In the Court of Appeal of Alberta

Citation: R v Chen, 2021 ABCA 382

Date: 20211125
Docket: 2001-0239A
Registry: Calgary

Between:

Her Majesty the Queen

Appellant

- and -

Yanshun Chen

Respondent

- and -

Animal Justice

Intervenor

The Court:

The Honourable Justice Marina Paperny
The Honourable Justice Jack Watson
The Honourable Justice Frans Slatter

Reasons for Judgment Reserved of the Honourable Justice Marina Paperny
Concurred in by the Honourable Justice Jack Watson
Concurred in by the Honourable Justice Frans Slatter

Appeal from the Sentence by
The Honourable Justice A.D. Macleod
Dated the 25th day of November, 2020
(2020 ABQB 734, Docket: 181216540S1)

Reasons for Judgment Reserved
of the Honourable Justice Marina Paperny

The Court:

[1] The respondent, Mr. Chen, beat his ten-month-old puppy, relentlessly, for over 20 minutes. He kicked her, dragged her across the floor, and threw her into a wall. An alarmed neighbour tried to stop the assault but Mr. Chen turned her away. The puppy sustained a broken paw, broken teeth, scleral hemorrhaging in one of her eyes and blunt force trauma to her right hind leg, the left side of her head, and her abdomen.

[2] Mr. Chen pleaded guilty to causing unnecessary suffering to an animal, contrary to s 445.1(a) of the *Criminal Code*, RSC 1985, c C-46. The sentencing judge imposed a jail term of 90 days to be served intermittently, followed by 2 years' probation. He held that the primary sentencing objectives in this case were deterrence and denunciation and, given the brutality of the attack and the moral blameworthiness of the respondent, a Conditional Sentence Order (CSO) would not be appropriate.

[3] Mr. Chen appealed his sentence. The appeal justice overturned the sentencing judge's decision, concluding that a CSO ought to have been imposed given the primary objectives of sentencing in this case, which the appeal justice saw as individual deterrence and rehabilitation. The appeal justice imposed a one-year CSO and two years' probation.

[4] The Crown was granted permission to appeal the decision of the appeal justice to this court: *R v Chen*, 2021 ABCA 74. The appeal raises two issues: (1) what are the sentencing principles applicable to animal cruelty cases having regard to 2008 amendments to the relevant *Criminal Code* provisions and jurisprudence following those amendments; and (2) did the appeal justice give sufficient or any deference to the decision of the sentencing judge in this case.

Background

[5] Mr. Chen lived in the upstairs portion of a duplex. The downstairs tenant heard a puppy yelping, being dragged across the floor, beaten continually and being thrown against a door and possibly a wall. The beating continued for approximately 20 minutes. The tenant, concerned by what she heard, knocked on the respondent's door and attempted to intercede. Mr. Chen told her to mind her own business, closed the door and continued the beating. At the same time, a passerby heard the puppy yelping from approximately 100 metres away from the house. The police were called and, upon their arrival, the puppy was observed to be in physical distress with visible injuries.

[6] In addition to the injuries described above, there was evidence of previous healed rib fractures that were at least six to eight weeks old.

[7] Mr. Chen admitted that he kicked the puppy and appeared apologetic but the sentencing judge found he minimized his behavior, omitting details about what he had done and offering innocent explanations for some of the injuries. He also admitted to his psychologist that the date of the offence was not the first time he had struck the dog.

[8] At the sentencing hearing, Mr. Chen called a psychologist, with whom he had 11 therapy sessions. That testimony suggested three contributing factors to Mr. Chen's behaviour: his cultural background, lack of experience in raising a dog, and corporal punishment experienced as a child and used in dog training. The psychologist concluded that Mr. Chen had an anger management problem and described his efforts to address the problem as a "work in progress".

The sentencing decision

[9] The Crown sought a 90-day custodial sentence, while the defence sought a CSO in the range of three to five months plus a lengthy period of probation. In his discussion of the fundamental principles of sentencing, the sentencing judge noted that, while rehabilitation is a factor to be considered, the primary sentencing objectives in this case were deterrence and denunciation. He identified the following aggravating factors:

(a) The violent and prolonged attack on a defenceless puppy;
(b) The refusal to stop abusing the dog when confronted by the downstairs tenant;
(c) The abuse was only stopped by the arrival of the police; and
(d) The respondent was in a position of trust vis á vis the dog.

