

In the Provincial Court of Alberta

Citation: R v Miller, 2020 ABPC 92

Date: 20200608

Docket: 190615070P1; 190648600P1

Registry: Calgary

Between:

Her Majesty the Queen

- and -

Dawson Troy Miller

Reasons for Judgment of the Honourable Judge T.C. Semenuk

- [1] The accused entered guilty pleas to charges of animal cruelty and breach of recognizance.
- [2] The matter is before the Court for disposition.
- [3] The only issue to be decided is a fit global sentence.
- [4] There is no joint submission or joint recommendation.
- [5] For the reasons the follow, the accused is sentenced to 12 months imprisonment, followed by 2 years probation, and a lifetime prohibition of owning animals.

Charges

- [6] The accused is charged in two Informations as follows:

Docket Number 190615070P1

Count 1: On or about the 16th day of May, 2019, at or near Calgary, Alberta, did wilfully and without lawful excuse kill, maim, wound, poison or injure a cat that was kept for a lawful purpose, contrary to section 445(1)(a) of the *Criminal Code of Canada*.

Docket number 190648600P1

Count 1: On or about the 17th day of May, 2019, at or near Calgary, Alberta, being at large on his recognizance entered into before a Justice or Judge and being bound to comply with a condition of that recognizance requiring him to 4. Have no contact or communication whatsoever, either directly or indirectly, with: [AM], did fail without lawful excuse, to comply with that condition, contrary to section 145(3) of the *Criminal Code of Canada*.

[7] As to Docket Number ending 070, the facts were adduced by way of a written Agreed Statement of Facts, marked **Exhibit S-1** and read into the record by Crown Counsel as follows:

The Accused, Dawson Troy Miller (“MILLER”) admits the following facts for the purpose of dispensing with the proof thereof:

Background

1. In May of 2019, MILLER was in a romantic relationship with [AM] [“M”], MILLER was 20 years old; [M] was 16 years old. As of mid-May, MILLER and M had been dating for four months.
2. MILLER lived in unit [...] 4th Street in NW Calgary, Alberta. M often stayed over at MILLER’s home. M lived in a group home. In April of 2019, M bought a four month old kitten she found on Kijiji. As the group home did not allow her to have pets, M kept her kitten, whom she named Prince, at MILLER’s home.
3. On May 14th and 15th, MILLER and M got into a series of heated arguments. On the evening of May 15th, they agreed to stop arguing. M was staying at her group home. She woke up at 3 am on May 16th to use the washroom and checked her phone. M told the Calgary Police that he had “blown up” her phone with text messages and voicemails, in which he called M a “dumb bitch” and a “waste of his time” and told M that “he couldn’t wait for me to come get my stuff out of his house and take my stupid cat with me”.
4. The text messages and voicemails are admitted as exhibits in this sentencing and are fair and accurate representations of what they depict.
5. Over text message, M told MILLER that she wanted to end their relationship and told him to stop acting like a 12 year old.

The Offence

6. MILLER, who was at home with M’s kitten, found Prince and hit him multiple times in the head with his hands and then threw the kitten to the floor. MILLER also filmed it. In the video, MILLER says: “I’ll show you a fucking 12 year old, you want to see a fucking 12 year old?” MILLER then filmed himself hitting the cat, then held it up to the camera and said: “I just smashed the shit out of your stupid fucking cat, eh you wanna see?” MILLER hits the cat again, before throwing Prince to the floor, saying: “I just killed your fucking cat, huh.”
7. The video is admitted as an exhibit in this sentencing as a fair and accurate representation of what it depicts.
8. MILLER sent this video to M. After watching the video, M immediately called MILLER and “screamed bloody murder not to hurt my cat”. MILLER told M that if

she didn't "shut the fuck up" he was going to "snap the cat's neck". M pleaded with MILLER to bring the cat to the 24 hour vet clinic a couple blocks away from MILLER's home.

