In the Provincial Court of Alberta

Citation: R v Purvis, 2023 ABPC 29

Date: 20230222
Docket: 220392815P1
Registry: Edmonton

Between:

His Majesty the King

Crown

- and -

John Michael Purvis

Accused

Decision on Sentencing of the Honourable Judge D. M Groves

I. Background

[1] John Michael Purvis (Purvis) pled guilty to one count of arson contrary to s 434 Criminal Code ("*CC*"), one count of killing a cat without lawful excuse contrary to s 445(1)(a) *CC*, and one count of causing unnecessary pain and suffering or injury to four cats, contrary to s 445.1(1)(a) *CC*.

[2] The offences occurred in Edmonton, AB on June 12, 2021.

[3] An Agreed Statement of Facts ("ASF") was entered as Exhibit S#1. A summary of the facts are as follows:

a) Purvis had been in an intimate relationship with Kim MacInnis (Kim) for four years. Despite the relationship ending, the two remained living together as roommates.

b) On June 12, 2021, police were dispatched to conduct a welfare check after receiving a call from Kim's son who indicated that Purvis informed Kim that he had taken enough insulin to go to sleep and that he had lit a fire in the house. Police were also

advised that Purvis had attempted suicide three times in the past. When police arrived, they found the accused on the front lawn holding three cats.

c) Purvis was uncooperative, belligerent, and verbally berating the police.

d) Purvis let go of the cats who ran away.

e) Police directed Purvis to stay away from the house while the fire fighters were working. Purvis was not following directions but with some negotiations he was placed on the ground and handcuffed.

f) The accused indicated he was Type 1 diabetic.

g) Once in cells the accused became ill, and EMS indicated that Purvis' blood sugar levels were low and that he needed to be transported to hospital. Purvis had to be restrained in the ambulance due to his erratic behavior.

h) Police spoke with Kim who provided screen shots of text messages she had received from Purvis. The exchange was as follows:

> KIM: There's no power gas or hot water cable or internet come next week
> ACCUSED: LMAO awesome the house won't be here and the cats lmao bring it cunt
> ACCUSED: Besides I took enough insulin I won't be coming back I lit a fire in the basement bye
> ACCUSED: There's a fire happening get the cat's out now

i) Fire investigators concluded that arson was the cause of the fire.

j) The fire damage was confined to a storage room in the basement; however, the fire compromised the floor joists and the upstairs, as well the content of the house was smoke damaged. The house was ultimately demolished.

k) One cat died from carbon monoxide poisoning. The remaining four cats survived, although they required oxygen for 24-48 hours, as well as treatment to their eyes for toxic smoke exposure.

l) Purvis was admitted to the Royal Alexandra Hospital mental health ward on June 12 and was released from hospital on July 2, 2021.

[4] In addition to the above-mentioned charges, Purvis also pled guilty to one count of breaching a condition of his release order contrary to s 145(5)(a) *CC*. The breach involved Purvis contacting Kim on July 6, 2022. Purvis phoned Kim using his brother's cell phone. Kim did not answer the phone, but Purvis left a voicemail telling Kim he had upcoming court matters and asked if they could talk. He apologized for everything he had done. Kim did not return his call, but rather contacted police.

[5] The following were entered as exhibits:

Exhibit S#1 – Agreed Statement of Facts (ASF)

Exhibit S#2 – Purvis' criminal record

Exhibit S#3 – The Curriculum Vitae and Report of Dr. Rebecca Ledger, Animal Behavior and animal Welfare Scientist who provided a report on the pain and suffering experienced by the cats.

Exhibit S#4 – Letter from Dr. Laidlaw dated July 4, 2022. Dr. Laidlaw is Purvis' family doctor.

Exhibit S#5 – Reference letter from Karen Llewellyn (Purvis' sister)

Exhibit S#6 – Pre-Sentence Report (PSR)

Exhibit S#7 – Restitution Request of Kim MacInnis

Exhibit S#8 – Victim Impact Statement (VIS) of Kim MacInnis

Accused's Personal Antecedents

[6] Purvis is 57 years old; he was 56 at the time of this offence.

[7] Purvis has an unenviable violent criminal record, although it is dated. His record started in 1986 when Purvis was 20 years old. He was convicted of mischief and received a suspended sentence and probation. His last entries were in 2000 for two robberies and one unlawfully at large conviction. Purvis received a five-year jail sentence consecutive to a three-year sentence he was serving for additional robbery convictions. In total, Purvis acquired 15 convictions consisting of: one mischief, one break and enter, one possession of a scheduled substance contrary to s 4(1) of the *Controlled Drugs and Substances Act*, one unlawfully at large, eight robbery convictions, and three convictions for armed robbery. Albeit dated, Purvis' record is egregious.

[8] In Dr. Laidlaw's letter (exhibit S#4), she confirmed that Purvis had been her patient since 2013. She currently sees him every one to two months. She opines that his mental health was currently the most stable she had seen in many years. Dr. Laidlaw confirmed that Purvis had experienced several suicidal ideations over the years, had been seen by psychiatry numerous times, and had attended significant therapy to deal with his issues; however, at present he was not experiencing suicidal ideations, he was not under the care of psychiatry, nor was he currently requiring therapy. Dr. Laidlaw concluded her letter stating that in relation to Mr. Purvis's treatment, he "[was] likely going to require lifelong medication and periodic counselling."

[9] Dr. Laidlaw confirmed that Purvis is on two medications to address mental health concerns, and that he has been compliant with his medications.

III. Positions of the Parties

[10] The Crown proceeded by indictment. The maximum sentence for arson is 14 years and killing an animal or causing unnecessary pain and suffering to an animal carries a maximum sentence of five years.

[11] The Crown seeks a global sentence of three-and-a-half to four-and-a-half years jail. The Crown also seeks a DNA Order for all offences, a s 447.1 *CC* animal prohibition for 20 to 25 years, and a forfeiture of all exhibits.

