

Action No.: 130626005P1, 140099458P1

E-File No.: ECP15PUNDICKR

Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

RICHARD PUNDICK

Accused

P R O C E E D I N G S

Edmonton, Alberta
September 18, 2014
May 11, 2015
June 10, 2015

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

TABLE OF CONTENTS

Description		Page
September 18, 2014	Morning Session	1
Plea		2
Election		3
Particulars		3
Certificate of Record		8
Certificate of Transcript		9
May 11, 2015	Morning Session	10
Discussion		10
Particulars		13
Discussion		14
Particulars		18
Submissions by Mr. Lim (Sentence)		19
Submissions by Mr. Isshak (Sentence)		29
Submissions by Mr. Lim (Sentence)		32
Submissions by Mr. Isshak (Sentence)		34
Discussion		34
Certificate of Record		38
Certificate of Transcript		39
June 10, 2015	Afternoon Session	40
Sentence		40
Certificate of Record		53
Certificate of Transcript		54

EXHIBITS

No.	Description	Page
S-1	Criminal Record of Richard Pundick	6
S-2	Collection of Letters and Certificates	19
S-3	Presentence Report	19

1 Proceedings taken in the Provincial Court of Alberta, Law Courts, Edmonton, Alberta

2 _____
3 September 18, 2014 Morning Session
4
5 The Honourable Provincial Court
6 Judge Day of Alberta
7
8 C. Lim For the Crown
9 G. Isshak For the Accused
10 B. Busenius Court Clerk
11 _____

12
13 MR. LIM: Your Honour, C. Lim for the Crown. I'm
14 going to be appearing on two matters today before this Court. First of all, the matter that
15 I'll be appearing before -- I have a matter with Mr. Isshak, and that's the Pundick matter.
16 That will be a resolution today. Perhaps if you will allow me, I just want to confirm with
17 madam clerk whether or not the guilty pleas have been entered. I don't believe they have.

18
19 THE COURT CLERK: They're not.

20
21 MR. LIM: That's what I thought. So that's -- Mr. Isshak
22 is in Leduc and is driving apparently here. There's also another matter with Mr. Morin
23 that I have, the matter of Delorme. There's two matters. I understand Mr. Morin is
24 getting new dates, so I just thought I'd let you know what's going on in those matters, but
25 I do anticipate Pundick will be resolved today, although I understand that my friend wants
26 a presentence report, so I --

27
28 THE COURT: Okay.

29
30 MR. LIM: He thinks for some reason that a guilty plea has
31 been entered. My recollection and my notes say that it hasn't.

32
33 THE COURT: Okay.

34
35 MR. LIM: So we can just stand both matters down at this
36 point.

37
38 THE COURT: Thank you.

39
40 (OTHER MATTERS SPOKEN TO)

41

- 1 MR. LIM: If it's appropriate, Your Honour, can we deal
2 with the matter of Pundick, which --
3
- 4 MR. ISSHAK: Good morning, Sir.
5
- 6 MR. LIM: -- is on page 5?
7
- 8 THE COURT: Good morning.
9
- 10 MR. ISSHAK: I apologize for being late. Mr. Pundick, come
11 forward, please.
12
- 13 MR. LIM: Your Honour, you have two Informations
14 before this Honourable Court. First of all, with respect to the file ending in 458 -- that's
15 458.
16
- 17 THE COURT CLERK: Give me a second, please. Okay.
18
- 19 MR. LIM: 458 we have numerous breaches, Your
20 Honour. We're dealing with counts 1 and 5.
21
- 22 **Plea**
23
- 24 MR. ISSHAK: Guilty pleas to both those counts, Sir.
25
- 26 MR. LIM: And the Crown will have application later on
27 with respect to the other charges.
28
- 29 THE COURT: Thank you.
30
- 31 MR. LIM: There's a one-count Information, Your Honour,
32 in respect to file ending in 6005. That's a charge of animal cruelty, Your Honour. First
33 of all, I notice that the -- I mentioned this to my friend the last date. The wording is
34 correct, but the actual section number should read -- and I'll try to read this slowly -- is
35 445, then in brackets (1), subsection -- sorry, 445.1, in brackets (1), subsection (a). That
36 would be the actual correct section number for that.
37
- 38 MR. ISSHAK: No objection, Sir.
39
- 40 THE COURT: Thank you.
41

1 MR. ISSHAK: And there'll be a guilty plea to that count.

2

3 **Election**

4

5 MR. ISSHAK: And if there is an election, it's provincial court
6 judge.

7

8 THE COURT: Thank you.

9

10 MR. LIM: And, Your Honour, it's my understanding that
11 with respect to these charges that we don't have a joint submission, that my friend will be
12 seeking a --

13

14 MR. ISSHAK: Presentence report, Sir.

15

16 MR. LIM: -- presentence report, which we will consent to,
17 Your Honour.

18

19 THE COURT: Okay.

20

21 **Particulars**

22

23 MR. LIM: Your Honour, first of all, in respect to -- in
24 respect to the charge of 445(1), subsection (a) of the *Criminal Code*, animal cruelty, the
25 Crown is alleging the following: On May the 31st, 2013, in the city of Edmonton in the
26 province of Alberta, about 1:00 witnesses contacted the member of the Edmonton Police
27 Service that the accused, one Richard Pundick, an individual they knew as being a
28 neighbour, was described in an extremely intoxicated state with blood all over him after
29 dragging his known cat behind him with a too-tight walking harness, according to the
30 witnesses. The accused was described by witnesses as grossly intoxicated while trying to
31 walk his known pet cat. The cat was in what is described as a walking harness and leash,
32 and the accused was trying to walk it. The harness is described in particular by one
33 witness as, quote, way too tight and hurting the cat obviously to them as the cat (sic)
34 dragged the cat behind him with the harness about 40 feet in front of the building. He
35 then was seen dragging the cat in the harness behind him to the back of the building,
36 which was another 40 feet approximately.

37

38 The accused had then dragged the cat through the parking lot, Sir, to the rear of the
39 building where the police then found -- later found the cat. The cat was described by the
40 Edmonton Police Service officers as helpless and that it didn't appear to be able to do
41 anything as it couldn't really stand up or walk on its own as it was -- after it had been

1 dragged. The cat seemed to be, quote, in distress as he was being pulled by the accused,
2 according to the civilian witnesses.

3

4 The accused, who was located with blood on him and some small puncture wounds
5 claimed the cat attacked him. Witnesses noted that the cat was found laying on the
6 sidewalk against the wall with breathing that was described as very rapid. It had blood on
7 its fur. The eyes were -- eyes were very large and dilated, and he was described as being,
8 quote, in shock, scared, timid, distressed as -- sorry, as described by civilian witnesses.

9

10 Police, in trying to deal with the cat, said the cat appeared to be dead weight. They noted
11 that the cat was extremely upset and scared and that they decided that they should not
12 handle the cat, in fact, because the cat was described, when they tried to pick it up or
13 come close to it, as hiding and sort of crawling away as though it was scared.

14

15 Your Honour, it is -- it's noted that a neighbour familiar with the cat had to step into the
16 situation. He finally -- she finally managed to pick up the cat and offered even to adopt it
17 as she was concerned about its health. The Edmonton Police Service and the civilian
18 witnesses noted that the cat appeared to be in distress and was bleeding particularly from
19 its, quote, digital and metacarpal pads on the feets (sic) as well as the rear feet had
20 abrasions and fresh blood. Several witnesses from the real estate agency nearby as well
21 as the accused's accommodation rental office employees where he was living witnessed
22 the cat being dragged and bleeding from its paws.

23

24 Dr. Karen Lange, a veterinarian with the Edmonton Humane Society at the time, was
25 contacted to look at the animal and provide some care with respect to the injuries. She
26 noted that the animal was -- would -- from the injuries was in distress, bleeding from its
27 paws, needed treatment and would have trouble walking, which we verified was for about
28 a month, and that it was, quote, in extreme distress from being dragged, injured and left in
29 shock. The cat was described as under ten pounds, and neighbours from the real estate
30 company and rental agency never saw any signs of aggressions from that cat before.

31

32 Those are the allegations, Your Honour.

33

34 MR. ISSHAK: Is there -- do you have any facts on what --
35 what ended up happening to the cat?

36

37 MR. LIM: Your Honour, the cat received medication for
38 about three weeks, it's my understanding, from the -- Dr. Lange in respect to medical care
39 and cleansing so that in order to -- because the area under the -- under the -- the paws,
40 sorry, the four paws of the animal are very sensitive, so the cat really couldn't walk that
41 well for quite some time until it was able to build up enough from the healing, and then it

1 was able to walk. It apparently was able to walk. It took some time. Like it was
2 walking gingerly, I understand, up -- the first two weeks. Then it started to do much
3 better after about four or five weeks in respect to healing.

4
5 MR. ISSHAK: So the cat made a full recovery; is that correct?

6
7 MR. LIM: Yes, that's my understanding, Your Honour.

8
9 MR. ISSHAK: Those facts are admitted, Your Honour.

10
11 THE COURT: Thank you.

12
13 MR. LIM: Your Honour, in respect to the second
14 Information, Your Honour, this is the file ending in 458, and I'm reminding the Court that
15 we're dealing with counts 1 and 5, Your Honour. The allegations are as follows: The
16 accused, Richard Pundick, as this Court knows from the original substantive charge, that
17 being the May 31st, incident, 2013, Your Honour, that Mr. Pundick was charged in
18 respect to the unnecessary pain and suffering to the cat. He was released on a
19 recognizance order, Your Honour, which included the following conditions: That he shall
20 refrain from the purchase, possession, use or consumption of alcohol, that he shall not
21 attend or enter any licenced premise of which the primary business is alcohol or the sale
22 of alcohol.

23
24 On January 24th, 2007, (sic) about 10:30 in the morning, the accused was noted to leave
25 the Edmonton Provincial Court in respect to dealing with the substantive charge. While
26 attending the location for court matters, Mr. Pundick was then observed to be intoxicated
27 to a point that his matter had to be postponed to a later date. Police then followed him
28 for several blocks until approximately 11:10 in the morning, where he was noted to enter
29 a Tops liquor store located on Whyte Avenue, Sir. He was then observed entering the
30 store and exiting after he purchased an alcoholic beverage labelled as, quote, Crooked Tea
31 Ice Tea, which was a -- about a 355-millilitre bottle, 5 1/2 percent alcohol. He then
32 proceeded to consume the alcohol and discard it nearby. About three minutes later at
33 11:15 roughly, Your Honour, Mr. Pundick then entered Blues on Whyte Avenue liquor
34 store without making any purchase. He then exited the store. At 11:30 approximately,
35 Sir, he then attended again the Tops liquor store and this time purchased a bottle of
36 Brights 74 Sherry liquor, which was 750 millilitres, 20 percent alcohol with respect to that
37 bottle, Your Honour, and exited the store. At approximately 12:00, he then returned to
38 that store on Whyte Avenue -- or, sorry, returned to another liquor store down the street,
39 another Tops liquor store, where he then attended the store, which sold liquor, exited the
40 store and walked to the southwest corner of 109th Street and Whyte Avenue. He was
41 observed by police consuming some sherry -- some of the sherry that he'd recently

1 purchased, Your Honour. At that point the police spoke with the accused. It was noted
2 there was smell of liquor on breath. He was arrested at that point with respect to the
3 breaches, Your Honour.

4
5 MR. ISSHAK: Facts are admitted, Sir.

