

Citation: ☀ R. v. Nguyen
2021 BCPC 304

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File No: 36776-1-K
Registry: Williams Lake

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

BRENDON LONG NGUYEN

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE M.D. STANFORD**

Counsel for the Crown:	S. Mann
Counsel for the Accused:	J. Killoran
Place of Hearing:	Williams Lake, B.C.
Date of Hearing:	September 01, 2021
Date of Judgment:	December 16, 2021

[1] Before me for sentencing is Brendon Nguyen. He has pleaded guilty to one count of spousal assault and one count of wilfully killing his cat Vesper.

[2] Crown and defence counsel jointly submitted that a Conditional Sentence Order is an appropriate sentence; however Crown seeks a global period of 12-18 months for both counts followed by two years of probation. Counsel for Mr. Nguyen seeks a nine month Conditional Sentence Order for both counts followed by one year of probation.

CIRUMSTANCES

[3] An agreed statement of facts was filed as Exhibit 1, setting out the background and detailed circumstances of the offences.

[4] July 15, 2020, was Mr. Nguyen's birthday. There had been no party for him. The next day he began drinking and became argumentative with his wife, Tashina Matilpi, about the lack of a party. As he became louder, potentially disturbing their two week old baby, Ms. Matilpi attempted to quiet him. Mr. Nguyen became physical and pushed her with an open palm causing her to fall backwards onto an air purifier in their apartment. Ms. Matilpi sustained a bruise on her thigh as a result of the push and fall. These actions constitute the assault by Mr. Nguyen against his wife Tashina Matilpi.

[5] The couple had two cats, Vesper and Macey. At some point on July 16, 2020, Mr. Nguyen tried to bring them in from the balcony. Ms. Matilpi heard one of the cats, Vesper, being vocal and resisting. Mr. Nguyen returned to the living room and asked if the cats were there. Given this odd question when he had just been with the cats, Ms. Matilpi recognized Mr. Nguyen had reached a state she described to the police, as "black out" from extreme intoxication - a state she has seen him in before. Mr. Nguyen left the apartment. Ms. Matilpi went to look for the cats and found Macey, one of the other cats, in the closet wrapped in a towel inside of a small bucket with the lid on. Macey was alive, but scared.

[6] Mr. Nguyen called at 3:45 a.m. crying that Vesper had run away. When he returned home, Ms. Matilpi angrily confronted him about Macey. Mr. Nguyen denied

knowing anything about Macey and reported he had left her on the balcony. He also told Ms. Matilpi he had been “downstairs” with Vesper for about 45 minutes and asked her to get the building manager to check the building security cameras.

[7] Ms. Matilpi noted Mr. Nguyen becoming increasingly agitated, so she messaged his foster mother to call the police and the police attended the residence. It is unclear from the facts if Mr. Nguyen was removed from the home at that time.

[8] Later that morning Ms. Matilpi was told by the building manager the cameras had recorded Mr. Nguyen stomping on Vesper. Hearing this, she examined Macey closer and observed she had a bleeding nose and scratches. She took her to the SPCA in hopes of treatment, but ultimately was unable to afford the medical bill. Macey had to be euthanized.

[9] Crown had intended to show the 11 minute video of Mr. Nguyen and Vesper caught by the security camera. He submitted that the purpose was not for aggravating circumstances pursuant s. 718.03 of the *Criminal Code*, but as the clearest evidence of what Mr. Nguyen had done to Vesper. He argued Mr. Nguyen had indicated in reports that he did not remember what happened.

[10] Counsel for Mr. Nguyen opposed this, arguing the contents of the video were not in dispute, his client had pleaded guilty, and that in light of his plea and admission, showing the video was “cruel, gratuitous and prejudicial.”

[11] In the end, Crown and defence agreed, and the Court was satisfied, that the details of the video could be read into the record given that the video was very disturbing and graphic. Crown proceeded to describe in great detail every kick, blow, punch, and full weight two and one-footed stomp; along with the accompanying vocal and physical reactions of Vesper to each these assaults. The assault lasted approximately 11 minutes from the first kick to Vesper’s last sound.

[12] Vesper was later found by the building manager wrapped in a pink sweater in the dumpster by the apartment.

[13] Mr. Nguyen reported no memory of the events.

BACKGROUND OF THE OFFENDER

[14] I have had the benefit of a Pre-sentence report (PSR) along with a psychological report by Dr. Kropp. Mr. Nguyen is 25 years old without a criminal history, but with at least two reported police contacts of alleged domestic violence prior to this incident.