[12] The Accused argues that the appropriate sentence is a Conditional Sentence Order ("CSO") in the range of 15 to 24 months, followed by probation. The Accused has 138 days of pre-trial custody; on an enhanced basis, Purvis has 207 days of pre-trial custody credit available, just over six-and-a-half months.

IV. Principles of Sentencing

A. Objectives of Sentencing

[13] The *Criminal Code* says that the fundamental purpose of sentencing is 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 objectives set out in s 718 of the *CC*. Those enumerated objectives are denunciation, deterrence, rehabilitation, reparation, to promote a sense of responsibility in the offender and acknowledgment of harm done, and to separate the offender where necessary, bearing in mind that s 718.2(d) and (e) *CC* states that one should not be deprived of liberty, if less restrictive sanctions are appropriate.

[14] Arson is a serious offence. Fires are often erratic and unpredictable and have the power to produce unintended and sometimes fatal consequences. Even firefighters and emergency personnel are at risk when responding.

[15] In ***R v Chen***, 2021 ABCA 382 (***Chen***) the Court recognized that denunciation and deterrence are paramount sentencing objectives when sentencing an offender for animal cruelty offences. At para 39 the Court states:

> Animals feel pain and suffer; they are not merely property and deserve protection under the criminal law. All animals not living in the wild, ..., 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. Sentencing for animal cruelty must reflect these realities, and the primary focus must be on deterrence and denunciation.

[16] There is no doubt that in relation to the arson offence as well as the animal cruelty offences, denunciation and deterrence are recognized as paramount sentencing objectives.

B. Proportionality

[17] Pursuant to s 718.1 *CC*, the sentence to be imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Proportionality has been characterized as the "cardinal principle" of sentencing: ***R v Lacasse***, 2015 SCC 64 (***Lacasse***) at para 12.

[18] The gravity of an offence is influenced by such factors as the harm or likely harm to the victim(s) of the offence, and the harm or likely harm to society and its value. Arson and animal cruelty offences are by their nature serious offences. However, as with every offence the severity of an offence is impacted by the circumstances of its commission.

[19] As mentioned by the Court in ***R v CPM***, 2009 ABPC 58 (***CPM***) the gravity of an arson offence is not limited to the damages caused by the lost property, but also the danger the fire setting created (***CPM*** at para 76). Other factors to consider in assessing the gravity of an arson include what was set on fire, whether the fire was set in a residential neighborhood, was the residential home occupied at the time, whether anyone suffered injuries and if so, the extent of those injuries, whether personal heirloom or sentimental items were destroyed that could not be replaced, how many fires were set, and whether an accelerant was used. This is not an exhaustive list.

[20] In relation to the arson offence, this was not a dumpster fire, but rather an arson to a residential home. At the time of setting the fire, Purvis was fully aware that Kim's cats were in the residence. One cat died in the fire; four other cats survived but required medical treatment. Not only was there a potential for harm, but in this case, that harm was realized. This was not a home owned by Purvis. Rather it was a home Purvis rented with his ex-girlfriend, Kim. In addition to the house being destroyed and the homeowner having to recoup his losses through his insurance, a restitution request was submitted on behalf of Kim for property losses she suffered because of the fire. In the VIS filed by Kim, it became evident that there were several irreplaceable heirlooms and keepsakes that she lost. While there was some dispute as to the losses claimed, there was no dispute that she suffered losses, and that Purvis was responsible for causing those losses. The losses sustained by this arson were significant.

[21] The gravity of the arson offence falls to the high end on the scale of seriousness.

[22] Respecting the animal cruelty offences, the Court in ***Chen*** recognized that the legislative amendments increasing the maximum sentences for animal cruelty cases were intended 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." (***Chen*** at para 24).

[23] As we know, animals are sentient beings that feel pain and suffering. As a result of the arson, and as already mentioned, one cat died, and four required treatments for smoke inhalation. These offences are serious. However, I must also be mindful that when assessing the severity of the *arson offence*, I took into consideration the death and suffering of the cats – it is difficult not to. Regardless, it is important that I do not double down when contemplating this factor in assessing the severity of these offences. The inability to separate these consequences when looking at both the arson and the animal cruelty cases highlights their interconnectedness.

[24] While Counsel agree that Purvis' offences are serious, they are not *ad idem* on the degree of his moral culpability.

[25] Defense supplied a plethora of case law supporting the proposition that mental health issues can have a significant impact on an offender's moral culpability. Defense referred to ***R v Shevchenko***, 2018 ABCA 31 (***Shevchenko***) at para 28, where the Court stated:

> Put simply, an offender who has a significant mental illness is generally considered to have less moral blameworthiness than someone operating with an unimpaired view of the world. It is therefore imperative that a sentencing judge appreciate the **extent and manifestation of the illness and link it to the degree of moral blameworthiness**. A further important consideration is the role such illness may have played in the commission of the offence. Rarely do the offence and the mental illness stand entirely apart. The offence must be viewed in the context of the mental illness. [Emphasis added].

(See also: ***R v Belcourt***, 2010 ABCA 319 (***Belcourt***) at para 8; ***R v Adam***, 2019 ABCA 225 (***Adam***) at para 17; ***R v Costello***, 2019 ABCA 104 (***Costello***) at para 8).

[26] As stated by the Court in ***Belcourt,*** citing C. C. Ruby, *Sentencing* (6th ed.) (Markham: Butterworths, 2004) at paras 5.246 and 5.256:

> It is, therefore, clear that a sentence can be reduced on psychiatric grounds in two instances: (1) when the mental illness contributed to or caused the commission of the offence; or (2) when the effect of imprisonment or any other penalty would be disproportionately severe because of the offender's mental illness. . . .

[27] However, as stated by the Court in ***Costello,*** the nature and effects of the mental health issues should be proven on a balance of probabilities, and they must be relevant to the offence or the offender in a "rational proportionality sense under s 718 of the Criminal Code" (at para 8). This procedure was reaffirmed by the Court in ***Adam*** when the Court stated:

> As with any other disputed fact, an accused's mental health issues and their impact on his moral blameworthiness must be proven on a balance of probabilities before it can be relied upon in determining the sentence: Criminal Code, s. 724(3)(d); Costello at para 8. Usually, this will require a clear diagnosis of mental illness and details of its impact on the accused's behavior, especially when there is no obvious nexus between the mental illness and the offence (at para 19).