6
7 THE COURT: Thank you.

8
9 MR. LIM: Your Honour, the Crown is alleging a criminal
10 record. I'll ask my friend to verify that.

11
12 MR. ISSHAK: Record's admitted, Sir.

13
14 THE COURT: Thank you. Be marked S-1, please.

15
16 **EXHIBIT S-1 - Criminal Record of Richard Pundick**

17
18 THE COURT: Go ahead. Do you want a presentence report?

19
20 MR. ISSHAK: Sir, yes. I think it would assist the Court in
21 sentencing this individual. He is in some sort of -- some jeopardy, but there's been some
22 significant changes in his life since this incident.

23
24 THE COURT: Okay. I order a presentence report, madam
25 clerk.

26
27 MR. ISSHAK: And the suggested returnable date, Sir, is --

28
29 MR. LIM: November 28th, Your Honour, 2014, at 9:30
30 before yourself, Sir.

31
32 THE COURT: Did you happen to check to see if I'm around
33 then?

34
35 MR. ISSHAK: Of course.

36
37 MR. LIM: I think you're in 446 it sounds like.

38
39 MR. ISSHAK: Yes, Sir. Definitely that was our first priority
40 is to find out where you were.

41

1 THE COURT:

Good.

2

3 MR. LIM:

I think you're in this courtroom actually, which

4 is why they probably said 9:30 --

5

6 THE COURT:

Okay.

7

8 MR. LIM:

-- is my guess 'cause they said they have you

9 assigned, and usually we'd have 002 at 9:00, but I notice it is 9:30, so --

10

11 THE COURT:

All right.

12

13 MR. ISSHAK:

Very well, then, Sir. We'll see you on the -- or

14 earlier than that.

15

16 THE COURT:

Thank you.

17

18 MR. ISSHAK:

Thank you, Your Honour.

19

20 MR. LIM:

Thank you, Your Honour. Those are my

21 matters, if I may be excused.

22

23 THE COURT:

Yes. Thank you.

24

25

26 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, NOVEMBER 28, 2014

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 Certificate of Record

2

3 I, Barbara Busenius, certify that this recording is the record made of evidence in
4 proceedings in Provincial Court held in courtroom 446 at Edmonton, Alberta, on the 18th
5 day of September, 2014, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2

3 I, Shawn Hurd, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

Digitally Certified: 2015-10-16 11:18:17
Shawn Hurd,
Order No. 57459-15-1

35 Pages: 11
36 Lines: 413
37 Characters: 11498

38

39 File Locator: 977ac30a742411e583eb0017a4770810
40 Digital Fingerprint: 5c750d0fa99b6991df9b7494aa6f7a4c32d924ef8a3576288b40f21fa88ae6c7

41

1 Proceedings taken in the Provincial Court of Alberta, Law Courts, Edmonton, Alberta

2 _____
3 May 11, 2015 Morning Session
4
5 The Honourable Provincial Court
6 Judge Day of Alberta
7
8 C. Lim For the Crown
9 G. Isshak For the Accused
10 E. Bodnarek Court Clerk
11 _____

12
13 **Discussion**

14
15 THE COURT: Good morning.

16
17 MR. LIM: Good morning, Your Honour. For the record,
18 it's Christian Lim, Lim for the provincial Crown prosecutors' office. I appear on the
19 matter of Richard Pundick. Surname is Pundick. That's for sentencing. Mr. Isshak has
20 checked in, and I've seen Mr. Pundick. This is before you, Sir, as you may know.
21 Perhaps I'll just say -- I guess I should ask if we can stand that down until you deal with
22 the list.

23
24 THE COURT: We'll stand down for a few minutes.

25
26 MR. LIM: Is it all right, Sir, if I step out of the courtroom
27 for a few minutes, then?

28
29 THE COURT: Yes. Thank you.

30
31 MR. LIM: Thank you, Sir.

32
33 (OTHER MATTERS SPOKEN TO)

34
35 MR. ISSHAK: Good morning, Sir. I apologize for the
36 inconvenience. This is Mr. Pundick. We're finally prepared to deal with his matter.

37
38 THE COURT: Thank you.

39
40 MR. LIM: Your Honour, this matter is for sentencing. I
41 can tell this Court I've checked with Madam Clerk. There are apparently victim impact

1 statements. With this Court's permission, I'm asking that we open the victim impact
2 statements, and my friend and I can review them for their appropriateness.
3
4 THE COURT: Yes. Thank you.
5
6 THE COURT CLERK: There are two, Sir.
7
8 MR. LIM: May I approach madam clerk, Your Honour?
9
10 THE COURT: Yes. Thanks.
11
12 MR. LIM: Thank you, Sir.
13
14 MR. ISSHAK: Sir, given the -- the length of the delay in this
15 matter was there transcripts of the facts, sir? Obviously you (INDISCERNIBLE).
16
17 THE COURT: I don't have a transcript, and I'm going to ask
18 Mr. Lim to recap --
19
20 MR. ISSHAK: Okay.
21
22 THE COURT: -- the facts. I do have a presentence report.
23
24 MR. LIM: I believe this is the right one.
25
26 MR. ISSHAK: This is -- no, this is not the right one.
27
28 MR. LIM: I don't know who this is.
29
30 MR. ISSHAK: The accused is Whitney (phonetic) Jackson.
31
32 MR. LIM: Yeah.
33
34 MR. ISSHAK: There are no victim impact statements, Sir.
35
36 THE COURT CLERK: There is another one.
37
38 MR. ISSHAK: Oh.
39
40 MR. LIM: I understand there's two.
41

1 MR. ISSHAK: This is the accused Richard Pundick.
2
3 THE COURT CLERK: Yes.
4
5 MR. ISSHAK: Okay.
6
7 MR. LIM: 'Cause that's --
8
9 MR. ISSHAK: Is that the same one?
10
11 MR. LIM: There should be one from Dr. Karen Lange, I'm
12 told, as well. She filed it.
13
14 MR. ISSHAK: This is a police officer.
15
16 MR. LIM: Yes.
17
18 MR. ISSHAK: How is he a victim?
19
20 MR. LIM: No, but they are speaking on behalf of the child
21 is my understanding.
22
23 THE COURT: I think, counsel, you should have this chat out
24 of my presence --
25
26 MR. ISSHAK: Okay. Let's go.
27
28 THE COURT: -- if you have some difference of opinion about
29 whether the Court should see a victim impact statement. I know I'm hard of hearing, but
30 I could actually hear you two.
31
32 MR. ISSHAK: Okay. Sorry, Sir. Sorry.
33
34 THE COURT: Do you want to take a minute and --
35
36 MR. ISSHAK: We'll just step outside.
37
38 THE COURT: Yeah. I'll just step --
39
40 MR. ISSHAK: There's just the one, right?
41

1 MR. LIM: Well, I'm told that there's another one.
2

3 THE COURT CLERK: There's only one attached.
4

5 MR. LIM: Perhaps madam clerk could check 'cause I was
6 told from Dr. Lange that she filed one.
7

8 THE COURT CLERK: Sure.
9

10 MR. LIM: Thank you.
11

12 MR. ISSHAK: Thank you. Sorry, Sir.
13

14 THE COURT: Right. I'll just step outside.
15

16 THE COURT CLERK: Order in court. All rise.
17

18 (ADJOURNMENT)
19

20 THE COURT CLERK: Order in court. All rise. Court is reconvened.
21 You may be seated.
22

23 MR. LIM: Your Honour, we -- we have resolved that
24 situation in respect to the victim impact statements.
25

26 THE COURT: Thank you.
27

28 MR. LIM: By way of consent, there will be no victim
29 impact statements, Your Honour, but we will be dealing with the -- some additional facts.
30

31 THE COURT: Thank you.
32

33 MR. LIM: All right? This Honourable Court has asked me
34 to summarize the facts for the case; is that correct?
35

36 THE COURT: Yes, please.
37

38 **Particulars**
39

40 MR. LIM: Your Honour, if it pleases the Court, I will
41 summarize the case but remind you, of course, the actual facts that are on record have

1 been obviously dealt with previously, and then I will then clarify what are agreed as
2 additional facts. So, first of all, I will do a summary, which is my summary. It's not the
3 facts that -- of course, that you already have.

4
5 THE COURT: Thank you.

6
7 MR. LIM: So, first of all, Your Honour, in respect to the
8 unnecessary pain, suffering and/or injury to an animal charge, and we have some other
9 charges as well, Sir. The Crown is alleging in Edmonton, Alberta -- this is just a
10 summary, Sir -- on May 31st, 2013, about 1:00 in the afternoon around 88th Avenue and
11 91st Street in front of a real estate agency and where the accused was living, Your
12 Honour -- it's a residence/business -- the police attended this scene to see the accused
13 extremely intoxicated as defined by the civilian witnesses and the police officers, and he
14 was also -- had some cuts as well, Your Honour, and bleeding. The allegations are, Your
15 Honour, that several civilian witnesses, some familiar with the accused because they
16 worked in the real estate agency beside or below the -- where the accused lived or I guess
17 above where -- or at least around where the accused lived, noted that they saw the
18 accused dragging a cat, a domestic cat, Your Honour, 40 feet in front of the building. He
19 then dragged the cat into the parking lot through -- beside the building, Your Honour, and
20 the back another 40 feet, Your Honour. The cat was found lying on the sidewalk against
21 the wall breathing extremely rapidly, had blood on the fur, had extremely large eyes,
22 appeared to be in distress, Your Honour, was dead weight. When the police tried to -- to
23 inspect it, the police thought it was scared. The witnesses thought the leash was too tight
24 as he was pulling the animal for -- the cat for 80 feet, Your Honour. Those are the
25 general allegations with respect to that.

26
27 **Discussion**

28
29 MR. ISSHAK: Mr. Pundick, did you just hear what the Crown
30 prosecutor said? Do you -- do you agree what he said is true and accurate?

31
32 THE ACCUSED: No.

33
34 MR. ISSHAK: Okay. Well, we have that problem.

35
36 MR. LIM: Well, Your Honour, he already agreed to the
37 facts the last day is my understanding I thought.

38
39 MR. ISSHAK: He did, but I don't know if they're the same set
40 of facts that you read in last time.

41

1 MR. LIM: I'm just giving a summary here today, and I
2 said that very clearly.

3
4 MR. ISSHAK: Your Honour, I -- I'm sorry for all the -- the
5 delay, Sir, but I think if we're going to do this properly, let's order a transcript of the --
6 of the guilty plea on the date it was entered when Mr. Pundick admitted those facts.

7
8 THE COURT: Can I see the information, please, madam clerk?

9
10 MR. ISSHAK: It's my information I don't remember you
11 reading in twice that he was dragged 80 feet.

12
13 THE COURT: Okay.

14
15 MR. ISSHAK: Sir, I was just going to enter those as exhibits.
16 Those are his AADAC visits and letters.

17
18 THE COURT: His guilty plea was entered September 18th,
19 2014, and then adjourned a couple of times. There's a second information regarding a
20 number of breaches, a six-count information. Counts 1 and 5, guilty pleas were entered in
21 that same September date, 1 and 5 being not to attend a licenced premise and to refrain
22 from purchase, possession or alcohol.

23
24 I -- I took brief notes last day, and given the fact Mr. Pundick takes issue with the
25 summary of evidence referenced by Mr. Lim this morning, the best way to deal with that
26 difference is, of course, to get the transcript. He entered a guilty plea. He can't resile
27 from the facts he acknowledged last day.

