

Action No.: 120630405P1  
E-File No.: ECP13DUDARD  
Appeal No.: \_\_\_\_\_

IN THE PROVINCIAL COURT OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

DUANE MICHAEL DUDAR

Accused

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P R O C E E D I N G S

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Edmonton, Alberta  
February 8, 2013

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

2 \_\_\_\_\_  
3 February 8, 2013 Morning Session

4  
5 The Honourable The Provincial Court of Alberta  
6 Judge Anderson

7  
8 C.M.T. Lim For the Crown

9 K.M. Norton  
10 (Student-at-Law)  
11 (Agent for S.J. Fix) For the Accused

12 S. Daniele Court Clerk  
13 \_\_\_\_\_

14  
15 **Plea**

16  
17 MR. LIM: Good morning, Your Honour. For the record,  
18 it's Christian Lim. Lim for the Provincial Crown prosecutor's office. I appear in the  
19 matter of Dudar, Duane Dudar.

20  
21 THE COURT: Okay.

22  
23 MS. NORTON: Good morning, Sir. Norton --

24  
25 MR. LIM: He's in custody.

26  
27 MS. NORTON: -- first initial 'K'.

28  
29 MR. LIM: Oh, sorry.

30  
31 MS. NORTON: Norton, first initial 'K'. Student-at-Law, Fix  
32 and Smith, I'm agent for Mr. Fix on this matter.

33  
34 MR. LIM: This is for summary disposition, Sir. I have  
35 given madam clerk, Your Honour, sort of a list of the order that we anticipate to go in.  
36 It's not quite a joint submission I can let the Court know as well.

37  
38 MS. NORTON: Sir, this is Mr. Dudar. I can advise you, Sir,  
39 that Mr. Dudar is prepared to enter pleas of guilty to count 1 on the Information ending  
40 405, count 1 on Information ending 657, count 1 on Information ending 130, count 1 on  
41 Inform -- Information ending 831, count 1 on Information ending 006. As well as some

1 ticket matters, Sir, ticket ending in 362Z, ticket ending 576Z, ticket ending 712Z, and  
2 finally ticket ending 793Z. I have canvassed Section 606 with him, Sir, and he's  
3 responded in the affirmative. I understand my friend has the facts.

4  
5 THE COURT: All right.

6  
7 **Particulars**

8  
9 MR. LIM: Your Honour, if it pleases this Honourable  
10 Court, I'll first deal with the file ending in 405.

11  
12 THE COURT: Okay.

13  
14 MR. LIM: 405, Sir. The Crown is alleging the following,  
15 in the City of Edmonton, in the Province of Alberta on the date, Sir, of May the 31st,  
16 2012, a member of the Edmonton Police Service was around 107th Avenue and 96th  
17 Street completing an investigation on another matter. This police officer who was on duty  
18 and uniformed heard the accused seem to be somewhat intoxicated yelling and screaming  
19 at a dog that he was possessing on a leash, that being a Golden or a Labrador. He was  
20 noted to then be pulling on the leash so hard that it made the dog yelp and then cower  
21 and shake uncontrollably.

22  
23 Before the police officer could actually exit his vehicle to intervene, the accused then  
24 began to whip the dog with the leash, it appeared to be a leather leash, several times  
25 causing the dog again to yelp and cower in extreme fear. It should be noted that the  
26 police was yelling at the accused eventually to stop, although the police officer admitted  
27 he swore at the accu -- at the accused to stop. The police officer noted that in trying to  
28 get the dog -- or to obtain the dog, that the dog was extremely timid, submissive, shaking,  
29 appeared to be malnourished and was hiding or cowering under the police vehicle when  
30 the Animal Protection or the bylaw officers actually came to attend to try to retrieve the  
31 dog. The accused upon being arrested without any prompting said,

32  
33 I'm not a good guy, so what, I beat the dog. What are you going  
34 to do about it?

35  
36 He then said later on,

37  
38 I own the world, the Government will pay my tickets. I'm not a  
39 great guy.

40  
41 He was asked why did he whip the dog. He said,

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'Cause I fuckin' own the dog and the world.

Your Honour. Those are the allegations.

MS. NORTON: That's admitted, Sir.

THE COURT: Okay.

