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| File No: 166293-1 | | | |
| Registry: Victoria | | | |
| In the Provincial Court of British Columbia | | | |
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| REGINA  v.  BRENNA BARKER | | | |
| REASONS FOR SENTENCE  OF  THE HONOURABLE JUDGE MROZINSKI  COPY | | | |
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| Crown Counsel: | | P. Cheeseman | |
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| Defence Counsel: | | C. White | |
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| Place of Hearing: | | Victoria, B.C. | |
|  | |  | |
| Date of Judgment: | | July 24, 2017 | |

1. THE COURT: Ms. Barker, I am sentencing you today having found you guilty at trial of causing unnecessary suffering to an animal contrary to s. 445.1(1)(a) of the *Criminal Code*. Ms. Barker, I am going to start my reasons in this sentencing by setting out a little bit about the nature of this offence. I will then set out some of your personal background that I have heard. It is important in this as in every sentencing that I consider the background of the offender which is you in this particular case.
2. There is no victim impact statement in this hearing, but I will make a few statements with respect to the purposes of sentencing, particularly in the context of this particular offence, which is a special offence in some regards. I will outline also what I consider to be mitigating and aggravating circumstances in the sentencing and then I will impose your sentence. At the end of the day, we all know what that is going to be, but it is important that I get this on the record, just as it is important that you have made the comments that you have made today. As I stated at the outset, I am going to take you at your word, and we are going to hold you to those words, okay?
3. THE ACCUSED: Yes.
4. THE COURT: You are going to hold yourself to those words, more importantly. This is a good intention that you are setting for yourself and it is unfortunate that it came about because of this offence. It would have been better if it had occurred in other circumstances, but sometimes it takes a tragedy to start the reset button, which is what you are doing. As I say, that is definitely to your credit.
5. What I am sentencing you today though for is the fact that under your care and supervision Barrett did die and he died of starvation. I do not want to get gruesome, but the dog was in the distress over several weeks and it was painful for that dog. The dog did suffer.
6. What I found at trial was this, and it is important to make this note after having listened to you and having heard all of the evidence, what I found striking was that there was food in the house. I have sentenced on another starvation case, in fact. This was not a case where you were not providing the food; the food was there. Barrett was sick. He had an ailment. I do not think you were aware of that ailment specifically, but you knew that he was sick. I recall you testified to feeding him by hand, and that at the same time you were busy with work and your three children, and I know from the pre-sentence report that with your background among other things you had difficulty organizing yourself, organizing your life and really coping with life generally. Something slid and that something was Barrett. So the conduct was, I found, reckless. That was the nature of the state of mind that I found arising out of the evidence at trial. You did not intentionally starve Barrett to death. You took him to the vet, but by the time he got to the veterinarian and by the time he got care it was too late; things could not be reversed.
7. You are 27 years of age and the mother of three children, so young to have such responsibility, and it has been difficult for you as you have said. It has been difficult for you because of the lack of resources and because of a really difficult childhood. Those facts were outlined in your pre-sentence report. Ms. Barker, I do not intend to review all of this in great detail, but as the report indicates, you have been living on your own since a very young age and certainly did not have positive support. That is no fault of anyone's. I am not attributing any blame. I am just saying that in your case that was what occurred. You do need to upgrade your education. You have grade eight and it is apparent to me you are quite intelligent and that you would be able to get through university. You are quite able to gain employment and to care for your children and to really live a pro-social life.
8. I know from your pre-sentence report that you have suffered trauma in the past, including being sexually assaulted at a young age. That experience would make it difficult for someone having the most positive supports to carry on in life, and, of course, lacking those it is not surprising that you find yourself in the situation that you are now in. The point here is that we have to move forward and make sure that nothing like this ever happens again. I have indicated already that it will be some time before you will be legally entitled to have the pleasure of owning or caring for another animal. That must happen despite everything that I heard because it is important that you are clearly completely recovered and able to care for an animal before you ever have that chance.