9. At 3:30 am, MILLER brought Prince to the Calgary North Animal Clinic where he told staff member Tannis Caravan that he had found the cat in an alley, badly injured. He identified himself as "Donnie" on a "stray finder form" that the clinic asked him to fill out. Prince was immediately seen by a veterinarian at the clinic. The veterinarian determined that Prince's injuries were too severe and made the decision to euthanize the cat to end his suffering.
10. After receiving the video of MILLER beating her cat, M called the police. The police arrived at MILLER's apartment at 3:55am. Pre-*Charter* and caution, MILLER told the police that he had taken the cat to a veterinarian after hitting it off a side table. The police arrested MILLER for animal cruelty. Post *Charter* and caution, which MILLER indicated that he understood, MILLER told the arresting officers that he hurt the cat and that he wanted to take responsibility.
11. After MILLER was processed, he was taken to the Foothills Medical Health Centre under the Mental Health Act at 7:17 am due to concerns that he was suicidal – after seeing cut marks down both of MILLER's arms. At the hospital, MILLER was diagnosed with "Acute Situational Crisis", meaning a crisis beginning with a precipitating event and intensifying into feelings of fear and emotional disequilibrium. He was released from the hospital that same morning at 10:57 am into the custody of the Calgary police.

The Injuries

12. Dr. Margaret Doyle, a veterinarian with the Calgary Humane Society, performed a necropsy on the cat the same day. Dr. Doyle's report of the necropsy, dated May 20, 2019, is admitted as an exhibit in this sentencing. The photos taken at the time of the necropsy are admitted as an exhibit in this sentencing as a fair and accurate representation of what they depict. The commentary of Dr. Doyle, explaining the injuries noted in each of the photos, is admitted.

[8] As well the following documents were marked in evidence:

Exhibit S-2 – FAOS Report done by Dr. Baillie

Exhibit S-3 – One-page Supplementary to the FAOS

Exhibit S-4 – Criminal Record

Exhibit S-5 – Dr. Margaret Doyle's Report

Exhibit S-6 – Text Messages

Exhibit S-7 – DVD of Cell Phone Video

Exhibit S-8 – Photos taken of Mr. Miller very shortly after arrest

Exhibit S-9 – AISH Application completed by Mr. Miller's Physician

Exhibit S-10 – Three newspaper reports

Exhibit S-11 – Letter of Support for Mr. Miller from the Assistant Director of Independent Living Services with Hull Services.

[9] As to **Docket Number ending 600P1**, the facts were read into the record by Crown Counsel as follows:

Sir, it's alleged that on May 24th of 2019 police were dispatched to a domestic complaint. [AM] called the police and reported that Dawson Miller had breached the no contact condition of his recognizance entered into on May 17th of 2019.

[M] told the police that she was supposed to have a domestic standby to retrieve her belongs from Miller's apartment. And then Miller contacted her over Facebook messenger stating starting on May 17th of 2019. And she showed the police the messages on her phone. Police described the messages as follows. (as read)

Miller acknowledges the fact that there is a no contact order in place prohibiting him from communicating with her, along with apologizing for his behaviour and admits his actions were wrong. This dialogue kicks of a steady stream of communication between [M] and Miller up until today at 2222 hours on May 24th of 2019 where the two get into yet another argument with Miller threatening [M] that he's going to throw out her belongings -- throw out the belongings she has at his place if she doesn't come get them right away.

The argument prompts Montgomery to contact police, advising them Miller is in breach of his conditions as he has been in communication with her. Police went to Miller's apartment but were unable to locate him, so a warrant was issued.

[10] As well, the text messages were marked in evidence as follows:

Exhibit S-1 – Text Messages

Issue

[11] The issue to be decided is a fit global sentence.

[12] Crown Counsel submits that a fit global sentence is 18 months imprisonment, followed by 2 years probation, and a lifetime prohibition of owning animals.

