

218548-1
Surrey Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

XIN YING ZHOU

ORAL REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE D. WEATHERLY

COPY

Crown Counsel:	K. Johnston
Counsel for the Accused:	C. Shen
Place of Hearing:	Surrey, B.C.
Date of Sentence:	May 9, 2018

[1] THE COURT: Mr. Johnston, on behalf of the Crown, is seeking a suspended sentence in this matter for a period of two years with conditions similar to the ones set out by Judge Gillespie in the *Chrysler* decision, which he passed up, which is [2013] BCJ No. 1872. He said the main goal is to keep Ms. Zhou from owning or possessing animals for life and he is seeking, pursuant to s. 24(3) of the *Prevention of Cruelty to Animals Act*, a lifetime ban on her possessing or owning animals.

[2] He says the aggravating factors are as follows:

1. That she was given plenty of opportunity by the SPCA to come into compliance with the law and that she neglected or refused to do so. He said, while she made some effort, it was not enough. She did not take it seriously and certainly I would agree with that. I agree that she failed to take advantage of the assistance offered by the SPCA to comply.
2. He said it is a commercial enterprise. I also agree with that. Although she had some of her own pets, it was a commercial enterprise.
3. He says she still fails to understand the gaps in her knowledge with respect to animal welfare. I would agree with that, given her evidence that she gave to this court in which she disputed the medical evidence of the SPCA, notwithstanding that most of it came from two licensed veterinarians, very well qualified, which was supported by confirmatory evidence from laboratory findings.

[3] In mitigation, he says that she has no record and she made some effort to comply.

[4] Mr. Shen, also relying on the *Chrysler* decision, said, as she has no record, rehabilitation should be this court's primary emphasis.

[5] He said, in mitigation, this is a strict liability offence and, quite rightly, he points out that she did not intend to hurt the animals.

[6] Next, he says her ability was lacking; it is an educational and training problem.

[7] Next, he says, under the circumstances, that a lifetime ban on owning or possessing animals is excessive.

[8] He also suggests that a suspended sentence is appropriate and suggests that I impose an animal ban for the period of the probation order, perhaps with the condition that she complete education and training programs related to animals to the satisfaction of the probation officer.

[9] He said that, if necessary, rather than impose a lifetime ban, that I should have her complete more community work service and that if she fails to comply then a greater ban can be considered. He asks the court not to impose a lifetime ban on her with respect to owning personal pets.

[10] Ms. Zhou addressed the court and said her lifetime goal is to be someone who takes care of animals and that she would like to create job opportunities in that regard. She said in the past 10 years, she has worked pretty much 16 hours a day and she says she wishes to have a chance to learn about animal care and have a happier, healthy life.

[11] I agree with counsel with respect to the aggravating and mitigating factors. I have to keep in mind that she has no record. I also keep in mind that she made some attempts to comply with the previous orders. She regularly had animals going

to Dr. Brar's clinic, although, as I found, not animals that should have been going for veterinary care when they needed it.

[12] I also accept that a lot of money was spent on the renovation of the animals' accommodation. Sadly, again, because of her lack of education, it was not done properly and contributed to the difficulties for the animals.

[13] Most importantly, as noted by Mr. Shen, she did not intentionally harm these animals. It was a lack of training and knowledge and today she has expressed a willingness to learn how to take care of animals properly.

[14] I turn now to Judge Gillespie's decision in the *Chrysler* case, commencing at paragraph 15 where she states:

Given that Ms. Chrysler has no previous record, I must consider rehabilitation at least to some extent and balance the principles of sentence having regard to the aggravating and mitigating factors that I have identified.

I would add in the principles of denunciation and deterrence as well. Judge Gillespie carries on:

The circumstances are such that I highlighted in this decision, together with my reasons for judgment, that animals are dependent upon their caregivers, particularly domesticated animals who are at the whim and mercy, if you will, of the owners with whom they reside.

As noted by Crown in this case, in addition to her own animals, she had other people's animals there, which is aggravating. Judge Gillespie carried on:

The *Prevention of Cruelty to Animals Act* is in place in order to ensure that those animals are maintained in a manner that they are provided with the necessities of life, which include shelter, water and food.

Of course, in the case at bar, there was other deficiencies or different deficiencies than that but I have addressed those in my decision earlier.

She then carries on at paragraph 17:

In the circumstances it is appropriate, in my view, when I look at the principles of sentence, the authorities before me and the aggravating and mitigating factors, to suspend the passing of sentence for a period of two years, and I do so.

She then sets out the conditions that are appropriate.

[15] In my view, it is an appropriate case for a suspended sentence for two years.

[16] It is not an appropriate case for a lifetime ban, in my view, because she is a first offender, she made efforts to try and comply, and she did not intentionally harm the animals.

[17] So Madam Clerk, there will be an *Offence Act* probation order for a period of two years with the following conditions, one, you will keep the peace and be of good behaviour. Do you have the pick list there, Madam Clerk?

[18] THE CLERK: Yes, Your Honour.

(DISCUSSION)

[19] THE COURT: So back to the conditions, 2001. You must keep the peace and be of good behaviour.

[20] You must appear before the court when required to do so by the court.

[21] You must report in person to the probation office at 102 - 14245 56 Ave., Surrey, B.C., by 3:00 p.m., May 10th, 2018, and after that, you must report as and when directed by the probation officer.

[22] When first reporting to the probation officer, you must inform him or her of your residential address and phone number. You must not change your residence or phone number without prior written permission from the probation officer.

[23] You are not to reside in any residence where any domestic animal is present. Mr. Shen, does your client live in such a place now?

[24] MR. SHEN: No, she doesn't.

[25] THE COURT: You must complete 100 hours of community work service under the direction of the probation officer. How long is she going to need to complete that, Mr. Shen? If I give her to the end of the year, is that sufficient?

[26] MR. SHEN: Sorry?

[27] THE COURT: If I give her to the end of the year, is that sufficient?

[28] MR. SHEN: She says yes.

[29] THE COURT: Yes?

[30] MR. SHEN: Oh, sorry, Your Honour, yes. She said yes.

[31] THE COURT: All right. The community work service must be completed by December 31st, 2018. I pause to note that the reason I have increased the

community work service over what the Crown had asked is because I am of the view that a lesser prohibition is appropriate but I am also of the view that, because she is running this as a business as well as her own animals, that more than 30 hours was appropriate.

[32] You must attend, participate in and successfully complete to the satisfaction of the probation officer any counselling or program, as directed by the probation officer, that deals with the subject matter of the proper treatment and welfare of dogs and cats.

[33] With respect to s. 24(3) of the *Prevention of Cruelty to Animals Act*, I am going to prohibit you for a period of seven years from owning, possessing, caring for or otherwise having in your custody and control any domestic animals.

[34] I will repeat that, Madam Clerk. Pursuant to s. 24(3) of the *Prevention of Cruelty to Animals Act*, you are prohibited for a period of seven years from owning, possessing, caring for or otherwise having in your custody and control any domestic animals.

[35] I just pause to note that the lifetime ban on horses imposed in the *Chrysler* case was with the consent of the accused.

[36] There is a \$50 victim fine surcharge. If I give her until the end of the year, is that sufficient time to pay?

[37] MR. SHEN: Yes, Your Honour.

[38] THE COURT: All right. Payable no later than December 31st, 2018.

(REASONS FOR SENTENCE CONCLUDED)