In the Alberta Court of Justice

Citation: R v Trithart, 2023 ABCJ 197

Date: September 8, 2023
Docket: 210461018P1
Registry: Stony Plain

2023 ABCJ 197 (CanLII)

Between:

His Majesty the King

Crown

- and -

Michael Richard Trithart

Offender

Reasons for Sentence of the Honourable Justice T.W. Achtymichuk

I. Summary

[1] Michael Trithart pleaded guilty to one count of wilfully causing or permitting unnecessary pain, suffering or injury to four of his dogs, contrary to s 445.1(1)(a) of the *Criminal Code*.

[2] Briefly, on April 22, 2021 there was a fire at Mr. Trithart's house while he was at work. Three of his dogs died in the fire. A fourth dog named Sparky survived with smoke inhalation, but was eventually euthanized at the veterinary clinic. It was the vet clinic that identified issues of neglect suffered by all four dogs. The three deceased dogs had significant hair matting mixed with fecal matter on their faces, bodies and legs. Hair had to be removed from one dog to locate the eyes and free the ears.

[3] Sparky's right front foot had been completely severed at least one or two months before. The remaining stump had grown over. The severed part was only attached to Sparky by severely matted hair. There was an obvious large growth on Sparky's face, and severe dental disease. Sparky was euthanized due to his ongoing medical conditions and his age.

[4] The main issues are whether a fit and proper sentence includes incarceration, and an order prohibiting Mr. Trithart from having animals. The Crown argues that it does, due to the direction given for harsher sentences in animal cruelty cases in *R v Chen*, 2021 ABCA 382 (*Chen*).

[5] Mr. Trithart primarily argues for a conditional sentence order (CSO) to be served in the community, and opposes a prohibition order. That is mostly because he says this was neglect, rather than the intentional violence and cruelty against animals seen in *Chen* and other cases.

[6] I find that a six month CSO followed by 18 months probation reflects the principles of sentencing in this case. I do not make a s 447.1 prohibition order. Instead, the CSO and probation order include terms that govern Mr. Trithart's involvement with animals.

II. Positions of the Parties

[7] The Crown argues for a four month custodial sentence, plus an order prohibiting Mr. Trithart from owning, having custody or control of, or residing in the same residence with an animal or bird for 15 years, under s 447.1 of the *Code*.

[8] Mr. Trithart primarily argues for a CSO. He also argues that a prohibition order is not warranted. He still has three dogs who were not affected by the house fire and says he will look after them properly.

III. Analysis

A. Proportionality

[9] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *Code*, s 718.1.

[10] In considering those two elements, I take into account aggravating and mitigating factors under s 718.2 of the *Code*.

1. Aggravating and Mitigating Factors

[11] The aggravating factors are as follows:

a) The number of animals involved is aggravating. Mr. Trithart's actions resulted in pain and suffering to four dogs.

b) The length of time that the dogs experienced pain and suffering is aggravating. The neglect identified by the vet had been going on for months.

c) I accept the Crown's position that it is an aggravating factor that Mr. Trithart's actions were a breach of trust, because his dogs were dependent on him for proper care. *Chen* says this at para 45:

> [45] Some trial courts have considered whether an offender was in a position of trust in relation to the victim of animal cruelty: see e.g. *R v Huston*, 2021 ABPC 108; *R v Florence*; *R v Camardi*; *R v Rodgers*, 2012 ONCJ 808. There is an expectation that owners and guardians of animals will provide food, care and protection to animals they take into their custody. See, for example, the *Animal Protection Act*, RSA 2000,

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> c A-41, s 2, which prohibits an owner or person in charge of an animal from causing distress to the animal or permitting the animal to be in distress, and s 2.1, which imposes positive duties on an owner or person in charge of an animal. Whether an offender is in a position of trust vis a vis an animal victim of abuse will depend on the circumstances in which the abuse occurs. Where such a breach of trust is found, it will be an aggravating factor.

Mr. Trithart did not argue that this was not an aggravating factor.

