

Citation: ☼ R. v. Mathes  
2016 BCPC 386

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Registry: Kamloops

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**REGINA**

**v.**

**CHRISTOPHER GERALD MATHES**

**REASONS FOR SENTENCE  
OF THE  
HONOURABLE JUDGE R.C. DICKEY**

Counsel for the Crown:  
Counsel for the Defendant:  
Place of Hearing:  
Date of Hearing:  
Date of Judgment:

Ms. A. Janse  
Mr. K. Tessovitch  
Kamloops, B.C.  
October 18, 2016  
October 18, 2016

[1] THE COURT: Mr. Mathes has pled guilty to a charge under s. 445.1(1)(a) of wilfully causing unnecessary pain, suffering, or injury to an animal. The animal was his dog. The Crown states that they are not opposed to a conditional sentence order in the circumstances with a 10-year ban on owning animals. The defence argues for a discharge.

[2] The court, in determining the appropriate sentence, must assess the circumstances of the offender and the offence and apply the sentencing principles and objectives found in s. 718 to 718.2 and the applicable case law. I will first address each of these areas and then provide my analysis and decision.

#### Circumstances of the Offence

[3] The circumstances of the offence are a critical factor in the case before me. This includes the Mathes' history with the dog. Mr. Mathes is married with two children. He has a daughter named Zia who was six years of age at the time of the incident. They have a long history of being pet owners who love, care, and financially support the health of their animals.

[4] The Mathes family obtained a rescue dog approximately one month prior to the incident. Shelley Mathes, the wife of Christopher Mathes, was told the dog should be fine around children. I believe the dog was named Jersey and I will refer to it as such within these reasons. The Mathes home was the third home at which Jersey had been placed. Jersey was a Chihuahua weighing under 10 pounds.

[5] Ms. Mathes provided a history of events that led up to this incident. It is clear that Jersey was unpredictable and aggressive towards both people and other dogs. The Mathes had Jersey for approximately one month and, during this time, Jersey was frequently aggressive with other dogs and aggressive towards people on six different occasions. This includes an incident in which Zia was returning home from school with Ms. Mathes. Zia sat down on the steps to undo her shoes. Jersey then jumped and "attempted to bite her in the face." Zia was left with a small bruise. This occurred approximately one week prior to the subject matter of the offence. A few days later, Jersey again attempted to bite Zia and her brother, Corbin, intervened and was bitten. Corbin was 14 at the time.

[6] On the offence day, the Mathes family and others gathered for Thanksgiving dinner. While dinner was being prepared, Zia sat beside the kitchen table and played with her Barbie dolls. Jersey was also in the kitchen. Jersey then bit Zia in the face very close to her eye. Ms. Mathes described Zia as having blood all over the left side of her face. Efforts were made to stop the bleeding, but the wound would not seal. Jersey was placed in the back yard. Ms. Mathes says she told Mr. Mathes that they would have to attend to the hospital with Zia and that they were going to have to return Jersey to the rescue home. In the meantime, she said Jersey would have to be contained to ensure he did not bite anyone else.

[7] Mr. Mathes says he entered their back yard with the intention of placing Jersey into their garage. He says that as he approached Jersey the dog attacked him. He says he picked up a four-by-four to defend himself and struck the dog. I understand that from this strike the dog was injured such that it was apparent to Mr. Mathes that

Jersey was suffering and would not live. Mr. Mathes then struck the dog on a number of occasions to put the dog out of its misery.

[8] Zia attended hospital, but no stitches were required. In June of this year, approximately eight months after the incident, Zia continues to have nightmares of dogs attacking her. She also becomes panicked if a dog jumps around her. Ms. Mathes is attempting to have her seen by a counsellor to assist Zia with these issues.

[9] This matter has received significant media attention and it has resulted in threats made to Mr. Mathes through social media.

#### Circumstances of the Offender

[10] Mr. Mathes is 41 years of age. He has no criminal record. He is a millwright and business owner and has worked continuously for the previous 23 years.

[11] Mr. Mathes has seen Michael Koehn, a registered clinical counsellor, and a report has been filed. I am somewhat concerned with the inappropriate advocacy found within this report. Reports such as this should be limited to opinions formed from the expertise of the author. I will accept the report, but only for the evidence admissible at a sentencing hearing.

