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| File No: 17906-1 | | | |
| Registry: Western Communities | | | |
| In the Provincial Court of British Columbia | | | |
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| REGINA  v.  JOSEPH JANSEN WHITE  ELIZABETH SANDEE JOHNSTON | | | |
| ORAL REASONS FOR SENTENCE  (RE ACCUSED WHITE)  OF  THE HONOURABLE JUDGE L. MROZINSKI  COPY | | | |
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| Crown Counsel: | | R. Pica | |
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| Defence Counsel: | | M. Munro | |
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| Place of Hearing: | | Colwood, B.C. | |
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| Date of Judgment: | | October 28, 2015 | |

1. THE COURT: Mr. White, you are here today for a sentencing following your trial in this matter in which you were found guilty of the charges of causing unnecessary pain or suffering or injury to an animal, contrary to s. 445.1 of the *Criminal Code*, and of failing to provide suitable care for an animal, contrary to s. 446(1)(*b)* of the *Code*.
2. At the conclusion of your trial, I found that you had come home late in the afternoon on April 1, 2014 after having had a difficult day. You found the family dog, Bryn, lying on your couch. I found that in anger you struck at the dog, and it may well have nipped you. I found also that the dog then ran in one direction toward the bedroom of the home, and you went in the opposite direction down a set of stairs and there grabbed a metal baseball bat from a closet area. You then used that bat to harry Bryn from room to room until finally, as she lay in her bed in the living room, you struck the bat in her direction at least 10 times, hitting Bryn four or five times.
3. As an indication of the force used, the Crown produced photographs showing several large gashes in the drywall behind Bryn's bed area. You also testified that while weighing about 200 pounds at the time, you applied as much force to each bat swing as you could.
4. The assault on Bryn was violent and, I find, entirely unjustified. It caused terrible injuries. At trial it was established that the blows from the baseball bat caused, among other things, Bryn's skull to split open. The vet noted, at the time that she was treated, that bare bone was visible, and that is certainly apparent in the photographs. Bryn suffered other injuries, which included a fractured right leg as well as some nerve and neurological damage.
5. You then made matters much worse by leaving Bryn stranded on her bed, essentially unable to move, eat or drink, lying in her own urine for about 24 hours before you finally carried her to your car and took her to the vet for care.
6. I found at trial, based on all the evidence, that Bryn would have been in obvious medical distress for that 24-hour period, yet you did neglect to get her medical care largely, I found, because you could not fix on a ready solution in the circumstances.
7. Fortunately for Bryn, after receiving medical care, she was discharged and ultimately placed in a home. The cost of Bryn's care was not in evidence during the trial, though it is clear it would have been significant.
8. In such cases as this where the Crown has proceeded summarily, a conviction under s. 445.1 of the *Criminal Code* provides for a sentence of up to 18 months, a fine of up to $10,000, or both. It is of note that this sentence provision is an increase that has been instituted of late by Parliament. That increase was referenced in the decision of my brother Judge Quantz in *R. v. Connors*, 2011 BCPC 24. There he quoted from the reasons of the Ontario Court of Justice in *R. v. Munroe*, [2010] O.J. No. 2579, at paragraph 35, wherein the court noted that these changes in the legislation gave effect to widespread concerns that the *Criminal Code* provisions had fallen drastically out of step with current social values regarding harm caused to animals. The changes clearly reflect the seriousness that Parliament attributes to this offence.
9. A conviction under s. 446(1)*(b)* of the *Code* in which the Crown has proceeded summarily carries with it a maximum sentence of six months or a fine not exceeding $5,000 or both.
10. In addition, pursuant to s. 447.1 of the *Code*, the court may make an order prohibiting the accused from owning or having the custody or control or residing in the same premises as an animal or a bird during any period that the court considers appropriate in the case of a first-time offender.
11. Although not often used, s. 447.1*(b)* does allow the court, on application of the Attorney General or on its own motion, to order that the accused pay to a person or an organization that is taking care of an animal as a result of the commission of the offence the reasonable costs that the person or organization incurred in respect of the animal if the costs are readily ascertainable.