[28] In ***R v Miller,*** 2018 ABCA 356 (***Miller***), the accused appealed his sentence for manslaughter, arguing the sentencing judge failed to adequately account for his mental health issues. The appellant argued that the sentencing judge viewed the case as one of voluntary intoxication. However, the appellant argued that it was not simply a case of voluntary intoxication, but intoxication tied to a mental health issue. The Court accepted that where an offender commits an offence because of a serious mental illness, the offender's degree of responsibility was diminished, and the sentence should reflect the offender's reduced moral culpability. However, the appellant Court found that there was no actual diagnosis of mental illness. The Court had the benefit of three reports, two made no mention of any mental illness, and the third report made a provisional diagnosis of Autism Spectrum Disorder (at para 16).

[29] ***R v E.A.***, 2017 NUCJ 16 (***EA***) involved an accused who pled guilty to an offence contrary to s 434 *CC.* She set fire to and destroyed her own public housing unit that she lived in with her two siblings and other children. Fortunately, the other three suites of the building were not damaged, and the occupants only temporarily displaced. The insured value of the unit was $1M dollars. At the time of setting the fire, E.A. was the only person in the residence. She was drunk, depressed, and in a state of despair. Several times she had expressed suicidal ideations. E.A. presented with significant *Gladue* factors. She had no prior criminal record. Since committing the offence she had sought assistance, and although homeless, her children were returned to her care, and she had established a good relationship with Social Services and did not hesitate to reach out to them for assistance when needed. The accused was sentenced to nine months incarceration followed by 18 months' probation.

[30] In *R v Jonah*, 2014 ONCJ 19 (***Jonah***) the accused and LR were in a relationship and shared a five-year-old daughter. The two were to be married, but an argument arose over infidelities on both sides. LR called off the wedding, and the accused told her to leave the house. LR left with their daughter. The accused sent a text message indicating that he would not be there when she returned. The accused obtained a gas can and spread it over the bedroom floor. He then lit the gas in an effort to harm himself. However, he changed his mind and called 911. The insurance company requested restitution in the amount of $37,741.96.

[31] The Court stated at para 56 that "longstanding mental health issues has been a consistent factor in those cases where a conditional sentence has been imposed." However, the 38-year-old accused, with no prior criminal record, denied any issues with alcohol, and aside from the one-off suicidal ideation there was no noted mental health issues. This offence was accepted by the Court as being an isolated incident that was out of character for Mr. Jonah. The accused sought counselling to manage the stress he was experiencing because of these matters. The Court imposed a jail sentence of six months followed by two years' probation.

[32] In assessing moral blameworthiness, it is important to make a clear distinction between fault in terms of an offender's *mens rea* at the time of committing the offence and fault in terms of the offender's overall moral blameworthiness for the crime. The two are not the same. For sentencing purposes, the offender's level of moral culpability will be influenced by factors such as the nature and quality of the act itself, the method by which it was committed, and the manner in which it was committed in terms of the degree of planning and deliberation. Any specific aspects of the offender's conduct or background that tend to increase or decrease the offender's personal responsibility for the crime must also be considered.

[33] The offence of arson required an element of planning. This was not a reactionary offence committed in the heat of the moment, as may occur when a person lashes out while embroiled in an argument and commits an assault. To assess Purvis' moral culpability, it is helpful to understand the backdrop of this offence.

[34] Purvis and Kim had been in an intimate relationship for nearly five years. They had separated but were residing together as roommates. The time had come for the two to physically separate and go their own ways. Purvis had done nothing to find another residence. Kim was packed and ready to move out. With this as the backdrop, one can better understand the text message exchange.

[35] Defense suggested in his written arguments that this incident was not motived by animosity, nor was it undertaken in the context of a domestic dispute or revenge. I disagree.

Kim texted Purvis advising him there would be no services at the house come the following week. It was fair to infer she did this since Purvis had made no efforts to find a new residence. Purvis' response was clearly riddled with animosity and revenge when he replied: "LMAO awesome the house won't be here and the cats lmao bring it cunt".

[36] 'LMAO' is an acronym colloquially used for 'laugh my ass off'. This reply clearly suggested a degree of revenge or retaliation against Kim, which I find increased Purvis' moral culpability. This reply also solidifies that he was aware the cats were in the house.

[37] Purvis then followed up with another text: "Besides I took enough insulin I won't be coming back I lit a fire in the basement bye". Purvis' response clearly revealed that he was aware what he was doing. But it was also telling, in that it disclosed that his intention was to die by overdosing on insulin. If Purvis intended to commit suicide, he did not need to set a fire, the insulin would have been sufficient. The fire was an 'extra'.

[38] The final text message sent by Purvis telling Kim to get the cats out, further reinforced that he was aware and had full knowledge of the consequences of his actions.

[39] I was not advised that any accelerant was used or that any other individuals were present in the residence at the time of the arson, which is not mitigating, but lack of further aggravating factors.

[40] The aggravating factors considered is assessing moral culpability were: Purvis' apparent vindictiveness when he responded to Kim's text and told her he was starting a fire, Purvis' knowledge that the cats were in the house, and the fact that he was cognitively aware of the consequences of his actions.

[41] All the above-mentioned factors increase Purvis' moral culpability.

[42] Turning to factors that could reduce Purvis' moral culpability, the most significant factor would be mental health issues. (***Shevchenko*** at para 28; ***Belcourt*** at para 8; ***Adam*** at para 17; ***Costello*** at para 8).

[43] Unfortunately, I was not provided with any mental health reports, FACS assessments, or a formal diagnosis. The best that I have is a letter authored by Dr. Laidlaw, Purvis' family doctor, who advised that Purvis had experienced several suicidal ideations over the years, had been seen by psychiatry numerous times, and had attended significant therapy to deal with his issues. She continued, saying that at present he was not experiencing suicidal ideations, he was not under the care of psychiatry, nor was he currently requiring therapy. She further confirmed that he was on two prescriptions for his mental health and was compliant with his medications.