[15] He was born in Vancouver to a Vietnamese father and Cree First Nation mother, but acknowledges no connection with his Cree heritage. He has six biological and step-siblings that he has limited contact with at this time.

[16] Mr. Nguyen reported in both the PSR and psychological report, a troubled childhood that involved multiple foster homes beginning at about 15 years old, until he aged out at 18. He described his childhood growing up in downtown Eastside Vancouver with a mother entrenched in alcohol addiction as unstable and including exposure to and being a victim of physical and sexual abuse, and neglect.

[17] He reported having to be the caregiver of his younger siblings at an early age due to his mother's alcohol addiction. His father lived out of the province and was not involved. He moved to the Williams Lake area in grade 8 with his last foster mother and completed grade 12 there.

[18] Mr. Nguyen began drinking alcohol in earnest in grade 12 and developed a significant addiction to marijuana. While Mr. Nguyen denies any alcohol dependency, Ms. Matilpi reported him drinking to black out at times and in the reports he claimed to have no memory of what he did to Vesper.

[19] He reported to Dr. Kropp as having "significant emotional, behavioural and learning difficulties in childhood and adolescence" and suffering from "trauma resulting from bullying, neglect, abandonment, physical and mental abuse." He reported to taking medication for ADHD and depression without any formal diagnosis of either.

[20] Following the offence, Mr. Nguyen was certified under the *Mental Health Act* and is currently taking anti-depressant and anti-psychotic medications he was prescribed that he reports help “mellow” him out since being discharged from the hospital.

[21] Dr. Kropp found no evidence of major mental illness, but found Mr. Nguyen to be impulsive and explosive, particularly in intimate partner situations and at moderate risk for intimate partner violence. Dr. Kropp also found that this risk could be managed “through a combination of monitoring, supervision, treatment and victim safety planning” strategies.

[22] I was advised that at the time of the offence, Mr. Nguyen was under “multiple stressors” including unemployment for two years and having a newborn. He also attributed his extreme intoxication and marijuana use as contributing factors to the offence.

AUTHORITIES

[23] Crown provided a number of authorities where sentences for harming and torturing animals ranged from a fine, probation, a conditional sentence order and jail.

[24] Closest on the facts is *R. v. Seidel*, 2014 BCPC 230. Mr. Seidel was convicted of causing unnecessary pain and suffering to his cat. He was a man of similar age to Mr. Nguyen with no prior criminal record, but a significant addiction to alcohol. The cat would regularly urinate and defecate on the floor, his clothing and a car seat he had recently purchased for a child due in a couple of months. He and his wife had concerns of harm to their unborn child if it had contact with the cat’s faeces. While extremely intoxicated, he “lost control” and strangled the cat believing it had just urinated again outside of its litter box.

[25] His Honour Judge Cleaveley unequivocally rejected the defence submission for a conditional discharge or non-custodial sentence as contrary to the animal cruelty sentencing principles on these facts. Crown sought a six month jail sentence. Following a review of related authorities, the court found that denunciation and deterrence were emphasized in all and considered the only issue to be whether a conditional sentence

was consistent with the fundamental purpose and principles of sentencing set out in sections 718–718.2 of the *Criminal Code*.

[26] In terms of aggravating factors, the court found that Mr. Seidel was in a position of trust as the cat’s owner. He was charged with taking care of the cat and he breached this trust when he strangled the cat. The court found however, a number of mitigating factors, including the immediate remorse expressed, the presence of significant *Gladue* factors, and Mr. Seidel’s positive steps to address his anger and alcohol use.

[27] The court determined sentencing principles could be met by the imposition of a nine month conditional sentence order.

ANALYSIS

[28] Crown and defence jointly submitted a conditional sentence order would serve the sentencing principles of denunciation and deterrence under these circumstances and with this offender, but disagree on the length and terms. Crown is seeking 12-18 months followed by a two year probation order and defence is seeking a duration of nine months followed by one year of probation.

[29] They also disagree with the length of prohibition against owning an animal under s. 447.1 of the *Criminal Code*. Crown seeks five years while defence argues it should be the length of the conditional sentence order.

AGGRAVATING CIRCUMSTANCES

[30] With respect to count 1, I have considered the assault against his wife as an intimate partner pursuant to s. 718.2(a)(ii) and a vulnerable person pursuant to s. 718.201 of the *Criminal Code*.

[31] With respect to count 2, the prolonged extreme violence against a vulnerable animal for a period of 11 minutes leading eventually to a painful death is foremost in these circumstances. The agreed statement of facts describes a prolonged, very painful, and likely terrifying experience for Vesper.