28
29 MR. ISSHAK: Right.

30
31 THE COURT: But to get a transcript means an adjournment's
32 necessary, unless one of you two can come up with a better alternative.

33
34 MR. LIM: I don't think the Court can -- I don't think
35 madam clerk can pull up the --

36
37 MR. ISSHAK: Not this quick.

38
39 MR. LIM: Yeah.

40
41 THE COURT CLERK: I might be able to.

1
2 MR. ISSHAK: Yeah?
3
4 THE COURT CLERK: Yeah.
5
6 MR. ISSHAK: Oh.
7
8 THE COURT CLERK: I can give it a shot.
9
10 MR. ISSHAK: Modern technology. Do you have the witness
11 statements with you? Maybe -- 'cause I think that's where you had your
12 (INDISCERNIBLE).
13
14 THE COURT: If madam mlerk can -- sorry. Go ahead,
15 madam clerk. You might, Mr. Isshak, while my clerk is looking for that, very privately --
16 in fact, you may want to take your client outside, get it clear in your mind today what
17 he --
18
19 MR. ISSHAK: What happened, yeah.
20
21 THE COURT: -- believes he's taking issue with so that as you
22 listen --
23
24 MR. ISSHAK: Yes, Sir.
25
26 THE COURT: -- as you and he listen, you in particular have
27 the benefit of hearing the facts as recited last day --
28
29 MR. ISSHAK: Right.
30
31 THE COURT: -- then I think you'll be in a better position to
32 address his concern this morning.
33
34 MR. ISSHAK: Very well, Sir. Okay. We'll step outside.
35
36 THE COURT: Go ahead and just step outside and get that
37 clarity. In the meantime, I'll have a look at --
38
39 MR. ISSHAK: Yes, sir. Thank you.
40
41 THE COURT: Mr. Lim, these are documents you've seen I

1 assume?

2

3 MR. LIM:

Yes.

4

5 THE COURT:

Thank you.

6

7 MR. LIM:

That's fine, Sir.

8

9 THE COURT:

We can adjourn, Madam Clerk. I'm going to

10 sit here, but --

11

12 THE COURT CLERK:

Sure.

13

14 THE COURT:

-- you don't need to keep your recording

15 running.

16

17 THE COURT CLERK:

Sure. Off the record.

18

19 (DISCUSSION OFF RECORD)

20

21 MR. ISSHAK:

Okay. Sir, we've -- we've reviewed everything,

22 even on a map actually of his apartment, and we're prepared to listen.

23

24 THE COURT CLERK:

And I do have the recording.

25

26 THE COURT:

Were you able to find it?

27

28 THE COURT CLERK:

I was.

29

30 MR. ISSHAK:

Listen very carefully to this, okay?

31

32 (FTR PLAYBACK - SEPTEMBER 18, 2014, COURTROOM 446, 10:55:30)

33

34 THE COURT:

Thank you, madam clerk. Thank you.

35

36 MR. ISSHAK:

So let's just go, and you're going to read in the

37 police statement?

38

39 MR. LIM:

Just read that, yeah.

40

41 MR. ISSHAK:

But I think wasn't that already in the facts?

1 Okay. Go ahead. That's fine.

2

3 **Particulars**

4

5 MR. LIM: Your Honour, the only addition I have for the
6 facts that we've agreed on is -- remember we've just resolved the victim impact statement
7 situation -- is the following from the officer -- the investigating officer Jennifer Kroetsch.
8 That's K-R-O-E-T-S-H -- S-C-H, sorry, Your Honour, K-R-O-E-T-S-C-H. We've agreed
9 to include her statement, which is: (as read)

10

11 I have been a police officer for over ten years and involved in a
12 few animal cruelty files. This file was the first time I had been
13 exposed to seeing injuries on an animal caused by a human. As
14 you can imagine, over the course of my policing career I've seen
15 many horrific things, but only a few stand out. I will never forget
16 the sight and feelings of Mr. Pundick's cat. I grew up on a farm
17 and have been exposed to cats my entire life, too many to count. I
18 recognize a cat's normal behaviour as well as when they are
19 frightened, usually from being chased by dogs or kids. The cat
20 was so frightened that he displayed a drastic change of behaviour.
21 He had pressed himself against a wall and so close to the ground
22 that he appeared flattened. He was panting very rapidly with
23 flared nostrils even after I had already been at the scene for quite
24 some time. His eyes were very large, and he had some blood on
25 his fur. I was certain he would run as I approached him, but he
26 didn't. When I tried to lift him, his body was dead weight, and it
27 took a few tries to get my hands under his belly. When I finally
28 picked him up and was checking for injuries, I saw that several of
29 the pads on his feet were bleeding and had abrasions. While
30 inspecting his body, several clumps of his hair were coming out,
31 and my uniform was covered in hair.

32

33 Those are the only additions in facts, Your Honour, and that is by consent.

34

35 Your Honour, perhaps we should just clarify the exhibits. I understand we have Exhibit 1
36 is the criminal record of the accused.

37

38 THE COURT: Okay. Do you have it?

39

40 MR. LIM: Correct?

41

1 THE COURT CLERK:

Yes, Sir. Yes, Sir.

2

3 THE COURT:

Thank you.

4

5 MR. LIM:

Now, I know my friend handed some -- some

6 cases -- or not cases, sorry, some --

7

8 MR. ISSHAK:

It's -- it's an itemized list of his attendance at

9 AADAC, completion of -- he's got certificates of completion for a number of

10 alcohol-related treatment and just a letter from his doctor indicating that he is suffering

11 from severe alcoholism.

12

13 MR. LIM:

And that can be entered as -- that's 2 for

14 sentencing purposes --

15

16 THE COURT:

Yes, thank you.

17

18 MR. LIM:

-- Your Honour.

19

20 **EXHIBIT S-2 - Collection of Letters and Certificates**

21

22 MR. LIM:

And if my friend is agreeable, the presentence

23 report, which was --

24

25 MR. ISSHAK:

Yes.

26

27 MR. LIM:

-- dated -- was originally for, I guess,

28 November 28th, 2014. That could be Exhibit S-3 for sentencing purposes.

29

30 THE COURT:

Yes.

31

32 **EXHIBIT S-3 - Presentence Report**

33

34 **Submissions by Mr. Lim (Sentence)**

35

36 MR. LIM:

Thank you, Your Honour. In respect to

37 sentencing, Your Honour, the Court is, of course, dealing with two breach of recognizance

38 orders as well as a charge of causing unnecessary pain, suffering and/or injury to an

39 animal.

40

41 The position of the Crown is as follows, Your Honour: A global sentence of five to

1 seven months incarceration, 15 to 18 months probation.

2
3 THE COURT: Sorry. How long?

4
5 MR. LIM: Sorry. Five to seven months gaol followed by
6 15 to 18 months probation and a 15-to-20-year pet prohibition pursuant to Section 447.1.
7 I'm suggesting, Your Honour, that as part of the sentence, first of all, in dealing with the
8 two breaches, that that can be dealt with by way of a short and sharp period of
9 incarceration. I'm suggesting something, Your Honour, even in the seven-day range for
10 each charge.

11
12 Your Honour, I'm suggesting that gaol is appropriate in this particular case on the -- not
13 only for the unnecessary pain and suffering to the animal but for the breaches, Your
14 Honour, and I'll deal with the breaches first. I'm saying that because if you notice
15 criminal record -- his criminal record, Your Honour, he has had convictions in the past for
16 breaches.

17
18 THE COURT: Can I see that, please, Madam Clerk?

19
20 MR. LIM: That's Exhibit S-1. It's also in Exhibit S-3, in
21 the presentence report as well --

22
23 THE COURT: Thank you.

24
25 MR. LIM: -- his criminal record. You'll see that he's
26 gotten gaol in the past. As you may recall, in respect to the facts, Your Honour, here,
27 you have a breach of the accused in respect to January 24th, I believe the date is, 2014,
28 where he shows up to court intoxicated. He wasn't held in contempt. He's released. We
29 cannot deal with the matter because, in fairness to him, he's obviously intoxicated. The
30 police follow him, and he goes to a liquor store to purchase more liquor I think twice,
31 Your Honour, are the facts. So, Your Honour, I'm suggesting here while I appreciate that
32 he's an alcoholic, here is a situation you have an individual who can't comply with court
33 orders even when -- after he's been basically stopped already for it, Your Honour, so I'm
34 suggesting that you need a deterrent factor of sentence for that alone and specific
35 deterrence, even though I appreciate he's an alcoholic, Your Honour. He couldn't even
36 follow that for a short -- after he was, shall we say, stopped because we couldn't deal
37 with the sentencing 'cause he was intoxicated.

38
39 Now, dealing with the charge, Your Honour, of causing unnecessary pain and suffering,
40 the Crown's position for five to seven months incarceration, and, of course, we do believe
41 rehabilitation is important here because, as you can tell by the presentence report, alcohol

1 is a challenge, Your Honour, and the pet prohibition, which is also recommended by the
2 presentence report, is also something that we believe is necessary, but it is the position of
3 the Crown the sentence must reflect the disdain -- disdain by society that we should have
4 for such in excusable barbaric behaviour that the owner of a living creature who would
5 drag inhumanely his cat for at least 80 feet on pavement with a too-tight leash or harness,
6 Your Honour, needs to be considered. One can only imagine the immeasurable pain and
7 suffering this animal went, not only had the pads or flesh of its feet injured or ripped off,
8 Your Honour, causing abrasions and bleeding, but to be dragged by the throat area, which
9 is a very vulnerable area for any living creature and required to sustain one's self, of
10 course, by breathing.

11
12 This is a horrible crime that requires general deterrence and denunciation. That is
13 something that all the cases, especially here in Edmonton, have reflected since 2010 and
14 since the legislative changes in 2008, which I won't go into. This kind of behaviour must
15 not be condoned, and that's the reason why even your brothers here, Your Honour, in
16 their decisions on sentences often with no injuries have given actual real gaol time.

17
18 Humans are supposed to be the wise ones. We are taught from when we are very little to
19 protect and care for the vulnerable, the weak and, in this case, also animals as well, Your
20 Honour. The behaviour of Mr. Pundick on May 31st, 2013, whether fuelled by alcohol or
21 not, Your Honour, is the type of behaviour that we need to set apart, and by doing that,
22 we need an actual period of gaol time, Your Honour. It goes against common decency
23 and humanity.

24
25 Your Honour, first of all, before I get to the case law here, dealing with the mitigating
26 and aggravating factors here, and, again, I'm now looking at specifically, of course, the
27 unnecessary pain and suffering and/or injury to an animal pursuant to 445.1, subsection
28 (1)(a) of the Criminal Code. It is admitted, Your Honour, the accused has no related
29 criminal record in respect to animal abuse or animal cruelty. The guilty -- there is also a
30 guilty plea, Your Honour, as well, which we know that goes to the amount of remorse.
31 However, Your Honour, as you'll see in the presentence report, I would suggest, it, Your
32 Honour, suggests that this accused is minimizing the facts, Your Honour, and so that goes
33 somewhat to the remorse issue, Your Honour.

34
35 THE COURT: May I see the PSR, Madam Clerk, please?

36
37 MR. LIM: Presentence report, Your Honour, page 7,
38 paragraph 2. That's page 7, paragraph 2.

39
40 THE COURT: Thank you.

