

ONTARIO COURT OF JUSTICE

College Park Toronto

CITATION: *R. v. Way*, 2016 ONCJ 514

DATE: 2016 08 24

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

DIANE WAY

Before Justice William B. Horkins
Reasons for Sentence released on August 24, 2016

Ms. Corie Langdon and Alan Spiegel counsel for the Crown
Mr. Walter Fox..... for the accused

W.B. Horkins, J.:

[1] On March 20, 2016, at the conclusion of very protracted trial proceedings, I found Diane Way guilty of two counts of cruelty to animals.¹

[2] The facts of the matter are set out fully in my reasons for judgement which are reported at [2016] O. J. 1259. At the outset of those reasons I summarized the case in the following terms;

- 1** ... At the material time, the accused had at least 107 cats living with her, in her home. These cats were living in filth, disease and squalor.
- 2** Although the evidence in this case is voluminous, and was received over many days in court, the facts are actually very clear. With apologies to Shakespeare, Diane Way loved her cats, "not wisely, but too well" and as with Othello, there were tragic results.
- 3** When the authorities arrived at Ms. Way's home on April 24th, 2011, they found, at best count, 107 cats living there. The house was an unbelievable sight; wall to wall cats; floors, walls and furniture rotting and coated in cat urine, cat fur

¹ Under s. 446(1) and s. 445.1(1) (a) of the Criminal Code.

and cat feces. The smell was literally over-powering. The first officer on the scene thought there might be a dead body inside the house. She entered but had to retreat from the eye-watering stench of the place. A fire-fighter in full "hazmat" gear went in and feared that he might fall through the wooden floor because it was so spongy from having been soaked in cat waste. He found cats huddled in nooks and crannies all over the house. He saw a cat with a missing eye.

4 The Ontario Society for the Prevention of Cruelty to Animals (OSPCA) was brought in. The cats were rounded up and taken for examination by a team of veterinarians. The cats were suffering from a multitude of health concerns: dehydration; upper respiratory infections; alopecia; eye infections; chemical scalding from cat urine; and from genetic birth defects, resulting from inbreeding within the population. They were almost all black in colour and they were, without doubt, mostly related to each other.

5 When Ms. Way arrived home on the day of the intervention she found the police, the fire department, and the OSPCA in and around her home. They had been there for a few hours. She had been out getting provisions for her cats. She had a pull cart full of cat food with her. She immediately cooperated with the authorities and signed over the cats to the custody of the OSPCA. In the days following, all of the cats were assessed by a team of veterinarians. All but one of the 107 cats was then euthanized.

6 This was a sad case. Diane Way is not a mean person and she had great affection for her cats. However, she allowed her population of cats to get totally out of control. The result was horrible. She failed to deal with it and the results were tragic.

[3] The Crown seeks a custodial sentence in the range of four to six months imprisonment to be followed by three years of Probation, a DNA "known offender" data banking order and an Order prohibiting Ms. Way from ever owning any pets for life. The accused asks for a non-custodial disposition and argues against any prohibition on having pets.

[4] The Crown has provided me with a number of animal cruelty sentencing cases for my assistance. The reported cases describe a wide range of sentences from suspended sentences and probation to custodial sentences of several months in jail. The sentences vary in accordance with the gravity of the conduct and the character of the offender. As with many criminal sentencing patterns the range is wide and the results are very fact specific.

[5] The fundamental principle in crafting an appropriate sentence in any given case is set out in s. 718.1 of the *Code*;

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[6] S. 718 of the *Code* sets out the fundamental purpose of sentencing in criminal cases;

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[7] One recognized aspect of fairness in sentencing is parity, which requires that sentencing courts should try to be consistent with the sentences that have been imposed in similar cases. In *R v Barrett*,² Judge Porter of the Provincial Court of Newfoundland and Labrador catalogued a number of animal cruelty cases to illustrate that the appropriate range of sentence in such cases in fact spans the whole range between the positions taken by the parties before me; from probation to several months in jail. This same range is described by other authorities presented by counsel.³

[8] In finding this Ms. Way guilty I concluded that her efforts to care for her pets fell well below the standard of care demanded by society and by the law. Diane Way defended this case essentially on the basis that she tried her best and could not do better. I found that her efforts were inadequate, that she was well aware of the prevailing conditions of deprivation and suffering in her colony of cats and that she failed to act to alleviate those circumstances. She could have and should have “done better”. Having said that, she is not a bad person and in the wake of the intervention by the authorities she cooperated fully with the remedial and investigative measures that were necessary.