MR. LIM: But, Your Honour, so the file ending in 657 is a respect to a fail to attend court. Sir, this is in respect to June 15th, 2012, in Edmonton, Alberta and it's in respect to a docket matter.

MS. NORTON: Also admitted, Sir.

MR. LIM: File ending in 7130, 7130, breach of recognizance order, Your Honour. The Crown alleges the following; in the City of Edmonton, in the Province of Alberta between the dates of June 6th, 2012, and June 18th, 2012, the accused is out on a recognizance order in respect to the -- the charge on the animal cruelty, Sir. One of the terms was requiring him to report to a probation officer. What happened, Your Honour, he was explained that he had to attend to a probation officer on those dates. He didn't attend. There were phone calls made. He still didn't attend, Your Honour. That's the charge before the Court.

THE COURT: All right.

MS. NORTON: That's admitted.

MR. LIM: Next file, Sir, is 831, file ending in 831. The Crown is alleging the following, Sir. In the City of Edmonton, in the Province of Alberta, on September the 4th, 2012, about 11:30 in the evening at the Royal Alexander Hospital police were contacted, Your Honour. The accused was noted to be intoxicated and causing a disturbance in the emergency room area. One of the security or one of the members who worked at the Royal Alexander Hospital was trying to deal, or calm down, shall we say, the accused who was making a scene. The accused (sic) tried to bring the -- Mr. Dudar back to the end of the unit so that he wouldn't interfere with the patients and people around in the emergency ward, Sir. While bringing him to this room he was being belligerent and difficult and extremely intoxicated.

The accused grabbed a chair and then came at the complainant who was able to eventually grab the chair away from the accused and pushed him to the floor. He

1 continued, he being Mr. Dudar, with the complainant. While on the floor, the accused  
2 kicked the complainant several times and struck him many times in the abdomen and area,  
3 groin and legs. The complainant didn't require medical attention. He had some bruising I  
4 note, that was my understanding. This was witnessed by two nurses, Your Honour, as  
5 well as some other obviously civilians. The police came and arrested the accused. He was  
6 noted to be extremely drunk at the time.

7  
8 THE COURT: So the complainant was security?

9  
10 MR. LIM: Yes.

11  
12 THE COURT: Yes.

13  
14 MS. NORTON: That's admitted, Sir.

15  
16 THE COURT: All right.

17  
18 MR. LIM: File ending in 006, Sir, file ending in 006. The  
19 Crown is alleging on June the 1st, 2012, Your Honour, the accused had just been released  
20 obviously on the -- if you may recall the date, May 31st, in respect to the animal cruelty  
21 charge. He was, of course, to keep the peace and be of good behaviour. On this, sorry,  
22 on September 7th, 2012, the accused was noted to be approaching a residence on 101st  
23 Street and 115 -- 18, sorry, Sir.

24  
25 He forced his way into the residence by breaking through a screen door and a large plate  
26 glass door gaining access into this resident house where he used a lawn chair to get in.  
27 Once inside he was noted to be searching inside the residence until he was -- was noted  
28 by two neighbours who lived nearby, Sir. They saw the accused in the residence knowing  
29 that -- familiar with the people living there, knowing that he was not welcome there. So  
30 these two civilian witnesses, males, actually approached the accused who was in the  
31 residence. They contact the -- the police and maintain watching the exits until the police  
32 actually arrived.

33  
34 When the police did arrive, they attempted to place the accused into handcuffs. He was  
35 extremely intoxicated, struggled with them. It was noted that he had a very sma -- strong  
36 smell of liquor emanating from him as well, Your Honour. There was a struggle. It was  
37 noted that there was -- when the police looked at the place and confirmed with the actual  
38 owners of the residence who were away on holidays, that the damage was approximately  
39 \$2,000 to the screen door as well as the plate glass door, which were obviously  
40 significantly damaged by the chair to get into the residence.

41

1 MS. NORTON: That's admitted.

2

3 THE COURT: All right.

4

5 MR. LIM: Your Honour, respect to the ticket -- I'm sorry,  
6 Your Honour. Ticket ending in 1362. This would be ticket ending in 1362. This, Sir, is  
7 respect to trespass to premises. The accused again was intoxicated, Your Honour, was --  
8 and attended a Lucky 97 store. He was not welcome there, Sir, not supposed to be there,  
9 thus that particular ticket. That is a \$287 fine.