41

1 MR. LIM:

And I quote: (as read)

2

3 The subject accepts minimal responsibility for the offences and
4 disagrees with police circumstances, although reports that he
5 cooperated during the arrest.

6

7 Your Honour, perhaps most significantly though, here is although there's a guilty plea, it
8 was a strong case for the Crown. We had civilian witnesses, Your Honour, third party
9 witnesses, more than one, who saw the accused pulling the cat for over approximately 80
10 feet, Your Honour. There's no way that in nexus or proximity you could have a sense of
11 self-defence or anything like that when he's actually pulling. He's in control. He's the --
12 not only is he an adult, Your Honour, human being, but he's certainly a lot larger, and
13 this -- there's no question this is a domestic cat. This is not a lion, a tiger or a -- or a
14 cougar or a puma, Your Honour. This is a domestic cat that he is pulling along, just
15 about ten pounds, Your Honour, or less that he's dragging, so he's in the position of
16 power not only because he's the human but also because he's got this animal on a leash
17 or a harness, Your Honour, and that it's being dragged behind him, and it was for a
18 considerable period of time, Your Honour. There's no suggestion at any time that this cat
19 was attacking the accused or anything like that. There's no nexus or any reason for him
20 to do that, Your Honour, for 80 feet, Your Honour, but as I said before, there is a guilty
21 plea nevertheless.

22

23 The aggravating factors, Your Honour, are quite simply this: 1, this is a trust-like
24 position. The accused is the owner and the person controlling the animal, especially in
25 this case on a leash or harness. Secondly, Your Honour, most probably significant, this
26 was a prolonged attack and a period of suffering. Now, maybe attack's not the exact
27 word here, but, Your Honour, the suffering that occurred from this animal, unlike a lot of
28 these other cases where we're getting incarceration, real gaol time, Your Honour, went
29 over a period of time and not -- involved not only the bleeding and the injuries to the
30 pads and the feet but also the pulling, Your Honour, too tight on the throat, and, as I said
31 before, we know that on any living creature -- and I appreciate the Courts have clearly
32 distinguished between a person and an animal, but nevertheless, that is the lifeline in
33 respect to them breathing, Your Honour, and that's what happened here. He pulled it for
34 80 feet with this harness and leash device, Your Honour, and that's something that needs
35 to be considered, Your Honour.

36

37 Also, Your Honour, the accused was on a recognizance order and has a lengthy criminal
38 record, as mentioned in the presentence report, unlike many of the other accused that
39 we've dealt with, Your Honour, in Edmonton here and that have gotten periods of
40 incarceration.

41

1 Your Honour, I'd now like to briefly go over the case law. I provided to you a couple of
2 binders or -- or tab -- and tabs, Your Honour, in respect to cases. The first three cases,
3 Your Honour, in the book of authorities -- not in the additional book of authorities, in the
4 book of authorities are *Connors*, *Rodgers* and *White*, the first three tabs. Those three
5 cases, Your Honour, have been provided to this Court, although they are not in the
6 jurisdiction of this Honourable Court, to give the basic outline as to what the direction has
7 been -- Parliament has been intending when it did the legislative changes in 2008 to the
8 section 445.1 and subsection (1)(a) of the *Criminal Code*, and these are different
9 jurisdictions, Your Honour.

10
11 Of course, I admit -- I'll let you know, Your Honour, that the cases that I provide to you
12 and that -- in this area of law here, there are no real Court of Appeal cases or anything
13 directly on point. I admit that. What I'm providing you are the cases to give you the
14 direction of what went on in Edmonton and the fact that they're extremely persuasive.

15
16 These three cases are not in Alberta or Edmonton for that matter, Your Honour, but they
17 give the general outline of the provisions of the *Code* and how serious animal cruelty is
18 being taken, unlike in the past, and why the legislative changes were done. You can tell,
19 Your Honour, that the maximum penalty, even if the Crown proceeds summarily on these
20 matters, is a period of incarceration up to 18 months or a \$10,000 fine.

21
22 In looking at the legislative policies and -- Your Honour, and addressing this issue in
23 respect to sentencing why a period of incarceration is required here, Your Honour -- and
24 you're going to hear these words. It's deterrence and denunciation. I asked you to turn
25 to the *Connors* decision, and if you turn to paragraph 40, that's the *Connors* decision in
26 tab 1, paragraph 40, and I quote: (as read)

27
28 The *Criminal Code* makes it clear that the wilful infliction of
29 unnecessary pain and suffering on animals violates one of the
30 basic tenants (sic) of our society and is deserving of punishment.
31 It is also conduct which most members of our society find
32 repugnant and morally reprehensible.

33
34 The objectives of sentence to be emphasized in this case are
35 denunciation and deterrence without losing the sight of the
36 offender's prospects of rehabilitation.

37
38 Which is why, Your Honour, the Crown is also seeking in this case here a period of
39 probation. I also turn now to the same case, the *Connors* decision, paragraph 51, Your
40 Honour, paragraph 51, and I quote: (as read)

41

1 To fulfill Parliament's intention to making these more serious
2 offences requires in this case that a longer period of incarceration
3 be imposed than in the majority of cases decided prior to the
4 amendments.

5
6 And, again, Your Honour, that tells you something here since we have the changes since
7 2008 how serious these charges are and why deterrence and denunciation become more
8 paramount, Your Honour.

9
10 In the *Rodgers* decision, it cites the *Connors* decision, Your Honour, I will note, and uses
11 the *Connors* decision. Likewise, in the *White* decision, Your Honour, it again uses the
12 same principles here. It takes a very serious approach to sentencing in respect to animal
13 abuse.

14
15 Your Honour, I now would like to turn to the Edmonton cases here. I provided to you all
16 the cases that I've gotten transcripts for possible, and I've also given you a brief summary
17 of the cases. Since 2010 -- and we have to deal with the charges, of course, of the
18 unnecessary pain and suffering and/or injuries to an animal -- there have always been a
19 sentence of incarceration, even in cases, Your Honour, where there have been *Gladue*
20 factors or individuals with significant less criminal records, Your Honour, and where there
21 were no injuries at all or very short and sort of moments of infliction of pain and
22 suffering, Your Honour, there's always been a period of incarceration.

23
24 In the addendum, Your Honour, that you have, there's the *Cardinal* decision, the Bobby --
25 I think it's the Bobby Cardinal ruling. In that decision, Your Honour, there it was
26 admittedly concurrent time with a domestic assault, Your Honour, but nevertheless it was
27 real gaol time. The person basically threw two dogs against a wall. The dogs
28 scampered. There were no injuries. The Court still felt that deterrence was required and
29 got a period of 15 days incarceration.

30
31 Your Honour, more recently -- and it's not -- I do not actually have the case because it
32 just happened about seven days ago -- is the *McPike* decision. Darren McPike was
33 convicted for a very minor assault on his boyfriend and for kicking a dog down the stairs.
34 There were absolutely no injuries. There was a joint submission, Your Honour, for a
35 person with a very minimal record, certainly not like the accused. He received a sentence
36 of 15 days concurrent. It was a joint submission for 15 days on the animal abuse or the
37 unnecessary pain and suffering caused to an animal. The judge, quote, tweaked it and
38 said, well, even though it's a minimal -- a minor domestic assault, the guy had no record
39 and gave 15 days concurrent. Nevertheless, Your Honour, that shows how serious that
40 our Courts are taking this and how society -- and showing -- to separate this kind of
41 behaviour, how an actual period of incarceration is required.

1
2 Your Honour, the case here is much serious here, and I think if you look at the *Dudar*
3 decision, that may give us probably a better ground as to where we come to five to seven
4 months. The *Dudar* decision, Your Honour, first of all summarizing, the accused got --
5 pled guilty to several informations unrelated to the animal abuse charge. However, Your
6 Honour, the individual in this particular case got actual gaol time for -- for an animal
7 where there were absolutely no injuries, and, of course, he had the benefit of the totality
8 principle. Likewise, Your Honour, it seems that this individual had alcohol and drug
9 problems somewhat similar to the accused, but the Court in this particular case here, Your
10 Honour, went against the Crown and the defence counsel and sought a joint submission
11 for 15 days incarceration. The facts in this case here are essentially, Your Honour, were
12 is that an accused was walking his dog, yanks the chain too hard three times and then hits
13 the dog with the leash or the leather material several times. The dog cowered. It yelped.
14 There were no injuries, and it was certainly a much shorter duration than the facts before
15 this Honourable Court. In that case, Your Honour, the Court gave a sentence of 90 days
16 incarceration.

17
18 If you turn to that -- it's at tab 4, the *Dudar* decision here -- the Court made its decision
19 on the following, and I quote the Honourable Judge Anderson.

20
21 MR. ISSHAK: What page are you looking at?

22
23 MR. LIM: Page 13.

24
25 MR. ISSHAK: Okay.

26
27 MR. LIM: And it would be approximately line 27, Your
28 Honour. That's page 13, line 27. (as read)

29
30 Which leaves then the cruelty to animal, and I appreciate both
31 counsel suggest that the range of sentence should be 15 to 30
32 days. I disagree. As you may have gleaned from the sentences
33 that I have seen where I have been imposing in relation to the
34 other matters, when a person is disadvantaged and is committing
35 offences as a result of having been dealt a poor deck of cards and
36 the like, I tend to be quite sympathetic. When people whip or
37 kick dogs, though, I am not sympathetic because surely when you
38 are sober and you look at that, taking advantage of the creature
39 that cannot defend itself, the exploitation of others, which frankly
40 you yourself have been a victim of, is not justified and is simply
41 going to be punished because there is no explanation that justifies

1 it. So that is why I would impose a sentence of three months
2 consecutive on that.

3
4 Your Honour, that individual also had some challenges in his life too unlike -- like the
5 accused, Your Honour, but nevertheless, a period of incarceration was needed to send the
6 message home, Your Honour, that animal abuse, animal cruelty will not be tolerated in
7 our communities.

8
9 I'm hoping you've had the opportunity to read the *Chalmers* decision, Your Honour,
10 which the Honourable Stevens-Guille was sitting on that particular matter.

11
12 MR. ISSHAK: Which tab is that?

13
14 MR. LIM: Now, the -- his decision will be tab number 9.

15
16 MR. ISSHAK: I have eight tabs.

17
18 MR. LIM: That doesn't confirm that actually. Sorry.

19
20 MR. ISSHAK: There's only --

21
22 MR. LIM: Tab number 8 I guess.

23
24 THE COURT: *Chalmers* is at tab 7 as well as 9?

25
26 MR. LIM: Yes, 7 is the actual trial, (INDISCERNIBLE) of
27 the trial. 8 is actually the decision of the Honourable Court, and, Your Honour, if I turn
28 to again page -- tab 8 and the decision in *Chalmers*, the Court --

29
30 MR. ISSHAK: What page are you looking at?

31
32 MR. LIM: Sorry, page 22. The Court, I would suggest,
33 highlights the direction that -- what has been going on in the Edmonton courts, Your
34 Honour, that we're treating it very serious and that periods of incarceration are required
35 for deterrence and denunciation, not even specific deterrence but general deterrence. Line
36 35 on page 22, the Honourable Judge Stevens-Guille states, quote: (as read)

37
38 There is sort of a tendency for some to say, well, these are just
39 animals, they are not people, what's the big deal? Both the
40 Parliament and I think the majority of Canadians view the conduct
41 that he has pled guilty to to be deserving of serious denunciation

1 on their behalf and, if not, punishment -- a sentence that will let
2 everybody else know, if he is past that and doesn't need to know
3 it now, and if you abuse animals who are not able to defend
4 themselves obviously and not able to speak out, they are very
5 vulnerable, it is not going to be viewed as though they are just
6 animals and you will face a significant response if you are caught
7 and convicted.

