

CITATION: *R. v. Vassell*, 2022 ONCJ 415
DATE: September 8, 2022
Information Nos. 19-17397-00, 19-20955-00

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

TYLER VASSELL

REASONS FOR SENTENCE

BEFORE THE HONOURABLE JUSTICE S. POLLOCK
on September 8, 2022, at WINDSOR, Ontario

APPEARANCES:

J. Lesperance

Counsel for the Crown

F. Miller

Counsel for Tyler Vassell

POLLOCK, J. (Orally):

Mr. Vassell entered a guilty plea to one count of wilfully causing unnecessary suffering to an animal, having occurred on November 1, 2019. The animal was his 17-week-old puppy, Kojakt, K-O-J-A-K-T. The incident occurred in his apartment, in the elevator and in the lobby of his building. It was captured on video, which was played on the sentencing hearing.

The facts acknowledged are that Mr. Vassell picked Kojakt up by his muzzle, repeatedly struck him, then picked him up by his neck and slammed him against the wall in a baseball motion. He then continued to slap and punch him. The violence was such that Kojakt urinated and defecated as a result.

This incident shows an act of prolonged violence to an innocent animal who appeared happy and calm when the beating started. Kojakt suffered significant injuries. He had a profoundly swollen neck that when manipulated in any direction caused extreme pain, a hemorrhage in his eyes, and hesitation in moving his head or neck in any direction. He screamed out in pain when his mouth was opened. He required a total hip replacement and long-term pain medication. Several months after the event, he was unable to wear a normal collar due to prolonged sensitivity to his neck.

In a case summary from March 4th, 2020, his treating doctor noted that his "quality of life continues to be significantly affected from the trauma he endured. At this time Kojakt remains under medical treatment where the probability of recovery to normal function remains unlikely."

The Crown seeks a 9 to 12 month custodial sentence and an order prohibiting Mr. Vassell from having any animals in his care for a period of 10 years, as well as restitution in the amount of \$1,817.60.

The defence submits that a six month conditional sentence is the appropriate sentence in this case. In the

alternative, the defence seeks a 90 day intermittent jail sentence. In addition, the defence submits that a period of probation with a term addressing anger management would be appropriate. The other orders sought by the Crown are not contested.

Both parties have provided the court with case law supporting their positions.

The defence submits that this incident was completely out of character for Mr. Vassell, who has no criminal record, a strong work history, and is leading a pro-social life which includes caring for his new partner's three children. He is a soon to be father. The defence points out that a traditional jail sentence carries with it the collateral consequence of Mr. Vassell's family losing his sole financial support. His pre-sentence report is generally a positive one.

The Crown submitted that although a conditional sentence is an available sentence, it is inappropriate in the circumstances of this case given the level of violence seen. The Crown submits this case calls for actual custody.

There was no explanation offered or provided for why Mr. Vassell committed this offence. The only information I have in this regard is that he had been drinking in excess prior to the event and recalls feeling tense and irritated after being around people downtown prior to the offence.

Sentencing is always an individualized process. A court must take into account all of the factors and circumstances of an offence and the offender before it, while balancing

that with public safety concerns, considerations regarding any victims, as well as all of the statutory sentencing purposes and principles.

It is mitigating that Mr. Vassell entered a guilty plea and that he lacks any criminal record. This behaviour is completely out of character for him. That is demonstrated in the character letters from family and friends that were provided to the court. It is mitigating that he has made a choice and has not consumed any alcohol since, as alcohol was involved in the incident.

Aggravating factors include the fact that Mr. Vassell was in a position of trust to Kojakt. The severity of the injuries and the severity of the behaviour that caused those injuries are also aggravating factors.

A conditional sentence is only an appropriate sentence if the court is imposing a custodial sentence of less than two years and is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the Criminal Code.

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. Denunciation, both general and specific; deterrence, both general and specific; separation of offenders from society where

necessary; rehabilitation; reparation; and promotion of a sense of responsibility in offenders.

Section 718.1 states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2(d) and (e) state that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate and all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered.

The issue for me to determine is whether I am satisfied that the service of the sentence in the community would not endanger to the safety of the community and would be in line with these sentencing objectives.

The case law suggests that denunciation and deterrence are the primary objectives in sentencing offences of this nature.

In coming to the appropriate sentence, I must take into account several factors which include the fact that Mr. Vassell has no criminal record, that incarceration would have financial consequences for those he cares for, and the fact that any time he would serve in custody would be during the ongoing pandemic.