9. Ms. Valentine is here today from the Ucluelet First Nation. I know you are a member of the Ucluelet First Nation and I know now that you are back in the community. You have been out of the community for quite some time but you are back there enjoying I think the supports of the community. They have reached out to you. They have made supports available to you. Ms. Valentine outlined some of those. I know she has spoken to you. She is standing here today beside you in support. She has indicated today that she understands that you are remorseful for what has occurred and I accept that. I accepted when you spoke the last time that you were remorseful and I accept again that if you could re-do things, Barrett would not have endured the suffering that Barrett endured. So I accept that, but as I say, it was something that occurred at the time and I have to deal with that now.
10. As I mentioned, there is no victim impact statement here, but the case law that I have been provided with certainly sets out I think the perspective that society takes in regard to this kind of an offence. The animals, of course, cannot speak for themselves, but certainly the comments by the courts in a number of these cases indicate that society does condemn in the strongest possible terms the abuse of animals and actions that cause the suffering of animals who really are essentially helpless in many regards when they are in the care of a human being. They are like children in a lot of ways. They rely on the good faith of their caregivers. They can do nothing else. When that care is abused or not given there has to be some consequences. That sentiment is set out in numerous cases, one of which is the decision of Judge Quantz of this court in *R. v. Connors,* 2011 BCPC 24. *Connors* is referred to in a number of other cases because, among other things, it sets out, at para 20, that ultimately when you boil down what the *Criminal Code* requires with respect to sentencing in ss. 718 and 718.2:

. . . the overarching duty of a sentencing judge is to draw upon all legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender."

1. I have spoken about the offence at the start of these reasons, and I indicated as best I can the nature of this offence and the gravity of this offence. I have talked a little bit about your own moral blameworthiness in that what I found was not that you intentionally caused Barrett to suffer harm, but that through your recklessness Barrett did endure that suffering and so that must be a focus of this sentence.
2. What Judge Quantz states in *Connors* and what is reiterated in the other cases is that in instances where you are dealing with sentencing for causing animals suffering, the sentencing objectives that are paramount are the objectives of deterrence, both specific and general, as well as denunciation. What follows from that is that those sentencing objectives call for a sentence which in most cases is a custodial sentence; that is what flows from that.
3. The joint submissions in this case are for a custodial sentence, but one that is served in the community by way of a conditional sentence order. The sentencing objectives of deterrence and denunciation as I have said call for a custodial sentence. The Supreme Court of Canada is clear in the decision of *R. v. Proulx* among others that a conditional sentence order, provided that the conditions are onerous enough, can meet the principles of deterrence and denunciation. That is to say that in the community people will know that you are serving a conditional sentence order. They will know why you are serving a conditional sentence order. They will understand that your liberties are restricted by virtue of the conditional sentence order, and all of those things combined fulfill the purposes of deterrence and denunciation such that real custody is not necessary.
4. I should tell you this, that a conditional sentence order is sometimes more difficult to serve than a real jail sentence. It is longer than a real jail sentence would have been in this case. If you breach any of the conditions of the conditional sentence order, some or all of that conditional sentence order can be collapsed so that you end up serving time in a custodial facility. Ms. Barker, I would not want that to happen to you. It would be unnecessary. It would be counterproductive. It would be unhealthy for your children. So I just want you to be mindful of that as we proceed.
5. In every sentence I also have to take into account mitigating and aggravating circumstances. Being careful not to make the offence itself an aggravating circumstance, it is important to note that an aggravating circumstance really is the level of suffering in this particular case and the fact that it was one of starvation that would have taken place over a period of time. That is an aggravating circumstance on this kind of a sentencing. There are, in my view, mitigating circumstances, and those include your remorse and your insight I think into the way in which this occurred and the reason why this occurred. I include as well your dedication - through accepting counselling, moving back in the community and accepting the help of the members of your community - to ensuring that something like this does not happen again. This reinforces, in my mind at least, the fact that you are remorseful and have insight into your offending behaviour. I know, as I have said, that this would not happen again and that you dearly wish that it had not happened in the first instance as do we all. It is terribly unnecessary and unfortunate in all of the circumstances.
6. It is important to note as well that you are a good candidate for rehabilitation. You have begun the process toward rehabilitation and that is something that you ought to have credit for. I find it mitigating as well that you have the support of your community, particularly after your lengthy absence, and that you have embraced that in court.
