

# CONVICTIONS

- **Count 3**
- **Count 4**
- **Count 10**
- **Count 13**
- **Count 17**
- **Count 18**
- **Count 19**
- **Count 24**
- **Count 26**

# MAGOO

- **Counts 3 and 4 involve the same act concerning Magoo.**
- **Therefore, Mr. Mercado will only be sentenced for Count 4.**

# MOLLY

- **Counts 10 and 13 involve the same act concerning Molly.**
- **Therefore, Mr. Mercado will only be sentenced for Count 13.**

# KOKO

- **Counts 17, 18, 19, 24, and 26 involve the same act concerning Koko.**
- **Therefore, Mr. Mercado will only be sentenced for Count 19.**

# THE COUNTS FOR SENTENCING

- **COUNT 4 - VIOLATION OF OWNERS DUTIES - 510 ILCS 70/3(a)**
- **COUNT 13 – ANIMAL CRUELTY - 510 ILCS 70/3.01(a)**
- **COUNT 19 - ANIMAL CRUELTY - 510 ILCS 70/3.01(a)**

# COUNT 4 - MAGOO

- **COUNT 4 - VIOLATION OF OWNERS DUTIES - 510 ILCS 70/3(a)**
- **Class B Misdemeanor**
- **Punishable by up to six months imprisonment.**
- **Two years of Probation, Conditional Discharge or Supervision.**
- **Fine up to \$1,500**

# COUNT 13 - MOLLY

- **COUNT 13 – ANIMAL CRUELTY - 510 ILCS 70/3.01(a)**
- **Class A Misdemeanor**
- **Punishable by a term of imprisonment less than one year.**
- **Two years of Probation, Conditional Discharge or Supervision.**
- **Fine up to \$2,500**
- **Court Supervision is NOT available for this offense per 730 ILCS 5/5-6-1 (C)**

# COUNT 19 - KOKO

- **COUNT 19 – ANIMAL CRUELTY - 510 ILCS 70/3.01(a)**
- **Class A Misdemeanor**
- **Punishable by a term of imprisonment less than one year.**
- **Two years of Probation, Conditional Discharge or Supervision.**
- **Fine up to \$2,500**
- **Court Supervision is NOT available for this offense per 730 ILCS 5/5-6-1 (c)**

# EVIDENTIARY CONCLUSIONS - Part 1

- **Mr. Mercado did not start the fire.**
- **The fire did not start as a result of negligence by Mr. Mercado.**
- **Mr. Mercado did not violate any laws or licensing requirements that contributed to the fire outbreak.**
- **Mr. Mercado did not intend for any of the dogs to be injured fatally or otherwise, by the fire.**

## EVIDENTIARY CONCLUSIONS - Part 2

- **Mr. Mercado's stacking of the cages did not explicitly violate any laws or licensing requirements.**
- **Mr. Mercado had no emergency plan for the dogs in the event of an unforeseen crisis.**
- **That there is not any evidence that the fire would have been prevented, or that canine casualties and injuries would have been fewer, had Mr. Mercado secured the dogs in individual, unstacked crates of proper size, material and spacing.**

# SENTENCING OPTIONS

## COUNTS 13 and 19

- **Two years of Probation, Conditional Discharge combined with a maximum of 180 days in jail.**

**OR**

- **Straight conviction combined with a maximum of 364 days jail.**

**AND**

- **Fine up to 2,500.**

# SENTENCING OPTIONS

## COUNT 4

- **Two years of Probation, Conditional Discharge and a maximum of 180 days in jail.**

**OR**

- **Court Supervision**

**OR**

- **Straight Conviction combined with a maximum of 180 days jail**

**AND**

- **Fine up to \$1,500**

# WHAT IS THE GOAL OF SENTENCING?

- The Goal **COULD** include:
  - To punish Mr. Mercado
  - To deter others from engaging in similar conduct
  - To protect the public and animals from Mr. Mercado
  - To rehabilitate Mr. Mercado
  - To seek retribution

# PROHIBITING OWNERSHIP

- (Animal Cruelty) The court, additionally, may order that the convicted person and persons dwelling in the same household as the convicted person who conspired, aided, or abetted in the unlawful act that was the basis of the conviction, or who knew or should have known of the unlawful act, may not own, harbor, or have custody or control of any other animals for **a period of time that the court deems reasonable.**

510 Ill. Comp. Stat. Ann. 70/3.04

# WHAT IS A REASONABLE PERIOD OF TIME?

- A Georgia court upheld a probation condition that the defendant, who was convicted of eight counts of animal cruelty, “shall not own, possess, or care for any animal during the term of his sentence.” The reviewing court rejected the defendant's argument that the condition was unreasonable because it would prevent him from operating his pet grooming business, noting that the condition **did not exceed the length of the probation sentence** and served the rehabilitative purpose of making clear that animal abuse results in the loss of any privilege to handle or keep them.
- [Morgan v. State, 285 Ga.App. 254 \(2007\).](#)

# PROBATION REQUIREMENT

- **Multiple terms of probation imposed at the same time shall run concurrently.**

**730 Ill. Comp. Stat. Ann. 5/5-6-2**

# CONSECUTIVE PROBATION

- In section 5–6–2(b), the Code directs that multiple terms of probation imposed at the same time run concurrently.
- This section, however, only applies to multiple terms of probation imposed at the same time, not to a term of probation imposed consecutively to a sentence of imprisonment.
- Had the legislature wanted to prohibit consecutive sentences of probation in all other cases, it could have easily done so in this section.