[13] Defence Counsel submits that a fit global sentence is a 2 year Conditional Sentence Order, followed by 2 years probation. In the alternative, he submits that a fit global sentence is a 90 day intermittent sentence, followed by 2 years probation. He takes no issue with a lifetime prohibition on owning animals.

Law and Analysis

Range of Sentence for animal Cruelty Offences

[14] An offence contrary to section 445(1) of the *Criminal Code* is now a hybrid offence. In this case, the Crown has elected to proceed by Indictment. The maximum penalty is a term of imprisonment of not more than 5 years.

[15] If the Crown proceeds by summary conviction the maximum penalty is a fine of not more than \$10,000, or to a term of imprisonment not exceeding 18 months, or to both.

[16] To assist the Court in fixing a range of sentencing the circumstances of this case, Crown Counsel has provided the Court with the following authorities: **R v Helfer**, 2014 O.J. No 2984; **R v Joy**, 2019 CarswellOnt 11477; **R v Habermehl**, 2013 ABPC 192, **R v Habermehl**, 2013 ABPC 122; **R v Chen**, 2020 ABPC 35; **R v Morgan**, (unreported judgment delivered by Brown, PCJ., in Calgary on July 2, 2019); and **R v Elder**, (unreported judgment delivered by McLeod PCJ., on August 23, 2019).

[17] Defence Counsel has provided the Court with the following authorities: **R v Braile**, 2019 ABCA 477; and **R v Campbell Brown**, 2004 ABPC 17.

[18] In addition, the Court has also reviewed and considered the following authorities: **R v Rabeau**, 2010 ABPC 159; and **R v Danfousse**, 2013 ABPC 346.

[19] In **Rabeau**, this Court dealt with the range of sentence for animal cruelty offences where the Crown proceeds by summary conviction at paras. 9-17 as follows:

9 To assist the Court in fixing a range of sentence, Crown Counsel has provided the Court with a Book of Authorities including: **R. v. Wicker**, 2007 ABPC 129; **R. v. Gehring**, (February 6, 2008, unreported judgment, ABPC); **R. v. Piasentin**, 2008 ABPC 164; **R. v. Presnail**, (2000) 264 A.R. 258 (ABPC); **R. v. MacKinnon**, (September 26, 2000, unreported judgment, ABPC); **R. v. Leehim**, (January 13, 2000, unreported judgment ABPC); **R. v. Charette**, (October 20, 1998, ABPC); **R. v. Zeller**, [1998] A.J. No. 351 (ABPC); **R. v. Vince**, (November 16, 2007, Transcript of Proceedings); **R. v. Peters**, (January 24, 2007, Transcript of Proceedings); and **R. v. Patrick**, (June 26, 2009, Transcript of Proceedings).

10 Defence Counsel has also provided the Court with a Book of Authorities, including: **R. v. Priest**, [1996] O.J. No. 3369 (Ont. C.A.); **R. v. Campbell Brown**, [2004] A.J. No. 201 (ABPC); **R. v. Perreault**, [2007] N.S.J. No. 162 (NSPC); **R. v. Gamble**, [2008] S.J. No. 429 (Sask. Q.B.); and **R. v. B.J.M.**, [1976] A.J. No. 429 (ABCA).

11 I have carefully reviewed all of the cases submitted by Counsel. Many of these cases were also referred to the Court in **Wicker**, *supra*. In an attempt to fix an appropriate range of sentence in that case, my Learned Colleague, Dunnigan, PCJ, at paras. 36 - 37, stated as follows:

The decisions vary in terms of the relative culpability of the offenders, and the extent of the injuries suffered by the animals subjected to abuse.

*The cases, however, appear to have at least two common threads. **First, the attack on the animal is often connected to a domestic relationship incident, invariably involving the offender exacting revenge on the other member of the relationship by injuring the pet.** Second, the cases often disclose offenders attacking the animals in a blind rage, followed by an inability to comprehend or even recollect their actions.*

12 I agree with these observations. In the second class of case, the motivation for the rage is often connected to the pet urinating or defecating in a residence, or otherwise destroying property, and the offender losing control, and punishing the pet well beyond any notion of reasonableness and civility.