12. In this case, though, the Crown made mention of the possibility of a restitution order. I do not have sufficient evidence to make such an order, though you must understand your actions resulted in not just the suffering of the dog that you profess even at this sentencing to love; it upset a community of persons who love and care for animals and it resulted in costs which would be significant but are not likely ever to be recovered.
13. Mr. White, you are now 42 years of age and the father of two preschool-aged children. I understand you are separated from their mother, Ms. Sandee Johnston, and that you are engaged in various family law proceedings as well as being involved with the Director for Children and Families regarding access to your children.
14. At the time of these offences you were present in the home that you shared with Ms. Johnston and present also was your stepson, Ms. Johnston's child Dayton.
15. Apart from your current family law matters, you are familiar to the courts, having a long and somewhat unrelenting criminal record which begins in your youth and continues on and off. Some of your offences are serious such as your conviction for armed robbery. Your record also includes two domestic violence or “K-files” in which you were convicted of assault in one instance and uttering threats in another. There are also a number of breaches on these domestic files.
16. In support of this sentencing, I have been provided with a presentence report that was prepared for a prior sentencing, as well as a psychological report that was prepared for that previous sentence and one which has been updated for the purposes of this sentencing. As the presentence report indicates, you do not share many of the antecedents, I will say, of persons who frequent our courts. For example, your upbringing looks to have been somewhat privileged even though your parents separated. You described some learning challenges, but there is nothing in your family history, that I can see, in any event, that would account for your criminal behaviour.
17. Your counsel advises that much of your criminal offending can be attributed to your cocaine addiction. I note, however, that in regard to these offences, there is no suggestion - in fact, you deny any suggestion - that drugs were involved. This is a case of anger, frustration, inability to control your actions and, really, an unjustifiable, inexcusable, intentional lashing out at a defenceless animal.
18. Two psychiatric reports were prepared, and in both you underwent various testing to address, among other things, risk assessment. The first report prepared in April of 2015 concluded, subject to further information, that you were at a moderate risk to reoffend. The second, prepared by the same report writer, found you to be at a high risk to reoffend, and that was done in August of 2015. The differences between those two reports are accounted for at page 5 of the first report and page 8 of the second. Effectively, having retested you with the additional information concerning the attack on Bryn, the test results concluded that you met most and in some cases all of the risk markers of the various tests, while in the first testing you often met fewer of the risk markers.
19. The report filed in August 2015 describes you as impulsive and apparently unable to restrain violent behaviour and threats of violence. I found that to be an accurate description given the facts as I found them at trial and the facts outlined in regard to the charges that formed the basis of that April report that you threatened various persons simply because you were not getting your way.
20. You are described as lacking insight into the severity of your behaviour and the impact on your victims. To that, which description I entirely agree with, I would add that you do appear, to me, at least, on this sentencing, to feel largely sorry for yourself. Your regret in this case, which you did profess at the end of the sentencing submissions, was for the way that you were painted by the community as some sort of monster rather than someone who loves his dog and just acted badly that day when you struck Bryn repeatedly with the bat.
21. In my view, your comments amply demonstrate your lack of insight into the harm and suffering you caused, in the presence of your stepson, no less.
22. In the normal course of sentencing, the courts do and must consider the impact of the offences on the victim. The victim in this case, Bryn, of course, cannot speak for herself. I think it evident that she suffered terribly as a result of this incident and that such an attack would have a lingering effect on an animal. There are many who would speak for the victim, and I will address the views of the community later in these reasons.
23. The Crown in this case seeks a sentence, as you know, somewhere in the range of six months or more. That is based on both the changes to the *Criminal Code* that I have already alluded to and to the case authorities that I will discuss momentarily. Mr. Munro, on your behalf, seeks a sentence in the range of 90 days, or three months. It bears noting that as you have served the equivalent of 90 days in custody, such a sentence would result in your release today. I must note for the benefit of those members of the public here today that are interested in this case that that is as it should be. If I were to find that the appropriate sentence was 90 days, it would be equally appropriate, and the law demands, that I credit you Mr. White with time served, whatever the outcome.