[12] Mr. Koehn reports that Mr. Mathes is remorseful for his actions. This finding was clear to me when Mr. Mathes addressed the court and from his actions following the incident. Mr. Mathes also expresses insight into his actions and what he has done wrong. He describes it as the worst decision he has ever made. He understands that

he used more force than was necessary and that there were other actions available to him. He has been cooperative with the authorities.

[13] Mr. Mathes has filed numerous letters from friends, family members, acquaintances, and work references. Many of these individuals consider him a good friend and many have known him for a lengthy period of time. I will summarize these letters by referring to what I observe as common themes throughout:

1. he is a devoted and dedicated family man;
2. he is kind, loving, compassionate and caring of others;
3. he is hard working, trustworthy, reliable, and prepared to help others;
4. this incident is completely out of character; many of the references refer to his loving care of his pets that has been observed throughout his life;
5. he is remorseful for this incident; and
6. he openly admits to the circumstances and has discussed them with others.

[14] Some of the references have expressed that they would have him look after their pets.

#### Sentencing Principles and Objectives

[15] The Crown argues that the paramount sentencing principle is general deterrence and denunciation. The Crown acknowledges that specific deterrence is not required in

these circumstances as this has already occurred as a result of the significant media attention and the resulting threats to Mr. Mathes through social media.

[16] Crown argues that the starting position for such offences such as this is a jail sentence. The defence agrees that the usual range involves jail unless there are exceptional circumstances and that this is a case where exceptional circumstances exist.

[17] The Crown referred me to the following cases: *R. v. Connors*, 2011 BCPC 0024; *R. v. Seidel*, [2014] B.C.J. No. 2570. In *Connors*, the Honourable Judge Quantz reviewed a number of cases in which offenders were being sentenced on similar charges. A custodial sentence was generally imposed with the range of sentence dependant on the circumstances of the offence and offender. In one of the cases referred to, *R. v. Rabeau*, *infra*, the offender received a conditional discharge.

[18] In *Connors*, Judge Quantz referred to the amendments to this type of offence in 2008 increasing the maximum sentence on a summary offence from six to 18 months and in an indictable matter from six months to five years. The amendments also increased the period of prohibition of any offender from possessing animals from two years to any period the court considers appropriate unless it involves a second or subsequent offence, in which case, there is a minimum of five years. Judge Quantz states that in increasing the penalties for this type of offence, Parliament concludes that:

... previous maximums were wholly inadequate and failed to represent the prevailing views in society as to the seriousness of these offences. However, it is also important to remember that while increasing the maximum penalties, the range of sentences still considered appropriate by Parliament remain broad and include an absolute discharge.

(Paragraph 49)

[19] In *Seidel*, the Honourable Judge Cleaveley sentenced the offender to a nine month CSO. In this case, Mr. Seidel strangled his cat. The cat was defecating and urinating in his family's apartment and, despite other efforts to find a humane resolution, he admitted that it was the easiest way to get rid of the animal. Judge Cleaveley concluded that Mr. Seidel had allowed his anger and frustration with the cat to get the best of him. As an owner of an animal, a person is in a position of trust and therefore owes a duty to that animal.

[20] The defence relied on the following cases: *R. v. Rabeau*, [2010] A.J. No. 567 (A.B.P.C.); *R. v. Voong*, 2015 BCCA 285. In *Rabeau*, the offender stopped driving in an alley to urinate. He came upon a Husky puppy that had escaped from the owner's yard. The puppy approached Mr. Rabeau excitedly and possibly aggressively. Mr. Rabeau thought the puppy was going to attack him. Mr. Rabeau ran back to his car and the dog followed. Mr. Rabeau retrieved either a two-by-four or a wooden bat from his car and swung it once at the puppy. Mr. Rabeau then left the scene. The puppy died shortly afterwards. Mr. Rabeau admitted to using more force than was necessary and Mr. Rabeau was sentenced to a 12-month conditional discharge.

[21] The court in *Rabeau* was provided a number of decisions by both Crown and defence. The Honourable Judge Semenuk found that the cases fell into one of three different categories and the moral culpability of the offenders was different in each. The first category identified involved a domestic relationship incident in which the offender is exacting revenge on his partner by injuring the pet. The second category involves

offenders attacking animals in a blind rage often motivated by the pet urinating or defecating and resulting in punishing the pet beyond any "notion of reasonableness and civility," (paragraphs 11 and 12). Judge Semenuk states that in either of these categories, denunciation and deterrence are the primary considerations and a short sharp period of incarceration is usually imposed even on an individual without a criminal record (paragraph 13).