[12] The mitigating factors are as follows:

a) Mr. Trithart's guilty plea is a mitigating factor. Credit for guilty pleas can vary depending on the circumstances: *R v Ryan*, 2015 ABCA 286 at para 181.

In this case, credit is given for Mr. Trithart's guilty plea, because it spares witnesses from having to testify and spares Court resources. On the other hand, that is somewhat tempered by what appears to be a strong case for the Crown. The fact that his guilty plea simply acknowledges the inevitable lessens the weight given to it: *R v Mufuta*, 2020 ABCA 79 at para 25.

A guilty plea can also indicate that an offender is remorseful, accepts responsibility for their actions, or acknowledges the harm done to their victims.

b) Mr. Trithart is remorseful. That is accepted by the Crown. Mr. Trithart did get emotional when he entered the guilty pleas, where photos of the dogs and a short video of Sparky were entered into evidence. He says he will abide by any terms of a sentence aimed a rehabilitation and preventing something like this happening again.

c) It is noted that Mr. Trithart does not have a criminal record. While a criminal record can be an aggravating factor, the absence of one is not a mitigating factor, but is instead neutral: *R v JJM*, 2021 ABCA 170 at para 24, citing *R v Felix*, 2019 ABCA 458 at para 45. To the extent that the absence of a record reflects an otherwise prosocial life before this offence, that can be taken into account when considering the prospects of rehabilitation.

[13] Taking into account these aggravating and mitigating factors, I now return to the gravity of the offence and Mr. Trithart's responsibility as the offender.

2. Gravity of the Offence

[14] I find the gravity of the offence to be moderate for the following reasons.

[15] The gravity of the offence includes two components: the harm or likely harm 1) to the victim, and 2) to society and its values: *R v Arcand*, 2010 ABCA 363 at para 57 (*Arcand*).

[16] For the three dogs who died in the fire, the neglect was hair matting mixed with feces. One had dental disease. They were otherwise found to be properly fed and their bodies in good condition. The pain and suffering caused by this is on the low end of the range of conditions that can result from not properly caring for an animal.

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[17] Sparky's pain and suffering for his severed foot, facial growth and dental disease were more serious. The information is not clear what the facial mass was, how long it had been there, or whether it was painful. Nevertheless, treatment by a veterinarian could have reduced Sparky's overall pain and suffering for months.

[18] With respect to harm to society and its values, over time both Parliament and our courts have recognized that animals are sentient beings who feel pain and suffering, are to be treated as living victims and not objects, and that cruelty to animals is incompatible with civilized society: *Chen* at para 27. The changes to the *Code* to increase penalties for animal abuse and better protect animals who are the victims of these crimes, reflects among other things, the seriousness of these crimes and the harm to society and its values.

3. Responsibility of the Offender

[19] I find Mr. Trithart's moral blameworthiness to be moderate, for the following reasons.

[20] When assessing moral blameworthiness, the Court should consider the unlawful act itself, the nature and quality of it, method used to commit it, degree of planning and deliberation, degree of risk posed, and the offender's personal circumstances: *R v Bergh*, 2019 ABCA 151 at para 13, citing *R v LaBerge*, 1995 ABCA 196 at para's 6-10. The greater the harm intended, or the greater the recklessness or wilful blindness about the harm, the greater the offender's responsibility. That moral blameworthiness can be affected by things like the offender's personal circumstances, mental capacity or motive for committing the crime: *Arcand* at para 58.

[21] Within the range of behaviours caught by s 445.1(1)(a), this is not a case of deliberately causing severe injuries or death to an animal from physical or other violence and cruelty. Nor is this a case where Mr. Trithart's intended purpose was to cause pain and suffering to his dogs, and he failed to get them proper vet care or grooming to carry out that purpose. I am satisfied by the information provided at the sentencing hearing and in the Pre-Sentence Report (PSR), that Mr. Trithart has an emotional attachment to his dogs. They helped him deal with the loss of his wife to cancer in 2017. Others who know him say that he loves and provides good care for his dogs, and that these charges are out of character for Mr. Trithart. At the same time, their perspective is contradicted by the serious nature of the neglect, especially to Sparky and his severed paw, and the length of time it went on. That indicates at least recklessness about letting his dogs experience pain and suffering. But overall, these considerations place Mr. Trithart's moral blameworthiness at the comparative mid-range of the spectrum.