13 In these types of cases, denunciation and deterrence are primary considerations in the sentencing process, and a short sharp period of imprisonment is usually imposed, even on an offender with no prior criminal record.

14 The reason for this was succinctly stated in *Campbell Brown*, *supra*, by my Learned Colleague, Brown, PCJ, at para. 31 as follows:

Protection of animals is part of our criminal law because a person's treatment of animals, like the treatment of children, the infirm or other vulnerable parties, is viewed as a barometer of that person's treatment of people. As with all other criminal offences, harming animals amounts to harming everyone.

15 The range of sentence for these types of cases is somewhere between 2 and 4 months' imprisonment. In some cases, a Conditional Sentence Order (CSO) may be granted. In some cases, if the sentence does not exceed 90 days, an intermittent sentence may be imposed. Depending on the circumstances of the offence and the offender, probation for 12 - 24 months may follow a period of imprisonment.

16 That being said, there is a third category of case where the offender has a bona fide fear of an animal, either personally, or in relation to someone else, or some other animal, and overreacts by killing the animal.

17 In this type of case, and depending on the circumstances of the offence and the offender, rather than imprisonment, a suspended

sentence and probation or conditional discharge may be granted.
See: *Campbell Brown* and *Gamble*, *supra*.

[Emphasis added]

[20] In *Chen*, my Learned Colleague, Dinkel PCJ., after a thorough review of the authorities, disagreed with the range of sentence put forth by this Court in *Rabeau* and *Danfousse*.

[21] At para. 98, Dinkel PCJ., stated as follows:

With respect, I find the sentencing range of two to four months found in *Rabeau* in 2010 and *Danfousse* in 2013 to be outdated and not reflective of the current sentencing regime or the public sentiment towards the abuse of vulnerable animals such as the 10-month-old puppy in the case at Bar. Although it is my job to impose the fit and appropriate sentence according to law, regardless of public opinion, in my view, the range for an offence of this nature should be three to six months of actual jail. This would place the offence well below the penalty imposed in *Elder*, which involved multiple incidents, significant violence and injuries and a prior criminal record for violence.

[22] Having regard to *Helfer*, *Joy*, *Morgan* and *Elder*, this Court also appreciates that where the circumstances of the animal cruelty charge are particularly egregious, and the Crown has proceeded by indictment, a range of sentence between 9 and 24 months imprisonment may be appropriate, followed by a period of probation. As noted in *Habermehl* and *Chen*, a Conditional Sentence Order, in this type of case, would not be appropriate.

Circumstances of the Accused

[23] Briefly, the accused is 21 years of age.

[24] He comes before the Court with the following Youth Court record:

2016/11/22 – 430(1)(a) – 50 hours community service and restitution

2015/10/19 – YCJ137 – 8 months probation

2015/10/19 – 173(1) – 8 months probation

2015/02/17 – YCJ137 – 6 months probation

2015/02/17 – YCJ137 – 6 months probation

2013/07/04 – 334(b) – 12 months probation

2013/07/04 – 348(1)(b) – 12 months probation

2013/05/03 – 334(b) – WAM

[25] The accused was born in Grande Prairie, Alberta. He has a twin brother that has been diagnosed with schizophrenia, and is presently hospitalized. His biological father left the family home when he was 3 years old. Neither he or his brother has had much contact with his father due to his protracted drug use. His mother and father separated due to the father's drug use, and

his mother never feeling safe around him. There was intermittent police involvement in the family home until his father left.