[22] The third category is where the offender has a *bona fide* fear of an animal and "overreacts by killing the animal" (paragraph 16). In this last category and depending on the circumstances of the offender and the offence, "rather than imprisonment, a suspended sentence and probation or conditional discharge may be granted" (paragraph 17).

[23] The Crown argued that *Rabeau* relied upon cases that pre-existed the amendments in 2008. I agree, but Judge Semenuk was aware of the amendments that, on summary conviction, the maximum sentence was now a penalty not exceeding \$10,000 or imprisonment of 18 months or both (paragraph 8).

[24] Crown argued that persons have a duty to not beat a dog until it is dead and that a message needs to be sent to persons that they need to make appropriate decisions when an animal misbehaves. The defence responded that Mr. Mathes did not beat Jersey, but responded to its aggressive behaviour.

[25] The *Voong* decision involved a dial-a-dope operation and ranges of sentences. The Court of Appeal provided that the normal range of sentence for a first offence dial-a-dope drug trafficker was six to 18 months "absent exceptional circumstances"



(paragraph 44). Madam Justice Bennett on behalf of the court described exceptional circumstances as follows:

The exceptional circumstances must engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence.

(Paragraph 45)

[26] Justice Bennett pointed out that the concept of exceptional circumstances applies to all offences, not just drug offences (paragraph 47).

[27] The Crown and defence did not argue the law on discharges. The law in this area is trite and can be found in s. 730 of the *Criminal Code* and in the leading British Columbia case of *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.). A discharge must be in the best interests of the offender and not contrary to the public interest.

[28] At issue here would be whether a discharge was not contrary to the public interest. In *Fallofield*, the court says the following with respect to this requirement:

In the context of the second condition the public interest in the deterrence of others, while it must be given due weight, does not preclude the judicious use of the discharge provisions.

[29] Sentencing purposes and objectives are found in s. 718 to 718.2.

[30] Deterrence and denunciation are the primary considerations for a court in this type of offence. I must, however, consider all the purposes and objectives of sentencing relevant to the matter before me. As per s. 718.1, the fundamental principle in sentencing is:

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

[31] The court is also required not to deprive an offender of his liberty if less restrictive sanctions may be appropriate in the circumstances (see s. 718.2(d)).

### Analysis and Decision

[32] The Crown argues and I accept that individuals have the right to euthanize animals they own, but it must be done in a humane manner. This did not occur in this situation.

[33] The case before me that is most helpful is the decision of *Rabeau*. The circumstances that gave rise to the charge in *Rabeau* are closer to the circumstances in the case before me than any other case referred to. If anything, the circumstances in *Rabeau* are more aggravating in that, in *Rabeau*, there were no history of the dog biting anyone. The offender in *Rabeau* could have simply entered his vehicle and removed himself from harm leaving the dog behind. Mr. Mathes also could have distanced himself from Jersey without inflicting harm.

[34] The *Rabeau* case makes it clear that the third category of cases where the offender has a *bona fide* fear of an animal and depending on the circumstances of the offender and the offence, "rather than imprisonment, a suspended sentence and probation or conditional discharge may be granted."

[35] I accept that this type of sentence is exceptional and not within the normal range of sentence for this type of offence. Normally, a sentence in this area would start with a jail sentence to address the sentencing principles of denunciation and deterrence.

[36] Madam Justice Bennett in *Voong*, on behalf of the Court of Appeal of our province provided, guidance in the sentencing analysis of when the facts of a case may be considered exceptional. Following this guidance, I must determine whether there are exceptional circumstances in the case before me that engage the principles of sentencing to a degree sufficient to overcome the need for deterrence and denunciation and the requirement of a jail sentence. If I find that deterrence and denunciation requires a jail sentence and this is not exceptional, then I must determine the length of the jail sentence and whether it can be served in the community by way of a conditional sentence order.

[37] If I find the other sentencing principles overcome the main principles of denunciation and deterrence, then I must consider the appropriate sentence in the circumstances and whether a discharge is appropriate.