[22] Mr. Trithart says that he tried to address the hair matting by buying clippers just before the fire. He had groomed the outside dogs, but had not yet gotten to the inside dogs. However, that does not change my assessment of Mr. Trithart's responsibility. That is because his neglect went on for a long time, and grooming wouldn't address the pain and suffering experienced by Sparky with his more serious medical conditions.

[23] The PSR notes that earlier this year, Mr. Trithart completed a canine CPR and First Aid course. I understand that he did that to help prevent something like this from happening again, and to show that he is open to rehabilitation in the hopes of keeping the dogs that are still with him.

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[24] Mr. Trithart has led a pro-social life. He is 58 years old. He describes his childhood as better than most. He has good relationships with his three stepchildren and their families. He finished Grade 9 in school. He has always been employed. He was a truck driver for 20 years. For the last five years, his job has been dispatching service trucks. His employer describes him as helpful, hard working, selfless, compassionate, and an integral part of the day-to-day business. Mr. Trithart has volunteered for many years with agricultural, rodeo and other community organizations in Whitecourt.

[25] He lost his savings with his wife's illness and death. He says that after that, tools worth $60,000 were stolen from him. Then he lost most of his other possessions in the house fire. He has worked his way back out of debt from all that. He is hoping to turn the page on these misfortunes.

[26] In summary, when I take into account all the circumstances I have reviewed, I conclude that the gravity of Mr. Trithart's crime is moderate. I also conclude that his responsibility as the offender is also moderate.

B. Objectives of Sentencing

[27] The fundamental purpose of sentencing is to protect society and contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

a) to denounce unlawful conduct and the harm done to victims or to the community;

b) to deter the offender and others from committing offences;

c) to separate offenders from society, where necessary;

d) to assist in rehabilitating offenders;

e) to provide reparations for harm done to victims or to the community; and

f) to promote a sense of responsibility in the offender, and acknowledgement of the harm done to victims or to the community: *Code*, s 718.

[28] Denunciation and deterrence are the primary sentencing objectives for causing or permitting pain and suffering to animals. *Chen* says this at para 39:

> 39 The purpose of deterrence is to discourage the offender and others in the community from committing the offence. Animals feel pain and suffer; they are not merely property and deserve protection under the criminal law. All animals not living in the wild, including companion animals, livestock, and animals in industrialized production settings, 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. Sentences for animal cruelty must reflect these realities, and the primary focus must be on deterrence and denunciation.

[29] Specific deterrence is less important in this case. I am satisfied that having been through this court process for the first time in his life, Mr. Trithart does not need to be deterred from

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doing this again. But a sentence here should make sure that he understands what is required of him to avoid this happening again.

[30] That is why rehabilitation is also an important sentencing objective in this case. Even with the prohibition order sought by the Crown, Mr. Trithart would probably have animals again at some time. Ensuring he has the knowledge and insight to prevent unnecessary pain and suffering for his animals could provide some protection for them.

C. Parity

[31] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: *Code*, s 718.2(b). Using this parity principle is a necessary means to reach a proportionate sentence: *R v Germain*, 2022 ABCA 257 at para 57; *R v Perranto*, 2021 SCC 46 at para 11.

[32] Most of the cases cited to the Court are those in which the animals were subjected to deliberate violence, resulting in either very significant injuries or death. Those cases include *Chen*; *R v Carr*, 2023 ONCJ 22 (*Carr*); *R v Ehbrecht*, 2022 ABPC 141 (*Ehbrecht*); *R v Purvis*, 2023 ABPC 29 (*Purvis*); and *R v Huston*, 2021 ABPC 108 (*Huston*).