I find that the facts of this case most closely resemble the facts of the case of R. v. Chen, C-H-E-N, of the Alberta Court of Appeal in 2021. That defendant was also a first offender who had entered a guilty plea to the offence. The court found that a conditional sentence was

not appropriate given the brutal and prolonged attack and the moral blameworthiness of the defendant. The court stated that animals are at the mercy of those who are expected to care for them and, unlike some other victims, are incapable of communicating their suffering. The court found that sentences for animal cruelty must reflect these realities and the primary focus must be on deterrence and denunciation.

I find myself coming to the same conclusions. I find that a conditional sentence is inappropriate in the circumstances of this case, which involved an unexplained, prolonged, and brutal attack on a 17-week-old puppy who sustained serious injuries.

I have considered the financial collateral consequences to Mr. Vassell's family. In doing so, I note that his relationship is one that has fairly recently developed.

Further, as stated by the Supreme Court of Canada in *R. v. Pham, P-H-A-M*, it is only where two possible sentences are appropriate that the most suitable may be the one where rehabilitation is better addressed.

I have found that a conditional sentence is inappropriate in these circumstances.

The sentence will be one of 90 days' jail.

The defence has asked that I consider allowing the defendant to serve this sentence intermittently. In considering whether to impose an intermittent sentence, s. 732 of the Criminal Code requires that I have regard for the availability of appropriate accommodation to ensure

compliance with the sentence. It appears that at the present time persons who receive an intermittent sentence are being assessed by the institution as to their suitability for an intermittent rehabilitation temporary absence pass, or TAP, and GPS monitoring. That means that currently, despite a court making an order for custody, a person receiving an intermittent sentence may not actually serve their time in custody. There are many factors for consideration in whether a person will be approved for this program. I questioned whether, on this basis, imposing an intermittent sentence would be appropriate. Counsel for the defendant, Mr. Miller, submitted that this factor is not one which I should consider in determining if an intermittent sentence is appropriate. After reviewing the authorities provided, I agree.

The Supreme Court of Canada and the Court of Appeal have made it clear in cases such as *R. v. Zink*, Z-I-N-K, and *R. v. Passera*, P-A-S-S-E-R-A, that the court's role in determining and imposing a fit sentence is a distinct function separate from the administration of that sentence after it is imposed. At paragraph 24 of *Passera* the Ontario Court of Appeal said the following:

Sentencing judges are charged with imposing a fit sentence for the offence and the offender, having regard to concerns which include rehabilitation, deterrence and denunciation. Correctional authorities take the sentence as imposed and are responsible for administering that sentence. Sentence administration includes determining when and on what terms persons who are serving prison sentences should be permitted

to serve some part of that sentence outside of the prison on conditions deemed appropriate by the correctional authorities. That assessment engages different considerations from those that influence the determination of an appropriate sentence. Decisions pertaining to conditional release are, by their very nature, predicated to a considerable degree on events that post-date the imposition of sentence.

As a result, Mr. Vassell, your sentence will be 90 days jail and I will order that it be served intermittently.

So, it is ordered this, Mr. Vassell, that you be sentenced to imprisonment for a term of 90 days, to be served intermittently, commencing today for processing for as long as may be necessary to complete documentation and thereafter - now, Mr. Miller, I may need some input from you on what days on the weekends he's to report and how long he would remain. Do you want Saturday mornings to Sunday evenings? And give me some input on that, please.

MR. MILLER: If I could just have a moment, Your Honour?

THE COURT: Yes.

MR. MILLER: We're suggesting 9:00 on - 9:30 on Saturday morning and out at nine o'clock on Sunday evening so he can get home and look after his responsibilities.

THE COURT: Okay. And the start time on Saturday mornings is because the travel time...

MR. MILLER: Yeah, the travel from home. He's....

THE COURT: ...is not local?

MR. MILLER: Yeah.

THE COURT: Anything to say about that,...

MR. MILLER: He's got to get there.

THE COURT: ...Mr. Lesperance?

MR. LESPERANCE: No, Your Honour. I was actually hopeful that Mr. Miller would propose those exact types of dates and day ranges, only the Saturday and Sunday, because, as Your Honour will recall, when we made submissions earlier for the TAP, Mr. Miller correctly and appropriately indicated that when only the two days are considered, the Saturday and Sunday, this will take a significant many weeks, as many as 30 plus for the sentence to be completed. So, no, I agree that those date ranges and times for each specific day are appropriate.