24. However, with the greatest of respect for your counsel, I have concluded that three months, or 90 days, is not a proper sentence in this case, and I will now explain my reasons for that.
25. I want to begin with a brief review of the cases produced by the Crown, in particular the reasons of Judge Quantz in *R. v. Connors* which I have already referred to. *Connors* is relied on both by the Crown and by your counsel. In *Conners*, the accused, a young man with no criminal record, pled guilty to causing unnecessary pain and suffering to a three-month-old pit bull. The facts at sentencing indicate that the accused had consumed so much alcohol on the day that he attacked the dog that he had no recollection of the incident. It was also stated during that sentencing that a consequence of suffering what seems to have been a serious lack of self-esteem, the accused used steroids and engaged in excessive bodybuilding.
26. In *Connors*, then, there is some sense that the offender's moral culpability was lessened to a limited extent, though only minimally, as the court states at paragraph 50. Though the Crown sought a sentence in *Connors* of three to four months, Judge Quantz imposed a sentence of six months.
27. Finally, in *Connors*, unlike this case, the accused's early guilty plea was a mitigating factor. The aggravating circumstances were described at paragraph 21 of that decision as including the extreme brutality of the offence and the callous disregard the offender showed for the health and well-being of the dog, the somewhat protracted nature of the violence and suffering, and the fact that the offender continued the attack even after he was provided with an opportunity to pause and reflect.
28. Other cases provided include *R. v. Mercredi*, which is unreported in the Kamloops Registry, Nos. 91477, 91846-2-C, and 91722-1, dated February 8th of 2011, and *R. v. Stich*, also unreported, Kamloops Registry 91934-3-KC, dated September the 1st of 2011. These are two decisions of Judge Donegan (as she then was) in which each of the accused pled guilty to charges of, among other things, causing pain and injury to an animal.
29. In *Stich*, the accused choked and kicked his girlfriend's cat in a fit of anger and jealously. The cat later died but not because of those incidents.
30. In *Mercredi*, also in a fit of anger, the accused killed the family's pet cat. Mr. Mercredi was a significant drug user with other mental health issues. His level of moral culpability was also lessened to an extent by his First Nations heritage which played a role in the sentencing in accordance with the *Gladue* decision of the Supreme Court of Canada. In quoting extensively from Judge Quantz's reasons in *Connors*, Judge Donegan notes at paragraph 54 that animal cruelty cases are deserving of punishment. It is conduct, to quote Judge Quantz, that most members of our society find repugnant and morally reprehensible.
31. Other cases by the Crown speak to conditional sentence orders, and it is agreed that that is not a consideration before me. At a minimum, I would adopt the reasoning of Judge Quantz in *Connors* to the effect that in this case, as in *Connors*, a conditional sentence order would simply not meet the purposes and principles of sentencing.
32. The *Criminal Code* sets out the purpose and principles of sentencing at ss. 718 and 718.2. It provides that the purpose of sentencing essentially with other crime prevention initiatives is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society, and that is accomplished by imposing just sanctions that have a number of objectives. Those objectives are tailored to the nature of the offence and to the nature of the offender. In this case, there is no dispute that the sentencing objectives that are paramount are the objectives of denunciation and specific and general deterrence. The objectives of denunciation and general deterrence are, it seems to me, obvious in such cases.
33. Sentencing in these cases - and there are far too many of them in my view - must communicate society's revulsion at instances of cruelty to animals. That is particularly so in the cases of domestic animals which generally live in our homes and are at our mercy, are often vulnerable to attack in private with no hope of assistance. General deterrence, too, it seems to me, is obvious.
34. I find in this case that specific deterrence is also a significant objective of sentencing because of your lack of insight and your inability, as near as I can tell, to empathize with the harm that you caused the dog.
35. In this case, the issue on sentencing is not whether there will be a custodial sentence but the length of that sentence. I have outlined the difference in the approach between your submissions and those of the Crown. The length of sentence can be adjusted up or down by taking into account mitigating and aggravating factors. In this case, the Crown submits there are a number of aggravating factors including the extreme violence of this assault; the somewhat protracted nature of the attack as you chased Bryn from room to room; the fact that when Bryn hid under your bed, you could simply have closed the door to the bedroom but instead aggressively harried her to the living room where you beat her almost literally senseless with a bat.