[33] In *Chen*, the youthful offender with no record pleaded guilty to beating a 10 month old puppy relentlessly for 20 minutes. It was kicked, dragged across the floor and thrown into a wall. The offender refused to stop when a neighbour tried to intervene. The dog suffered a broken paw, broken teeth, an eye injury, and blunt trauma to its hind leg, head and abdomen. Fractured ribs from about 8 weeks before had healed.

[34] The initial sentence was 90 days intermittent plus two years probation. The summary conviction appeal court substituted a one year CSO for the 90 days custody, plus two years probation. The Court of Appeal restored the original sentence, holding that a CSO was not proportionate. In doing so, the Court was clear that whether the 90 day sentence sought by the Crown at trial and ordered by the court was appropriate, was not an issue before the Court of Appeal.

[35] In *Carr*, the offender pleaded guilty to killing his girlfriend's dog by throwing it off an apartment balcony to spite her. He had a record for violence and weapons offences, denied and deflected responsibility, but expressed some remorse about the dog dying. This had a significant impact on the girlfriend. The sentence was 12 months in custody and a 25 year prohibition order.

[36] In *Ehbrecht*, the 18 year old offender with a record for violence pleaded guilty to deliberately physically abusing 5 kittens over one year. Two were injured so badly they had to be euthanized. This included throwing against walls, dragging on floor, pinching ears, biting tails, lighting whiskers on fire, bashing faces into walls, hitting on the head and digging fingernails into skin. All of this caused many fractured bones that went untreated. He had a difficult childhood, mental health and substance abuse issues, and was a moderate risk to re-offend. The sentence was 12 months custody plus three years probation, and a lifetime prohibition order.

[37] *Ehbrecht* was decided after *Chen*. The Court in *Ehbrecht* held that a CSO was not consistent with the principles of sentencing on the facts of that case. The Court reviewed a

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number of other cases of deliberate violence against animals, resulting in either very significant injuries or death. The *Ehbrecht* Court noted that those cases showed a sentencing range of 90 days intermittent to 22 – 24 months in custody.

[38] *Purvis* was also decided after *Chen*. In *Purvis*, the 57 year old offender pleaded guilty to one count of killing one cat, and one count of causing unnecessary pain and suffering to four other cats. He set fire to his girlfriend's house to spite her. The four surviving cats had to be treated for smoke inhalation. The offender had a dated criminal record. He was remorseful. A long history of mental health issues did not significantly reduce his moral culpability. There was a global sentence of 18 months for arson and the two animal offences.

[39] The Court in *Purvis* also reviewed a number of cases of deliberate violence against animals, resulting in either very significant injuries or death. Those cases showed a sentencing range of 3 months to two years.

[40] *Huston* was decided before the Court of Appeal's decision in *Chen*. In *Huston*, the 65 year old offender with no record killed his cat by hitting it three times with a baseball bat, after which he put it in a garbage bag. He kept beating the cat after a neighbour told him to stop. He was remorseful. His references said this was out of character. The Court held there was no need for specific deterrence due to social media reactions from other tenants in his building. The Court held that the cases it reviewed suggested a sentencing range of six to nine months in those circumstances. The sentence was a 12 month CSO plus 18 months probation. The Court distinguished other cases rejecting a CSO because they had elements of protracted abuse, torture, remorselessness, domestic violence and other aggravating factors not present in *Huston*.

[41] I am aware of two recent reported sentencing decisions for animal neglect (as opposed to deliberate violence) causing unnecessary pain and suffering to animals under s 445.1(1)(a) of the *Code*.

[42] The first is *R v Dieudonne*, 2021 CarswellOnt 2993 (CJ), decided before *Chen*. In that case, the 26 year old offender pleaded guilty to one count of causing pain and suffering to four of her dogs through neglect. The dogs were skin and bones with a body condition score of one out of nine. This went on for months. One dog needed to be euthanized. Two others were locked in a crate unable to move. The neglect here was described as a form of torture. The offender lacked insight and had mental health and other issues. The Court held that normally there would be jail time. But a four month CSO was found to be appropriate because she accepted responsibility, there was a guilty plea and no record, she had responsibilities as a single parent, and her sentencing had been delayed for a year by the pandemic.