[26] The accused has maintained a close and positive relationship with his mother. She was present in Court during the sentence hearing and made a statement confirming her support of him. The family relocated to Calgary when the accused was about 5 years of age. After moving to British Columbia for about a year, the family returned to Calgary. The accused lived with his mother until he was about 15-16 years of age. Due to the accused's substance abuse, criminal activities, suspension from school, financial difficulties, and discord in the family home the accused was placed in Hull Services in Calgary,

[27] In terms of education, the accused completed grade 10. During his school years he was suspended for theft, doing drugs, and for truancy. For a time, he obtained employment at McDonald's and a sporting goods store. Since then, his current income consists of funding through Alberta Child and Family Services. At the present time, the accused lives on his own in an apartment in Calgary. He has made application and is hopefully that he will soon begin to receive income through AISH. As well, he has the benefit of a part-time aid who takes him to doctor appointments, assists with grocery shopping and picking up his prescription medication. He spends most of his time playing video games, watching movies at home, and skateboarding or walking along the Bow River.

[28] As to substance abuse, the accused began to consume marijuana when he was 13 years old, while in grade 7-8. About 2 years ago, his marijuana use escalated to daily use. At the present time, his marijuana use is sporadic. In addition to marijuana, the accused has tried mushrooms, cocaine, hash, and MDMA/ecstasy. The accused admitted that his use of MDMA "screwed him up." He admitted consuming MDMA at or about the time of the index offences in this case.

[29] As to personal relationships, prior to dating the 16 year old complainant in this case, he had a brief intimate relationship with one other girl. He met the complainant on-line, and then they started to hang out at his place. As time passed, his relationship with the complainant became intimate, and she stayed at his place on a daily basis.

[30] As to mental health, the accused readily admitted to distractibility and anger management problems. He denied ever attempting to take his own life, but acknowledged having self-harmed. Indeed, the photos taken of the accused taken shortly after his arrest, marked in evidence as **Exhibit S-8** confirm this. The accused is presently taking prescription medication to address depression, attention-deficit disorder, and mood stabilization.

[31] According to the FAOS Report marked in evidence as **Exhibit S-2**, there is no indication that the accused experienced any thought disorder or impaired contact with reality. After testing it was determined that the accused's intellectual ability was in the *Borderline* range. In his interaction with Dr. Baillie, the accused presented as having marked problems managing his temper, easily becoming frustrated and combative. After test results and his experience dealing with the accused, Dr. Baillie found that the accused struggles with anger management, displaying a remarkably short fuse. Overall, the accused presented as being a moderate risk for future violent misconduct. His previous involvement in treatment was of limited utility, largely due to his inconsistent attendance. In his Supplementary FAOS Report, marked **Exhibit S-3**, Dr. Baillie opined that the accused retained the ability to know right from wrong, and that he knew precisely what he was doing in the index offence.

[32] According to the accused's AISH Application, marked in evidence as **Exhibit S-9**, and completed by his psychiatrist, Dr. Naylor, the accused was diagnosed with Bi-Polar Disorder-type 11 (current mixed state) and Attention Deficit Hyperactivity Disorder. He describes the accused as having severe mood instability, characterized by depressive episode, anxiety, suicidal ideation, reactive anger, inability to sustain effort and attention, restlessness and impulsivity. He writes that the accused has suffered serious impairment in social, emotional, and academic functioning since early childhood. The accused did not have the opportunity to experience a stable living, appropriate parenting, adequate support or stable noninstitutional support system. His illness and behaviour overwhelmed the capacity of his mother to provide parenting. The accused is unable to maintain motivation enough to attend to personal needs. He describes the accused's level of impairment due to mental health as major or complete impairment. The accused is presently taking prescription medication to help control his mental health issues. The accused's AISH Application was fully supported by Dr. Naylor.

[33] According to the Letter of Support from Hull Services, marked in evidence as **Exhibit S-11**, the writer, Chelan McCallion states that the accused indicated remorse for his offence. Several people who have worked with the accused over the years have recently noted that he is stressed, worried, and apologetic for his actions. He is aware that his impulsivity, lack of medication, substance use and poor decision-making has resulted in the criminal charge and wants to make changes in his life.