THE COURT: Okay. So.....

MR. MILLER: In a fantasy world, Your Honour, he's report at 11:59 on Friday evening and get out at five o'clock on Sunday,...

THE COURT: Right.

MR. MILLER: ...on Monday morning but that's if....

THE COURT: It wouldn't be happening.

MR. MILLER: Well, it defeats the whole purpose.

MR. LESPERANCE: Yeah.

THE COURT: Okay. So, Mr. Vassell, so after reporting or commencing your sentence today for as long as necessary to

complete documentation, you will then recommence your sentence on Saturday, September 10th at 9:30 a.m. until Sunday, September 11th at 9:00 p.m., and on each consecutive Saturday at 9:30 a.m. to Sunday at 9:00 p.m. until the sentence is fully served.

When you're not confined to prison, you are ordered to comply with the terms prescribed in a production order which require to keep the peace and be of good behaviour, as well as the following conditions. You will report to the institution promptly at the times required. You are to totally abstain from the consumption of alcoholic beverages. Those are the only two on that order, Madam Clerk.

In addition, Mr. Vassell, I'm going to place you on probation for a period of 18 months. There are some statutory, or mandatory, terms of the order. They are as follows. You are to keep the peace and be of good behaviour. You are to appear before the court when required to do so. You are to notify the court or probation officer in advance of any change of name or address and promptly notify the court or probation officer of any change in employment or occupation. You are to report in person to a probation officer within two working days of the completion of your intermittent sentence, and after that at all times and places as directed by the probation officer or any person authorized by the probation officer to assist in your supervision. You are to cooperate with your probation officer. You must sign any releases necessary to permit the probation officer to monitor your compliance, and you must

provide proof of compliance with any condition of this order to your probation officer on request.

Number three, Madam Clerk, you are to live at a place approved of by the probation officer and not change that address without obtaining the consent of the probation officer in advance.

Condition 11, you are to attend and actively participate in all assessment, counselling, or rehabilitative programs as directed by the probation officer and complete them to the satisfaction of the probation officer, including, but not limited to, anger management. You shall sign any release of information forms as will enable your probation officer to monitor your compliance, attendance and completion of any assessments, counselling, or rehabilitative programs as directed. And you shall provide proof of your attendance and completion of any assessments, counselling, or rehabilitative programs as directed.

In addition, you are ordered to pay restitution as part of the probation order. So, the total is \$1,817.60. Who is it to specifically? Is it Windsor-Essex Humane Society?

MR. LESPERANCE: Yes, Your Honour. That's - it's specifically the Windsor-Essex County Humane Society.

THE COURT: Okay. To the Windsor and Essex County Humane Society to be paid in full by the completion of the probationary term. Instalments of not less than \$100 per month. If you're unable to make any restitution payment for any reason you must tell the probation officer in advance and all restitution payments are to be made by cash, or certified cheque, or money order, payable to the Minister

of Finance through any criminal court office for payment to the Windsor-Essex County Humane Society.

Do you understand the terms of the probation order?

TYLER VASSELL: Yes, Your Honour.

THE COURT: Do you agree to be bound by them?

TYLER VASSELL: Yes, Your Honour.

THE COURT: Do you understand if you breach any of the terms that you could face further charges and consequences?

TYLER VASSELL: Yes, Your Honour.

THE COURT: In addition, there is a prohibition order for a period of 10 years which prohibits you from owning or having the custody of any animal or bird. Do you understand that?

TYLER VASSELL: Yes, Your Honour.

THE COURT: I'm waiving the victim fine surcharge because there is restitution to be paid and it would be a financial burden for you to have to pay that as well as the restitution and I want your focus to be on paying back that money in the restitution order. Is this a DNA eligible offence, Mr. Lesperance?

MR. LESPERANCE: Your Honour, that's actually - I was going through my notes for two questions. I believe that it was DNA eligible and I asked Your Honour to consider that. I believe it was discretionary. And I believe it was also discretionary for a weapons prohibition. Those are the two areas that I was hopeful Your Honour would consider.

There's all - depending on how the weapons prohibition is dealt with, that will determine what will happen with the second information that's before the court as well.

THE COURT: So, you're saying you believe. Are you saying to me it is?

MR. LESPERANCE: I believe it is, and that I had requested it as part of the submissions. That's what I'm trying to pull out.

THE COURT: Are you just taking a minute to look at that, Mr. Lesperance?