[10] The mitigating factors identified included:

(a) The timely guilty plea;
(b) The respondent accepted responsibility for his wilful action;
(c) Expression of remorse;
(d) Lack of a criminal record;
(e) Youthful first offender;
(f) No reoffences since the date of the offence;
(g) Cooperation with police; and
(h) Attending counseling.

[11] The sentencing judge considered whether a CSO was appropriate in the circumstances. He concluded that "Chen's high degree of moral blameworthiness and the gravity of the offence, which stems from the length and sheer brutality of the abuse occasioned on the dog, is of such a significant degree that the fundamental principles of sentencing cannot be satisfactorily addressed by a CSO of any duration.": *R v Chen*, 2020 ABPC 35 at para 97.

The summary conviction appeal decision

[12] The appeal justice overturned the decision of the sentencing judge: *R v Chen*, 2020 ABQB 734. He relied on the principle enunciated in *R v Priest* (1996), 30 OR (3d) 538, 110 CCC (3d) 289 (ONCA) that, in sentencing youthful first-time offenders, the primary objectives are individual deterrence and rehabilitation, and not deterrence and denunciation as identified by the sentencing judge. In the view of the appeal justice, a period of incarceration was not required as a matter of individual deterrence and to teach Mr. Chen a lesson, and the sentencing judge erred in not utilizing a CSO. He substituted a one-year CSO, maintaining the period of probation.

[13] Mr. Chen's CSO was finalized on December 17, 2020 and he has been bound by it since.

Issues on appeal

[14] Permission to appeal was granted on two issues:

> 1. Did the appeal justice give appropriate deference to the sentence imposed by the sentencing judge?
>
> 2. What are the primary principles that ought to inform sentencing for offences involving animal cruelty?

Standard of review

[15] The sentences imposed by trial judges are entitled to considerable deference from appellate courts. An appellate court can only interfere with a sentence where it is demonstrably unfit or where the sentencing judge has made an error in principle that had an impact on the sentence: *R v Friesen*, 2020 SCC 9 at paras 25-26; *R v Lacasse*, 2015 SCC 64 at paras 39-41; *R v Nasogaluak,* 2010 SCC 6 at paras 43-44; *R v Proulx*, 2000 SCC 5 at paras 123-125. Parliament has explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment. Sentencing judges are to be afforded wide latitude and their decisions are entitled to a high level of deference on appeal: *R v Parranto*, 2021 SCC 46 at paras 13 and 29.

[16] The Supreme Court has on numerous occasions described the types of errors that will warrant appellate intervention. They were recently described in *Friesen* as follows, at para 26:

> Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle "[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably" (*R v McKnight* (1999), 135 CCC (3d) 41 (Ont CA), at para 35, cited in *Lacasse*, at para 49).

[17] In this case, the appeal justice was of the view that the sentencing judge erred in his assessment of the gravity of the offence and the moral blameworthiness of the respondent's conduct, and in failing to emphasize the principles of individual deterrence and rehabilitation in light of the fact that the respondent was a youthful first-time offender. Whether the approach of the sentencing judge, and his conclusion that a CSO was unavailable in the circumstances of this case, can be said to constitute an error in principle depends largely on the principles that guide sentencing in cases of animal cruelty.

[18] The Crown and the intervenor, Animal Justice, have urged us to provide guidance on the approach to sentencing in this context to address a perceived inconsistency in the sentences being imposed at the trial level.

[19] I will, therefore, begin by considering those principles.

Sentencing principles in cases of animal cruelty

[20] The animal cruelty cases provided to the panel demonstrate what might be called an enforcement gap – the criminal law recognizes the offence but the sentence imposed often fails to reflect the gravity of the conduct. Such gaps may be exacerbated by various factors, including limited reporting and systemic barriers. All sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *Parranto* at para 10; *Friesen* at para 30. However, no sentence can be proportionate if the gravity of the offence and the harm caused by the criminal conduct is not appreciated or accepted. Similar disparities have existed between the harm caused by other types of crimes and the sentences imposed for those crimes. This court, and others, have often provided guidance when sentences imposed fail to capture the gravity of a particular category of offence: see e.g. *R v Johnas*, 1982 ABCA 331 (convenience store robberies); *R v Parranto*, 2019 ABCA 457, aff'd 2021 SCC 46 (drug trafficking); *R v Arcand*, 2010 ABCA 363 (sexual assault); *R v Hajar,* 2016 ABCA 222 and *Friesen* (sexual offences against children). As the Supreme Court recently noted in *Parranto* at para 15, "provincial appellate courts must promote stability in the development of the law while providing guidance to lower courts to ensure the law is applied consistently... Appellate guidance may take the form of quantitative tools (such as sentencing ranges and starting points), non-quantitative guidance explaining the harms entailed by certain offences, or a mix of both." A purpose of such guidance is to highlight the nature and gravity of the offence and encourage consistency in the application of sentencing principles. It is in that light that we take the opportunity to provide guidance on the appropriate sentencing principles in animal cruelty cases.