[43] The second case is *R v Ebrahimi*, 2023 CarswellOnt 10013 (CJ) (*Ebrahimi*). In that case, the offender tried to treat his cat's injuries himself. He did not have money for a vet because of his drug addictions. The cat suffered for two to three weeks before it had to be euthanized due to its condition. No further details of the cat's injuries or pain and suffering are given in the decision. Citing *Chen*, the sentence was four months in custody plus two years probation.

[44] However, there are distinguishing features about the sentence in *Ebrahimi*. The offender also pleaded guilty to four property offences and five breaches of court orders. In crafting a global sentence, the Court said it wanted to ensure a progressive release over time starting with jail, then a CSO, and then probation. That was to address the offender's need for addictions

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treatment. So the starting point was a four month sentence for the animal neglect offence. Three months credit was given for pre-sentence custody, leaving 30 days jail left to serve on that conviction. That was followed by a three month CSO on other charges, which when completed, would just leave probation left to serve. The factors that influenced the sentence in *Ebrahimi* do not apply to Mr. Trithart's case.

[45] Finally, Mr. Trithart has cited *R v Way*, 2016 ONCJ 514 (*Way*). However, I do not find that case to be instructive here. In *Way*, the offender was found guilty after trial of two counts of animal cruelty. She had 107 cats in her home living in filth, disease and squalor. The wooden floors were spongy because they were soaked in cat urine. The cats had many different medical ailments, including birth defects from inbreeding. All but one had to be euthanized. The Court found she had affection for her cats, but it was a crime of "negligence" for letting it get out of control. Her ability to work as a teacher or lawyer might be affected.

[46] The Court granted a conditional discharge and 12 months probation. However, in my view the sentence is *Way* does not reflect later amendments to the *Code* increasing the maximum sentences for these offences: *R v Friesen*, 2020 SCC 9 at para 35. Nor does it reflect the binding authority of *Chen* in Alberta for harsher sentences in animal cruelty cases.

[47] Based on the cases I have reviewed, I find that the range of sentencing in the circumstances of Mr. Trithart's case is three to four months.

D. Conditional Sentence Order

[48] The main issue here on sentencing is whether a sentence is to be served in the community under a CSO. I now turn to that issue.

[49] The first question is whether a CSO is precluded under the *Code*. Here, the *Code* does not preclude it.

[50] The second question is whether a sentence of two years or more, or a sentence of probation, are excluded. I find that they are. The Crown has proceeded by summary conviction. The maximum sentence is two years less a day.

[51] When defence counsel stated Mr. Trithart's position on sentence, it was for either a CSO or suspended sentence with probation. However, the possibility of probation was not mentioned again. I understood all of the oral and written submissions that were made to only advocate for a CSO, which is what I will address. I will only say here that in my view, a suspended sentence with probation is excluded in this case. That is because it would not reflect the direction given in *Chen* for harsher sentences in animal abuse cases under the *Criminal Code*. Nor would that be a proportionate reflection of the gravity of the offence and Mr. Trithart's responsibility for it.

[52] The third question is whether Mr. Trithart serving a sentence under a CSO would endanger the community. There are two aspects to this. The first aspect is the risk of Mr. Trithart re-offending. I have found that risk to be relatively low, with rehabilitation. The second aspect to this question is the gravity of harm if he does re-offend. That would likely be moderate, based on the gravity of his crime here. Taking these factors into account, I am satisfied that he would not endanger the community by serving his sentence under a CSO.

[53] The fourth question is whether Mr. Trithart serving his sentence in the community would be consistent with the fundamental purpose and principles of sentencing under ss 718-718.2 of

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the *Code*. I find that a CSO would be consistent with that purpose and those principles, for the following reasons.