8
9 Your Honour, in that case there, admittedly the facts were different. You have a situation
10 where two cats were misbehaving and they get thrown and they get injured. However, that
11 individual had a glowing presentence report, had a very minimal criminal record, Your
12 Honour. There was some (INDISCERNIBLE), but, again, the key thing that was gleaned
13 from this -- from this case here from Honourable Judge Stevens-Guille is that even though
14 he seemed like a wonderful person here, the message had to get across with an actual gaol
15 sentence. He couldn't give a conditional sentence order. He had to give a real gaol
16 sentence, and that individual got nine months gaol. The facts are certainly different here,
17 and one of the things here, though, that -- that's different is that -- Your Honour, is that
18 while the injuries were worse -- I have to admit that. They were certainly significant, a
19 broken skull and a broken leg, Your Honour, or a cracked skull and a broken leg is my
20 recollection. The problem here is that in this case at bar we have and in -- before this
21 Honourable Court with Mr. Pundick is that we have this cat that is pulled for a
22 significantly long period of time in front of members of the public, who if it weren't --
23 but for these members of the public standing up and making a complaint and contacting
24 the police, providing a voice for the voiceless, we wouldn't have a case, Your Honour,
25 and that cat would have suffered who knows what without getting any care.

26
27 So, Your Honour, when we're sentencing this -- and I appreciate, Your Honour, that the
28 provisions of sentencing, we're trying to look at rehabilitative. We're trying to also look
29 at the least, you know, amount of gaol as possible, Your Honour, if it's required. We're
30 saying, Your Honour, it's very clear the Courts are saying not only so much because it
31 was an epidemic in Edmonton here, but because of the seriousness that deterrence and
32 denunciation is paramount and requires a period of gaol.

33
34 The Crown bases the five to seven months gaol is when you look at these other charges;
35 15 days for animals with no injury, Your Honour; 90 days for pulling on a leash and for
36 whipping the dog, again no injuries, Your Honour; but here we actually have injuries over
37 a prolonged period of time.

38
39 Your Honour, I am certainly not coldhearted enough to suggest that this individual should
40 just get a period of incarceration because we know that -- and these cases suggest that
41 too, that rehabilitation is part of it too, which is why I'm suggesting a period of probation.

1 I think it's pretty clear here, Your Honour, that besides keeping the peace and being of
2 good behaviour, reporting conditions, Your Honour, that obviously an assessment and
3 treatment term is paramount here to Mr. Pundick shall we say becoming a contributing
4 and successful member of society, looking at, I suggest, psychiatric and psychological
5 issues as well as, Your Honour, of course in respect to substance abuse.

6
7 It appears, Your Honour, according to his statement that he gives in the presentence
8 report, that an abstaining clause is possible at this point where he is, and I -- I commend
9 him for that, for those changes, Your Honour, and that a testing phase to allow for the
10 abstaining clause be appropriate as well.

11
12 Your Honour, and while I do commend that -- and that's very clear from what he's trying
13 to do. We've seen Exhibit 2. The key thing here is that even though he may be a nice
14 person when he's not drunk, that he's doing better here, it's clear the Courts have said
15 deterrence and denunciation requires actually gaol, especially in a case here where we
16 have got a situation that is far from the minimal situations where they've been getting
17 gaol already, Your Honour, here. This is certainly circumstances that -- again, what is
18 quite different than a lot of these cases here in respect to unnecessary pain and suffering
19 is that it's over a period of time, as noted by the -- the distance, and that it's not just one
20 thing. It's not just the pads of feet that were injured. Obviously there was some distress
21 even described by the officer in respect to the breathing as he -- as she dealt with the --
22 the injured cat, and so that's some of the things that I think need to be considered in
23 respect to -- to sentencing, Your Honour.

24
25 Finally in closing, Your Honour, when we're sentencing here, we're not just simply
26 sentencing a man to gaol, Your Honour, here. What we're sentencing is behaviour, that
27 we are trying to deter other people, and that's the main focus here we have seen from
28 Parliament's intention, from the case law here that we've seen in Edmonton here. As I
29 said before here, this is a situation when you consider parity, there's no other cases that
30 have -- that have not gotten actual gaol time, Your Honour, here, and this certainly is not
31 one of the -- shall we say the -- the least one or least severe. It certainly, Your Honour,
32 would be perhaps maybe not -- other ones have led -- led to death, Your Honour, but
33 those are usually a different section of the *Code*. When reviewing actually unnecessary
34 pain and suffering, you are sentencing a matter that took over a period of time and that
35 would have been certainly suffered also reflected over a period of time and distance and
36 continued obviously after the incident as well, Your Honour.

37
38 Those would be my respectful submissions in respect to sentencing, Your Honour, and,
39 Your Honour, if the Court does approve of the section 447.1 application for a pet
40 prohibition, I have prepared a document to assist in the wording.

41

1 THE COURT:

Thank you.

2

3 **Submissions by Mr. Isshak (Sentence)**

4

5 MR. ISSHAK:

Sir, I'll go in the same order as my friend. I'll

6 start with the breaches. It's -- it's very unfortunate that Mr. Pundick showed up
7 intoxicated to court and then immediately went to a liquor store to purchase alcohol, but
8 as you can see from the documents I provided you, this man has been struggling with
9 alcoholism his entire adult life, and I turn your attention, to the *Omeasoo* decision by
10 Judge Rosborough. In that decision, it was a native -- sorry, a First Nations individual
11 who was put on an undertaking not to -- to abstain from alcohol, and obviously it was
12 just -- he was set up for failure. Judge Rosborough in that case I think gave him either an
13 absolute discharge or a \$1 fine. I would ask that you consider this the -- in a similar vein
14 because Mr. Pundick is an alcoholic and he will be an alcoholic the rest of his life, but
15 what he has done, Sir, since last April -- and it's in the presentence report -- he's turned
16 his life around. He's -- alcohol more than any other drug is one of the most hardest drug
17 or thing to overcome and to control. What this man has done since the offence date
18 speaks volumes for what he's going to do in the future.

19

20 Now, I'm not going to lose sight of the cat. Obviously there is a victim here, and it's
21 quite aggravating what happened, but you should note too as well, Sir, that Mr. Pundick
22 had this cat for three years. There was no suggestion that there was abuse to the cat in --
23 in the past. From the examination of the vet, there was no old injuries that they noted.
24 This was an isolated incident. It happened on a day he was extremely intoxicated. He
25 told me as he was walking his cat -- the cat would always try and jump out of the
26 balcony, so he figured he better take it for a walk. It was spooked. It was spooked by
27 traffic, and a big bus had come along. It ran under the tree. He went down to try and
28 pick it up. He got his face all scratched out, so he kept pulling the cat. I'm not trying to
29 excuse what he did. Obviously what he did was unfortunate to the cat and obviously to
30 him, but at the end of the day, the cat did recover. I'm not sure what its psychological
31 trauma was, but the cat did recover, was taken away from Mr. Pundick, and keep in mind
32 he had this cat for three years with no problems. It was just an unfortunate incident on
33 that date.

34

35 The case law on the sentencing for cases like these animal cruelty, Sir, most of them can
36 be distinguished on their facts and the injuries to the -- to the animals. *Connor* (sic), the
37 first case *Connor*, the accused was very violent in that case. He broke ten ribs, broke the
38 jaw. The cat was missing teeth, a lacerated liver, and he was only sentenced to five
39 months imprisonment. In that case what was noted was the gravity of the offence and the
40 accused's level of moral blameworthiness. That's what required the sentence, a custodial
41 sentence. Here I'd ask you to consider that Mr. Pundick's level of moral blameworthiness

1 was tampered or was tainted by his alcohol intoxication.

2

3 Now, of course, we all know that self-induced intoxication is never really a defence. It's
4 a mitigating factor. What he did wrong here is he was indifferent or didn't -- he was
5 reckless to the fact that he was injuring this cat because of his intoxication, and it no
6 more excuses him, but it does distinguish the facts on that case.

7

8 Again, on *Rodgers*, this was a 12-day-old puppy. Now, the -- the -- the accused there
9 was intoxicated by the consumption of alcohol and drugs at the time of the offence. The
10 accused's sentence was sentenced to 240 days. In that case, the puppy was actually killed
11 and its skull was fractured by the accused, very very serious injuries.

12

13 Again, the case of *White* where the accused was sentenced to six months, the -- the cat
14 was found dead. The accused had 20 prior con -- convictions, and the acts of violence
15 were not isolated.

16

17 Sir, the -- the *Dundar* (sic) case that my friend has provided -- and I note that Judge
18 Anderson was quite right in what he said, but you will note, Sir, on page 2 of this
19 transcript, the accused comes right out and says, okay, I'm not a good guy, so what, I
20 beat the dog, what are you going to go do about it? I think that's probably what upset
21 Judge Anderson. Here Mr. Pundick is remorseful. He pled guilty. He feels bad for what
22 he did for his dog. I won't go on.

23

24 I mean these cases, I understand where my friend is coming from. Animals need to be
25 protected. The general public needs to be told that if you're going to own a pet, you have
26 to take care of that pet and -- and not abuse it.

27

28 I think what happened here is Mr. Pundick seriously fell off the rails when -- when he
29 was intoxicated, and I don't think his intentions were clearly to -- to hurt his -- his cat.
30 He was just dealing with the situation in an inappropriate way, which still justifies
31 criminal sanction.

32

33 The presentence report, Sir, speaks volumes of where this person came from. I mean you
34 have an individual here who has had quite a life. Although his criminal record is lengthy,
35 he still managed to raise a family. He managed to start a business. He took part in the
36 military, and the only thing I see that jumps out at me constantly from his record and
37 from what's written in this presentence report is that alcohol has been his nemesis for his
38 entire adult life, and this is the first time, Sir -- although he's been to counselling in the
39 past and fell off, this is the first time where he's maintained a level of sobriety for such a
40 long time, and he should be credited for this, Sir, and there should be some mitigation
41 here for -- for what he has done since the offence date, and in light of all that, Sir, and

1 given that the presentence reports says notwithstanding his record he's an ideal candidate
2 for community supervision or he's a suitable candidate, I'd ask that you consider his
3 post-offence conduct is what you're going to see from this individual -- individual from
4 now on.

5

6 Now, I've got two proposals for you, Sir, a -- a very lengthy suspended sentence with
7 probation, very strict conditions where he would continue with his treatment and
8 counselling. You've got to understand that this gentleman has been attending just more
9 than AADAC. He's been attending -- what was the other --

10

11 THE ACCUSED: A.A.

12

13 MR. ISSHAK: A.A., and what was the other?

14

15 THE ACCUSED: Seniors group.

16

17 MR. ISSHAK: Seniors home? And what was the other one?

18

19 THE ACCUSED: AADAC seniors group at -- at the
20 (INDISCERNIBLE).

21

22 MR. ISSHAK: No less than three times a week since the
23 offence date. He's realized what his problem is. He's realized what he's done to his cat.
24 He loved that cat, and unfortunately that's what happened that day.