[21] Without drawing a moral equivalence between human victims of crime and animals as sentient beings, it is apparent that the views of society with respect to animal cruelty and the harms caused by this conduct must continue to evolve. The comments of Fraser CJA in her dissent in *Reece v Edmonton (City)*, 2011 ABCA 238 at para 162, leave to appeal to SCC refused, (2012) [2011] SCCA No 447 are relevant here: "a civilized society should show reasonable regard for

vulnerable animals". At para 54, she remarked on the societal change in this area: "We have moved from a highly exploitive era in which humans had the right to do with animals as they saw fit to the present where some protection is accorded under laws based on an animal welfare model."

[22] Unlike *Reece*, this case arises under the criminal law and involves deliberate cruelty to animals, the most egregious form of animal abuse. The societal change noted by Fraser CJA is reflected in Parliament's approach to sentencing for these offences.

[23] In 2008, Parliament amended the animal cruelty provisions of the *Criminal Code.*[1] As this court noted in *R v Alcorn*, 2015 ABCA 182 at para 40, the amendments "reflect the recognition that the prior sentence range for such conduct was wholly inadequate." The amendments made the offences hybrid and increased the available maximum sentences. Prior to the amendments, the maximum sentence for causing unnecessary suffering to an animal was six months' imprisonment; the amendments increased the maximum for summary conviction offences to 18 months' imprisonment, and in 2019 that maximum was increased again to two years. The maximum sentence for indictable offences is now five years' imprisonment: s 445.1(2). The length of prohibition orders, by way of which a judge may prohibit the offender from owning, having custody or control of, or residing with an animal, was also increased from a maximum of two years pre-amendment. A judge may now impose a prohibition order of any length, including permanently. For second or subsequent offences, the court *must* impose a prohibition order of at least five years: s 447.1(1)(a). The court may also make a restitution order, to require the offender to pay costs incurred by another person or organization for the animal's care: s 447.1(1)(b).

[24] The objectives of the amendments are apparent: to better reflect the serious nature of crimes of animal cruelty, provide better protection for animals who are the victims of such crimes, and enable flexibility in sentencing. In particular, the increase in maximum sentences is reflective of the gravity of the offence and assists in determining a proportionate sentence. As was noted by the Supreme Court in *Friesen* at para 97, "a decision by Parliament to increase maximum sentences for certain offences shows that Parliament 'wanted such offences to be punished more harshly'". The following direction from *Friesen*, at para 100, is apt: "To respect Parliament's decision to increase maximum sentences, courts should generally impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences."

[25] The identified objectives are borne out by the legislative debates at the time the amendments were introduced. The Bill was said to have the objective of "improving the law's ability to deter, to denounce and punish animal cruelty, and make offenders take greater responsibility for their crimes."[2] The Hon Charles Hubbard characterized the Bill as a "response

---

[1] An Act to amend the *Criminal Code* (cruelty to animals), SC 2008 c 12.

[2] "Bill S-203, An Act to amend the *Criminal Code* (cruelty to animals)", 3rd reading, *House of Commons Debates*, 39-2, No 63 (10 March 2008) at 3826 (Kevin Sorenson).

to the desire to offer more protection to animals and to increase the power of prosecutors to advocate stronger punishments."[3] That dual aspect is reflected in the amendments. Higher sentences are intended to denounce and deter the conduct; prohibition orders are designed to prevent further harm and protect animals.