MR. LESPERANCE: Yes, please, Your Honour. I believe s. 445.1(1)(a), which is what we were dealing with, is secondary DNA eligible, and that's why I asked for it. The only one I will have to look up is the weapons prohibition.

THE COURT: Right. And so when I look at s. 110, it would not fall under (1)(b). I think you'd be asking me to look at (1)(a), and this is not the commission of an offence in which violence was used against a person.

MR. LESPERANCE: So that's....

THE COURT: I don't think it's weapons prohibition eligible.

MR. LESPERANCE: That probably....

MR. MILLER: I agree, Your Honour.

MR. LESPERANCE: That probably ends

[*indiscernible*]...

MR. MILLER: It wouldn't get caught.

MR. LESPERANCE: ...right there.

THE COURT: So, what do you want to say about DNA?

MR. MILLER: He's got no record, he's got no history.

THE COURT: Okay. I don't need to hear any more.

MR. MILLER: I don't, I don't see that it's really....

THE COURT: So, I'm declining to make a DNA order on the basis of the lack of a criminal record or prior criminal history since it's discretionary. Did I miss anything, Mr. Lesperance?

MR. LESPERANCE: No, Your Honour. I believe as I was making notes per your probation order that covered everything.

THE COURT: I know there's another Information. Just one second. Thanks, Madam Clerk. Did I miss anything, Mr. Miller?

MR. MILLER: No, I think - thank you very much, Your Honour.

THE COURT: What do we do with the other Information?

MR. MILLER: The other Information is....

THE COURT: It's a 111 application, I think. Do you want to just adjourn it and speak to Mr. Lesperance in the meantime?

MR. MILLER: Yeah. Unless Mr. Lesperance wants to just walk away from it today?

MR. LESPERANCE: Your Honour, that was kind of my thought. When - Your Honour has already addressed...

THE COURT: Yes.

MR. LESPERANCE: ...a finding of fact related to which elements Your Honour believed - that this was significant violence, it was violence towards the animal, but there was no weapons used in the offence, and the accused doesn't own any weapons. I think I'd have to take a different position if he was in possession of weapons and had licences, but because Your Honour has ordered for the next 18 - the....

THE COURT: I didn't make no weapons part of it.

MR. LESPERANCE: That's what I was - there was no weapons included in the probation order.

THE COURT: But let's just take a quick look at 111 as well. So, if I made it part of the probation order, would it address that issue?

MR. LESPERANCE: It was [sic]. That's what I was hopeful - and what I was going to suggest. If it could be built into the probation for what he's been sentenced for, the Crown would withdraw the remain Information.

THE COURT: Any issue with that, Mr. Miller?

MR. MILLER: No, I think it's....

THE COURT: Making it part probation.

MR. MILLER: I think it's largely academic in any event.

THE COURT: So, Mr. Vassell, I'm adding one condition to the probation order I just made, and it's a condition that you're not to possess any weapons. So, let me just read the full condition to you to make sure you understand. Okay?

So, you're not to possess any weapons as defined by the Criminal Code, for example, a BB gun, pellet gun, firearm, imitation firearm, crossbow, prohibited or restricted weapon or device, ammunition or explosive substance, or anything designed to be used or intended for use to cause death or injury or to threaten or intimidate any person. So, no weapons for the 18 months that you're on probation. Okay?

TYLER VASSELL: Okay.

THE COURT: Understand?

TYLER VASSELL: Yes, Your Honour.

THE COURT: And understand if you breach that condition you could face another charge and consequences?

TYLER VASSELL: Yes, Your Honour.

THE COURT: Okay. Anything else, Madam Clerk? So, that other Information, Mr. Lesperance, you're asking to withdraw?

MR. LESPERANCE: Yes. Just to be clear, specifically the s. 111 firearms application which is before you, if that can be withdrawn at the request of the Crown now that we have the conclusion and sentencing related to the substantive as well as a no weapons built into that.

THE COURT: So, that Information is withdrawn, or that application is withdrawn at the request of the Crown. Thank you.

MR. MILLER: Thank you, Your Honour.

TYLER VASSELL: Thank you, Your Honour.

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

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I, Cale Harper, certify that this document is a true and accurate transcript of the recording of R. v. Tyler Vassell in the Ontario Court of Justice held at 200 Chatham Street East, taken from Recording 0811_200-CRTRM1_20220908_091718__6_POLLOCSH.dcr, which has been certified in Form 1.

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