[44] Without a formal diagnosis, FACS assessment, or psychological report, I am left piecing together what weight should be given to Purvis' mental health in contemplation of reducing his moral culpability. This is the pot portiere of factors for consideration:

a) The information contained in Dr. Laidlaw's letter (exhibit S#4).

b) The context of the text messages that were exchanged between Kim and Purvis.

c) I am aware that after committing this offence Purvis was transported to the hospital for medical treatment. On the same day, he was admitted to the Royal Alexandra Hospital Mental Health Unit. He remained in the mental health unit from the date of the offence until his discharge on July 2, 2021, approximately three weeks.

d) I have a PSR which indicated that Purvis advised the author of the PSR that he believed "his drug and alcohol use throughout life has been his biggest flaw, as well as challenges with his mental and physical health." (Page 5). The author continued saying: "The subject shared he has attempted death by suicide on 5 occasions, including the current matter. He denies any current suicidal ideations and expressed belief they were often triggered by substance use. The subject advised he was formally diagnosed with PTSD, however, he was unsure of the exact date. He is currently on medication, which has stabilized his mental health." (Page 5)

e) In the PSR, Purvis confirmed a history of substance misuse, with his primary substance abuse being alcohol.

f) Purvis told the PSR writer that he had previously completed some treatment program although he could not recall any specifics. He further advised the writer that "he has not consumed alcohol or any illicit substances since the current offence."

g) In the VIS dated September 26, 2022, Kim writes under the heading "Fears for Security":

> "I feel he will go back to drinking when he's having a bad day. John has been sober for 10 years before so him being sober for over a year means nothing. The bottle will always be crutch for John (*sic*). The bottle is the reason I left in the first place and I told John he needed help with his drinking but that bottle meant more to him that (*sic*) anything else." (Page 2 of 3)

h) A letter of support written by Purvis' sister, Karen Llewellyn, and entered as exhibit S#5, says: "Since John has stopped drinking and doing drugs more than 12+ months ago his demeanor has SIGNIFICANTLY changed."

i) In sentencing submissions, counsel reiterated that Purvis advised he has been sober since the offence.

[45] Based on this information, I am left to believe, and do accept, that alcohol was a contributing factor in Purvis' offending behavior.

[46] I appreciate Purvis' behavior was fueled by suicidal ideations. He had ingested sufficient insulin to cause serious harm to himself, he deliberately set a fire while inside the house, and it was his intention to die. While there is no doubt that Purvis was suffering with mental health issues, he was not in a psychotic state unaware of his surroundings or the consequences of his actions. Further, the information supplied revealed that alcohol was a contributing factor in Purvis' offending behavior. Purvis also disclosed to the PSR writer that his suicidal ideations are often triggered by substance use. With this information and no mental health diagnosis, I find that Purvis' suicidal ideations were likely triggered to a significant degree by his alcohol/substance abuse. So, while I find that Purvis was suffering with mental health issues at the time of committing these offences, the mental health issues were not organic in nature thus necessitating a significant reduction in moral culpability. Rather, the mental health issues were significantly impacted by Purvis' alcohol/substance abuse. This is not to say that there should be no reduction in Purvis' moral culpability. Often substance abuse is a symptom of undiagnosed mental health issues. People may use alcohol or illicit substances as a means of self-medicating.

[47] A sentence can be reduced on psychiatric grounds when the mental illness contributed to or caused the commission of the offence. However, as with any other disputed fact, an accused's

mental health issues and their impact on his moral blameworthiness must be proven on a balance of probabilities before it can be relied upon in determining the sentence: Criminal Code, s 724(3)(d) (***Costello*** at para 8). Usually, this will require a clear diagnosis of mental illness and details of its impact on the accused's behavior (***Adam*** at para 19).

[48] I have been advised that Purvis now lives with his brother, which appears to have had a positive impact on Purvis. Aside from comments made through counsel that Purvis' brother has certain expectations of Purvis, such as contributing to household chores, maintaining a regular daily schedule, and ensuring regular exercise, there is no evidence that Purvis has engaged with any treatment or counseling to address his substance/alcohol abuse.

[49] The seriousness of these offences falls towards the high end on the spectrum of seriousness, and Purvis' moral culpability would land somewhere between the mid-range and the high end on the moral blameworthiness scale.

C. Aggravating and Mitigating Factors

[50] I am also required by s 718.2 of the *CC* to ensure that the sentence is increased or reduced to account for any relevant aggravating or mitigating factors.

[51] Mitigating was Purvis' guilty plea, his remorse, and the steps he has taken since committing these offences to address and stabilize his mental health issues, which as far as I can glean is complying with his medications and moving into a pro-social living arrangement with his brother.

[52] As for aggravating factors not considered in the proportionality analysis, I characterize Purvis' relationship to these cats as akin to a position of trust. While Purvis and Kim were no longer in an intimate relationship, they had been, and these cats were a part of that relationship. Although the couple had separated, they were nonetheless living together as roommates. Kim was not present at the time the fire was set, but the cats were. Purvis was aware of that fact. As stated in ***Chen*** at para 39 "[a]ll animals not living in the wild, ..., are under the complete dominion of human caretakers", and are at the mercy of their caregiver to protect them. At the time the fire was set, that caregiver was Purvis.

[53] A further aggravating factor is Purvis' criminal record, albeit dated. Purvis has an unenviable violent record. Fortunately, the last entry was in 2000. However, given his sentence of five years, the earliest he would have received full parole was 2005, and likely later as this sentence was consecutive to a three-year sentence imposed in 1998.

D. Parity

[54] I am also required to ensure that the "sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." (s 718.2(b) *CC*).

[55] Counsel supplied a plethora of cases in support of their positions.