[32] Similar to the facts in *Seidel*, I find that Mr. Nguyen was also in a position of trust to care for Vesper. He brought him into his home and was to protect and care for him.

MITIGATING CIRCUMSTANCES

[33] I am satisfied that there are many mitigating factors, beginning with Mr. Nguyen taking full responsibility and pleading guilty to these distressing facts. I note that Vesper would likely never have been found, nor the circumstances of his death discovered, had Mr. Nguyen not suggested the building manager review the security camera footage.

[34] While a formal *Gladue* report was not filed, Mr. Nguyen is of Cree First Nation descent from his mother's side. He grew up with his mother in downtown Eastside Vancouver and it is clear he was exposed and likely impacted by the intergenerational effects of residential school. His mother was, and is still, entrenched in alcohol addiction. He and his siblings were exposed to substance use and experienced trauma from neglect, abandonment, physical and mental abuse. He was bounced between multiple foster homes from the age of six and at times took on the role of caregiver for his siblings.

[35] I am told he began drinking at an early age and was exposed to racism and discrimination leading to a low self-esteem. It was submitted that Mr. Nguyen has been sober and clean since the date of the offence, now 17 months. Dr. Kropp reported that he is actively engaged in counselling to address his "emotional volatility, anger and motivations for the index offences."

[36] A letter from his counsellor confirmed his attendance at counselling and reported that Mr. Nguyen initiated contact with counselling services. The letter described him as presenting "very forthcoming", demonstrating an "eagerness to gain better understanding about his mental health and behaviours." and that he "participates actively" and "seems to feel deeply remorseful."

[37] Dr. Kropp reported the violence in this event did not appear to be premeditated, nor predatory and did not find any evidence of Mr. Nguyen being previously sadistic or harmful to animals.

[38] Despite his tragic and unstable upbringing, Mr. Nguyen comes with a strong long term work history and, while he was recently unemployed for two years, has recently been employed fulltime. The PSR reports that Mr. Nguyen is choosing to associate with only pro-social peers and that he has been on an “unsupervised Recognizance” under strict conditions with no breaches of any kind for 14 months at the time of the writing of the report, including no contact with his newborn child since the date of the offence. At the time of sentencing, his Recognizance was finally varied to allow contact with his family.

[39] Mr. Nguyen personally expressed remorse to the court and reported in the PSR that he “loves animals.” “lost a best friend,” and was feeling “very lost and scared” because he did not understand how he was able to commit the offence.

[40] Of particular note is that, on his own initiative, he has taken positive steps in recovery and is addressing the underlying issues motivating his anger and substance use.

VICTIM IMPACT STATEMENT

[41] A Victim Impact Statement was submitted by Ms. Matilpi. She described the significant negative impact of being separated from Mr. Nguyen since the date of the offence and the hardship it has caused her being a new mother and unexpectedly a single parent. She described Mr. Nguyen as a “good father and a caring and attentive spouse.” She reported she had “no fears for security of herself and the baby.”

SENTENCING PRINCIPLES

[42] In addition to the usual principles of sentencing, including proportionality and moral blameworthiness, I have also turned my mind to the additional considerations under s. 718.03 of the *Criminal Code* in giving primary consideration to denunciation and deterrence with offences related to injuring or endangering animals and ss. 718.2(a)(ii) and 718.201 of the *Criminal Code* as an offence involving an intimate partner and vulnerable person.

[43] Counsel submit a global joint submission with respect to a conditional sentence order for both counts. With respect to count 2, the principles of denunciation and deterrence loom large when addressing the injury and endangerment of animals in light of their vulnerability and dependency on their caregivers. The only issue here is whether that jail sentence can be served in the community.

DECISION

[44] On count 1, all assaults against intimate partners are serious. Fortunately this case involved a push that did not result in serious injury. Without any criminal history, a jail sentence, even if served in the community, would be inappropriate in these circumstances. Notwithstanding Dr. Kropp's opinion that Mr. Nguyen remains a "moderate risk" for intimate partner violence, including animals, he concluded this risk "...can be managed in the community through a combination of monitoring, supervision, treatment and victim safety planning strategies..."

[45] Taking into account Mr. Nguyen's guilty plea, his first conviction, his immediate engagement in counselling to address the underlying factors of his anger, I will suspend the passing of sentence on Count 1 and place Mr. Nguyen on probation for a period of 12 months.

[46] On count 2, I find that the imposition of a jail sentence appropriate in light of the circumstances of Vesper's prolonged multiple assaults and ultimate death. However, I am mindful there were clear signs, on the agreed facts, that Mr. Nguyen was under the influence of extreme intoxication by alcohol and/or drugs and that this tragic incident was not premeditated. In my view, this lowers Mr. Nguyen's moral blameworthiness.

