

1 IN THE MUNICIPAL COURT FOR THE CITY OF ISSAQUAH
2 COUNTY OF KING, STATE OF WASHINGTON

3 THE CITY OF NORTH BEND,)

) No. Y123426A

4 Plaintiff,)

) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER

5 vs.)

6 JOSEPH BRADSHAW,)

7 Defendant)
8)

9
10 I. FINDINGS OF FACT

11 On October 15, 2013, in North Bend, Washington, Deputy
12 Toner found Joseph Bradshaw sleeping at approximately 0756 hours
13 in a sleeping bag under the east side of the "Poor House
14 Bridge." Mr. Bradshaw had various belongings around him
15 including prescription bottles, shoes and food.
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17 Mr. Bradshaw was charged with camping in violation of the
18 City of North Bend Municipal Code 9.60.030.

19 There are resources available to homeless persons in the
20 City of North Bend. These include an operating shelter during
21 the winter months, as well as a number of other resources which
22 are located either near or within the city limits, or elsewhere
23 on the eastside of King County. These resources are, however,
24 limited. Furthermore, the evidence does not establish which, if
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1 any, of these resources would have been available to Mr.
2 Bradshaw on the date of his arrest.

3 II. CONCLUSIONS OF LAW

4 A law is presumed constitutional. *State v. Pauling*, 149
5 Wn.2d 381, 386 (2003). The presumption in favor of a law's
6 constitutionality should only be overcome in exceptional cases."
7 *City of Seattle v. Eze*, 111 Wn.2d 22, 28 (1988). The burden of
8 establishing the invalidity of an ordinance rests heavily upon
9 the party challenging the constitutionality. *City of Seattle v.*
10 *Webster*, 115 Wn.2d 635, 645 (1990). "Every presumption will be
11 in favor of constitutionality." *Id.*

12
13
14 The North Bend Municipal Code, chapter 9.60.030, prohibits
15 camping as follows:

16 It is unlawful for any person to engage in camping in any
17 park or other publicly owned property, or on any
18 sidewalk, street, alley, lane, public right-of-way, or
19 under any bridge or viaduct, or in any other public place
20 to which the general public has access.

Chapter 9.60.010 defines camping as follows:

21 A. "Camping" means the use of park land or other
22 publicly owned property for living accommodation
23 purposes including but not limited to any of the
24 following:

- 24 1. Sleeping activities;
- 25 2. Making preparations to sleep;

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1 3. Laying down of bedding for the purposes of
2 sleeping;

3 4. Storing personal belongings;

4 5. Erecting any tent, tarpaulin, shelter, or
5 other structure that would permit one to sleep
6 overnight;

7 6. Using a motor vehicle, motor home and/or
8 trailer as those terms are defined by
9 Chapter 46.04 RCW for the purposes of sleeping;

10 7. Knowingly causing a fire including
11 campfires, cooking fires, bonfires or other open
12 flames.

13 B. Notwithstanding subsection A of this section,
14 "camping" shall not include sleeping in a public
15 park during the daylight hours as long as no tent,
16 tarpaulin, shelter, or other structure has been
17 erected, shall not include starting a fire in a
18 city designated fire pit in any developed park and
19 shall not include activities approved through a
20 special events permit.

21 The camping ordinance was enacted out of a concern that
22 people were using publicly owned property for living
23 accommodations, which created risks to both the health and
24 safety of the land, as well as the people who may visit the area
25 and/or access the area. The record supports these findings, and
26 the court must, therefore, accept them. To that end, the court
is bound to construe the ordinance as constitutional if it can
be done "without doing violence to important rights." City of
Seattle v. McConahy, 86 Wash.App. 557, 564, 937 P.2d 1133 (1997)

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1 See also, *Duckworth v. City of Bonney Lake*, 91 Wash.2d 19, 26-
2 27, 586 P.2d 860 (1978). The ordinance was enacted in response
3 to a legitimate legislative health and safety concern. Article
4 XI, § 11 permits a municipality to enact such an ordinance. *City*
5 *of Seattle v. McConahy*, 86 Wash.App. at 564. *Baker v. Snohomish*
6 *County Dep't of Planning & Community Dev.*, 68 Wash.App. 581,
7 585, 841 P.2d 1321 (1992), review denied, 121 Wash.2d 1027, 854
8 P.2d 1085 (1993).