[26] The Crown submits that, since the 2008 amendments, there has been inconsistency in sentencing decisions in this area. With limited exceptions, lower courts have not imposed sentences above the previous six month maximum. Of the Alberta decisions referred to the panel, only three resulted in sentences greater than six months' in jail.[4] Most of the post-2008 cases cited to the panel involved no jail time, including several cases in which abuse of an animal caused serious injury or death.[5]

[27] Moreover, there has been little appellate guidance. In Alberta, the only reported animal cruelty decisions from this court are *R v Sanaee*, 2016 ABCA 289, a conviction appeal that does not discuss sentencing, and *R v Alcorn*. In *Alcorn,* the court noted that case law on sentencing "has not revealed an overall policy strategy for animal cruelty cases as yet", but went on to state categorically that animals are sentient beings and "not objects": para 41. The court also opined that, by enacting s 445.1 of the *Criminal Code,* "Parliament recognized, and intended that courts also recognize, that cruelty to animals is incompatible with civilized society": para 42. I agree that animals, sentient beings that experience pain and suffering, must be treated as living victims and not chattels. Smashing a pet through a window is not the same as smashing a window.

[28] Beyond Alberta, there are two appellate cases of note. In *R v Wright*, 2014 ONCA 675, the Ontario Court of Appeal stated in a brief endorsement that the 2008 amendments "signal an added determination by Parliament to deter and punish those who would engage in acts of cruelty to animals": para 1. The court imposed a nine-month sentence of incarceration, overturning the original suspended sentence and probation. In *R v Reykdal*, 2020 NBCA 13, the New Brunswick Court of Appeal quoted with approval a decision from the Ontario Court of Justice, which

---

[3] "Bill C-213, An Act to amend the *Criminal Code* (cruelty to animals), 1st reading, *House of Commons Debates*, 39-1, No 118 (26 February 2007) at 7278 (Hon Charles Hubbard). This debate was in respect of Bill S-213, the identical predecessor of the Bill that was ultimately enacted (Bill S-203).

[4] *R v Alcorn*, 2015 ABCA 182 (20 months' jail and three months probation for torturing and killing a cat); R *v Camardi*, 2015 ABPC 65 (22 months' jail and three years' probation for repeatedly abusing and eventually starving and strangling a dog and cat); *R v Miller*, 2020 ABPC 92 (one-year jail and two years' probation for killing his ex-girlfriend's kitten as revenge).

[5] See e.g. *R v Danfousse*, 2013 ABPC 346 (suspended sentence and probation for kicking and causing serious injuries to his cat); *R v Rabeau*, 2010 ABPC 159 (conditional discharge and probation for killing a four-month-old puppy with a wooden object); *R v Ainsworth*, 2010 ABPC 205 (nine month CSO for beating a dog with a flashlight and causing the dog to lose an eye); *R v Labonte*, 2014 ABPC 153 (60 day CSO for beating a five-month-old puppy at a dog daycare where the offender worked); *R v Huston*, 2021 ABPC 108 (12 month CSO and probation for killing his cat with a baseball bat).

identified a pattern of increasing periods of incarceration in animal cruelty offences since the 2008 amendments: *Reykdal* at para 40, citing *R v Florence*, 2018 ONCJ 872.

[29] In light of the 2008 amendments and the relative lack of appellate comment from this jurisdiction, consideration of the relevant sentencing principles is warranted.

Animal cruelty as a crime of violence

[30] Mr. Chen pleaded guilty to causing unnecessary suffering to an animal, contrary to s 445.1(1)(a) of the *Criminal Code*:

> 445.1(1) Every one commits an offence who
>
> > (a) wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;

[31] The gravamen of the offence is wilfully causing unnecessary pain, suffering or injury to an animal. The *mens rea* of the offence requires wilful causation or, if an owner, wilful permission. Thus, the focus of the inquiry must begin with the gravity of the offence - the nature and extent of the pain, suffering or injury caused to the animal, the victim of the offence.

[32] The Crown urges us to consider animal cruelty as a crime of violence. It submits that characterizing conduct that contravenes the animal cruelty provisions as violent crimes would recognize that animals are sentient beings that feel pain, and are not merely property.

[33] A crime of violence is generally understood as an act of physical aggression or threat of physical aggression that results in harm to the victim. There can be no disputing that animals are sentient beings that are capable of experiencing pain and suffering and can be victims of violence. The animal cruelty provisions are aimed at protecting animals themselves from wilful acts of violence and the wilful infliction of pain and suffering.