25

26 In lieu of that -- Sir, in the alternative, given that my friend is pounding hard on the table
27 for a gaol sentence and notwithstanding the record, Sir, I'd ask that you consider a
28 conditional sentence order, given what he has done since April of last year, and it is in his
29 presentence report and it is confirmed at page 11 of the presentence report, the first
30 paragraph: (as read)

31

32 The subject has been attending HA -- AHAS since April 2014.
33 He completed a three-week intensive day program in August, has
34 been attending seniors group and recovery skills group on a
35 weekly basis since April and August. He -- he -- the subject is
36 enrolled in mindfulness course running from November 27th of
37 2014.

38

39 This is all confirmed by Mrs. Melrose (phonetic), that his current period of sobriety and
40 advises that the family has come to his support now. He's meeting regularly, in contact
41 all necessary factors, and this individual, I mean I know he's no boy scout, Sir. He's

1 gone through drugs. He's gone through gaol. Now he's a gentleman coming an older
2 age. It was just a very unfortunate incident that day, Sir. So I'm asking you to consider
3 if -- if you're not agreeable to a noncustodial sentence, then a conditional sentence order,
4 Sir, with those conditions, and those are my submissions subject to any questions you
5 might have.

6

7 THE COURT: Thank you. Anything further, Mr. Lim?

8

9 **Submissions by Mr. Lim (Sentence)**

10

11 MR. LIM: Yes, Your Honour. Briefly dealing -- I know
12 my friend's suggesting a suspended sentence or a conditional sentence order. Part of the
13 problem -- I don't disagree that certainly probation would be helpful for this individual to
14 continue on his hopefully successful ride towards further sobriety. However, the problem
15 with a conditional sentence, Your Honour, when you look at the *Proulx* decision here is
16 that you have an individual here who has had difficulties complying with court orders.
17 The presentence report itself, Your Honour, on page 7, bottom -- or the second-to-last
18 paragraph on page 7 talks about how he was on a probation period for an intermittent
19 sentence and that there were concerns throughout the supervision about him, consumption
20 of alcohol, though he's not bound by an abstaining clause, but more importantly, Your
21 Honour, you have also the two breaches that he's been convicted of, Your Honour, and
22 you will note that the factor -- the facts on them include that even after he came to court
23 drunk -- or intoxicated -- sorry, Your Honour -- he left and -- right away and breached
24 again, Your Honour, by trying to purchase more alcohol twice that day, so, Your Honour,
25 there's an issue about whether he can comply with any court orders which would be
26 expected both in a suspended sentence or in a conditional sentence order.

27

28 A lot has been made about the alcohol and trying to distinguish the cases. Well, the
29 Edmonton cases, Your Honour, which are the *Villebrun*, the *Dudar* decision, then, there
30 again, with basically no injuries or very minimal injuries and very little pain and
31 suffering, and they got periods of incarceration because the main focus was deterrence and
32 denunciation. On both *Dudar* and *Villebrun*, my friend made the comment about the -- he
33 thought Judge Anderson may have been mad essentially in respect to the comments that
34 he was -- made, but actually the comments was made on the facts by a drunk individual,
35 so, Your Honour, again not unlike the allegations here that Mr. Pundick's trying to say he
36 was intoxicated. Likewise in the *Villebrun* decision here, we have an individual who
37 basically is walking by this dog and starts, shall we say, shaking it or essentially
38 strangling it so that the paws, I believe, got a few cuts, Your Honour, very minor injuries
39 here, and that individual was accusing -- 'cause he or she -- sorry. Sorry. On the
40 *Villebrun* decision, the accused was actually high, Your Honour, and was accusing the
41 animal of being an alien, so, Your Honour, these other people have had less criminal

1 records. They -- also the totality principle 'cause they also pled to many other things
2 here, and they still got periods of incarceration here because it sees -- and, again, the
3 decision that Judge Stevens-Guille gives on *Chalmers* on page 24 on the bottom, Your
4 Honour, even outlines is that --

5
6 THE COURT: Sorry. Which case?

7
8 MR. LIM: The *Chalmers* decision, which is at tab 8,
9 and -- and, again, it goes here the -- the unnecessary pain and suffering didn't go on for
10 as long. The injuries were worse, I note, but --

11
12 THE COURT: Tab 8, page?

13
14 MR. LIM: At page 24, Your Honour, line 34, and he goes
15 through the sentencing principles, but he comes to the conclusion that animal cruelty or
16 unnecessary pain and stuffing -- 'cause that was the charge there too, Your Honour -- has
17 to be taken very seriously and that despite this guy with a great presentence report, great
18 future, very minimal record, Your Honour, was dealing with his substance abuse and
19 getting his life together here too, despite all that, not having any specific deterrence
20 factors or concerns about likelihood to re-offend or be able to comply with court orders,
21 seemed like a glowing report, the point was deterrence and denunciation required a period
22 of incarceration.

23
24 Now, if the Court feels that the Crown has asked for too much -- for too long a period of
25 incarceration, they can certainly look at a shorter period of time here. The Crown isn't
26 just pounding on the table here. We're saying this is what the law is here. This is the
27 position that the Courts are taking here in Edmonton and that we should be consistent
28 with it. We should be setting proper principles in that too. We're not saying to throw
29 Mr. Pundick away without getting a rehabilitation here, but parity is also deserved too,
30 Your Honour, here, and we've got all these cases here where the animals are not injured,
31 certainly not the length of pain and suffering, and they're getting gaol. Again, we need to
32 follow what the Courts have been doing, and the paramountcy has been going to
33 deterrence and denunciation, and that's the reason why they've always gotten real gaol so
34 far since 2010, Your Honour.

35
36 This case here does not merit a period of -- of a CSO or suspended sentence when you
37 consider the facts even, Your Honour, noting that, as I said before, these other people
38 have had far less criminal records, and certainly, Your Honour, I would suggest the facts
39 were them -- were there were often no injuries and a very momentary amount of pain or
40 suffering. We need to sentence what's before this Honourable Court. As much as
41 Mr. Pundick has made some improvements to his life, we appreciate that, but we're

1 dealing with setting some proper deterrence and denunciation here, and that's the reason
2 why gaol needs to be considered and is appropriate here.

3

4 **Submissions by Mr. Isshak (Sentence)**

5

6 MR. ISSHAK: Sir, just -- just one thing here. My friend
7 should have kept reading *Villebrun*. The accused kicked the dog several times in the ribs
8 and the leg and received 90 days gaol.

9

10 THE COURT: Sorry. Where are you? Page.

11

12 MR. ISSHAK: *Villebrun*, the first case. This is on tab 6 on
13 page 3 of the transcript. Right from the top it says the dog was kicked several times in the
14 ribs and the leg. So it wasn't just pulling on the leash.

15

16 MR. LIM: No, I didn't say pulling on the leash. No, he --
17 he throttled the -- he grabbed it by the neck.

18

19 MR. ISSHAK: Okay. It just said, She kicked -- on page 2,
20 She kicked -- and then the top of 3 -- the dog several times in the ribs and the legs.

21

22 MR. LIM: But it wouldn't have the lengthy period of
23 suffering that was in this case, Your Honour.

24

25 MR. ISSHAK: Okay.

26

27 **Discussion**

28

29 THE COURT: I'm not going to be able to give you a decision
30 today. I can tell you at some time earlier I did have a look at some of the cases. I didn't
31 read all of them cover to cover, but I do need to refresh my memory about the case law
32 that's been provided, and, of course, until today I hadn't seen what is now Exhibit 2, the
33 record indicating attendances for various programs. I don't think we need a terribly long
34 adjournment. By that, I'm not thinking months, but I'm going to need a few weeks at
35 least. It's 12:40. I don't know if they take a lunch break downstairs.

36

37 MR. ISSHAK: No, CMO runs right through.

38

39 MR. LIM: It runs. There's always somebody downstairs,
40 Your Honour.

41

- 1 MR. ISSHAK: Yeah.
2
- 3 THE COURT: Do you want to go get a date --
4
- 5 MR. ISSHAK: Yeah.
6
- 7 THE COURT: -- then, and -- sorry, I'm thinking ahead. I
8 have to be back here at 1:30 for the afternoon assignments.
9
- 10 MR. LIM: Your Honour, would it be appropriate if I may
11 ask a favour, Sir? My phone, I can't get it to charge, so I can't actually -- I can't get my
12 phone to charge, so I can't actually get into my schedule, so if I could send another -- one
13 of my colleagues if -- I don't know if that's possible -- to set a date at 1:30, if that would
14 be appropriate, Your Honour.
15
- 16 MR. ISSHAK: I'm in --
17
- 18 MR. LIM: Or are you --
19
- 20 MR. ISSHAK: -- two sentencings at 1:30.
21
- 22 MR. LIM: Oh, sorry. Okay.
23
- 24 THE COURT: I saw you're on the list for the afternoon.
25
- 26 MR. ISSHAK: Yes.
27
- 28 THE COURT: So do you want to put it into 356 next week,
29 and then if you two --
30
- 31 MR. ISSHAK: Sure.
32
- 33 MR. LIM: I apologize to my friend.
34
- 35 MR. ISSHAK: No, that's no problem. That's no problem.
36
- 37 MR. LIM: Then I'll call or get my friend to call you and
38 to arrange with --
39
- 40 THE COURT: You two can have --
41

- 1 MR. ISSHAK: Sure. Should we throw it in on --
2
- 3 MR. LIM: Whatever day my friend wants.
4
- 5 MR. ISSHAK: I'm just looking at the 19th right now 'cause
6 I've got a prelim. starting next week. That's for sentencing. Why don't we throw it in on
7 the 19th in 356, and we'll coordinate dates, and, Your Honour, would you prefer it be in a
8 sentencing courtroom or it doesn't matter, wherever you are?
9
- 10 THE COURT: Good question.
11
- 12 MR. ISSHAK: 'Cause I don't want to throw it in when you're
13 in the middle of a trial or something that's got you handcuffed.
14
- 15 THE COURT: I think it could be added --
16
- 17 MR. LIM: Okay.
18
- 19 THE COURT: -- but I mean at 9:00 or a 1:30 start on I guess
20 virtually any day, but for I don't want to do it if I'm in a docket court, 265 or 356.
21
- 22 MR. ISSHAK: Certainly.
23
- 24 THE COURT: But other than that --
25
- 26 MR. ISSHAK: So trial or sentencing.
27
- 28 THE COURT: Yeah, but it can be whatever they call it, an
29 overbook or an add-on or whatever.
30
- 31 MR. LIM: Thank you, Sir.
32
- 33 MR. ISSHAK: Thank you, Sir.
34
- 35 MR. LIM: Thank my friend.
36
- 37 THE COURT: Thank you.
38
- 39 THE COURT CLERK: Order in court. All rise. Court stands
40 adjourned.
41

1 _____
2 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, MAY 19, 2015
3 _____

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

1 Certificate of Record

2

3 I, Emma Bodnarek, certify that the recording is the record made of the evidence in the
4 proceedings in Provincial Court held in courtroom 355 at Edmonton, Alberta, on the 11th
5 day of May, 2015, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2

3 I, Shawn Hurd, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11

12

13

Digitally Certified: 2015-10-16 11:18:33

14

Shawn Hurd,

15

Order No. 57459-15-2

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35 Pages: 32

36 Lines: 1323

37 Characters: 47282

38

39 File Locator: 977ac30a742411e583eb0017a4770810

40 Digital Fingerprint: 62b44a8aa3e245da35a878d5f0c5392a9d21ab9bedab0b996333cc60afdab3c2

41

1 Proceedings taken in the Provincial Court of Alberta, Law Courts, Edmonton, Alberta

2 _____
3 June 10, 2015 Afternoon Session

4
5 The Honourable Provincial Court
6 Judge Day of Alberta

7
8 C. Lim For the Crown
9 G. Isshak For the Accused
10 N. Stasiv-Danylko Court Clerk

11 _____
12
13 THE COURT CLERK: Order. All rise. Court is now reconvened.
14 Please be seated.