[54] In *R v Proulx*, 2000 SCC 5 (*Proulx*), the Court gave the following guidance on this issue at para's 113-114:

> 113 In sum, in determining whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing, sentencing judges should consider which sentencing objectives figure most prominently in the factual circumstances of the particular case before them. Where a combination of both punitive and restorative objectives may be achieved, a conditional sentence will likely be more appropriate than incarceration. In determining whether restorative objectives can be satisfied in a particular case, the judge should consider the offender's prospects of rehabilitation, including whether the offender has proposed a particular plan of rehabilitation; the availability of appropriate community service and treatment programs; whether the offender has acknowledged his or her wrongdoing and expresses remorse; as well as the victim's wishes as revealed by the victim impact statement (consideration of which is now mandatory pursuant to s 722 of the *Code*). This list is not exhaustive.
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> 114 Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence. Conversely, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance, depending on the nature of the conditions imposed, the duration of the conditional sentence, and the circumstances of the offender and the community in which the conditional sentence is to be served.

[55] In this case, for the reasons I have given, the primary focus for sentencing here are the punitive objectives of denunciation and general deterrence. In doing so, though, I also take into account that even with the aggravating factors I have found in this case, the gravity of the offence and Mr. Trithart's moral blameworthiness are moderate. Therefore, the objectives of denunciation and deterrence do not overwhelm the balancing between those and restorative objectives.

[56] I have also found that rehabilitation is an important sentencing objective here. Mr. Trithart gaining knowledge and insight into the care he must provide to his animals should help protect them in the future. Also, Mr. Trithart's rehabilitation includes being able to continue with the pro social life he led apart from this crime. I am satisfied that if he cannot have access to his phone 24 hours a day for dispatching, he likely will lose his job just when he is turning a corner in putting his life back together. I take that factor into account in considering a custodial sentence, whether intermittent or not.

[57] Mr. Trithart serving his sentence in the community is certainly not the same as serving it in jail. However, as stated in *Proulx*, in some cases a CSO can still provide sufficient denunciation and deterrence to satisfy punitive sentencing objectives. A CSO that is somewhat longer than a proportionate custodial sentence in this case, can help to achieve those sentencing objectives.

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[58] I reviewed the facts in *Chen* earlier. There, the Court held that a CSO was not proportionate to the gravity of the offence in that case and restored the original custodial sentence. The Court went on to say this at para 36:

> 36 I add that, even where violence is not involved, it does not follow that a CSO will be the appropriate disposition for a youthful offender: see e.g. *R v Field*, 2011 ABCA 48, where a period of incarceration was imposed on a youthful offender convicted of dangerous driving causing bodily harm. The offence of animal cruelty does not encompass only physical violence. Its focus is on the pain or suffering experienced by the animal. Not every contravention of the animal cruelty provisions will be a crime of violence; crimes of neglect, depending on the circumstances, can be equally serious and sufficiently grievous to diminish, or eliminate, the likelihood of a CSO.

This passage from *Chen* contemplates that a CSO can be a fit and proper sentence for animal neglect, unless the pain and suffering caused is so serious or grievous that a CSO is no longer proportionate.

[59] In Mr. Trithart's case, I therefore consider the pain and suffering his dogs experienced, and how that affects the assessment of whether a CSO could be proportionate to the gravity of the offence and Mr. Trithart's responsibility. In my view, those considerations do not eliminate the possibility of a CSO in this case. That is because I have found that the pain and suffering experienced by the three deceased dogs largely from a lack of grooming was on the comparative low end of the spectrum for the seriousness of the harm. Although some information is lacking about Sparky's facial mass, certainly the pain and suffering caused by a lack of care for Sparky's severed paw for at least one to two months and his dental disease is what brings the overall gravity of the offence for the harm caused, into the comparative moderate range for this offence. Also, I have found Mr. Trithart's moral blameworthiness to be in the moderate range.