[34] Recognizing animal cruelty as a crime of violence is also relevant to the comments of the Ontario Court of Appeal in *Priest*, relied upon by the appeal justice for the proposition that the primary objectives in sentencing a first-time youthful offender are individual deterrence and rehabilitation, and that those objectives are best achieved by a suspended sentence and probation or a very short term of imprisonment and probation. The court in *Priest* qualified that statement, noting it does not apply in the case of "very serious offences and offences involving violence": para 17.

[35] It is not a principle of sentencing that youthful first-time offenders who commit violent offences will receive the most lenient of sentences. Crimes of violence are, rightly, treated differently from property offences. An aggressive attack on an animal intended to wilfully cause

unnecessary pain, suffering or injury is properly characterized as violent. In the circumstances of this case, there is no doubt that the respondent committed a violent offence against his puppy. The sentencing judge described it as a brutal and lengthy assault. The circumstances here render a CSO disproportionate to the gravity of the offence.

[36] I add that, even where violence is not involved, it does not follow that a CSO will be the appropriate disposition for a youthful offender: see e.g. *R v Field*, 2011 ABCA 48, where a period of incarceration was imposed on a youthful offender convicted of dangerous driving causing bodily harm. The offence of animal cruelty does not encompass only physical violence. Its focus is on the pain or suffering experienced by the animal. Not every contravention of the animal cruelty provisions will be a crime of physical violence; crimes of neglect, depending on the circumstances, can be equally serious and sufficiently grievous to diminish, or eliminate, the likelihood of a CSO.

Primary principles of sentencing in animal cruelty cases

[37] The fundamental and overarching principle of sentencing is proportionality: s 718.1. The sentence must be proportionate to the gravity of the offence and the moral blameworthiness or degree of culpability of the offender. The sentencing judge directed his mind to both these considerations in his assessment of whether a CSO was an appropriate sentence in the circumstances of this case. As noted above, he characterized the assault as brutal and prolonged, and leading to serious injury. He also noted the respondent refused to stop the abuse despite being confronted by a neighbour, and that the abuse only stopped when the police arrived. His conclusion that there was a high degree of moral blameworthiness was entirely reasonable on this record.

[38] The Crown urges us to consider denunciation and deterrence as the paramount considerations when sentencing for animal cruelty cases. Denunciation encompasses society's demonstration of its disapproval of the act in question. Theoretically, it reflects a set of commonly held values. As has already been discussed, society's understanding of animal protection as an important value has increased; I repeat the observation of this court in *Alcorn*, that "cruelty to animals is incompatible with civilized society": para 42. Denunciation is clearly an applicable principle when sentencing for such conduct.

[39] The purpose of deterrence is to discourage the offender and others in the community from committing the offence. Animals feel pain and suffer; they are not merely property and deserve protection under the criminal law. All animals not living in the wild, including companion animals, livestock, and animals in industrialized production settings, are under the complete dominion of human caretakers and are highly vulnerable to mistreatment and exploitation at the hands of those caretakers. They are at the mercy of those who are expected to care for them and, unlike some other victims of crime, are incapable of communicating their suffering. Sentences for animal cruelty must reflect these realities, and the primary focus must be on deterrence and denunciation.

[40] While deterrence and denunciation are the primary sentencing principles, other sentencing principles are also engaged. The amendments to the animal cruelty provisions in the *Criminal Code* do not speak only of punishment, but also protection for the animal victim. The intervenor, Animal Justice, urges a nuanced approach to sentencing, with consideration of specific deterrence including conditions that will reduce the potential for repeat offending and ensure the offender is not in a position to harm animals, rehabilitation to help the offender understand the impact of his or her actions, and reparations to acknowledge harm and ensure care is available for the animal victim. These will all be relevant considerations in sentencing for animal cruelty offences, depending on the circumstances. For example, greater consideration should be paid to prohibition orders to ensure the offender is no longer in a position to harm animals, and reparations to ensure provision of short and long-term veterinary care for the animal. Section 447.1(1)(a) permits an order prohibiting the offender from owning or residing with an animal. In circumstances where there is a reasonable risk of future harm to the animal, or any animal, an appropriate order should be made to prevent such harm.

Aggravating and mitigating factors

[41] Finally, the Crown and the intervenor urge this court to consider, and to an extent recast, aggravating and mitigating factors as they arise in animal cruelty cases – in particular, the nature, extent and recovery from injuries, provocation, position of trust, discipline and cultural norms. Not all these factors arise in this case, but several are addressed below.