15
16 MR. ISSHAK: Good afternoon, Your Honour.

17
18 THE COURT: Good afternoon.

19
20 MR. LIM: Good afternoon, Sir. We appear on the matter
21 of Pundick.

22
23 **Sentence**

24
25 THE COURT: Thank you. The accused pled guilty to causing
26 unnecessary suffering to an animal pursuant to section 445.1 sub (1) sub (a) of the *Code*
27 as well as to two counts of failing to comply with release conditions pursuant to section
28 145 sub (3) regarding consumption of alcohol and attending at a licenced premise.

29
30 The animal cruelty charge not inevitably but invariably calls for a gaol term and
31 probation. The cases cited by the Crown show a range of sentence from 15 days up to
32 nine months in gaol for a range of cruel conduct committed by a range of people. The
33 cases are a helpful guide; in particular is the decision of *R. v. Connors* cited at 2011
34 BCPC 24. At paragraphs 40 and 41, the Court observes -- and I agree with their
35 observations. I quote: (as read)

36
37 The *Criminal Code* makes it clear that the wilful infliction of
38 unnecessary pain and suffering on animals violates one of the
39 basic tenants (sic) of our society and is deserving of punishment.
40 It is also conduct which most members of our society find
41 repugnant and morally reprehensible.

1
2 The objectives of sentencing to be emphasized in this case are
3 denunciation and deterrence without losing sight of the offender's
4 prospects for rehabilitation.
5

6 In addition, I'd like to quote from a decision of Mr. Justice -- or Ms. -- of the Honourable
7 Judge Stevens-Guille in *R. v. Chalmers*. I don't have a case citation. It was part of the
8 Crown's book of authorities. I do have a transcript of Judge Stevens-Guille's decision,
9 and so I quote from page 22 beginning at line 35:

10
11 There is sort of a tendency for some to say, well, these are just
12 animals, they are not people, what's the big deal? Both the
13 Parliament and I think the majority of Canadians view the conduct
14 that he has pled guilty to to be deserving of serious denunciation
15 on their behalf and, if not, punishment -- a sentence which will let
16 everybody else know, if he is past that and doesn't --
17

18 Know -- sorry.
19

20 -- doesn't need to know it now, that if you abuse animals who are
21 not able to defend themselves obviously and not able to speak out,
22 they are very vulnerable, it is not going to be viewed as though
23 they are just animals and you will face a significant response if
24 you are caught and convicted.
25

26 I share that view as well. In other words, deterrence, specific and general, together with a
27 denunciation are paramount sentencing considerations with rehabilitation not to be lost
28 sight of.
29

30 Here the accused dragged a harnessed cat approximately 80 feet leaving it bloody, scared
31 and distressed. The accused was so drunk at the time he either didn't know what he was
32 doing, i.e. oblivious to the cat's distress and bloody paws, or was aware but didn't care
33 about what he was doing. It's difficult to say which of those two alternatives is more
34 egregious. Needless to say, in my view both are. Thankfully the cat recovered.
35

36 The accused has a lengthy criminal record but, on the other hand, no related offences.
37 That is with respect to the cruelty count. He pled guilty but, on the other hand, appeared
38 to have a limited understanding of what he did, according to the author of the presentence
39 report. That being said, that same author notes he has exhibited support for positive
40 change and has taken not insignificant steps to deal with an obvious alcohol problem. In
41 other words, his post-incident conduct speaks rather loudly to a man willing to genuinely

1 deal with personal issues which led to or contributed to unlawful antisocial behaviour.

2
3 The Crown seeks a gaol term of five to seven months followed by 15 to 18 months of
4 probation and a 15-to-20-year pet prohibition period. The accused, no doubt in light of
5 what counsel not inappropriately called remarkable post-incident conduct, viewed in
6 particular in light of his lengthy criminal and antisocial lifestyle, sought a long suspended
7 sentence or a conditional sentence order.

8
9 I want to quote somewhat further from Judge Stevens-Guille's decision in *Chalmers*
10 'cause he again expresses a view which I share, so, again, from the transcript of the
11 *Chalmers* decision at page 24 beginning at line 34, quote: (as read)

12
13 The key piece of that is a case such as this is this: Would not
14 offend the principles of sentencing set out in section 718. And
15 one of those, and what this is all about, in truth, is that one of the
16 principles is deterrence, and the other principle of great note here
17 is denunciation, but general deterrence. And you only send people
18 to gaol, in my view, if they can be proved to be dangerous to the
19 public. If you do not, and I do not accept that that is the case
20 here, or that a message has to go forward, which I think is the
21 case here, to people who contemplate committing the same offence
22 or are careless whether they do or not, that the consequences are
23 going to be unacceptable, and they are going to include
24 incarceration.

25
26 I do not consider a conditional sentence of imprisonment to be
27 appropriate here.

28
29 We then come to the issue of whether or not the sentence should
30 be such that intermittent service of it is not or is available. That is
31 that the sentence of over 90 days intermittent service is not
32 available. Under 90 days it is. It is not automatic, but it is within
33 my discretion to grant it, and, indeed, a couple of these
34 sentences -- or at least one of them, Judge Matchett's decision in
35 *R. v. Oyer* --

36
37 I believe that's a misspelling. I believe that accused's name is Loyer. In any event:

38
39 Judge Matchett's sentence in *R. v. Oyer* of three months in goal
40 included a provision that it be served intermittently.

41

1 I too think a conditional sentence order is not appropriate. I am mindful that Loyer or
2 Oyer had no criminal record when Judge Matchett imposed the sentence he did, and that's
3 not an insignificant contextual difference given this accused has, as I said, a lengthy
4 criminal record. However, this accused's apparently genuine and significant efforts to
5 rehabilitate himself is to both his and society's benefit. Absent those efforts, my decision
6 would be different.

7
8 Accordingly, I sentence him globally to 90 days in gaol to be served intermittently
9 followed by 15 months' probation on the terms to which I'll refer and allow counsel an
10 opportunity to speak to the proposed terms.

11
12 In addition, there will be a five-year prohibition order that's pursuant to section 447.1 sub
13 (1). That's the so-called pet prohibition section. A victim fine surcharge applies, and he
14 will pay it. I'll speak to time to pay in a moment.

15
16 Firstly, Mr. Isshak, the intermittent sentence will commence either this Friday or, if your
17 client has a need to undertake looking after some affairs, I'm prepared to put it over to a
18 week Friday.

19
20 MR. ISSHAK: Your Honour, if it is at all possible, Sir, could
21 he report on the 19th in a sober condition? I believe it's somewhere around 7 PM.

22
23 THE COURT: It is. I'll deal with the terms.

24
25 MR. ISSHAK: Yeah, but, Sir, he'd like to stay from Monday
26 to -- or, sorry, Friday to Monday.

27
28 THE COURT: To Monday.

29
30 MR. ISSHAK: Yeah, that way he'll get four days in every
31 weekend.

32
33 THE COURT: Okay. Madam Clerk, I have a short form
34 checklist of the probation terms available to you. I'll --

35
36 THE COURT CLERK: Thank you.

37
38 THE COURT: -- review them generally for the accused's sake
39 as well as counsel. In addition to the mandatory terms, in terms of the intermittent
40 sentence, he, of course, is on probation during the period of the intermittent sentence
41 followed by the 15 months of the probation order. He'll report to probation within two

1 working days from today and thereafter as directed including he will commence his
2 intermittent sentence on Friday, June 19th, reporting to the Fort Saskatchewan correctional
3 institute no later than 8 PM in a clean and sober condition to be released Monday, June
4 22nd, by 4 PM and each weekend thereafter until the sentence is satisfied.

5
6 In addition to the reporting, he will need to satisfy his supervisor that he is residing at an
7 approved residence. He will attend for assessment, treatment and counselling. I've ticked
8 off psychiatric and psychological, alcohol and drug abuse and anger management. I do
9 so, so you understand my thinking, because of the nature of the offence and the obvious
10 alcohol involvement, my view is that when one drinks too much or too often that there
11 are underlying psychological issues which lead one to drink in that fashion. I leave it to
12 the experts to determine what might be beneficial. You'll, of course, sign whatever
13 release or waivers are necessary.

14
15 The abstention clause -- the abstention clause will refer to drugs only. I am not going to
16 prohibit him from drinking alcohol. I do so because -- three reasons really. Sometimes
17 it's beneficial, I think, for a court-ordered abstention clause. Generally speaking, I'm of
18 the view that younger people might benefit more from that than older people, the thinking
19 being that as one gets older, one should get wiser and know better. Secondly, he's
20 undertaken steps of his own volition to date to deal with his drinking, and, on balance, I
21 would rather leave it to him to decide whether or not he wants to continue that. In other
22 words, if he hasn't seen the light, I'm not sure I can tell a 60-ish, 60-year-old man that
23 not drinking is to his benefit, particularly in light of the offence he committed. So the
24 abstention clause applies, but it applies only to -- to drugs.

25
26 I am going to prohibit him from -- from attending at licenced premises, which in plain
27 English means you can buy a case of beer and go home and drink it. Of course, if you
28 go out in public when you're drunk, that'll be a criminal offence. You'll breach this
29 intermittent order, you'll breach your probation, and you'll be back in hot water in front
30 of me, but you can't go to a bar. You can go for dinner somewhere that serves alcohol,
31 but, again, you need to be prudent about your consumption, if you decide to drink at all.

32
33 As I referenced, the pet prohibition of five years pursuant to that section. The victim fine
34 surcharge applies. How much time does he need to pay? Because it's a global sentence, I
35 wrapped up what would otherwise be concurrent sentences for the breaches into the
36 90-day sentence, so it'll be one surcharge. The Crown proceeded summarily. Is the
37 offence date after --

38
39 MR. ISSHAK:

What -- the offence date --

40
41 THE COURT CLERK:

After the amendments.