9
10 A. The Right to Travel

11
12 In *Seattle v. McConahy*, the defendant, Sarah McConahy, was
13 cited under the "Seattle sitting ordinance," SMC 15.48.040, for
14 sitting on the sidewalk in the University District. She
15 challenged the ordinance on several state constitutional
16 grounds, including contending that the ordinance violated her
17 right to travel. With regard to this contention, the *McConahy*
18 court noted that

19
20 ***The right to travel, including the right to travel***
21 ***within a state, is a fundamental right subject to strict***
22 ***scrutiny under the United States Constitution.*** *Kent v.*
23 *Dulles*, 357 U.S. 116, 78 S.Ct. 1113, 2 L.Ed.2d 1204
24 (1958). A law violates the right to travel if it
25 penalizes migration from state to state, or makes it
impossible to move about within a state. *Memorial Hosp.*
v. Maricopa County, 415 U.S. 250, 259, 94 S.Ct. 1076,
1082-83, 39 L.Ed.2d 306 (1974). [Emphasis supplied.]

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1 *Seattle v. McConahy*, 86 Wn.App. at 571.

2 The McConahy court further noted that

3 Sweeping ordinances prohibiting eating, sleeping,
4 sitting, or lying down in public **may also be so broad**
5 **that they violate the right to travel if they make it**
6 **impossible for homeless persons to live within the city.**
7 See *Pottinger v. City of Miami*, 810 F.Supp. 1551
(S.D.Fla.1992). [Emphasis supplied]

8 *Seattle v. McConahy*, 86 Wn.App. at 571.

9 The *Seattle v. McConahy* court concluded that the Seattle
10 sitting ordinance did not implicate the right to travel. This
11 was because unlike

12 the ordinance in *Pottinger*, it [did] not exact a
13 penalty for moving within the state or prohibit homeless
14 persons from living on the streets of Seattle. Nor [did]
15 it make it more difficult for people to migrate from
16 state to state. Instead, the ordinance **restricts sitting**
17 **or lying down during certain hours in some places to**
18 **benches or parks which are out of pedestrian traffic and**
19 **not in the path to retail areas.** McConahy [could] still
20 travel around Seattle to access services and rest on
21 benches or in parks. [Emphasis supplied]

22 *Seattle v. McConahy*, 86 Wn.App. at 571.

23 The right to travel is a fundamental right guaranteed by
24 the United States Constitution. Applying the rationale set
25 forth in *Seattle v. McConahy*, an ordinance which restricts the
26 ability of a person to engage in sleeping activities and/or make
27 preparations to sleep in any park or other publicly owned
28 property, or on any sidewalk, street, alley, lane, public right-

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1 of-way, or under any bridge or viaduct, or in any other public
2 place to which the general public has access is so broad that it
3 violates the right to travel in that it makes it impossible for
4 homeless persons to live within the city.

5
6 The City argues that the provision in Chapter 9.60.010(B)
7 allowing persons to sleep in public parks during daylight hours
8 is sufficient to satisfy the fundamental right to travel. This
9 reliance ignores the fact that human beings are not nocturnal by
10 nature. Furthermore, Chapter 9.60.010(B) is clearly meant to
11 ensure that citizens enjoying public parks are able to fall
12 asleep during daylight hours if they choose to do so.

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14 Applying *Seattle v. McConahy*, the court finds that North
15 Bend Municipal Code Chapter 9.60.010 (A) (1) and (2), which apply
16 to "any publicly owned property" under 9.60.030, is so broad as
17 to violate the fundamental right to travel under the United
18 States Constitution.

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20 Finally, the court concludes that the right to protect
21 oneself from the elements is implicit in the right of a homeless
22 person to be able to sleep. To that end, the Court reads North
23 Bend Municipal Code Chapter 9.60.010 (A) (3) as permitting
24 reasonable measures to ensure that a person is able to protect
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1 himself or herself from the elements, while prohibiting the
2 laying down of any bed, mattress, or the like.