[60] I find that the circumstances of this case support a CSO. The sentence here should reflect not only denunciation and general deterrence, but also restorative objectives. A six month CSO can properly reflect the objectives of denunciation and general deterrence. For rehabilitation, a sentence served in the community can, with appropriate terms, help prevent something like this from happening again, and allow Mr. Trithart to keep his job. Without minimizing the pain and suffering caused by Mr. Trithart's neglect of his dogs, I do not find it to be so serious or grievous that a CSO is no longer proportionate. Finally, I apply the principle of restraint in s 718.2(d) and (e) of the *Code*. Incarceration is a sanction of last resort, and I have found other sanctions, including serving a sentence in the community, to be proportionate and reasonable.

E. Prohibition Order

[61] The Crown argues for an order under s 447.1 of the *Code*, prohibiting Mr. Trithart from owning, having the custody or control of, or residing in the same premises as, an animal or bird for 15 years. I decline to make that order for the following reasons.

[62] First, I have found that the risk of Mr. Trithart re-offending is low, with rehabilitation. That would include him gaining insight and knowledge about what is required of him, with monitoring to ensure compliance and good animal care practices. That can be accomplished with terms in a CSO and probation order. Mr. Trithart says he will comply with terms requiring

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him to have his remaining three dogs periodically examined by a vet at his expense, to ensure their good care.

[63] Second, Mr. Trithart does still have three dogs in his care. They have been with him for years. The two outside dogs are said to be old. Terms of a CSO and probation order could require good care of those dogs, and that he not get any new animals during the term of the sentence.

[64] On the other hand, s 447.1 of the *Code* appears to be all or nothing. Although the point was not argued before me, s 447.1 on its face only contemplates a complete ban of all animals and birds for a period of time. It doesn't expressly provide any authority for the court to impose any other terms: see *R v O'Donnell*, 2023 CarswellOnt 7542 (CJ). That means Mr. Trithart's remaining three dogs would have to be relocated into someone's else's care.

[65] Therefore, in the circumstances of this case I find that rehabilitative terms of a CSO and probation order would provide better long term protection of animals in, or coming into Mr. Trithart's care, than would a prohibition order under s 447.1 of the *Code*.

F. Sentence

[66] For all of these reasons, the sentence is as follows.

[67] Mr. Trithart is sentenced to a term of imprisonment for six months to be served in the community under a CSO on the following terms:

1. Compulsory conditions, including reporting by phone to a supervisor within five working days and thereafter as directed by the supervisor;

2. During the first three months of the CSO, remaining at his residence or on its grounds at all hours, subject to specified exceptions;

3. During the last three months of the CSO, be in his residence or on its grounds between the hours of 10 pm and 6 am every day, unless he is otherwise authorized in advance and in writing by his supervisor;

4. Attend or complete such programming as his supervisor directs with respect to the care of animals, and provide proof of completing such programming to the satisfaction of his supervisor;

5. That he not own, have care or control of, or reside with, any additional animals or birds other than the three dogs currently in his care;

6. That he have the animals in his care examined at a qualified veterinary clinic by September 30, 2023 at his expense, and thereafter as directed by his supervisor, with no more than 4 months between veterinary clinic exams; and

7. That he reasonably follow treatment recommendations for the animals in his care that are made by a veterinary clinic that examines them.

[68] After completion of the CSO, Mr. Trithart be subject to probation for 18 months on the following terms:

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1. Compulsory conditions, including reporting by phone to a probation officer within five working days and thereafter as directed by the probation officer;

2. Attend or complete such programming as his probation officer directs with respect to the care of animals, and provide proof of completing such programming to the satisfaction of his probation officer;

3. That he not own, have care or control of, or reside with, any additional animals or birds other than the three dogs in his care at his sentencing date;

4. That he have the animals in his care examined at a qualified veterinary clinic as directed by his probation officer, with no more than 4 months between veterinary clinic exams; and

5. That he reasonably follow treatment recommendations for the animals in his care that are made by a veterinary clinic that examines them.

[69] There is a victim fine surcharge of $100.

Heard on April 12 and July 17, 2023.
Dated at the Town of Stony Plain, Alberta this 8th day of September, 2023.

T.W. Achtymichuk
A Justice of the Alberta Court of Justice

Appearances:

C. Palmer
for the Crown

B. Rivers
for the Offender

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