[34] Finally, according to informal statements made by the accused's mother, and a member of the Alberta Child and Family Services team, in open Court, they confirm continued support for the accused in the community.

Sentencing Principles

[35] As in all sentencing cases, the ultimate disposition for an offender must reflect the fundamental purpose and all the principles of sentencing provided for in Section 718 of the *Criminal Code*. The sentence must be in accordance with the fundamental principle of proportionality found in Section 718.1 of the *Criminal Code*. **R v Arcand**, 2010 ABCA 363; **R v Pham**, 2013 SCC 15; **R v Lacasse**, 2015 SCC 64 and **R v Friesen**, 2020 SCC 9. As well, the sentence must account for any relevant *aggravating* and *mitigating* circumstances tailored to fit the individual before the Court. "*Individualized*" sentencing as opposed to "*tariff*" sentencing, has been approved by the SCC in **R v McDonnell**, [1997] 1 SCR 948 and **R v Proulx** (2000), 1 SCR 61. Finally, the sentence must take into account the sentencing principles found in section 718.2(a) and (b) of the *Criminal Code*. As to section 718.2(b),(c),(d) and (e) of the *Criminal Code*, there should be parity in sentencing similar offenders for similar offences; a global sentence should not be excessive; the least restrictive sentence should be imposed; and all available sanctions other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Aggravating

1. The nature of the offence in this case is grave. The accused intentionally killed his girlfriend's kitten. His motive for doing so was revenge, spite and vindictiveness. The text messages, marked **Exhibit S-6**, and DVD of Cell Phone Video, showing him killing the cat, marked **Exhibit 7**, are particularly disturbing and telling in terms of the accused's

frame of mind at the time. His actions in killing the kitten were not impulsive. According to Dr. Baillie's Supplementary FAOS Report, marked **Exhibit S-3**, the accused knew precisely what he was doing. His actions were premeditated and deliberate. The accused wanted his girlfriend to watch her kitten die.

2. The offence in this case fits into the most serious first category of animal cruelty offences outlined by this Court in *Rabeau*. The offence was connected to his domestic relationship with his girlfriend, and he was exacting revenge on her for calling him a 12 year old, and breaking up with him. It is obvious why the Crown elected to proceed by indictment in this case, thereby exposing the accused to a maximum penalty of 5 years imprisonment.
3. The kitten in this case was particularly vulnerable. The kitten was living with the accused. He was the primary caregiver of the cat, and he was in a position of trust at the time.
4. The kitten sustained extensive injuries as a result of blunt force trauma caused by multiple blows. As noted in Dr. Doyle's Report, marked **Exhibit S-5**, the suffering endured by the cat in this case was immense.
5. After the offence, although the accused brought the kitten to a vet, he lied about his name and how he found the kitten.
6. As well, as noted in Dr. Baillie, in his FAOS Report marked **Exhibit S-2**, when confronted by the facts, the accused attempted to minimize what he did. He denied reading the Agreed Statement of Facts, and tried to manipulate his way out of taking full responsibility by pointing his finger at his own lawyer.
7. Dr. Baillie was of the view that the accused presented as a moderate risk of future violent misconduct, and his prior involvement in participating in treatment for his various mental health issues was largely ineffective due to his inconsistent attendance.
8. The accused is not a first offender. He comes before the Court with a prior Youth Court record, marked in evidence as **Exhibit S-4**. In terms of the breach of recognizance offence, I note that the accused has three prior convictions for breaching Court orders. As well, the offence was committed by the accused the day after he committed the animal cruelty offence.

Mitigating

9. The accused is a youthful offender and has entered early guilty pleas to the charges.
10. The accused had an unfortunate family background, he has a borderline IQ, and suffers from a number of identified mental health problems, including Bi-Polar Disorder and Attention Deficit Hyperactivity Disorder. He is under the care of his psychiatrist, Dr. Naylor, and is on prescription medication to help him cope with these disorders. In addition, he has a serious Anger Management problem.
11. Despite his various mental health problems, he has the continued support of his mother, and Alberta Hull Services in the community. As well, his AISH Application completed by Dr. Naylor, is positive, and he is hopeful of receiving funding for his daily needs in the community in the near future.