10

11 MS. NORTON: That's admitted.

12

13 MR. LIM: Likewise again, Your Honour, Crown is  
14 alleging April 18th, 2012, in Edmonton, Alberta, same location accused is found  
15 intoxicated at the same store. He's asked to leave and wasn't -- wasn't supposed to  
16 attend there. He'd already been given a trespass from the previous, Sir, I should explain.  
17 This applies to both tickets, I'm sorry, Your Honour. I think my friend would agree that  
18 he's actually was not to attend the Lucky 97 in respect to something that happened in  
19 2011.

20

21 MS. NORTON: That's correct, Sir.

22

23 MR. LIM: The last two tickets, Your Honour, I'm not sure  
24 how much detail you want on 4712, --

25

26 THE COURT: Not a lot.

27

28 MR. LIM: 5793 --

29

30 THE COURT: Not a lot.

31

32 MR. LIM: Sir, they're -- on the face value, they're --  
33 they're a *Gaming and Liquor Act* ticket. He's found intoxicated on the street by EPS and  
34 it's consistent with his (INDISCERNIBLE). I don't think there's nothing much more to  
35 be said about that.

36

37 MS. NORTON: I think that's sufficient, Sir. That's admitted.

38

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

40

41 MR. LIM: Your Honour, in respect to sentencing. We

1 aren't quite in agreement, Sir, to the sentencing. The ranges, yes, but not the way it's to  
2 be done here. So the suggested sentence is from the Crown, Your Honour, is a -- would  
3 be a global and I'll break it down. From 9 to 13 and a half months incarceration, 12  
4 months proba -- probation and a 5-year pet prohibition.

5

6 THE COURT: Sorry again, 9 to 13 and a half months plus --

7

8 MR. LIM: 9 to 13 and half months.

9

10 THE COURT: -- what?

11

12 MR. LIM: Plus 12 months probation and 10 -- or sorry  
13 5-year pet prohibition, sorry, 5-year pet prohibition. And I can break it down for this  
14 Court as to the Crown's suggested sentences served.

15

16 First of all, my friend has explained to me that there's no issue about the range, she just  
17 wants concurrent time on some of the charges. We're in agreement that the filing in 405,  
18 that would be the animal cruelty charge, would not be concurrent. So we are in  
19 agreement to that and the suggested time we've agreed to is between 15 to 30 days  
20 incarceration to be followed by a 5-year pet prohibition.

21

22 We agree, Your Honour, that the other ancillary orders do not need to be made, which are  
23 pursuant to Sections 445 and 4 -- 446 of the *Criminal Code of Canada*. In respect to file  
24 ending in 3657, Sir, we're suggesting 15 days consecutive, Your Honour. File ending in  
25 130, fail to attend, in respect to the breach, Your Honour, the Crown is suggesting a 30 to  
26 60 day sentence, that's 130. File ending 831, that's the assault charge, 30 days  
27 consecutive with the 12 months probation.

28

29 File ending in 006, this is the break and enter, Sir, 6 to month -- 6 to 9 months gaol  
30 consecutive and we agree that the DNA sampa -- sample can go on this one here, Your  
31 Honour. As well, we agree to a weapon prohibition pursuant to Section 109. Your  
32 Honour, we have the suggested probation terms before you, if I can pass to madam clerk,  
33 as well as the criminal order -- criminal record of the accused, which I believe has been  
34 verified with the --

35

36 MS. NORTON: It has been exhibited, Sir.

37

38 THE COURT: Okay, record will be S-1.

39

40 **EXHIBIT S-1 - Criminal Record of Accused**

41

1 MR. LIM: Thank you, Sir. The probation we're  
2 suggesting, Sir, is -- and I've spoken to my friend, we're in agreement in everything  
3 except for the al -- the abstaining clause in which alcohol and testing clause. Essentially  
4 is -- is a reporting condition, Your Honour, maintaining a residence, a designated  
5 residence. You will note, the detainee staying within the Province of Alberta, you will  
6 note in respect to maintaining employment or trying to create a positive environment from  
7 him. We've also made sure that 'cause he has some medical issues that he may not be  
8 able to work, that he, of course, could provide a medical letter to his doctor if he's unable  
9 to work for that clause there.