3 B. Equal Protection
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5 "Equal protection requires that those individuals similarly
6 situated are treated alike." *City of Cleburn v. Cleburn Living*
7 *Center*, 473 U.S. 432, 439 (1985). The defense asserts that the
8 code provisions are not equally applied and prosecution of the
9 statute has been selective. The record does not support these
10 assertions.
11

12 A. Cruel and Unusual Punishment
13

14 The defense asserts that the code provisions make the
15 status of being homeless a criminal offense and that this is
16 cruel and unusual punishment.
17

18 A state cannot punish a person for his or her status.
19 *Robinson v. State of California*, 370 U.S. 660, 82 S. Ct. 1417, 8
20 L. Ed. 2d 758 (1962). In *Robinson*, the court struck down a
21 California law that criminalized people for being addicted to
22 narcotics. The *Robinson* court held that punishing people based
23 upon their status as a narcotics addict was cruel and unusual
24 punishment in violation of the 14th Amendment of the
25 Constitution.

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1 Significantly, until *Robinson*, all Eighth Amendment
2 decisions addressed whether the method of punishment was cruel
3 and unusual, or whether a punishment was too excessive in light
4 of the nature of the crime, so as to make the severity of the
5 sentence cruel and unusual. *Robinson* placed substantive limits
6 on who or what the government can criminalize.¹

7
8 In *Jones v. City of Los Angeles*, 444 F.3d 1118, 1120
9 (2006), the court addressed whether a City of Los Angeles law
10 criminalizing sitting, lying or sleeping on public streets and
11 sidewalks at all times and in all places within Los Angeles city
12 limits violated the 8th Amendment prohibition on cruel and
13 unusual punishment. The *Jones* court noted that that the City

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15 could not expressly criminalize the status of
16 homelessness by making it a crime to be homeless
17 without violating the Eighth Amendment, nor can it
18 criminalize acts that are an integral aspect of that
19 status. Because there is substantial and undisputed
20 evidence that the number of homeless persons in Los
21 Angeles far exceeds the number of available shelter
22 beds at all times, including on the nights of their
arrest or citation, Los Angeles has encroached upon
Appellants' Eighth Amendment protections by
criminalizing the unavoidable act of sitting, lying,
or sleeping at night while being involuntarily
homeless.

23 ¹ Following the *Robinson*, the Court invalidated a Texas law criminalizing
24 homosexual acts through anti-sodomy laws under *Lawrence v. Texas*, 539 U.S.
25 558 (2003), and upheld a law criminalizing public drunkenness under *Powell v.*
26 *Texas*, 392 U.S. 514, 517 (1968).

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1 Jones v. City of Los Angeles, 444 F.3d 1118(2006).

2 The Jones court further noted that

3 the involuntariness of the act or condition the City
4 criminalizes is the critical factor delineating a
5 constitutionally cognizable status, and incidental
6 conduct which is integral to and an unavoidable result
of that status, from acts or conditions that can be
criminalized consistent with the Eighth Amendment.

7 * * * *

8 Accordingly, in determining whether the state may
9 punish a particular involuntary act or condition, we
10 are guided by Justice White's admonition that "[t]he
11 proper subject of inquiry is whether volitional acts
12 brought about the 'condition' and whether those acts
13 are sufficiently proximate to the 'condition' for it
14 to be permissible to impose penal sanctions on the
15 'condition.'" Powell, 392 U.S. at 550 n. 2, 88 S.Ct.
2145 (White, J., concurring in the judgment); see also
16 Bowers v. Hardwick, 478 U.S. 186, 202 n. 2, 106 S.Ct.
2841, 92 L.Ed.2d 140 (1986) (Blackmun, J., dissenting)
17 (quoting and endorsing this statement in discussing
18 whether the Eighth Amendment limits the state's
19 ability to criminalize homosexual acts) The Robinson
20 and Powell decisions, read together, **compel us to
21 conclude that enforcement of section 41.18(d) at all
22 times and in all places against homeless individuals
23 who are sitting, lying, or sleeping in Los Angeles's
24 Skid Row because they cannot obtain shelter violates
the Cruel and Unusual Punishment Clause.** As homeless
individuals, Appellants are in a chronic state that
may have been acquired "innocently or involuntarily."
Robinson, 370 U.S. at 667, 82 S.Ct. 1417. **Whether
sitting, lying, and sleeping are defined as acts or
conditions, they are universal and unavoidable
consequences of being human. It is undisputed that,
for homeless individuals in Skid Row who have no
access to private spaces, these acts can only be done
in public.** [Emphasis supplied.]