7. Finally, these are joint submissions and in law the court is required to pay close attention to those and not depart from them unless it considers the submissions to be inconsistent with the proper administration of justice. In this instance, I am satisfied that a conditional sentence order is appropriate, even though I am sentencing you for an offence contrary to s. 445.1(1)(a) of the Code which in the normal course as you have heard would attract a sentence of real jail.
8. So having said that and taking into consideration the materials that I have been provided and taking into consideration the *Gladue* factors which are imperative in a sentence such as this, I am going to accede to the joint submissions. Ms. Barker, for the offence of causing unnecessary suffering to an animal contrary to s. 445.1(1)(a) of the *Criminal Code* which is Count 2, Madam Clerk, of Information 166293, I sentence you to a period of custody for six months to be served in the community by way of a conditional sentence order.
9. Ms. Barker, I am going to set out the conditions of the conditional sentence order now. That order will be read out to you again when you attend at the office of your conditional supervisor who will ensure that you understand its terms. As I have said, it is imperative that you understand the terms of the order and not depart from those because you could well find yourself in custody and I hope that would not happen.
10. I am going to refer to some numbers as well. That is for the benefit of Madam Clerk, Ms. Barker, who is going to draft this order. Madam Clerk, we are in the 3000 series so 3001: Ms. Barker, you are going to comply with the conditions of the conditional sentence order for a period of six months. The compulsory conditions of the order are that: You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or your conditional sentence supervisor seven days in advance of any change of name or address and promptly notify the court or the supervisor of any change in your employment or occupation. You must remain within the province of British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province, and if you do, you are going to have to carry that written permission with you at all times.
11. There will be a reporting order requirement as well, 3101, Madam Clerk. Ms. Barker, you will report in person to the conditional sentence supervisor at 836 Courtney Street by 3 p.m. today and thereafter as directed by the conditional sentence supervisor and in the manner directed by the conditional sentence supervisor.
12. 3201: When you report to the conditional sentence supervisor, you will advise that person of your residential address and phone number, even if it is a cellphone, and you must not change your residence or your phone number without written permission of your conditional sentence supervisor. This is a six-month conditional sentence order. These are joint submissions, and so I have not heard anything other than the house arrest condition. So it is a significant condition. I do not know if there might be an opportunity at some point to vary that curfew, but right now it is a joint submission which I have accepted.
13. 3209 and that is the house arrest condition. For the duration of this order you must remain inside your residence or on the property on which it is located 24 hours a day, except between the hours of 11 a.m. and 2 p.m. each day. You must present yourself immediately at the door of your residence or answer the phone whenever any peace officer or your conditional sentence supervisor attends at your residence or calls to check your compliance with the house arrest condition of this order. You may be away from your residence during the house arrest hours with the written permission of your conditional sentence supervisor, but that will be given only for compelling personal, family, or employment reasons. You may be away from your residence during house arrest hours while in the course of employment or when travelling directly to or returning directly from your place of employment, but if requested you have to provide your conditional sentence supervisor with details of your employment, including location and hours of work.
14. You may be absent during curfew hours in the event of a medical emergency, and then only while at a healthcare facility or when travelling directly to or returning directly from the facility. Again if requested you must provide your conditional sentence supervisor with a written confirmation that you went to the facility, and that must be signed by a representative of the healthcare facility which you attended to. Finally, you may be absent during house arrest hours in the presence of a person approved of in writing in advance by your conditional sentence supervisor.
15. You must carry any written permission of your conditional sentence supervisor to be absent from your residence during the period of house arrest hours when you are away from your residence during those house arrest hours.
16. This is, Ms. Barker, effectively a custodial sentence, and therefore it follows that there will be an order, and it is 3401, Madam Clerk, that you will not possess or consume alcohol, drugs, or any other intoxicating substances except those that may be prescribed for you by a medical physician. There will be a 3403: You must not enter any liquor store, beer and wine store, bar, pub, lounge, nightclub, beer garden, or any other business from which minors are prohibited at any time by terms of a liquor licence. Sorry, I am going to change that. It will be 3404, pardon me, Madam Clerk: You must not enter any liquor store, beer and wine store, bar, pub, lounge, nightclub, or beer garden, or any other place where the primary commodity sold is alcohol. So I will just leave it at that.