10

11 For assessment and treatment, Your Honour, we're looking obviously at the one that  
12 seems to be the most prominent, looking at his criminal record, that being alcohol, as well  
13 as anger management, domestic violence, Sir -- sorry anger management and psychiatric  
14 and psychological issues. Actually domestic violence does not -- I don't know why that is  
15 circled, Your Honour, sorry that was in error, it does need to be done in this particular  
16 case here.

17

18 MS. NORTON: Thank you.

19

20 MR. LIM: I think my friend would agree with that.

21

22 MS. NORTON: Yes, Sir.

23

24 MR. LIM: Of course there should be a waiver so that -- of  
25 information to allow for such assessment and treatment to be done. The Crown -- and  
26 this is not agree -- this is one part we don't agree on is the abstaining clause, Sir. The  
27 Crown believe that there should be a abstaining clause and a testing clause to enforce it.  
28 Essentially looking at the criminal record, the allegations before the Court including the  
29 tickets, this person obviously has a problem with alcohol.

30

31 And it seems like not only when he drinks, he also becomes obviously a danger to the  
32 public, whether it be a dog, whether it be a security person at the hospital or to a house --  
33 a home residence. Some people may argue, of course, that a person who has an alcohol  
34 problem can't stay off it but in this case here this Crown is suggesting -- we've  
35 considered *Ipeelee* and the early guilty plea in *Gladue* and sentencing here that if he can't  
36 stay away from the alcohol, then perhaps it should be more gaol time, so consider that in  
37 our sentencing approach here.

38

39 We want to give him an early case resolution offer that looked at the early plea, the  
40 strength of the Crown's case as well as his criminal record. My understanding is that the  
41 accused wishes to apply to get concurrent time in respect to -- in respect to with the break

1 and enter with the other charges other than the animal cruelty charge, that's file 405. I've  
2 explained to my friend that we're not in agreement to that, we don't think it's appropriate.  
3 The Crown considering that we've already considered an offer that looked at *Ipeelee*,  
4 *Gladue* and the early guilty plea. And of course the -- even the nature of the -- the group  
5 or the -- if you want to call it the -- the multiple charges that have been pled to here as  
6 well as the tickets.

7  
8 I note, Your Honour, that if you see the criminal record, he's gotten gaol time already on  
9 breaches as well as property offences, not to mention alcohol related offences. He has an  
10 unlawful entry that's relatively recent. His criminal record is constant, current and  
11 consistent and also the property offences. So the break and enter, Your Honour, which is  
12 in a residence even given 6 to 9 months really does consider his unique circumstances that  
13 he's gone through in respect to *Ipeelee* and *Gladue* and the number of charges he's pled  
14 guilty to. We don't see how the other charges are related and therefore should be  
15 considered in respect to concurrent time but rather should be consecutive.

16  
17 We also note that there are real victims here; there was a dog, there was a -- people who  
18 own the house, civilians had to deal with that, as well as the hospital there was a man  
19 who was just trying to do his job and, of course, is assaulted by the accused in a  
20 vulnerable situation there in the public.

21  
22 Your Honour, respect to the pet prohibition, this Court can obviously understand that  
23 that's on the file ending in 405, the animal probation. The probation I will leave with the  
24 Court, but we are suggesting the assault, although we did I notice put down to look at on  
25 the psychiatric or on the assessment issue about animal care. If you want you can put a  
26 445 or the -- the break and enter as well, but I'll leave that up to the Court as to what  
27 the -- the probation order, if you accept, should be on, Sir, on the length of time. Those  
28 are my submissions, Sir, unless you have any questions?

29  
30 THE COURT: Thank you.