12. According to **Exhibit S-10**, marked in evidence, there has been extensive news media coverage that has attended this case. Indeed, the Court has noted the presence of persons from the news media present in court on every appearance in this case.
13. Although the accused is not a first offender, he has no adult record, and his Youth Court Record does not contain any convictions for violent offences. He has never received any prior custodial sentence.

Disposition

[36] Having regard to the fundamental principle of sentencing, the proportionality principle in this case, the animal cruelty offence was grave, and the moral blameworthiness of the accused was high.

[37] This Court also appreciates that the sentencing principles of denunciation and deterrence are primary considerations in the sentencing process for this type of offence.

[38] That being said, one of the issues that must be decided in this case is whether the moral blameworthiness of the accused, or the weight to be given to the sentencing principle of general deterrence can be reduced by the personal circumstances of the accused.

[39] As stated above, the accused had an unfortunate family background, has a borderline IQ, and suffers from a number of serious mental health problems, including Attention Hyperactivity Deficit Disorder, Bi-Polar Disorder and Anger Management.

[40] In terms of his mental health problems, this Court in *R v Manyshots*, 2018 ABPC 17, at paras. 57-61, canvassed the law relating to the effect of a mental disorder on sentencing.

[41] As I understand the law, a mental disorder will only impact sentencing when, (1) there is some evidence before the Court that the mental disorder contributed or caused the commission of the offence, or (2) there is some evidence that the effect of imprisonment or any other penalty would be disproportionately severe because of the accused's mental disorder.

[42] In the circumstances of this case, there is no evidence as to (1) or (2).

[43] In my view, neither the moral blameworthiness of the accused, nor the weight to be given to general deterrence as a sentencing principle, are reduced by the accused's mental disorders in this case.

[44] As to specific deterrence as a sentencing principle, Brown PCJ., in *Campbell Brown*, at paras. 41-45, canvassed the authorities relating to the impact of extensive news media coverage of a case.

[45] I agree with her analysis.

[46] Having regard to **Exhibit S-10**, I am satisfied that there was extensive news media coverage of the case at bar.

[47] As a result, I conclude that the extensive news media coverage in this case has, with other factors, mitigated the need for a specific deterrence. As well, it should make more effective that denunciatory and general deterrent aspects of the sentence in his case.

[48] In terms of Defence Counsel's submissions that a Conditional Sentence Order (CSO) ought to be imposed, I disagree.

[49] Having regard to the principles enunciated by the SCC in *Proulx*, for the granting of a CSO, I find that due to the gravity of the animal cruelty offence, and the high moral blameworthiness of the accused in this case, a CSO would not be consistent with the proportionality principle, the fundamental principle of sentencing.

[50] Having regard to the fundamental purpose and all the principles of sentencing, the aggravating and mitigating in this case, a fit sentence for the animal cruelty offence is 12 months imprisonment, followed by 2 years probation on terms and conditions to be discussed with Counsel.

[51] I may say in passing, but for the accused's early guilty pleas, his youth, unfortunate personal circumstances, lack of any related adult criminal record, his continued community support, and this being his first custodial sentence, I would have imposed a sentence of 18 months imprisonment as requested by Crown Counsel.

[52] As to the breach of recognizance offence, a fit sentence is one-month imprisonment, concurrent.

[53] As well, on the animal cruelty offence, pursuant to section 447.1 of the *Criminal Code*, the accused is prohibited from owning, having the custody or control of, or residing in the same premises as an animal or bird for life.

Dated at the City of Calgary, Alberta this 8th day of June, 2020.

T.C. Semenuk
A Judge of the Provincial Court of Alberta

Appearances:

R. Greenwood
for the Crown

Y. Niv
for the Accused