17. There will be a counselling provision, of course, and that is the purpose of this particular order. So the counselling provision will provide, 3501: Ms. Barker, you must attend, participate in, and successfully complete any intake, assessment, counselling, or program as directed by your conditional sentence supervisor without limiting the general nature of that condition. The intakes, assessments, counselling, or program may relate to alcohol or drug abuse.
18. 3502: You must attend, participate in, and successfully complete any intake, assessment, counselling, program, treatment or residential treatment program as directed by your conditional sentence supervisor and, of course, you will obey all the rules and regulations of any such program that you may attend.
19. I think that was it for the conditional sentence order.
20. MR. CHEESEMAN: Yes, Your Honour, just for the counselling, I don't know if you want to also specify the Thinking Leads to Change. I don't know if that would be helpful for the supervisor.
21. THE COURT: If that would be helpful I can do that.
22. MR. CHEESEMAN: I know the pre-sentence report suggested that that be a term.
23. THE COURT: That is fine. Let me just see that again.
24. MR. CHEESEMAN: I gather it is one of the main programs so it is not necessarily in the standard conditions.
25. THE COURT: The other program should be the program that Ms. Valentine had described which is entitled Thinking Leads to Change. So if that helps at all I will include that as a requirement of the counselling provision.
26. Outside of that conditional sentence order I must make a few other orders. Firstly, the conditional sentence order is going to be followed by a probation order for a period of two years but the probation order will not be nearly as restrictive as the conditional sentence order. Madam Clerk, we are in the 2000 series now.
27. Ms. Barker, you will have to comply with the conditions of a probation order for a period of two years following the termination of the conditional sentence order. The compulsory conditions are that you must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court, and you must notify the court or the probation officer seven days in advance of any change of name or address and promptly notify the court or the probation officer of any change in employment or occupation.
28. This probation order is going to include a counselling provision, and that is 2501. Ms. Barker, you must attend, participate in, and successfully complete any intake, assessment, counselling, or program as directed by the probation officer and without limiting the general nature of this condition, the intake, assessment, counselling, or programs may relate to alcohol or drug abuse, should include if it is necessary Thinking Leads to Change, and residential treatment in the event that that is directed by your probation officer, in which case you will obey all the rules and regulations of any residential treatment program.
29. I think that was it for the probation order.
30. MR. CHEESEMAN: Your Honour, just the reporting condition, just until she completes the counselling.
31. THE COURT: Oh, I am sorry, yes.
32. MR. CHEESEMAN: And I had only sought a 12-month order.
33. THE COURT: What is that?
34. MR. CHEESEMAN: I had only sought a 12-month order because I thought that six-month CSO plus 12 months' probation should be enough for any counselling to be done.
35. THE COURT: Right, sorry, Madam Clerk, we will change that to a period of probation for 12 months. So, Ms. Barker, within -- 2104, Madam Clerk: You will report to a probation officer within two business days of the expiration of your conditional sentence order, and unless you have obtained prior to the expiration, written permission from the probation officer to report elsewhere within a different time frame, you will be reporting in person then at 836 Courtney Street in Victoria, British Columbia, and you will advise the probation officer, 2201 again, of your residential address and phone number and not change those without obtaining the written permission of your probation officer.
36. In addition, I order pursuant to s. 447.1 of the *Criminal Code,* Ms. Barker that you are hereby prohibited from having the care of or living in a residence in which there is an animal for a period of 10 years from today's date.
37. I know you are not going to pay the victim impact surcharge at this point because you cannot pay; that is a $100 victim impact surcharge. In the circumstances, Ms. Barker, I order that be payable forthwith. I find you in default and sentence you to one day in custody for default. That will be reflected by your presence in court here today, so you are not going to serve time for not being able to pay that, but that will be reflected served by your presence here in court today. Anything else?
38. MR. CHEESEMAN: Just for the reporting, if she can be excused from further reporting upon successful completion of any counselling.
39. THE COURT: Oh, yes. Ms. Barker, your probationary period is for 12 months; it can end prior to the 12 months in the event your probation officer is satisfied you have completed the requisite counselling.
40. Ms. Barker, I wish you good luck.
41. THE ACCUSED: Thank you, Your Honour.

(PROCEEDINGS CONCLUDED)