31  
32 **Submissions by Ms. Norton (Sentence)**

33  
34 MS. NORTON: Sir, my friend has done a fair job of -- of  
35 summarizing my position on sentencing. I am asking, Sir, for the low end of the range  
36 that he has suggested for the break and enter charge, 6 months on that charge. The -- the  
37 low end of the range is he's proposed on the other charges concurrent to that charge and  
38 then a consecutive 15 days to the -- to that charge with the -- the cruelty to animal  
39 charge, Sir. So that would be a global sentence of 6 months and 15 days, Sir, on -- on  
40 everything. And then, of course, probation and the -- the pet prohibition. Sir, with regards  
41 to probation, as my friend indicated, I am in opposition to the abstinence clause and I will

1 elaborate upon my reasons for that, Sir when I dis --

2

3 THE COURT: Well, that's obvious. What is the whole  
4 purpose -- what is the point even of probation?

5

6 MS. NORTON: Sir, Mr. Dudar has indicated a strong desire to  
7 rebuild -- rehabilitate himself essentially, Sir, and I feel probation would assist him in  
8 that. I do have -- I do not have a formal letter in court for you, Sir, but I do have some  
9 information the way in fact on his aboriginal history, Sir.

10

11 Mr. Dudar's 38 years of age, he does have 2 children, teenagers who he has limited  
12 contact with. He completed grade 11, Sir, and he isn't working due to health issues. He  
13 advises me he has two smashed vertebrae, he suffers from seizures, Hepatitis C and liver  
14 damage due to his drinking, Sir.

15

16 With respect to Mr. Dudar's aboriginal background, Sir, I can advise you Mr. Dudar is  
17 Metis. He was born in Athabasca, has three brothers and sisters, he was adopted at birth,  
18 Sir. He advises that the foster parents he resided with moved around to various  
19 communities in Alberta and that his -- his upbringing with them was unstable due to the  
20 fact that they were moving fairly regularly. He also advises me, Sir, that he was abused  
21 by his foster parents.

22

23 Mr. Dudar was seized by Social Services when he was 13 or 14 years old. He was put in  
24 a group home at that time. Mr. Dudar advises me that he ran away from that group home  
25 and spent the remainder of his youthful years in and out of EYOC and various group  
26 homes. Sir, he also advises me he began drinking when he was 16 and I think you can  
27 clearly see in the Informations and the facts laid out before you, Sir, that his drinking  
28 problem is certainly what's brought him before you today.

29

30 With regards to Mr. Dudar's personal circumstances, Sir, I can advise he later moved to  
31 Athabasca. He advises me he did meet his birth mother. He then spent a period of time  
32 on the Big Stone Cree Reserve where he met the partner who would be the mother of his  
33 children, although they're not together anymore. He was with her for 6 to 7 years on the  
34 reserve then returned to Calgary for a couple years then finally settled in Edmonton again.  
35 He advises me, Sir, that he has limited contact with his parents, his ex-partner, his  
36 siblings and his children and he attributes that all due to his alcohol abuse.

37

38 With respect to treatment, Sir, Mr. Dudar advises me that he did occasionally attend  
39 Alcoholics Anonymous prior to 2012. He ended up in the hospital in the late -- late  
40 spring 2012 due to liver problems resulting from alcohol abuse. He did go to AADAC  
41 detox after that incident and then to Henwood for the summer of 2012 and I do believe

1 that most of the Information's before you. The offences occur either prior to or  
2 subsequent to that time in Henwood. Sir, he advises me that he relapsed after he was out  
3 of Henwood in September and since then he has certainly come to appreciate the very  
4 significant and detrimental impact that his alcohol problem has had on his life. He has  
5 taken steps to remedy that, Sir.

6  
7 He's attending church services while he's been in custody. He's connected with the  
8 Corrections Transitions program. Again while in custody, and Sir, that's a program  
9 through Alberta Health Services that deals with mental health and addictions issues. And  
10 I've had the opportunity of speaking with his case worker, Jamie, and her words were,  
11 That he's been active and motivated in dealing with his addictions, Sir. She was prepared  
12 to provide a letter to me but unfortunately she took an unexpected leave and for that  
13 reason I'm not able to provide a letter from Jamie to the Court. But she did advise me  
14 that she's been meeting with him approximately twice a month since he's been in custody.  
15 In September they've had one on one counselling. He has been working with her and  
16 now with another case worker towards developing a relapse prevention program.