[56] I will group the cases into two categories:

A. Arson Cases

1. ***R v Yellowknee***, 2017 ABCA 60 (***Yellowknee***)

[57] The accused pled guilty to arson. The dwelling-house which Yellowknee set fire to was a derelict trailer owned by Bigstone Band, which the accused and his common-law spouse resided in. Yellowkee also pled guilty to a mischief charge, and two breaches of an undertaking.

[58] Yellowknee was 45 years old, was intoxicated when he committed the offence, and had no memory of the events. He deliberately set fire to his home after texting his spouse to retrieve her possessions. The fire also destroyed the personal property of another person. The sentencing judge imposed a sentence of 12 months jail followed by 12 months probation. The accused appealed.

[59] The Court upheld the sentence as fit.

[60] Justice Wakeling, in a concurring decision, attempted to classify and categorize different types of arson to better equip sentencing judges with the tools to determine a fit sentence. However, as stated by the majority: "We have read the concurring decision of our colleague Wakeling JA with which we cannot agree. Rather, we reiterate what was said by the Supreme Court of Canada in ***R v M(CA)***, [1996] 1 SCR 500, 1996 CanLII 230 (SCC) at para 92:

> …It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. *See Mellstrom, Morrissette* and *Baldhead*. Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. For these reasons, consistent with the general standard of review we articulated in *Shropshire*, I believe tha a court of appeal should only intervene to minimize the disparity of sentences where the sentence imposed by the trial judge is in substantial and marked departure from the sentences customarily imposed for similar offenders committing similar crimes.

[61] I accept, with every offence, that the circumstances of the offending behavior will dictate the severity of the crime. However, to attempt to neatly catalogue a crime and assign a sentence range dependent on how it was catalogued is not only an exercise in futility but is contrary to the directions from the SCC who have repeatedly confirmed that sentencing is an individualized process.

2. ***R v C.P.M.***, 2009 ABPC 58 (***CPM***)

[62] The accused pled guilty to two arson offences that involved multiple fires set on two different dates with the total damage amounting to approximately $70 thousand dollars. The accused was 18 years old. He had a prior youth record but no prior arson convictions. He was not found to suffer with any psychosis or major depression, although had a history of poly-

substance and alcohol abuse. The accused suffered with antisocial personality disorder and anger management issues. He was assessed as being a high risk to reoffend. The accused was sentenced to two-and-one-half years jail less time in custody of 18 months leaving one year to serve followed by two years of probation.

[63] The Court referred to a decision *R v H.(K.)* 1994, 146 N.B.R. (2d) 372 and cited para 8 of this decision which said:

> By any yardstick, arson is a serious offence. An adult is liable to imprisonment for fourteen years. Fire, no matter how well planned, is often erratic and unpredictable and gives rise to unforeseen consequences. For sentencing purposes, arsonists are sometimes divided into four types: pyromaniacs or persons who are mentally disturbed, those who burn for no special reason or a grudge, vandals and those who burn for financial gain.

[64] As was clear in ***CPM*** the accused did not fit nicely into any of these categories identified in *R. H.(K.),* which provides further support, that any effort to neatly catalogue offences or offenders is futile.

3. ***EA***

[65] The facts were already discussed above in para 29.

[66] At para 82 of this judgment the Court said:

> Respecting the case authorities filed, it would appear that imprisonment is the norm or rule, rather than the exception, as punishment for the crime of arson. And while two of the case authorities support a community-based disposition in the form of a conditional sentence, a conditional sentence is simply a different form of imprisonment.

[67] However, at the time E.A. committed this offence, a CSO was not available.

[68] At the time of sentencing, which was approximately 21 months post-offence, E.A., who was a 26-year-old Indigenous woman, was a single mother of a two-year-old and a seven-month-old and was two months pregnant.

[69] E.A. was sentenced to nine months jail followed by 18 months' probation.

4. ***Jonah***

[70] The facts were discussed in para 30 above.

[71] The Court stated at para 56 that "longstanding mental health issues has been a consistent factor in those cases where a conditional sentence has been imposed."

[72] However, the 38-year-old accused denied any issues with alcohol, and aside from the one-off suicidal ideation there was no noted mental health issues. This offence was accepted by the Court as being an isolated incident that was out of character for Jonah. The accused, who had no prior criminal record, sought counselling to manage the stress he was experiencing because of these matters.

[73] The Court imposed a jail sentence of six months followed by two years' probation.

5. ***R v Sharun***, 2017 BCPC 367 (***Sharun***)

[74] In ***Sharun***, the Court sentenced the accused to a suspended sentence and three years' probation. Sharun was 27 years old, and a first-time offender. He started several fires in his suite in an attempt to commit suicide. The building he resided in was a 16-unit building, and the total damage was $37,191.07. At the time of committing the offence, he was suffering with an undiagnosed mental health issue. The Court found that this was a "rare case where the standard of exceptional, unusual, or special circumstances has been met" and imposed a suspended sentence with 3 years' probation.

[75] It should be noted that given the legislation at the time, a CSO was not available.

6. ***R v Bogue***, 2017 BCPC 58 (***Bogue***)

[76] In ***Bogue***, the accused was granted a suspended sentence and three years' probation. While in a drug induced psychosis, the accused set four separate fires to the house he was renting. The fires caused more than $315,000 worth of damage, including destroying the accused's vehicle. The fires put the neighbors at risk. Fortunately, no one was physically injured. Bogue had no prior criminal record.

[77] The Crown sought a jail sentence of 18 months, and Defense was pitching for a suspended sentence and probation for three years, or alternatively an intermittent jail sentence and three years' probation.

[78] Aggravating factors considered were as follows: he attended a gas station and filled jerry cans which he used to set four separate fires; he propped open a door so the fire could spread; his actions put residential neighbors at risk; the damage was extensive; and while on bail, the accused, again during a state of psychosis, set another fire at a fire hall in a different jurisdiction.