1
2 MR. ISSHAK: After October 22nd, 2000 -- okay.
3
4 THE COURT CLERK: Yes.
5
6 THE COURT: So that's \$100?
7
8 MR. ISSHAK: Yes, \$100.
9
10 THE COURT CLERK: Oh, I'm sorry, Sir. On the Information 005,
11 offence date predates the amendment. On the breach information, it is after -- the offence
12 date is after.
13
14 MR. ISSHAK: So the substantive charge --
15
16 THE COURT: What is the offence date?
17
18 MR. ISSHAK: Substantive charge predates the amendment, Sir.
19
20 THE COURT: No, he's going to pay the surcharge.
21
22 MR. ISSHAK: Sorry?
23
24 THE COURT: One surcharge.
25
26 MR. ISSHAK: Okay. He needs a month.
27
28 THE COURT: If it predates, it's only \$50 for a summary --
29
30 MR. ISSHAK: Yes.
31
32 THE COURT: -- offence; is that correct?
33
34 MR. ISSHAK: I believe so.
35
36 THE COURT CLERK: Correct, Sir.
37
38 THE COURT: \$50 surcharge.
39
40 MR. ISSHAK: One month, Sir?
41

- 1 THE COURT: Okay.
2
- 3 MR. ISSHAK: Your Honour, just one question. So his
4 record's going to reflect 90 days on the breaches as well?
5
- 6 THE COURT: Well, it's global. I -- I -- I just chose not to
7 sentence separately --
8
- 9 MR. ISSHAK: Okay.
10
- 11 THE COURT: -- for the breaches. I would have imposed
12 concurrent sentences for the breaches. I focused on the animal cruelty charge --
13
- 14 MR. ISSHAK: Yes. No, and I -- --
15
- 16 THE COURT: -- and determined that a global sentence for the
17 counts to which he pled guilty is 90. Clearly my thinking was directed towards because of
18 what he's done --
19
- 20 MR. ISSHAK: Yeah.
21
- 22 THE COURT: -- post-incident, he escaped a straight gaol term.
23
- 24 MR. ISSHAK: Right. No, no. No, no, I understand, Sir.
25
- 26 THE COURT: So --
27
- 28 MR. ISSHAK: I'm just mindful of the *Omeasoo* decision by
29 Judge Rosborough in -- in Wetaskiwin where he basically gave an absolute discharge on
30 an undertaking to an individual who had a bad alcohol problem.
31
- 32 THE COURT: Yeah, and --
33
- 34 MR. ISSHAK: But if it -- that doesn't fit here --
35
- 36 THE COURT: -- I think practically it won't matter, Mr. Isshak,
37 because his record will show he pled guilty to these counts. He got sentenced 90 days
38 globally.
39
- 40 MR. ISSHAK: Global, okay.
41

- 1 THE COURT: So it's a bit of a moot --
2
- 3 MR. ISSHAK: Thank you, Sir.
4
- 5 THE COURT: -- issue on the breaches. Now, proposed
6 probation term. So do either of you have any submissions about what I'm thinking is not
7 sufficient or too sufficient?
8
- 9 MR. ISSHAK: I think it's right on the mark, Sir. I have no
10 problems with it.
11
- 12 MR. LIM: Your Honour, the only thing is I note that
13 there's no testing clause you have in respect to the --
14
- 15 THE COURT: I'm sorry?
16
- 17 MR. LIM: There was no testing clause, I didn't hear, in
18 respect to -- there was no testing clause, Sir, in respect to the -- the drug abstention
19 clause.
20
- 21 MR. ISSHAK: You mean unreasonable suspicion, just --
22
- 23 MR. LIM: Yes, exactly, a reasonable -- on reasonable
24 suspicion if the accused is on drugs to provide a sample.
25
- 26 THE COURT: Oh, testing if he's on --
27
- 28 MR. LIM: The drug abstention clause, right. Usually you
29 have a testing clause so you can enforce it.
30
- 31 MR. ISSHAK: So he would have to provide a sample of his
32 urine or blood --
33
- 34 MR. LIM: Right.
35
- 36 MR. ISSHAK: -- on reasonable suspicion that he's under an
37 influence of a drug I think.
38
- 39 MR. LIM: Yes.
40
- 41 MR. ISSHAK: I don't see it being a problem, but it does

1 somewhat tie up his liberties a bit. He's already subject to a probation order. He's going
2 through counselling. It might just be a little bit of overkill, but I don't want to -- I don't
3 want to push it. That would be my position, Sir. I don't think it's necessary.

4
5 MR. LIM: The other point I would ask, Your Honour, is
6 whether or not the accused is under medical treatment by anyone at all because obviously
7 we'd want him -- to encourage him, if he's seeing someone right now, obviously to
8 continue that.

9
10 THE COURT: Let's just hold that thought for a moment. Let
11 me think about the provide a sample clause. It does frequently follow an abstention
12 clause. I haven't prohibited him from drinking, so if he has a drink and goes out in
13 public, so he might smell of alcohol, but that's not an offence. It would be if he drank so
14 much that might be in the view of a police officer that he's --

15
16 MR. ISSHAK: Under the influence.

17
18 THE COURT: -- drunk and disorderly or drunk in a public
19 place, some such thing, which typically doesn't require a testing procedure. It's not a
20 driving offence. I -- frankly I don't think it would be wrong to impose it, but, on balance,
21 I'm not going to.

22
23 MR. ISSHAK: Thank you, Sir.

24
25 THE COURT: Sorry, Mr. Lim, you were saying?

26
27 MR. LIM: Your Honour --

28
29 THE COURT: Your second point?

30
31 MR. LIM: -- considering the presentence report, if the
32 Court may want to look into whether or not the accused is under any medical supervision.

33
34 THE COURT: Ah.

35
36 MR. LIM: As you recall, remember because of his -- the
37 substance abuse, and I'm not sure if he's seeing anyone or --

38
39 MR. ISSHAK: He is. He continues to see a doctor, Sir. His
40 next appointment's in July. He can provide the name to the probation officer.

41

- 1 MR. LIM: Does that make sense, Sir, because we
2 obviously want to keep him on, you know, the rehabilitative --
3
- 4 THE COURT: I'll add the doctor's care clause.
5
- 6 MR. LIM: Thank you, Sir.
7
- 8 THE COURT: We don't yet know the name, but he can
9 report -- he can tell his supervisor who he's seeing and continue that care as the doctor
10 recommends. Anything else?
11
- 12 MR. ISSHAK: Not that I can think of, Sir. I think there's --
13 was there a count to be withdrawn?
14
- 15 MR. LIM: (INDISCERNIBLE) need to be -- need to be
16 withdrawn, yes.
17
- 18 THE COURT: I don't know if the other counts were
19 withdrawn or --
20
- 21 THE COURT CLERK: They were not. They hadn't been, Sir.
22
- 23 MR. LIM: They will be withdrawn. The Crown requests
24 to --
25
- 26 THE COURT: Okay.
27
- 28 MR. LIM: -- withdraw them.
29
- 30 MR. ISSHAK: No objection.
31
- 32 THE COURT: Thank you.
33
- 34 MR. LIM: In respect, Your Honour, to the section 447.1,
35 the animal pet prohibition, I'd ask that it be read out that the accused admitted on the
36 record and we also would ask that the clerks (INDISCERNIBLE) that they would provide
37 a copy for him to sign before he leaves today.
38
- 39 THE COURT: I'm sorry. The second part of your submission?
40
- 41 MR. LIM: In respect to the pet prohibition, Your

1 Honour --

2

3 THE COURT: Yeah.

4

5 MR. LIM: -- the section 447.1, I would ask that on the
6 record that the accused admit the pet pro -- prohibition; in other words, that it be read out
7 to him so that we can have it on the record that he's admitted that he's under a pet
8 prohibition, and then I'll provide -- I can provide the Court a copy of what usually we've
9 used, if that helps to -- the Court. What we've done, Your Honour, in this jurisdiction
10 is --

11

12 THE COURT: Madam Clerk.

13

14 MR. LIM: I apologize. I'll provide it to Madam Clerk.
15 This is what standard we've been using for a pet prohibition pursuant to 447.1. This
16 particular courthouse, Your Honour, does not have a formal document like some -- like an
17 impaired driving charge or a DNA sample, so, Your Honour, I'd ask that it be -- the pet
18 prohibition, if the Court agrees to it, would be read out, and then what happens is I
19 understand is the court -- provincial court clerks downstairs will prepare a document for
20 him to sign like a probation order to the prohibition. I worded one right there, Your
21 Honour, for -- if you approve it, Sir. That's basically what we've used. I apologize. I
22 typed one out, but I left it in the office. That's my fault, Sir.

23

24 THE COURT: Okay. Thanks. I think this language sounds
25 appropriate. Listen to this, Mr. Isshak. It's consistent, as I see it, with section 447.1,
26 which says the Court can make an order prohibiting the accused from owning, having the
27 custody or control of or residing in the same premises as an animal or a bird during any
28 period that the Court considers appropriate, and I've determined that period to be five
29 years, so this will be the language -- proposed language subject to your thoughts, if any.
30 The accused shall not possess, own, control or reside with any pet including, but not
31 limited to, dogs, cats or ferrets for a period of five years commencing June 10th, 2015.

32

33 MR. ISSHAK: Sounds good. How about goldfish? No? I'm
34 just wondering.

35

36 MR. LIM: If this assists the Honourable Court -- my friend
37 has brought it up -- I know Judge Groves considered this in respect to sea monkeys as
38 well, and so --

39

40 MR. ISSHAK: Sea monkeys aren't real.

41

1 MR. LIM: -- not to push the luck basically --
2
3 MR. ISSHAK: Yeah.
4
5 MR. LIM: -- was the decision.
6
7 MR. ISSHAK: Sir, he can live with those terms, and he's fine.
8
9 MR. LIM: Perhaps he can have a stuffed animal, Your
10 Honour.
11
12 THE COURT: Are we done? You'll get him to probation?
13
14 MR. ISSHAK: Yes, Sir, I will. Thank you for your decision.
15
16 MR. LIM: And the accused admits that he acknowledges
17 the prohibition on record?
18
19 MR. ISSHAK: Yes. Did you hear what the -- the judge said to
20 you --
21
22 THE ACCUSED: Yes.
23
24 MR. ISSHAK: -- about not owning, possessing or being in the
25 same premises, okay? Do you understand that?
26
27 THE ACCUSED: I don't have any.
28
29 MR. ISSHAK: And you -- and you -- and you're ready to
30 accept those terms?
31
32 THE ACCUSED: Yes. Yes.
33
34 THE COURT: Good.
35
36 MR. ISSHAK: He's consenting, Sir.
37
38 MR. LIM: Thank you, Your Honour.
39
40 THE COURT: Not that he had to, but it's helpful that he
41 does. Sorry, it's my job.

1
2 MR. ISSHAK: No, no.
3
4 THE COURT: Once I order it, he has to whether he likes it or
5 not, but --
6
7 MR. ISSHAK: He's acknowledging.
8
9 THE COURT: -- it's good that he's acknowledging it, so --
10
11 MR. ISSHAK: He's acknowledging it, Sir. Sorry.
12
13 THE COURT: He's onside.
14
15 MR. ISSHAK: Thank you, Sir.
16
17 THE ACCUSED: I feed squirrels outside and rabbits.
18
19 MR. ISSHAK: They're fine. Don't worry.
20
21 THE COURT: Keep them outside. You can feed them.
22
23 THE COURT CLERK: Order in court. All rise.
24
25 _____
26 PROCEEDINGS CONCLUDED
27 _____
28
29
30
31
32
33
34
35
36
37
38
39
40
41

1 Certificate of Record

2

3 I, Emma Bodnarek, certify that this recording is the record made of the evidence in the
4 proceedings in Provincial Court held in courtroom 357 at Edmonton, Alberta, on the 10th
5 day of June, 2015, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2

3 I, Shawn Hurd, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

Digitally Certified: 2015-10-16 11:18:48
Shawn Hurd,
Order No. 57459-15-3

35 Pages: 17
36 Lines: 668
37 Characters: 18838

38

39 File Locator: 977ac30a742411e583eb0017a4770810
40 Digital Fingerprint: d966cd2db552e40abc25566de10de355cf4f9ddf78b68787e93d4009ff0562bb

41

Detailed Transcript Statistics	
Order No. 57459-15-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	54
Total Pages:	56
Line Statistics	
Title Page Lines:	55
ToC Lines:	25
Transcript Lines:	2229
Total Lines:	2309
Visible Character Count Statistics	
Title Page Characters:	530
ToC Characters:	530
Transcript Characters:	75593
Total Billable Characters:	76653