People v. Wendt, 163 Ill. 2d 346, 353, 645 N.E.2d 179, 183 (1994)

## PROBATION AS A SENTENCE

- Therefore, if Mr. Mercado were to receive a term of Probation for Count 4, Count 13, and Count 19, that sentence of Probation would be required by law to run concurrently.
- Under this scenario the Mr. Mercado would be free from any Court restrictions in 24 months.

## CONSECUTIVE SENTENCING

- People v. Wendt, was instructive in stating that Probation CAN be served consecutive to another sentence, just not consecutive to another sentence of probation imposed at the same time.

# CONSECUTIVE SENTENCING

- In addition, 730 Ill. Comp. Stat. Ann. 5/5-4.5-55 controls sentences for Misdemeanors.
- Section(g) states:

CONCURRENT OR CONSECUTIVE SENTENCE. The sentence shall be concurrent or consecutive as provided in Section 5-8-4 (730 ILCS 5/5-8-4).

# MISDEMEANOR CONSECUTIVE SENTENCING

- **Per 730 Ill. Comp. Stat. Ann. 5/5-8-4**
- **(c) Consecutive terms; permissive. The court may impose consecutive sentences in any of the following circumstances:**
  - **(1) If, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record.**

# SENTENCING TRANSCRIPT PAGE 38

So if Mr. Mercado were to receive a term of probation for Counts 4, 13, and 19, that sentence of probation would be required by law to run concurrently. Under this scenario, Mr. Mercado would be free from any court restrictions in 24 months, so if I do that in two years he can go back to dog training, can go back to having 56 animals in a building, and there is really not much the court's can do about it.

# SENTENCING TRANSCRIPT PAGE 38

730 ILCS 5/5-4.5-55 controls sentences for misdemeanors, and Section G states, The sentence shall be concurrent or consecutive as provided in 5-8-4. Well, 5-8-4 states that I can make the sentences consecutive if having regard to the nature and circumstances of the offense and the history and character of the defendant it is the opinion of the Court that consecutive sentences required to protect the public from further criminal conduct by the defendant. The basis for which the Court shall set forth in the record.

# SENTENCING TRANSCRIPT PAGE 51

For Count 19, it's two years of probation. It's going to be 20 days jail because there have to be some repercussions. You can't have a dog in your care and control that is emaciated, that is starving to death, and not bring him to the veterinarian. And there is a repercussion for you, and there is a repercussion for other kennel owners and, frankly, any animal owner that it's their legal responsibility.

# SENTENCING TRANSCRIPT PAGE 52

So, again, 20 days jail. Other than one companion dog, you are not to possess or -- any other animals or engage in dog training.

Now, Count 13 is two years of conditional discharge to be served consecutive to Count 19.

Count 4 is two years of conditional discharge to be served consecutively to Count 19 and 13.

# SENTENCING TRANSCRIPT PAGE 52

Frankly, that means that you are on court restrictions for six years, two years for the probation. When you're done with that, there is two years of conditional discharge. When you're through with that, there is another two years of conditional discharge, so for six years you are to have no other dogs except for the one companion animal, and you're not to engage in dog training or possess any other animals, other than the one companion dog.

# FUTURE LAW EFFECTIVE JAN.1, 2022

- (d) In addition to any other penalty, the court may order that a person and persons dwelling in the same household may not own, harbor, or have custody or control of any other animal if the person has been convicted of 2 or more of the following offenses:
  - (1) a violation of Section 3.02 of this Act; (Aggravated Cruelty)
  - (2) a violation of Section 4.01 of this Act; (Animals in Entertainment)
  - (3) a violation of Section 48-1 of the Criminal Code of 2012. (Dog Fighting)

510 Ill. Comp. Stat. Ann. 70/3.04

- **The legislature could have but did NOT prohibit dog ownership for violations of 510 ILCS 70/3.01(a) or 510 ILCS 70/3(a)**

# NEW LAWS FOR KENNELS

- **As a results of this case, Governor Pritzker signed a new law into effect as of January 1, 2020.**
- **A kennel operator that maintains dogs or cats for boarding and that is not staffed at all times that dogs or cats are on the premises shall be equipped with at least one fire alarm system or fire sprinkler system in operating condition in every building of the kennel operator that is used for the housing of animals.**

**225 Ill. Comp. Stat. Ann. 605/18.2**

# Case Comparison 1

- Andrew Hunigan, a former Off Leash K-9 dog trainer charged with aggravated animal cruelty, pleaded guilty in Tennessee. Hunigan was charged in connection with the **death of a 9-month-old miniature bull terrier** named Dallas. Judge Rice described pictures of the dog presented by the prosecution as showing Dallas malnourished
- The judge sentenced Hunigan to **one year of probation**, a \$25 fine plus court costs.
- <https://wcyb.com/news/local/former-off-leash-k-9-dog-trainer-pleads-guilty-to-animal-cruelty-sentenced-to-probation>