25 Jones v. City of Los Angeles, 444 F.3d 1118(2006).

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1 The City of North Bend argues that Mr. Bradshaw's case is
2 distinguishable from *Jones* because the Los Angeles law made it
3 illegal for people to sit, lie, or sleep in or upon any street,
4 sidewalk, or public way at all times. The City argues that the
5 North Bend ordinance "only restricts the act of 'camping,'
6 defined as using a park or other public owned property for
7 living accommodation and not including sleeping in a public park
8 during daylight hours." City's Supplemental Response (*Jones v.*
9 *City of Los Angeles*), pages 2-3. The City further argues that
10 "camping" is not defined as "involuntary sitting, lying or
11 sleeping," but rather as "using park land or public owned
12 property for living accommodation purposes including laying down
13 bedding for purposes of sleeping, making preparations to sleep,
14 sleeping activities, storing belongings, etc." City's
15 Supplemental Response (*Jones v. City of Los Angeles*), page 3.
16 The City emphasizes that the code "permits sleeping in a public
17 park during daylight hours so long as no structure has been
18 erected to do so. City's Supplemental Response (*Jones v. City*
19 *of Los Angeles*), page 3.
20
21

22 Applying the *Jones*, a code provision which criminalizes
23 sleeping activities, a universal and unavoidable consequences of
24 being human, and/or making preparations to sleep, in any park or
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1 other publicly owned property, or on any sidewalk, street,
2 alley, lane, public right-of-way, or under any bridge or
3 viaduct, or in any other public place to which the general
4 public, where no reasonable options are available for
5 alternative shelter, violates the cruel and unusual clause of
6 the United States Constitution.

7
8 The City argues that the provision in Chapter 9.60.010(B)
9 allowing persons to sleep in public parks during daylight hours
10 allows homeless persons a sufficient opportunity to engage in
11 sleeping activities. This reliance ignores the fact that human
12 beings are not nocturnal by nature. Furthermore, Chapter
13 9.60.010(B) is clearly meant to ensure that citizens enjoying
14 public parks are able to fall asleep during daylight hours if
15 they choose to do so. As such, the court finds that the
16 definitions set forth in North Bend Municipal Code Chapter
17 9.60.010 (A) (1) and (2), which apply to any public property
18 under 9.60.030, violate the cruel and unusual clause of the
19 United States Constitution.
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22 Again, the court further concludes that the right to
23 protect oneself from the elements is implicit in the right of a
24 homeless person to be able to sleep. To that end, the Court
25 reads North Bend Municipal Code Chapter 9.60.010 (A) (3) as

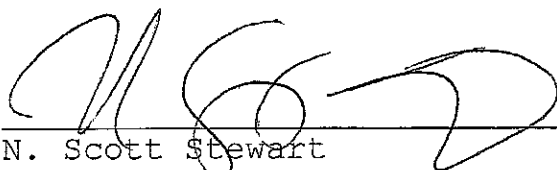
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1 permitting reasonable measures to ensure that a person is able
2 to protect himself or herself from the elements, while
3 prohibiting the laying down of any bed, mattress, or the like.

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III. CONCLUSION

For the foregoing reasons the court finds that North Bend
Municipal Code 9.60.010(1) and (2) are violate the fundamental
right to travel and cruel and unusual punishment clauses of the
Constitution in that, when read with 9.60.030 they prohibit
engaging in sleeping activities and making preparations to sleep
on **any** public property.

Signed this 13th day of January.



N. Scott Stewart
Issaquah Municipal Court

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