17  
18 Perhaps more significantly, Sir, the Transitions program is one that's prepared to work  
19 with Mr. Dudar once he's out of custody. So we're not going to run into a situation  
20 where Mr. Dudar is released from custody and out in the community with no supports.  
21 Instead, Sir, they are working on a plan with him to attend the Gunn Centre. I understand  
22 that he's -- he's intending to work with the Gunn Centre for approximately one year  
23 following his release from custody. And the Gunn Centre is a treatment facility that  
24 caters to people with addictions and also medical concerns, which makes it a good fit for  
25 Mr. Dudar with his health issues.

26  
27 The Corrections Transition program is also going connect him with Housing First, which  
28 is an independent living program, Sir. So with the assistance of the Corrections  
29 Transition program when Mr. Dudar's sentence is completed his -- when his custodial  
30 sentence is complete and he's released, he will have supports in place both for housing  
31 and for some form of relapse prevention, Sir.

32  
33 With respect to the sentence, Sir, my friend is correct in noting that the incidents are  
34 unrelated but I would ask, Sir, that you consider the totality principle in imposing a  
35 sentence on Mr. Dudar. And I would suggest that applying all of the sentences  
36 consecutively would result in a situation where the sentence imposed may exceed  
37 Mr. Dudar's culpability, particularly given the requirements of *Ipeelee*, Sir, where you're  
38 required to consider both systemic and the background factors and how that may impact  
39 on Mr. Dudar's culpability.

40  
41 So, Sir, in closing, I propose a 6 month sentence. Again, 6 months on the break and enter

1 charge, Sir, 30 days concurrent on the assault, 30 days again concurrent and 15 days  
2 concurrent on the fail to comply and the fail to appear. And I am in agreement with my  
3 friend, 15 days consecutive for the cruelty to animal charge, Sir. So the global charge --  
4 or global disposition of 6 months and 15 days and 12 months probation, Sir, again no  
5 abstinence provision and a 5-year pet prohibition. Subject to any questions, Sir, those are  
6 my submissions.

7

8 MR. LIM: Your Honour, the only comment that I think  
9 we'll make jointly to you, Sir, if you'll consider is that in respect to the tickets, the  
10 trespass ones are a set one of \$287, as the Court may know. The *Gaming and Liquor Act*  
11 is \$115 each, including other surcharges.

12

13 MS. NORTON: Thank you, Sir, and I -- I take no -- no  
14 comments on the fines. They -- they are what they are, Sir.

15

16 MR. LIM: I need to let the Court know that there is also a  
17 victim impact statement filed on the file ending in 006, which madam clerk, I think, has  
18 copies for us to review. In respect to the file ending in 405, the police officer just had  
19 extreme concerns about Marley the dog but it's not really a victim impact statement, it's  
20 just concerned about the safety of the dog. If we could perhaps, Your Honour, with your  
21 approval review the victim impact statements on the break and enter charge?

22

23 THE COURT: Yes.

24

25 MR. LIM: Thank you, Sir. If I can just approach, madam  
26 clerk.

27

28 (OTHER MATTER SPOKEN TO)

29

30 MR. LIM: Does my friend have any difficulties with this  
31 complying with the *Criminal Code* in respect to be admissible?

32

33 MS. NORTON: I -- I have no difficulties with this.

34

35 MR. LIM: If that could be marked as Exhibit S-2, with my  
36 friend's consent.

37

38 MS. NORTON: Certainly.

39

40 THE COURT: All right.

41

1 **EXHIBIT S-2 - Victim Impact Statement**

2

3 THE COURT: All right. I have read the victim impact  
4 statement. Mr. Dudar, anything you want to say?

5

6 THE ACCUSED: Yeah. I -- I pretty well -- yeah, I got an  
7 alcohol problem. Like, all my charges are all alc -- due to alcohol. If I wasn't drinking I  
8 wouldn't be in trouble. All this is all alcohol related, everything I've done. My whole  
9 record's alcohol related. When I'm not drinking I'm not like this, I don't do anything like  
10 this. Half these things I don't even remember, I was blacked out. I was -- not even my, I  
11 don't remember it, that's how bad it was.