# Case Comparison 2

- Jessica Spangler pleaded guilty to **four counts of aggravated cruelty to animals**. She was the owner of a Petland which was closed after 41 animals were found dead inside and 56 animals still living.
- She was sentenced to **30 months of probation**. She also can't have contact/own companion animals, she must obtain a mental health and psychological evaluation within 30 days and complete recommended treatment, pay a \$5,000 fine, pay \$1,995 in restitution and serve **120 days of home confinement**.
- <https://week.com/2019/08/05/macomb-pet-store-owner-sentenced-to-probation-for-animal-cruelty/>

# Case Comparison 3

- A Florida judge ordered David Yates to serve **a year probation on animal cruelty charges** and pay the local humane society for its care of 26 dogs found in a wire crate on a dirt road. the Humane Society said the dogs were “lethargic, dehydrated and terrified” without food or water
- The Judge ordered Yates serve probation on each count concurrently and pay \$1000 restitution to the Humane Society.
- <https://www.tcpalm.com/story/news/crime/indian-river-county/2021/09/28/st-lucie-man-convicted-26-animal-cruelty-charges-year-probation-pay-indian-river-humane-society/5898711001>

# Case Comparison 4

- A dog was found chained to a tree in a yard. A volunteer took the dog and delivered the animal to a Veterinary Hospital. The dog scored the lowest score on the emaciated scale used to describe a canine's health.
- The dog was euthanized the following day after it was determined it could not recover from its poor condition, according to the warrant.
- The Tennessee judge sentenced the defendant to **two years on supervised probation** (maximum);
- —**150 hours of community service with an animal shelter or humane society**;
- —**Banned from having animals for four years**;
- —Restitution for vet care of the dog (included in the guilty plea) when documented
- <https://news.yahoo.com/two-years-probation-animal-cruelty-001600910.html>

# Case Comparison 5

- A former veterinarian in Williamson County, Illinois was sentenced in court to **two years of probation after being found guilty of multiple counts of animal cruelty.**
- Elisa Kirkpatrick was charged with one felony count of aggravated animal cruelty, five misdemeanor counts of practicing veterinary medicine without a license, and six misdemeanor counts of animal cruelty.
- Prosecutors in the case brought in expert vets, who claim some of the dogs were malnourished, had open wounds and were surrounded by other dead animals – a breeding ground for bacteria, fleshing eating bugs and other pathogens.
- According to the sheriff's office, deputies did a welfare check at the home and through the windows they saw the home was full of caged dogs, cats and other animals. The floors were covered in several inches of feces and the home had no power for the past two weeks.
- <https://www.kfvs12.com/story/29411238/former-williamson-co-il-veterinarian-given-2-years-probation-for-animal-cruelty/>

# Case Comparison 6

- Cara Welty pleaded guilty to **three felony counts of cruelty to companion animals**. The defendant had allowed three dogs in her care to starve to death
- The defendant received **two years of probation** at her sentencing and cannot own any pets.

• <https://www.mansfieldnewsjournal.com/story/news/2021/10/04/former-bellville-resident-welty-allowed-three-dogs-starve/5985181001/>

# Case Comparison 7

- A Tennessee dog trainer was sentenced to **a year's probation after pleading guilty to aggravated animal abuse** in the starvation death of an animal in his care.
- In court, the defendant apologized to the owners of the 8-month-old bull terrier named Dallas, saying he never intended to injure the dog and didn't notice it was in medical distress. The necropsy report from the University of Tennessee's veterinary school said Dallas died from starvation and dehydration.

- <https://www.usnews.com/news/best-states/tennessee/articles/2021-07-10/dog-trainer-given-1-year-of-probation-after-dog-starved>

# TRIAL TAX

- The term “Trial Tax” refers to a defendant receiving a harsher penalty for going to trial and losing after rejecting a plea bargain.

- People v. Gordon, 2016 IL App (1st) 134004, ¶ 78, 56 N.E.3d 467, 488

# TRIAL TAX 2

- A trial court may not punish a defendant for exercising his right to a trial.”
- However, it must be “clearly evident” that a harsher sentence resulted from a defendant's demand for a trial.
- “This evidence can come when a trial court makes explicit remarks concerning the harsher sentence, or where the actual sentence is outrageously higher than the one offered during plea negotiations.
- Nevertheless, “the mere fact that the defendant was given a greater sentence than that offered during plea bargaining does not, in and of itself, support an inference that the greater sentence was imposed as a punishment for demanding trial.
- “In determining whether it is clearly evident that a harsher sentence resulted from a defendant's demand for a trial, the appellate court considers the record as a whole instead of focusing on isolated statements made by the trial court.”
- People v. Musgrave, 2019 IL App (4th) 170106, ¶ 69, 141 N.E.3d 320, 337