

IN CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

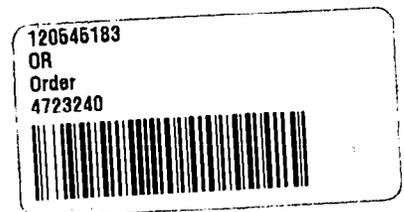
STATE OF OREGON;)	Case No. 120545183
Plaintiff,)	
)	ORDER & OPINION DENYING
v.)	PETITION TO SET ASIDE
SHIRLEY RAE HARMS)	CONVICTION
Defendant.)	

FILED
 APR 15 2016
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 JUDICIAL DISTRICT
 MULTNOMAH COUNTY
 CIRCUIT COURT

Defendant moves this court to set aside her September 25th, 2012 conviction of Animal Neglect in the Second Degree pursuant to ORS 137.225. At sentencing, defendant was placed on 12 months of bench probation, required to complete 32 hours of community service, and prohibited from possessing any domesticated animal for five years. The sentence also required defendant to transfer ownership of her cat to the Oregon Humane Society (OHS), consent to the search of her home by the OHS, and to pay OHS \$440 of restitution. Defendant does not have any subsequent criminal convictions, charges, or arrests.

Defendant contends she is eligible to have her conviction set aside and the records sealed pursuant to ORS 137.225. The state contends the five year prohibition on possessing domestic animals, pursuant to ORS 167.332, is a part of the sentence and,

Opinion and Order Denying Petition to Set Aside Conviction



therefore, the court may not set aside the conviction until five years have passed since the conviction in this case.

ORS 137.225 permits a defendant to petition the court to set aside a judgment after “the lapse of three years from the date of pronouncement of judgment” if the defendant has “fully complied with and performed the sentence of the court.” ORS 137.225 (1)(a) (2015). “If the court determines that the circumstances and behavior of the applicant from the date of conviction *** to the date of the hearing on the motion warrant setting aside the conviction *** the court shall enter an appropriate order ***. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, and the court shall issue an order sealing the record of conviction and other official records in the case ***.” ORS 137.225(3).

If the Defendant meets the above statutory requirements, ORS 137.225(3) does not give trial courts “broad discretion to deny requests to set aside convictions but, instead, requires the trial court to examine whether the applicant has behaved in conformity with or contrary to public law.” *State v. Larson*, 268 Or App 802, 807, 344 P3d 59, 61-62 (2015) (quoting *Coughlin*, 258 Or App 882, 889, 311 P3d 988, 991) (internal citations and quotations omitted). Not every “deviation from socially approved conduct will be disqualifying under subsection (3); rather, the applicant's behavior must be some form of legal, not merely social, impropriety.” *Larson*, 268 Or App at 807 (quoting *State v. Langan*, 301 Or 1, 9, 718 P2d 719, 724 (1986)). The court may only consider the

defendant's "circumstances and behavior *after* the conviction that he or she seeks to have set aside." *Larson*, 268 Or App at 808 (emphasis in original).

With this framework, the court must first address whether the defendant meets the statutory requirements of ORS 137.225. If the defendant meets these requirements, the court must next examine the defendant's 'circumstances and behavior' since the conviction demonstrating the court should not set aside the conviction.

At its crux, therefore, this case requires this court to determine whether the legislative prohibition on animal ownership prescribed by ORS 167.332 is part of the "sentence of the court." That is a question of statutory interpretation governed by *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610–12, 859 P2d 1143 (1993), as modified by *State v. Gaines*, 346 Or 160, 171–73, 206 P3d 1042 (2009), focusing on the text, context, and history of the statute at issue.

Neither the statute, nor the Oregon constitution defines the word "sentence." The ordinary meaning of the term, however, suggests that it broadly applies to the imposition or punishment for a crime or some other offense. *State v. Lane*, 357 Or 619, 625-26, 355 P3d 914 (2015); *Wright v. Turner*, 354 Or 815, 827, 322 P3d 476 (2014) (undefined terms are assumed to have ordinary meanings). A sentence may be composed of many aspects, including but not limited to incarceration, probation, or some other limitation on liberty. The imposition of financial obligation can also constitute a sentence. *State v. Gwyther*, 57 Or App 34, 37-38, 643 P2d 1296 (1982).

The text of ORS 167.332 states that the prohibition is required “[i]n addition to any other penalty * * *.” It seems clear therefore that the Legislature envisioned the prohibition to be one penalty, among others, imposed on an individual convicted. A violation of this condition is a class C misdemeanor pursuant to ORS 167.332: (1)(a) “In addition to any other penalty imposed by law, a person convicted of violating *** ORS 167.325 [a]nimal neglect in the second degree *** may not possess a domestic animal*** for a period of five years following entry of the conviction.”

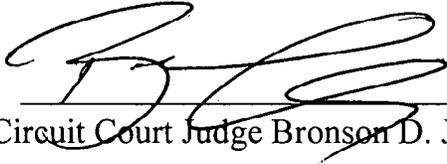
Finally, it is worth noting the context of other statutes concerning misdemeanor penalties. ORS 137.010(4) governs the maximum probationary periods for misdemeanors and felonies. It sets the maximum probationary period for all misdemeanors as 5 years, tellingly the same time period chosen by the Legislature for the prohibition on owning animals.

Therefore, based on the text and context of ORS 167.332, this court concludes that the prohibition is part of the sentence in this case.

ORS 137.225 permits the court to set aside a judgment only if the defendant has ‘fully’ complied with and performed the sentence of the court. As the prohibition on possession of domesticated animals is for a period of five years, defendant has not yet fully complied with the sentence of the court. As the first issue here is dispositive, the court need not consider whether the defendant’s ‘circumstances and behavior’ since the conviction would otherwise permit or require the court to set aside the conviction.

The petition is denied.

IT IS SO ORDERED this 15 day of April, 2016.



Circuit Court Judge Bronson D. James