[42] The fact that an animal may have recovered from its injuries is not a mitigating factor. While the failure to recover might be an aggravating factor, a full recovery is not mitigating. It is the animal's experience of the violence, the pain and suffering during and after the event, that is the focus.

[43] What role, if any, does "provocation" play in mitigating sentence? I use the term colloquially to refer to situations where an offender claims that the animal's behaviour has caused the offender to react or overreact. Ordinary animal behaviour, including but not limited to defecation and urination, is not a license or excuse for animal cruelty and does not diminish the moral blameworthiness of the offender, just as the behaviour of a vulnerable human victim, such as a young child, would not be a mitigating factor in sentencing for abuse of the child: see e.g. *R v LaBerge*, 1995 ABCA 196; *R v Nickel*, 2012 ABCA 158.

[44] As has already been noted, animal cruelty is an offence because of the pain and suffering caused to the animal victim, and not because a human victim may also be affected. However, when the abuse or killing of an animal is motivated by a desire to assert control over or exact revenge on another person, that will constitute an aggravating factor.

[45] Some trial courts have considered whether an offender was in a position of trust in relation to the victim of animal cruelty: see e.g. *R v Huston*, 2021 ABPC 108; *R v Florence*; *R v Camardi*;

R v Rodgers, 2012 ONCJ 808. There is an expectation that owners and guardians of animals will provide food, care and protection to animals they take into their custody. See, for example, the *Animal Protection Act*, RSA 2000, c A-41, s 2, which prohibits an owner or person in charge of an animal from causing distress to the animal or permitting the animal to be in distress, and s 2.1, which imposes positive duties on an owner or person in charge of an animal. Whether an offender is in a position of trust vis á vis an animal victim of abuse will depend on the circumstances in which the abuse occurs. Where such a breach of trust is found, it will be an aggravating factor.

[46] In this case, cultural norms and background were relied upon to mitigate conduct. While these factors might explain conduct, they cannot diminish moral culpability. As the Crown points out, this court has specifically stated that "[t]he law of Canada applies equally to all who are in Canada regardless of the length of time they have resided here": *R v Teclesenbet*, 2009 ABCA 389 at para 9. That statement was made in the context of a case of domestic abuse, but it is also applicable to offences of animal cruelty.

Application of the principles to this case

[47] The sentencing judge did not err in concluding that the primary sentencing objectives governing the case before him were denunciation and deterrence. He was entitled to reject a CSO where, in his view, the circumstances of the offence and the moral blameworthiness of the offender rendered such a sentence inappropriate. His conclusions on those points were amply supported by the record and do not reveal an error in principle. It cannot be said that his reasons were superficial or were merely paying lip service to a legal requirement. A court sitting on appeal is not entitled to substitute the sentence it would have imposed in favour of an otherwise fit sentence in the absence of legal error or error in principle. The conclusion that a CSO was not appropriate in these circumstances, particularly having regard to the extent and duration of the violence, is unassailable. The appeal justice ought not to have interfered with the decision of the sentencing judge in this case.

[48] I note that the Crown at first instance sought a 90-day jail sentence. Defence counsel sought a CSO in the range of three to five months, followed by a lengthy period of probation. Whether the 90-day intermittent sentence imposed by the sentencing judge was adequate in the circumstances, having regard to the sentencing principles set forth above, is not before us on this Crown appeal. Similarly, a prohibition order was neither requested nor considered.

[49] In the circumstances, I allow the appeal, overturn the CSO, and substitute the original sentence of 90 days' incarceration to be served intermittently, followed by the two-year period of probation. However, I have considered the circumstances of the respondent in this case, and the Crown's concession that she would not press for re-incarceration given that the respondent, at time of hearing, had served nine months of his 12-month conditional sentence without breach, has effectively rehabilitated himself, demonstrates better understanding of his culpability, and expresses remorse. There is no sentencing principle in play that requires the respondent's

incarceration at this point. Therefore, the imprisonment portion of the sentence is stayed. The two-year period of probation imposed by the sentencing judge is confirmed and will begin forthwith.

Appeal heard on September 21, 2021

Reasons filed at Calgary, Alberta
this 25th day of November, 2021

Paperny J.A.

I concur:

Watson J.A.

I concur:

Slatter J.A.

Appearances:

S.E. Clive
for the Appellant

A. Hepner, Q.C.
for the Respondent

P. Sankoff
for the Intervenor