[47] Under these circumstances and taking into account Mr. Nguyen's background, I am satisfied that the joint submission he serve his jail sentence in the community would not be contrary to the public interest, nor bring the administration of justice into disrepute, so I will not depart from that proposal.

[48] Further, in consideration of the singularity of the incident, I am also satisfied that serving his sentence in the community would not endanger the safety of the community and would be consistent with the principles of sentencing.

[49] There will be a 12 month Conditional Sentence Order on Count 2, followed by period of probation for 12 months.

[50] Terms of the Conditional Sentence Order are as follows:

1. You must report in person to a conditional sentence supervisor at Williams Lake, B.C. by 3:00 PM today December 16, 2021, and after that, you must report as directed by your supervisor.
2. When first reporting to your conditional sentence supervisor, you must provide them with the address where you live and your phone number. You must not change your address or phone number without prior written permission from your supervisor.
3. For the first three months of this Conditional Sentence Order, you must obey a curfew by being inside your residence (or on the lot which your residence is located) between 8pm and 6am every day.
4. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you during the curfew.
5. You may be away from your residence during the curfew with the prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence.
6. You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.
7. You must not enter any liquor store, beer and wine store, bar, pub, lounge or other business premise from which minors are excluded by the terms of their liquor license.
8. You must attend, participate in, and complete any intake, assessment, counselling or education program directed by your conditional sentence supervisor. This may include, but is not limited to counselling or programming for anger management, alcohol or drug addiction.
9. You must attend, participate in and complete any intake, assessment, program, treatment or a full-time live-in treatment program as directed by

your conditional sentence supervisor. This may include, programming or treatment for alcohol or drug addiction; psychiatric and psychological health.

10. You must have no contact or communication, directly or indirectly, with Tashina Matilpi with the following exceptions: If you are sober and have no alcohol, intoxicating substance or drugs in your body, except with a medical prescription, and you must leave her presence upon her request or upon the request of a peace officer. If a request is made, you must have no further contact, or communication with Tashina Matilpi until she has contacted you.
11. You must not possess, directly or indirectly, any weapon as defined by the *Criminal Code*, including:
 - a. firearms and ammunition;
 - b. cross-bows, prohibited or restricted weapons or devices, or explosive substances;
 - c. anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person;
 - d. any imitation of all of the above, including any compressed air guns or BB/pellet guns; or
 - e. any related authorizations, licenses and registration certificates, and you must not apply for any of these.

[51] On the expiration of the Conditional Sentence Order there will be a 12 month Probation Order. The terms of probation will follow the same terms as count 1:

1. You must report in person to the probation office located at Williams Lake, British Columbia, by 3:00pm today December 16, 2021, and after that you must report as directed by your officer.
2. When first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your officer in writing in advance of any change.
3. You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.
4. You must not enter any liquor store, beer and wine store, bar, pub, lounge or other business premise from which minors are excluded by the terms of their liquor license.
5. You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your

- probation officer. This may include counselling or programming for anger management and alcohol and drug addiction.
6. Having consented in court, you must attend, participate in and complete any intake, assessment, program, treatment or a full-time live-in treatment program as directed by your probation officer. This may include programming or treatment for alcohol or drug addiction, psychiatric and psychologic health.
 7. You must have no contact or communication, directly or indirectly, with Tashina Matilpi with the following exceptions: If you are sober and have no alcohol, intoxicating substance or drugs in your body, except with a medical prescription. You must leave upon her request.
 8. You must not possess, directly or indirectly, any weapon as defined by the *Criminal Code*, including:
 - a. firearms and ammunition;
 - b. cross-bows, prohibited or restricted weapons or devices, or explosive substances;
 - c. anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person;
 - d. any imitation of all of the above, including any compressed air guns or BB/pellet guns; or
 - e. any related authorizations, licenses and registration certificates, and you must not apply for any of these.

[52] I find that the nature of the injury and ultimate death of Vesper particularly disturbing and aggravating. Notwithstanding Mr. Nguyen's extreme level of intoxication, his conduct was purposeful and prolonged causing pain, fear and death. This was followed by treating Vesper's body in an undignified manner by wrapping it in a sweater and dumping it in a dumpster. Accordingly, Mr. Nguyen will also be bound by an order pursuant to s. 447.1 of the *Criminal Code* prohibiting him from owning, having the custody or control of, or residing in the same premises as an animal for a period of five years.