[79] The Court considered as mitigating the following: his guilty pleas, the accused had no prior criminal record, he was embarrassed, ashamed and remorseful; that although he was not under the influence of drugs at the time, he was nevertheless still suffering from a drug-induced psychosis; that he had made significant efforts towards rehabilitation, including an eight week treatment program, his psychiatrist believed the accused was a low risk of reoffending, he had family support, he was facing a significant civil action against him, and that his actions were not motivated by vengeance or malice.

[80] The Court assessed the accused's mental health concerns to be exceptional circumstances that warranted the imposition of a suspended sentence and three years' probation

7. ***R v Albarado***, 2020 ONCJ 621 (***Albarado***)

[81] While intoxicated both by drugs and alcohol, the accused set fire in his girlfriend's apartment, after notifying her that he was going to kill himself. The fire caused $73,000 damage and several tenants were in harm's way and had to be evacuated. The accused had attempted suicide previously and was apprehended under the Mental Health Act. Albarado was diagnosed with substance use disorders and substance induced psychosis. Albarado had no prior criminal record.

[82] The Court determined an appropriate sentence would be 15 months jail, before considering the harsh COVID restrictions inmates were experiencing. Albarado was sentenced to 12 months jail and three years probation.

8. ***R v Day***, 2013 BCCA 172 (***Day***)

[83] Day was a 47-year-old offender with an extensive criminal record but no prior convictions for arson. He pled guilty to two counts of arson contrary to s 434 *CC* and was sentenced to two years jail less seven months credit for time in custody, followed by two years' probation. Day appealed his sentence.

[84] A Not Criminally Responsible (NCR) Assessment was conducted, which found that Day was not suffering from any mental disorder which would exempt him from criminal responsibility. He did have a longstanding history of schizoaffective disorder. combined with alcohol and illicit substance abuse. and was under the influence of both alcohol and cocaine at the time of committing these offences.

[85] The Court of Appeal upheld the sentence.

9. ***R v Morgan-McDougall,*** 2011 ONCJ 119 (***Morgan-McDougall***)

[86] The 50-year-old accused, with no prior criminal record, pled guilty to one count of arson and breaching a condition of her release. The accused and her husband were embroiled in a dysfunctional relationship and were in the midst of separating. They disagreed about the sale of the matrimonial home. The accused decided she wanted to kill herself and poured gasoline in the house. After she lit it, she changed her mind and left. Fire responders found her nearby in a ditch. The value of the damage was $280,000 and the financial loss to the estranged husband could not be fully recovered as the home was destroyed by the accused's own criminal act.

[87] The Court heard *viva voce* evidence from the accused's psychiatrist. The accused was diagnosed with suffering from a major effective disorder, coupled with a chronic substance abuse disorder related to alcohol. While the psychiatrist assessed that the accused may be a risk to herself, she was deemed not to be a risk to the community and the psychiatrist opined that the arson was an isolated act which would likely never repeat itself.

[88] The Court found that this offender was "exactly the type of offender that the CSO regime was intended to apply to – a non-violent, medically beset adult first offender who represents no risk to the community".

[89] The court imposed an 18-month CSO.

B. Animal Cruelty Cases

1. *Chen*

[90] ***Chen*** involved what I would call a gratuitous and horrific beating on a ten-month-old-puppy for over 20 minutes. The accused kicked, dragged, and threw the puppy. A neighbor tenant tried to intervene, and a passerby heard the puppy yelping from approximately 100 meters away. The abuse did not stop until the police arrived. 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 of her head, and her abdomen, and there was also evidence of previous healed rib fractures at least six to eight weeks old. Chen had no prior criminal record.

[91] The sentencing judge imposed a 90-day jail sentence followed by two years' probation. The summary appeal judge maintained the probation order but substituted the 90 days' jail with a one-year CSO. The Crown sought leave to appeal to the Court of Appeal, which leave was granted.

[92] At the appellate level, the Crown and the intervenor, Animal Justice, urged the Court to provide guidance on the approach to sentencing cases involving animal cruelty and to address "perceived inconsistency in the sentences being imposed at the trial level." (at para. 18).

[93] At paras 23 and 24, the Court provided an overview of the legislative changes that have occurred in relation to animal cruelty cases and the impact that should have on sentencing judges when determining a fit sentence. The Court stated:

> [23] In 2008, Parliament amended the animal cruelty provisions of the *Criminal Code* 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."

[94] In reviewing appellate decisions across Canada, the Court "identified a pattern of increasing periods of incarceration in animal cruelty offences since 2008 amendments: *Reykdal* at para 40, citing *R v Florence*, 2018 ONCJ 872." (At para 28).

[95] The Court made it clear that denunciation and deterrence must be a primary focus when sentencing an offender for an offence of animal cruelty, although acknowledged that these were not the only sentencing principles that were engaged.

[96] At paras 41 through 46, the Court addressed aggravating and mitigating factors as they arise in animal cruelty cases. The Court found that: 1) while failure of an animal to recover from its injuries may be an aggravating factor, full recovery is not mitigating (at para 42); 2) "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" (at para 44); 3) when the abuse or killing is motivated by a desire to control or exert revenge, that is aggravating; and 4) whether the offender is in a position of trust towards the animal, will depend on the circumstances (at para 45). If a breach of trust is found, it will be an aggravating factor.

[97] The Court overturned the CSO and imposed a jail sentence of 90 days, although did not re-incarcerate Chen since he had served nine months of his 12-month CSO without breach and had effectively rehabilitated himself. However, at para 48, the Court commented that whether a 90-day jail sentence was adequate for the offences committed by Chen, was not before the Court on appeal.

2. ***R v Alcorn***, 2015 ABCA 182 (***Alcorn***)

[98] ***Alcorn*** involved a gruesome act of gratuitous violence against a cat. The accused, a sexual deviant offender, acquired a cat from Kijiji a couple days prior to the incident. On the day of the offence, he strung the cat by its back legs from a garage rafter, placed a tarp on the floor, had his female companion on all fours beneath the cat. He cut the cat's throat and the cat bled on the female as part of a sexual ritual. The cat died. Alcorn did not have a prior criminal record.