[38] Normally, in these types of cases, the moral culpability of an offender is high. In most cases, the circumstances fall within either of the first two categories identified by Judge Semenuk in *Rabeau*. If a case falls within either of these categories, the starting point is a jail sentence and it is necessary to address denunciation and deterrence.

[39] As referred to above, the third category is a situation where the offender has overreacted in circumstances of a *bona fide* fear of an animal. The courts have found in the past that in these circumstances the moral culpability is lower than in the first two categories.

[40] In the case before me, Mr. Mathes overreacted when he was attacked by Jersey. I must also consider that Mr. Mathes had just witnessed his six-year-old daughter bitten

by Jersey and, in the previous week, Jersey had bitten his daughter and his son each on a prior occasion. There were six different incidents of Jersey acting aggressively toward people or dogs in the month since the rescue of this dog.

[41] I accept that Mr. Mathes has a history of treating animals humanely. He is 41 years of age and has no criminal record. I find that in these circumstances the moral culpability of Mr. Mathes is low. I find that in these circumstances the sentencing principles of denunciation and deterrence are overcome when I consider the circumstances of the offender, this offence, and consider all the sentencing principles.

[42] In this analysis, I emphasize the fundamental principle of sentencing found in s. 718.1 requiring that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. I find in these circumstances that this is an exceptional situation in which the appropriate sentence for this type of an offence does not require a jail sentence. I am satisfied in these exceptional circumstances that deterrence and denunciation can be satisfied by a non-custodial sentence.

[43] The next question I must decide is what non-custodial sentence is appropriate. I find that a discharge is in the best interests of Mr. Mathes. A discharge also requires, however, that it not be contrary to the public interest and it is this aspect that addresses whether a discharge would adequately meet the requirements for denunciation and deterrence.

[44] As referred to before, the leading case of *Fallofield* sets out that the public interest in deterrence must be given due weight, but does not preclude the judicious use of the discharge provisions. I will not repeat the reasons for why a non-custodial

sentence was not appropriate in the circumstances, but it is for these same reasons that I find a conditional discharge would not be contrary to the public interest.

[45] This should not be seen as condoning what occurred. The wilful causing of unnecessary pain, suffering, or injury to an animal is not acceptable under any circumstances. When it does occur, the offender will generally be looking at a jail sentence unless exceptional circumstances exist.

[46] Mr. Mathes, stand up, please.

[47] Mr. Mathes, the sentence in this matter is a conditional discharge of 12 months.

[48] The terms will be as follows. There will be the mandatory conditions. You shall report today by no later than 4:00 p.m. in person to a probation officer at the probation office at Kamloops, B.C., and after that, you shall report as and when directed by your probation officer.

[49] When first reporting to your probation officer, you shall inform him or her of your present residential address and telephone number and you shall not change your address or telephone number without first obtaining the written consent of your probation officer.

[50] You shall attend, participate in, and successfully complete any assessment, counselling, or program as directed by a probation officer. You shall comply with all rules and regulations of any such assessment, counselling, or program.

[51] The Crown has also asked for an ancillary order prohibiting Mr. Mathes from owning any dog for 10 years. Section 447.1 sets out that the court may impose an order prohibiting an accused from owning an animal for any period that it considers appropriate. In determining if such an order is necessary and, if so, what the length should be, the court should consider the circumstances of the offence and the offender and the risk that exists of reoffending.

[52] Michael Koehn, the registered clinical counsellor, provided the opinion that Mr. Mathes has "no risk of reoffence." As noted before, I am concerned with Mr. Koehn's advocacy in the report. Further, there, of course, is no such thing as "no risk." I place no weight in his opinion.

[53] I do find, however, on the evidence placed before me that Mr. Mathes has a long history of caring for animals. The reference letters support that this was an incident out of character for Mr. Mathes. I also find that he was immediately remorseful for his actions and has been cooperative with the authorities. He has sought counselling.

[54] The family has a puppy which is presently required to live with other family members. The Mathes family travels every couple of weeks to see their dog. Taking into consideration these factors, I make the following order. Mr. Mathes, you shall not own, have the custody or control of, or reside in the same premises of any dog for a period of one year.

[55] This is my decision.

(REASONS FOR SENTENCE CONCLUDED)