

Citation: ☼R. v. Vieira
2006 BCPC 676

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File No: 75337-1
Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

JOHN VIEIRA

**ORAL REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE PENDLETON**

Counsel for the Crown:

A. Janse

Counsel for the Defendant:

J. Gnitt

Place of Hearing:

Kamloops, B.C.

Date of Hearing:

April 10, 2006

Date of Judgment:

April 10, 2006

[1] THE COURT: The accused, John Vieira, is found guilty of an offence under s. 446 of the *Criminal Code*. The facts are set out in my Reasons for Judgment. I do not intend to review them here again.

[2] On sentencing, the Crown's submission was that a jail sentence was appropriate in this case. The Crown also seeks a stand-alone restitution order to the Society for the Prevention of Cruelty to Animals and an order under s. 446(5) that would prohibit the accused from owning any animals for a period of two years.

[3] The Defence's position is that jail is not necessary, that some sentence short of jail would be appropriate; but that if the court is persuaded by all the circumstances that jail is necessary, that a conditional sentence order is appropriate. The Defence leaves the issue of restitution and the order under s. 446(5) to the court.

[4] The Crown has provided three cases, *R. v. Fowlie*, a 1998 decision of the New Brunswick Court of Queen's Bench, which summarizes a number of sentencing cases and the principles set out in those cases, and I have had a chance to review those. Suffice it to say, the range of sentence runs from a gamut of fines and probation all the way through to jail.

[5] The Crown also provided the court with the case of *R. v. Racicot*, a 1998 decision of the Ontario Court of Justice. In that case, the accused pled guilty to causing unnecessary pain or suffering or injury to twenty-nine dogs and failing to provide suitable and adequate food, water, care for six dogs and eight turtles. The accused was twenty-seven. She had some mental health difficulties in her background. She had no records. She was sentenced to thirty-day imprisonment, followed by three years' probation. She was ordered to perform two hundred and fifty hours of community work service and to pay \$10,000 to the Humane Society.

[6] The court, in *Fowlie*, concluded that deterrence and denunciation were the appropriate principles of sentence and imposed, as I have said, the thirty-day jail sentence.

[7] The final case that the Crown relies on is a decision of His Honour Judge Sinclair, a British Columbia Provincial Court decision, 2005. It is reported at B.C.J. 544, both the proceedings on conviction and sentence. I have reviewed Judge Sinclair's decision. The defence says that the facts in that case are distinguishable. I suppose I agree, to the extent that, in that case, the accused was operating a puppy mill. That is not the situation here. But otherwise, the facts in the two cases, the case before me and the *Materi* case, have similarities, in that there was a lengthy period of very poor care of the animals and a good deal of suffering.

[8] In the *Materi* case, the court concluded that a jail sentence was appropriate. Judge Sinclair said that, had he imposed a straight jail sentence, it would have been three to four months. He concluded that a conditional sentence was appropriate in the case of Mr. Mater, and imposed a six-month conditional sentence.

[9] Mr. Vieira has been convicted of a summary conviction offence involving the wilful neglect of his animals. This occurred over, as I have found, a lengthy period of time. As I have said, I found that the evidence established that some of the horses have lost as much as half of their body weight and were suffering significant distress.

[10] It is not, in this case, good enough for the accused to say that he had financial problems. The cases that were referred to earlier by the Crown establish an obligation on owners to sell or dispose of their animals if they cannot afford to keep them. What you cannot do in this case, Mr. Vieira, is continue to let them suffer as you did.

[11] I am satisfied, when I review the principles of sentence here, that the sentencing principles that are applicable to this case are deterrence and denunciation, and I am satisfied a jail sentence is appropriate here.

[12] Mr. Vieira, you simply cannot permit the horses and dogs in your care to suffer like they did. I need to denounce that. I need to send a message to people in this community that if you are going to do that, that there is a heavy price to pay. The sentence of this court will be four months in jail.

[13] I turn to the issue of whether it is appropriate to impose a conditional sentence order, and I am satisfied that it would be safe for this community to permit you to serve that sentence in the community. I therefore impose a four-month conditional sentence order. There will be the statutory conditions applicable. In addition to those statutory conditions, which the justice of the peace will go over with you, there will be the following conditions:

[14] That you are subject to a twenty-four-hour house arrest, except for the purposes of attending work, or travelling to or from work, or with the written permission of your conditional sentence supervisor for the purposes of addressing the necessities of life, such as shopping, medical appointments, and whatnot.

[15] In addition to this, I am imposing a restitution order. I am satisfied that the Society for the Prevention of Cruelty to Animals suffered significant expenses, some of which are before the court. As best I can, I am satisfied that the appropriate order to make is that there will be a restitution order in the amount of \$5,000, and I am ordering you to pay that through the clerk of the court within the next twelve months.

[16] In addition to this, I am making an order pursuant to s. 446(5) of the *Criminal Code*, and I am prohibiting you from owning or having the custody or control of an animal or a bird during the next two-year period. I recognize that you are a farmhand and working on the farm. That may well impact your employment. It very likely will, because you will likely be offside of the custody or control provisions of the order I have just made. Make sure that you are not in that position, because you are subject to prosecution under s. 446(6).