Department, we strike that portion of the condition and remand for resentencing.

The facts are not in dispute. The Lynnwood City Jail and the Lynnwood Police Department are located in the same building. Custody officers who work at the Lynnwood City Jail are employed by the Lynnwood Police Department. In 2008, Wyant was confined at the Lynnwood City Jail. On September 2, 2008, Custody Officer Sanchez checked on Wyant by sliding open the cover of the cell door window.

Because Wyant had covered the window with a blanket, Custody Officer Sanchez opened the cell door to remove the blanket. Wyant punched Custody Officer Sanchez in the shoulder. Custody Officer Conrad and two other custody officers entered the cell to help restrain Wyant. During the struggle, Wyant bit Custody Officer Conrad's finger. The custody officers ordered Wyant to let go and struck him. But Wyant did not stop biting Custody Officer Conrad's finger until Custody Officer Sanchez stunned him twice with a taser.

A jury convicted Wyant of custodial assault of Custody Officer Sanchez and Custody Officer Conrad.<sup>1</sup> The two other custody officers involved in the struggle with Wyant also testified.

The court sentenced Wyant to an eight-month term of confinement and 12 months of community custody. The court prohibited Wyant from contacting the Lynnwood Police Department or jail except for "public safety or health emergency" purposes. The judgment and sentence states: "Do not contact or go to the Lynnwood Police Dept. or Jail unless there is a public safety or health emergency." In explaining the condition to Wyant, the court stated:

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 the 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?

Wyant challenges imposition of the condition to the extent it prohibits him from

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<sup>1</sup> The conviction was under RCW 9A.36.100(1)(b).

contacting the Lynnwood Police Department. Wyant contends the condition is not crime-related under RCW 9.94A.505(8) and impermissibly infringes his constitutional right to petition government for redress of grievances.

An illegal or erroneous sentencing condition may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Under RCW 9.94A.505(8), the court may “impose and enforce crime-related prohibitions” as part of the judgment and sentence. A crime-related prohibition must be “directly relate[d] to the circumstances of the crime for which the offender has been convicted.” Former RCW 9.94A.030(13) (2008); State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

There is no dispute that the court has the authority to prohibit Wyant from contacting the Lynnwood City Jail Custody Officers who were victims of the assault or witnesses of the assault. See, e.g., In re Pers. Restraint of Rainey, 168 Wn.2d 367, 376, 229 P.3d 686 (2010) (“A no-contact order with the victim is a crime-related prohibition.”); State v. Ancira, 107 Wn. App. 650, 656, 27 P.3d 1246 (2001) (describing witnesses as directly connected to the circumstances of the crime).

Here, Wyant challenges only the imposition of the condition prohibiting contact with the Lynnwood Police Department. Wyant argues that the condition is not crime-related and that it violates his constitutional right to petition government for redress of grievances because it is not narrowly drawn to achieve a compelling state interest.

As a general rule, we review sentencing conditions for abuse of discretion. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993); see also State v. Sanchez Valencia, 169 Wn.2d 782, 793 n.4, 239 P.3d 1059 (2010). However, a “[m]ore careful

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review of sentencing conditions is required where those conditions interfere with a fundamental constitutional right.” Warren, 165 Wn.2d at 32. Conditions that implicate a fundamental constitutional right must be “reasonably necessary to accomplish the essential needs of

the State and public order.” Warren, 165 Wn.2d at 32.

Generally, the State has a compelling interest in preventing future harm to the victims of the crime[, but a]s to the “reasonable necessity” requirement, the interplay of sentencing conditions and fundamental rights is delicate and fact-specific.

Rainey, 168 Wn.2d at 377.

We reject the State’s argument that Wyant’s constitutional right to petition government is not restricted because he is free to contact the mayor of the City of Lynnwood. The First Amendment guarantees “the right of the people . . . to petition the government for a redress of grievances.” U.S. Const. amend. I. The Washington Constitution, article I, section 4 provides that “[t]he right of petition . . . to assemble for the common good shall never be abridged,” and Washington courts “interpret Const. art. I, § 4 consistent with the First Amendment.” Richmond v. Thompson, 130 Wn.2d 368, 383, 922 P.2d 1343 (1996). The Supreme Court has extended the right to petition to all departments of government. Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972).

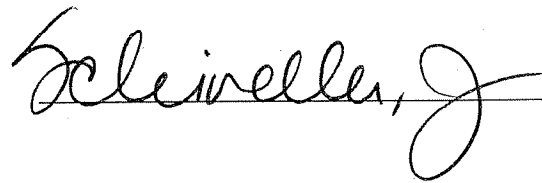
California Transport . . . clearly establishes that the submission of complaints and criticisms to nonlegislative and nonjudicial public agencies like a police department constitutes petitioning activity protected by the petition clause.

Gable v. Lewis, 201 F.3d 769, 771 (6th Cir. 2000).

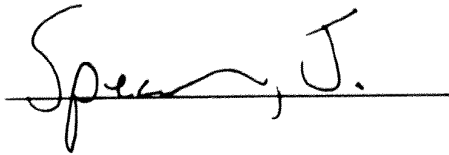
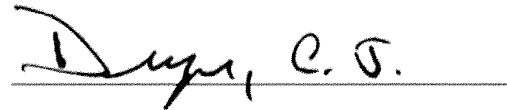
Here, the record does not support the determination that it is reasonably necessary to prohibit Wyant from contacting commissioned officers of the Lynnwood Police Department except for “a public safety or health emergency.” There is no evidence that commissioned officers of the Lynnwood Police Department were victims

or witnesses, or that Wyant had contact with any commissioned officer of the Lynnwood Police Department that would justify imposition of a no-contact order.

Because the condition prohibiting Wyant from contacting commissioned officers of the Lynnwood Police Department is not crime-related and improperly infringes on Wyant's constitutional right to petition government, we reverse the condition to the extent that it prohibits contact with commissioned officers of the Lynnwood Police Department, and remand for resentencing.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Spear, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dyer, C. S.", written over a horizontal line.