[99] The accused pled guilty to s 445.1(1)(a) *CC*, along with an assault charge and breaching a copy of his release order. He was sentenced to a global sentence of 24 months, 20 months attributed to the animal cruelty case.

[100] The sentence was upheld on appeal.

3. ***R v Fontaine*** is an unreported Provincial Court decision from October 26, 2016, docket 160153433P1 (Judge S. Bilodeau). (***Fontaine***)

[101] This case involved the accused picking up and throwing her neighbor's small four-pound Chihuahua against the wall. The dog scampered away with no injuries. The accused had a limited but unrelated criminal record.

[102] The Court accepted the joint submission of 15 days incarceration deemed served by the offender's pre-trial custody time.

4. ***R v Dudar*** is another unreported Alberta Provincial Court decision from February 13, 2013, docket 120630405P1 (Judge L. Anderson). (***Dudar***)

[103] In ***Dudar,*** the accused pled guilty to several offences on different Informations, however, in relation to the animal cruelty offence, the facts involved an on-duty police officer who heard the accused yelling at a dog that he had on a leash. He was noted to be pulling on the leash so hard that the dog was yelping. Before the officer could exit his vehicle, the accused began to whip the dog with the leather leash. The dog yelped and cowered in fear. A bylaw officer was called to retrieve the dog. The dog was noted to be extremely timid, submissive, shaking, appeared to be malnourished, and was hiding and cowering under the police vehicle. The accused had a prior criminal record.

[104] The Crown sought a global jail sentence of 9 to 13 ½ months jail, followed by 12 months' probation. In relation to the animal cruelty offence the joint submission was for 15 to 30 days consecutive to any other sentence, coupled with a five-year pet prohibition.

[105] The Court imposed a global sentence of seven months jail, less time served. However, in relation to the animal cruelty offence, the Court rejected counsels' submissions for a sentence in the range of 15 to 30 days and imposed a sentence of three months incarceration coupled with a five-year pet prohibition.

5. ***R v Helfer***, [2014] O.J. No. 2984 (***Helfer***)

[106] The accused pled guilty to several offences, including criminal harassment, two counts of assault with a weapon, and one count of maiming a dog, contrary to s 445(2) *CC*. All these offences occurred on the same date and were referred to as the 'The Breezy Incident', which was the name of the dog. Prior to sentencing, a subsequent plea was also entered to a break and enter. Helfer had a lengthy criminal record, mostly youth entries.

[107] In relation to the animal cruelty case, the facts accepted were that the accused brutally kicked the dog and beat her with a rake and shovel. The dog sustained life threatening injuries. The veterinary bills exceeded $11,000. At the time of sentencing, she had been adopted and was doing well in her new home. She would require ongoing medical care for her eye and a determination would need to be made whether the eye would be removed. As a result of the maiming, Breezy had no sight out of that eye.

[108] The Crown sought a global sentence of four years, with three years being allocated for 'The Breezy Incident'. Defense recommended a total sentence of nine to 12 months, suggesting 6 months for 'The Breezy Incident', followed by a lengthy period of probation.

[109] The Court imposed a two-year jail sentence for the s 445(2) offence with the other offences from the same day running concurrently. The offender had just over the equivalent of

one year pre-sentence custody credit, reducing his sentence to one year remaining. The Court also imposed probation for a period of three years.

[110] Given the Court was dealing with several offences over two different dates, reference to the applicable sentencing principles began to blur and parsing out what sentencing principles were applied to the s 445 offence was not readily ascertainable.

6. ***R v Ng*** unreported decision from the now Court of King's Bench, Action No. 171477144Q1 on October 1, 2020 (***Ng***)

[111] The accused pled guilty to killing two cats by drowning. These offences occurred two years apart. On the later date, the accused also tried to kill a third cat, although was unsuccessful. The accused had no criminal record.

[112] The Court accepted the Crown's recommendations for a two year less one day jail sentence followed by two years' probation.

7. ***R v Price*** an unreported decision from the Provincial Court of Alberta Action No. 181390683P1 on April 9, 2019. (***Price***)

[113] The accused, who was relatively young with no prior criminal record, pled guilty to killing a cat. Price believed he was the Norse God Thor and was protecting his wife from the serpent enemy of Thor, which he believed could take on the form of a cat. A psychological assessment determined that the Accused was in a psychotic state and did not appreciate the nature and consequences of his actions.

[114] The Court acknowledged that two years was an appropriate sentence for killing an animal but due to the accused's reduced moral blameworthiness, he sentenced Price to nine months' jail followed by two years' probation.

8. ***R v Geick*** is an unreported decision from the Court of King's Bench Action No.190263855Q2 dated February 18, 2022.

[115] In ***Geick,*** the accused inflicted severe and gratuitous beatings on his common law partner's two dogs. One dog died because of the injuries; the other dog had to be euthanized. There was no mention that the accused had a prior criminal record.

[116] This decision was post-***Chen.*** The Court recognized the 2008 amendments to the *Criminal Code,* and the guidance outlined in ***R v Friesen***, 2020 SCC 9 and ***Chen,*** which discussed the need to increase sentence reflective of Parliament's will. Geick was sentenced to 36 months jail.

9. ***R v Edwards***, [2022] A.J. No. 1289 is an unreported decision heard and decided o August 29, 2022.

[117] From reading the transcript I have pieced together the facts regarding the animal cruelty charge. Edwards was left in charge of his girlfriend's kitten while she was gone. While in his presence the kitten was subjected to significant abuse. It is uncertain whether it had a corrosive

substance poured on it, or whether it was scalding water. The kitten survived but was left with permanent disabilities and had undergone several surgeries with more likely to occur. Counsel proposed a joint submission of 18 months jail followed by one year probation and a lifetime pet prohibition. Crown counsel informed the Court that it was a true joint submission since the Crown had problems with its key witness. Without witness issues, the Crown would have been seeking a sentence in the range of two years, and the Court clearly stated two years would be an appropriate starting point for this type of case involving these types of injuries. The accused had a prior criminal record.