² (2015), NLPC 0814A 00017

³ See appendix A list of authorities considered.

[9] I have no hesitation in distinguishing Diane Way's conduct from what is described in many of the cases that I have reviewed. She is not a deranged adolescent who would skin a cat for the sick fun of it. She was not running a "puppy mill" for profit. She is not so cognitively challenged or careless that she would tie a dog to a stake with a rope and abandon it in the snow for days while on a drinking binge. She did not commit these offences for pleasure or profit or out of any dangerous lack of mental capacity.

[10] Ms. Way's crime is one of negligence and I am persuaded that Ms. Way has suffered extreme collateral consequences from being tried and found guilty of these offences. She has suffered tremendous personal embarrassment and loss of reputation in both her social and professional communities.

[11] This case received significant attention in the media. The media held her up a "crazy cat lady". And whether the shoe fits or not, the stigma of that offensive characterization has stung her deeply. Part of the tragic irony of this case is that Ms. Way loved these cats and yet her neglect led to the need to euthanize all but one of the over 100 animals seized by the authorities. This has not rested lightly on her shoulders.

[12] This is one of those cases where the sentence must include some consideration of the toll that the process itself has taken on the accused, physically, emotionally and financially. In short, one factor in the sentencing analysis that I have considered is the global collateral consequences of her failure to properly care for her colony of cats. It has been significant.

[13] I reject as harsh and unnecessary the idea of sending Ms. Way to prison for these offences. I also wonder what purpose there could be in a further period of supervision by way of probation; Ms. Way has been subject to a structured bail for about five years now. The option of a fine strikes me as conceptually inappropriate in that it would be seen as putting a price tag on the heads of these cats. Frankly, at this stage of this protracted and somewhat unique proceeding none of the usual sentencing options greatly appeals to me at all.

[14] Ms. Way is both a lawyer and a teacher. She has not practiced law in years but the Law Society has documented an express interest in the outcome of this case. Ms. Way's teaching contracts came to an abrupt end expressly as a result of these charges being laid against her. A criminal conviction may very well have serious collateral consequences on her ability to continue in either or both of her chosen professions.

[15] I recognize that applying the discharge provisions could risk sending the wrong message with respect to the gravity of these offences and the need for a message of denunciation. However, a conviction and suspended sentence would not have any significantly greater impact in terms of general deterrence.

Therefore, balancing all of the various factors and particular circumstances and of this case I find that it is not clearly contrary to the public interest to apply the discharge provisions of the *Code*.

[16] There will be a conditional discharge with 12 months of probation. She will report forthwith and thereafter as directed. She will not have more than two domestic animals in her care and custody at any given time. She will complete 100 hours of community service work at a pace and manner to be determined by her probation officer.

[17] The Crown has also sought ancillary Orders for a DNA data banking sample and an Order prohibiting Ms. Way from ever having any pets in the future.

[18] In this case a DNA data banking Order is discretionary. That application is to be considered in the context of the facts of the offence and the criminal history of the offender balanced against the privacy interests of the accused. Ms. Way has no prior criminal history and is extremely unlikely to reoffend in the future. Many of the same considerations that support a discharge weigh against a DNA Order and I dismiss that application.

[19] The Crown has made Application under s. 447.1 (a) to have the Court prohibit Ms. Way from ever having any pets for life. The purpose of such an Order is to proactively protect any future pet from suffering harm at the hands of an offender who presents as a real risk to reoffend and inflict abuse on such animals. These Orders have as their intended target offenders who are either sadistic or incompetent. The case has not been made out that Ms. Way is either and she does not present such a risk. I will however order that she not possess more than two pets at any given time.

[20] The Crown did not present any foundation for or seek an Order for compensation under s. 447.1 (1) b for the costs of the intervention and investigation in this matter. Those costs are not readily ascertainable and no Order can be made in that regard.

Released: August 24, 2016

Signed: Justice William B. Horkins

Appendix A

List of Authorities Considered

R v Habermehl, 2103 ABPC 192

R v Wright 2014 ONCA 675

R v Barrett (2015) NLPC 0814A00017

R v 2005 BCPC 85

R v Gerling 2014 BCSC 2203

R v Galloro 2006 ONCJ 264

R v Pryor 2007 ONCJ

R v Pryor (2008) 81 WCB 2d 737 ONSC

R v Chrysler 2013 BCPC 241

R v Fawcett [2012] BCJ 2484

R v Marohn 2012 BCPC 199

R v Seidel 2014 BCPC 230