12

13 Feel sorry for what I done but I don't even remember it. You know, and trying to get  
14 help for my alcohol problem. I've got a transition team that's working with me right  
15 now. And when I get out of here they're going to try, I'm going to go to Gunn  
16 Treatment Centre for a year. They're helping me get into that and helping me get off the  
17 street and my homeless -- I'm homeless so help me get my own place and help me with  
18 my, yeah, alcohol problem. So that -- I'm hoping that works out for me and that's pretty  
19 well -- I'm hoping everything works out when I get -- when I get out of here and that's  
20 about all I can say. I just hopefully it'll work on my alcohol problem.

21

22 THE COURT: All right. Is there any presentence custody?

23

24 MS. NORTON: There is, Sir. I was just going to mention that  
25 actually. He's been in for 5 months and 2 days as of today.

26

27 MR. LIM: If it assists this Court we calculate it to 154  
28 days, Your Honour.

29

30 MS. NORTON: Sorry, I think that would be 155. I did notice I  
31 missed one day when we were speaking earlier.

32

33 MR. LIM: Okay, 155, Your Honour.

34

35 MS. NORTON: Thank you.

36

37 **Sentence**

38

39 THE COURT: All right. Well, first of all with respect to the  
40 four charges under the provincial legislation, I am going to impose the specified penalties,  
41 in default of payment, deemed days. In the final analysis, I am imposing a global

1 sentence of 7 months, less time served. And in doing so I am approaching it as we are  
2 directed to approach it under *Gladue*. And looking at your background circumstances and  
3 then trying to fit the offences into that background context given respect to the objectives  
4 of sentencing.

5  
6 And of course, the primary thing is that the offences have to fit the crime. I realize these  
7 are alcohol related offences, that has been a scourge of your life, it has also jeopardized  
8 your health obviously seriously and you are very wise to be working with a transition  
9 team to try and beat that problem because I am sure if you do then you will not be such a  
10 menace to yourself and society generally. I see the apportionment of (INDISCERNIBLE)  
11 of the sentences a little bit differently than has been suggested.

12  
13 The break and enter, which given the level of intoxication and the question really of what  
14 was actually intended there but nonetheless, the inconvenience associated with a break and  
15 entry, I think the range suggested is high, actually, and I am going to cut you some slack  
16 on that. And on that offence I would have imposed a sentence of 3 months. On the  
17 assault at the hospital, I agree that a sentence of 30 days is appropriate. It is completely  
18 unrelated; there is no reason to make it consecutive. It would have been consecutive for a  
19 total of 4 months.

20  
21 With respect to the two breach related charges, I am making those sentences concurrent. I  
22 will impose a sentence of 15 days on the Information ending in 57 and 30 days on the  
23 other. But I am making them concurrent and I am going that partly because of the overall  
24 totality principle but also because of course those are -- you have, of course, because of  
25 your repeated misbehaviour ended up back in gaol. You are getting some credit for time  
26 but you are not getting any credit for remission. And when I throw all of that into the  
27 mix I think concurrent sentences on that are appropriate. .PP Which leaves then the  
28 cruelty to animal and I appreciate both counsel suggest that the range of sentence should  
29 be 15 to 30 days. I disagree. As you may have gleaned from the sentences that I have  
30 seen or I have been imposing in relation to the other matters, when a person is  
31 disadvantaged and is committing offences as a result of having been dealt a poor deck of  
32 cards and the like, I tend to be quite sympathetic. When people whip or kick dogs  
33 though, I am not sympathetic. Because surely, when you are sober and you look at that  
34 taking advantage of the creature that cannot defend itself, the exploitation of others, which  
35 frankly you yourself have been a victim of, is not justified and is simply going to be  
36 punished because there is no explanation that justifies it. So that is why I would impose a  
37 sentence of 3 months consecutive on that.