36. Other aggravating factors include your long and violent criminal record, the fact that you are at a high risk to reoffend, and the fact that you offended in this instance while out on bail.
37. There are in this sentencing, I find, no mitigating factors.
38. Bearing these considerations in mind, I find, firstly, that a sentence of three months would not communicate the sentencing objectives that are so critical in this case. You and others who might be minded from time to time to take out their anger and frustration on a defenceless animal must know that the courts will not tolerate such conduct and will discourage it as strongly as possible.
39. In this case, the sentencing objectives of denunciation and specific and general deterrence are powerful. Your rehabilitation, given your record and lack of insight and the comments in the psychological report regarding your proclivity to manipulate, places your rehabilitation at a distant fourth place.
40. The maximum sentence for the offence of inflicting unnecessary cruelty on an animal is 18 months. Your actions did not result in the death of Bryn, but you caused her considerable pain and suffering for a lengthy period of time. Your actions in violently attacking Bryn were purposeful. You deliberately chose not to contain your anger. You deliberately took your frustrations out on her. Your level of moral culpability in that regard is, I find, high.
41. I find it less high on Count 2 in that I found that you were neglectful in caring for Bryn and knowingly allowed her to suffer for 24 hours.
42. Though you did not cause Bryn's death, that is not, in my view, a sufficient basis in these circumstances to distinguish *Connors* and to reduce the sentence by half. I find that the least restrictive sentence in this case that would meet the purpose and principles of sentencing is a sentence that accords with that imposed in the *Connors* decision. Though you did not cause her death, your actions did lead to great suffering for a prolonged period for Bryn.
43. In the circumstances, I find that a six-month sentence is the minimally appropriate sanction in this case.
44. At this point, sir, I will ask you to stand.
45. With respect, Madam Clerk, to Information 17906, on Count 1, I sentence you to six months in custody. With respect to Count 2 of Information 17906, I sentence you to two months in custody to be served concurrently with the sentence on Count 1. For the purposes of the sentencing record, I am reducing that or adjusting that to days. My sentence, therefore, on Count 1 is 180 days. You are, I understand, entitled to credit for time served at the rate of 90 days. That 90-day period must come off Count 1, which is, as I say, 180 days, and that leaves you 90 days to serve on this sentence.
46. In addition, pursuant to s. 447.1(1)*(a)* of the *Criminal Code*, I hereby prohibit you from owning, having the custody or control of, or residing in the same premises as an animal or a bird for a period of 10 years from the date of your release from custody.
47. In addition, upon the date of your release from custody, you will be subject to a probation order for a period of 12 months. The conditions of the probation order are as follows: that you keep the peace and be of good behaviour; attend at court if and when required to do so by the court; that you not change your name, address, employment, or occupation during the period of probation without first notifying the court or the probation officer.
48. You will report to the probation office nearest your place of release within 48 hours of your release, in person, and thereafter as directed by the probation officer and in the manner directed by the probation officer.
49. In addition to those, you will also advise the probation office of your residential address and telephone number and not change those without first notifying the probation office.
50. There is a no-contact order, and that is with Ms. Elizabeth Sandee Johnson, Dayton Johnson and David Johnson. You are to have no direct or indirect contact with Dayton or David Johnson and no direct contact with Ms. Johnson. You may have indirect contact with Ms. Johnson, however, through legal counsel for the purposes of any family law proceedings.
51. In addition, I order that you must take counselling as assessed and directed by your probation officer and you must complete such counselling to the satisfaction of your probation officer, such counselling to include, at a minimum, anger management counselling.
52. You are prohibited from possessing any weapons as those are defined in s. 2 of the *Criminal Code*.
53. There is also a victim impact surcharge. It is $100 per count. That is $200, and that is payable within 60 days of your release from custody. Of course, if you are unable to pay, no warrant of committal will issue unless the government is satisfied that you can pay and simply refuse to pay.

(REASONS CONCLUDED)