

File No: 161945-9-B, 171180-1, 171180-2-A
Registry: Victoria

In the Provincial Court of British Columbia

REGINA

v.

TOBI LYNN KWISSA

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE MCKIMM**

COPY

Crown Counsel:	L. Wheeler
Defence Counsel:	N. Brooks
Place of Hearing:	Victoria , B.C.
Date of Judgment:	July 30, 2018

[1] THE COURT: On Information 171180 I am satisfied a fine in the amount of \$800 together with a prohibition under the *Prevention of Cruelty to Animals Act*, s. 24(3), for a period of five years is adequate. I am also prepared to place her on a period of probation for a term of two years under the *Offence Act*.

[2] The terms of that probation, Madam Clerk, are 2001, you must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or the probation officer, in advance, of any change of name or address, and notify the court or the probation officer of any change of employment or occupation.

[3] The only other condition, Madam Clerk, is that for the duration of this order you are not be in the possession or control of any domestic animals. So that is the probation order for that.

[4] On Information 161945-B-9 and 171180-A-2, I agree with the submissions of counsel. There will be a sentence on each of those of 30 days followed by a period of probation of 12 months. The terms of that probation, and it is concurrent on each information and the probation is to run concurrently, are again 2001, keep the peace and be of good behaviour, report to court when called upon to do so. You must notify the court or the probation officer in advance of any change of name or address and promptly notify the court or the probation officer of any change of employment or occupation.

[5] 2104, you must report in person to a probation officer on Courtney Street in Victoria, British Columbia, within two business days after your release from custody unless you have obtained prior to your release written permission from the probation

officer to report elsewhere or within a different time frame. After that you must report as and when directed by your probation officer.

[6] MR. BROOKS: Your Honour -- very sorry to interrupt. We were running in a position where we're breaching a breach for reporting. I don't think that that was discussed between me and my friend, a reporting element. The idea was --

[7] THE COURT: I was assuming that there would be counselling on an ongoing basis --

[8] MR. BROOKS: Your Honour, it's in the works now. What -- if you look at the record, it's just breach, breach, breach, and breach --

[9] THE COURT: No, no, I'm with you, sorry, I assumed that there would be a rehabilitative element to the sentencing.

[10] MR. BROOKS: It's already in play now. If it doesn't -- she has the care and support -- what I don't want to see is she doesn't report well and I don't want us to be having a reunion in three months from now with the same explanations. I do --

[11] THE COURT: Was that the expectation was just 30 days straight up?

[12] MS. WHEELER: Yes, it was.

[13] THE COURT: I apologize, sorry. I assumed that there would be -- okay, no probation. Just the one probation order that you cannot have animals for two years and you cannot have animals for five years under the *Prevention of Cruelty to Animals Act*. All right? I am sure you can apply to vary both of those if you have got your stuff together, but for now no animals, all right? Thanks.

[14] THE CLERK: Victim fine surcharge, Your Honour?

[15] THE COURT: Victim fine surcharge. I find her in default of same and sentence her to one day.

[16] MR. BROOKS: Thank you, Your Honour. And I thank my friend.

[17] THE CLERK: Time to pay the fine, Your Honour?

[18] THE COURT: Just leave it. It is just payable. Actually no, give her 12 months to pay, 12 months to pay the fine. All right?

[19] THE CLERK: And is that both the fine and the victim fine surcharge?

[20] THE COURT: No, the victim fine surcharge she is already in default of.

[21] THE CLERK: Okay, oh default, sorry.

[22] THE COURT: One day for that. Mr. Brooks? Mr. Brooks?

[23] MR. BROOKS: Yes, Your Honour.

[24] THE COURT: I would be indebted if you would -- your client is just serving 30 days for breaches. We could also find her in default of the \$800 fine. I am not sure what the daily amount is though. I do not want her to spend more time in custody other than it is minimum wage -- Mr. McLeod probably knows what minimum wage is, I am not sure. What is it, \$12?

[25] UNIDENTIFIED SPEAKER: Eleven thirty-five. I can check.

[26] THE COURT: So eleven thirty-five times eight is what?

[27] UNIDENTIFIED SPEAKER: If my math was good enough I would figure that out [inaudible/not near microphone].

[28] UNIDENTIFIED SPEAKER: Apologies, Your Honour, minimum wage has

gone up. It's now twelve sixty-five.

[29] THE COURT: I told you Mr. McLeod would know. It is an eight-hour day, isn't it?

[30] UNIDENTIFIED SPEAKER: So that's 101, about 100.

[31] THE COURT: That is not going to work. She will still have -- that will be an extra 20 days. Better to pay the fine.

[32] MR. BROOKS: I appreciate that, Your Honour, and I'm sure that --

[33] THE COURT: Thanks.

[34] THE CLERK: [inaudible/not near microphone] Your Honour, I just wanted to address was there any jail time credited attributed to the sentence?

[35] THE COURT: Oh, gosh, sorry, you are right. She served four days. She is entitled to credit at a rate of 1.5 to one for six days' credit for a total sentence of --

[36] MS. WHEELER: Actually, Your Honour, she had an extra day in there, so I think it should be eight days' credit.

[37] THE COURT: What is the extra day? Did she spend the night or just went in and was released?

[38] MR. BROOKS: Brought in on a warrant.

[39] MS. WHEELER: It was just went in and was released. There was no --

[40] THE COURT: I am not going to give her credit for that. I will just give her credit for the four days she has actually been getting her act together. So six days, so 24 days' new time. Thank you, Madam Clerk. I appreciate that.

[41] MR. BROOKS: Thank you, Your Honour. Thank you, my friend.

(REASONS CONCLUDED)