38  
39 Now in the final analysis you end up with a sentence that is at the lower end of what has  
40 been submitted but I want to make that point. You are also prohibited from possessing  
41 any kind of an animal as a pet for a period of 5 years. And I will impose a probation

1 order in addition to the assault or attached to the assault charge. You will be on  
2 probation for a period of 12 months. There are very few conditions. The conditions are  
3 that you have to keep the peace and be of good behaviour, report to the court when  
4 required, and you have to report to probation within a couple of days, two days, of your  
5 working days of your release and then after that as directed by probation.  
6

7 It is not a condition of the order but I am encouraging you to work with the transition  
8 team through your case worker and through the probation officer who is going to be  
9 assuming conduct of your situation once you are out so that you can have a concrete  
10 game plan in place as you are trying to do right now. And there will then be a general  
11 condition that you attend for whatever assessment, treatment or counselling is directed by  
12 the probation office. I am not doing that to motivate you to take treatment, you are  
13 motivated. The question is trying to create a structure which maximizes the chances of  
14 you being successful in that.  
15

16 And I am not imposing a condition that you abstain absolutely because you have  
17 demonstrated that in the past you have been incapable of complying with that kind of a  
18 condition. But you, of course, have to know that if you keep drinking everything else is  
19 going to unravel anyway, so you have to make that part of your plan. All right. Victim  
20 fine surcharges are waived.  
21

22 MR. LIM: Your Honour, may I ask the wording respect to  
23 the pet prohibition. In the past, we suggested be worded as not own, possess, control any  
24 pet or animal for 5 years. I'm just wondering if that would be appropriate, Sir?  
25

26 THE COURT: Not -- what?  
27

28 MR. LIM: Not own, possess, control any pet or animal for  
29 5 years.  
30

31 THE COURT: What does control mean?  
32

33 MR. LIM: Meaning he can't supervise, like, you know, a  
34 dog in respect to like a job or something like that around his house.  
35

36 THE COURT: All right.  
37

38 MR. LIM: In other words, if (INDISCERNIBLE) he's  
39 want to babysit should we say a dog or a pet.  
40

41 THE COURT: Yes. I will use the word supervise rather than

1 control.

2

3 MR. LIM:

All right.

4

5 THE COURT:

I think it would be misleading.

6

7 MR. LIM:

Can we confirm on the record that he

8 understands that, Sir, the pet prohibition.

9

10 THE COURT:

Do you have any lack of understanding about

11 that? Okay, you cannot look after pets. Cannot own them, cannot look after them.

12

13 THE ACCUSED:

Well, then pets all over -- my family all have

14 pets. (INDISCERNIBLE)

15

16 THE COURT:

Well, you cannot be the one that is supervising

17 them.

18

19 THE ACCUSED:

I won't have them. There's enough out of

20 there.

21

22 THE COURT:

Well, if that is true then you understand why I

23 gave you 3 months.

24

25 THE ACCUSED:

Yeah, I understand what you mean.

26

27 MR. LIM:

Your Honour, the Crown would apply to

28 withdraw all the charges and tickets. And seeking the forfeiture of the -- all exhibits

29 including the dog if (INDISCERNIBLE) still want them dealt with to Her Majesty the

30 Queen.

31

32 THE COURT:

Why does that require forfeiture?

33

34 MR. LIM:

In respect to -- there was -- if there's any issue

35 of whether the animal can be adopted -- animal can be adopted after that we're applying

36 so --

37

38 THE COURT:

Well, is there an issue? Because I cannot

39 imagine there would be.

40

41 MR. LIM:

I don't see it on the file here.

1  
2 MS. NORTON: I don't see that there is one, Sir.  
3  
4 THE COURT: I have never heard of forfeiting a dog.  
5  
6 MR. LIM: It allows us to do that. I just want to make  
7 sure that --  
8  
9 THE COURT: I think you can do that.  
10  
11 MR. LIM: Fair enough, Sir.  
12  
13 THE COURT: I am not going to do forfeiture but are there  
14 others are forfeited.  
15  
16 MR. LIM: Thank you, Your Honour, those are my matters.  
17  
18 THE COURT: Thank you.  
19  
20 MS. NORTON: Thank you, Sir, that's my only matter as well.  
21 Good morning.  
22  
23 THE COURT: Madam Clerk, do you have the terms that I just  
24 read out?  
25  
26 THE COURT CLERK: I got them, thanks.

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29 PROCEEDINGS CONCLUDED

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**1 Certificate of Record**

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I, Samantha Daniele, certify that the recording is the record made of the evidence in the proceedings in the Provincial Court, held in courtroom 446 at Edmonton, Alberta, on the 8th day of February, 2013, that myself and Marlene Kassian were the court officials in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2

3 I, Kim Moon, certify that

4

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

8

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

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