V. Application of the Principles to this Case

[118] While denunciation and deterrence are paramount, specific deterrence, rehabilitation, and protection of animals are also applicable. Rehabilitation, however, can only be contemplated if Purvis receives a jail sentence of less than two years.

[119] These offences are serious. Arson carries a maximum penalty of 14 years, the animal cruelty offences each carry a maximum of 5 years.

[120] In assessing proportionality, and in determining the seriousness of these offences I considered as aggravating the significant losses caused by the arson, not only to the accused but his estranged spouse, the public cost associated with the firefighters being sent to fight the fire and the personal risks they are exposed to in responding, the fact that four cats suffered injuries and one died as a result of Purvis' actions, that the fire was set to a residential home in a residential neighborhood which has the potential to put others at risk, and that heirlooms and keepsakes were lost and irreplaceable.

[121] Mental health is a relevant factor to consider in assessing moral blameworthiness. Purvis was suffering with mental health issues on the date of the offence, evidenced by his suicidal ideations. However, from the circumstances of this case, I found that Purvis' mental health concerns only somewhat reduced his moral culpability. I found Purvis' moral culpability fell between the mid-to-higher end on the scale of moral blameworthiness.

[122] Mitigating is his guilty plea, remorse, and the steps he has taken to address and stabilize his mental health.

[123] Statutorily aggravating is the fact that he breached a position of trust.

[124] In relation to parity, it is trite to say that no two cases are identical, and any effort to neatly catalogue offences into a grid with a corresponding sentence range is a fruitless exercise. (See ***Yellowknee*** at para 7; ***CPM*** at para 46)

[125] Several of the arson cases provided were similar in that the offence was committed as part of the accused's plan to commit suicide. The Courts have divided on whether jail was the appropriate sentence. In ***EA***, ***Jonah***, and ***Albarado,*** the offenders were sentenced to jail after their failed attempt at suicide by arson. In ***Sharun*** and ***McDougall,*** the Courts found a non-custodial sentence to be fit and proportionate. Neither Sharun nor McDougall had a prior criminal record.

[126] The other cases referenced, ***Yellowknee***, ***CPM***, ***Day*** and ***Bogue,*** did not involve offenders attempting to commit suicide, but instead were offenders suffering with a mental health disorder and/or a substance abuse disorders. The Court in ***Bogue*** sentenced the offender to a suspended sentence and 3 years' probation, whereas ***Yellowknee***, ***CPM***, and ***Day*** were all sentenced to jail. Bogue had no prior criminal record.

[127] Of the arson cases referenced, only ***Yellowknee*** and ***CPM*** are from Alberta.

[128] A review of these cases highlights that sentencing is an individualized process, with the overarching sentencing principle being proportionality.

[129] Characterizing these offences as serious and Purvis' moral culpability as falling towards the higher end of the moral blameworthiness scale, jail is warranted.

[130] The animal cruelty cases provided greater comparative difficulty. Of the nine cases, seven of these cases involved gratuitous violence that was nothing shy of horrific (see ***Chen***, ***Alcorn***, ***Helfer***, ***Ng***, ***Price***, ***Geick***, and ***Edwards***). I do not find the same level of gratuitous violence present in this case. In the two remaining two cases, ***Fontaine*** and ***Dudar***, the abusive behavior was against only one animal. Unlike the facts of this case, in neither of those cases did an animal die. Dudar received three months incarceration and in ***Fontaine,*** the Court accepted the joint submission for 15 days.

[131] As is often the case, it is difficult to rely on cases for comparative purposes when the circumstances of the case can be distinguished.

[132] However, I can put some weight in the legislative amendments that came into effect in 2008 and 2019, which increased the maximum sentence for offences of animal cruelty. These amendments recognize that the "prior sentence range for such conduct was wholly inadequate" (***Chen*** at para 23 citing ***R v Alcorn***, 2015 ABCA 182 at para 40). The amendments better reflect the serious nature of animal cruelty, allow for more flexible sentencing, and provide better protection for animals. (***Chen*** at para 24).

[133] ***Chen*** adopts the reasoning in ***Friesen***, at para 100, where the Court in ***Friesen*** stated: "[t]o 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." (***Chen*** at para. 24).

[134] The facts of this case do not reach the level of gratuitous violence of the seven cases referred to but are more serious than the circumstances in ***Fontaine*** and ***Dudar.*** In both of those cases I find the offending behavior less injurious. Coupling this with the legislative amendments signaling that courts should generally impose higher sentences, I find that jail is warranted for the animal cruelty offences.

VI. Conclusion

[135] While I am mindful that jail should be used as a last resort, proportionality dictates that jail is warranted.

[136] On each count: count #1 arson, count #2 killing a cat contrary to s 445(1)(a) *CC*, and count #3 causing unnecessary pain, suffering or injury to four cats contrary to s 445.1(1)(a), Purvis is sentenced to 18 months jail for each offence.

[137] I am also required by s 718.2(c) *CC* to ensure that where consecutive sentences are imposed, the combined sentence should not be unduly harsh or long.

[138] These offences all occurred on the same day, and from the same set of facts that were fueled by a desire to commit suicide. Given the interconnectedness between these offences, I find it appropriate that the sentences run concurrent to one another.

[139] This global sentence of 18 months incarceration addresses the paramount sentencing objectives of denunciation and deterrence. Purvis has the equivalent of six-and-a-half-month pre-sentence custody credit, reducing his sentence to eleven-and-a-half months left to serve. To address rehabilitation, I further order Purvis to be bound by a probation order for a period of two years following his release. And finally, to provide protection for animals who are victims of such crimes, pursuant to s 447.1 *CC*, I prohibit Purvis from owning, having the custody or control of, or residing in the same premises as an animal or a bird for a period of 15 years.

[140] I will address the terms of Probation with counsel.

Heard on the 9th day of January, 2023.
Dated at the City of Edmonton, Alberta this 22nd day of February, 2023.

Donna M. Groves
A Judge of the Provincial Court of Alberta

Appearances:

C. Lim
for the Crown

D. Nagase
for the Accused