

Citation: ☀ R. v. Minions
2023 BCPC 233

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File No: 66149
Registry: North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal Court

REX

v.

**ROBERT MINIONS
AND
NEDDY TSIN-MINIONS**

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE J. CHALLENGER**

Counsel for the Crown:	J. Cryder
Counsel for the Accused, N. Tsin-Minions	T. Barton
Place of Hearing:	North Vancouver, B.C.
Dates of Hearing:	July 21, 2022; March 6, 2023; July 28, 2023; August 10, 2023; August 11, 2023, and October 20, 2023
Date of Judgment:	October 20, 2023

[1] These are my reasons for sentence. My reasons for conviction are reported at 2022 BCPC 148.

[2] On March 10, 2023, I began to impose sentence and indicated I would provide written reasons in due course. However, as a result of how the matter proceeded thereafter, I also reserved on what penalty I would impose and invited further submissions.

[3] On March 25, 2022, Neddy Tsin-Minions was convicted of two counts, contrary to each of sections 9.1(1) and 9.1(2) of the *Prevention of Cruelty to Animals Act*.

[4] That section provides:

Duties of persons responsible for animals

9.1 (1)A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2)A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

[5] A search warrant was obtained and executed on November 30, 2016. Officers from the SPCA seized 29 dogs from the premises.

[6] The delay in proceeding to trial was due to related administrative proceedings before the Farm Industry Review Board concluding and the pandemic. The delay in proceeding to sentence was due to the conduct of Ms. Tsin-Minions.

[7] In summary, the circumstances giving rise to the convictions are that Ms. Tsin-Minions was engaged in breeding Coton de Tulear dogs in a home she shared with her common law husband in Brackendale. There were also a number of non-breeding age Cotons and dogs of various breeds located outside the home in a vehicle in the yard and in a vehicle in a garage.

[8] 19 Coton de Tulear dogs were found in the home. There were three litters with a total of 11 puppies. The breeding females and pups were in reasonable condition.

Some of the older Coton dogs found inside the home were neglected and in very poor condition.

[9] The home was unsanitary and reeked of urine. Dog feces and urine soaked papers were located throughout the home. Unsanitary food was left out for the dogs to eat. The puppies were exposed to hazards in the house, as they were not in pens or otherwise confined.

[10] Two dogs found in a car in the yard were neglected and in need of medical care.

[11] There were eight dogs in a small SUV in a dark garage. There was no water in the vehicle and insufficient ventilation for the number of dogs confined inside it. The dogs had been inside the vehicle for approximately five hours. Most had feces smeared on their coat. Several of these dogs were in extremely poor condition with respect to both their hygiene and health.

Positions of the Parties

[12] The Crown submits that a fine of \$3,000.00 per count is appropriate in all the circumstances. Ms. Tsin-Minions argues that she is not able to pay a total fine of \$6,000.00 even if granted an extended time to pay.

[13] The Crown also seeks to have a lifetime prohibition imposed preventing Ms. Tsin-Minions from engaging in the breeding of dogs, or possessing more than one dog as a pet.

Relevant Provisions of the Act and Principles of Sentence

Offences

24 (1) A person who contravenes section 9.1, 9.2, 9.3, 23, 23.1, 23.2 or 23.3 commits an offence.

(3) If a person is convicted of an offence under subsection (1), a justice may, in addition to any other penalty that may be imposed for the offence, prohibit the person from owning or having custody or control of an animal for a period of time specified by the justice.

(4) A justice may make an order under subsection (3) on any terms the justice considers appropriate.

(5) A person who fails to comply with an order made under subsection (3) commits an offence.

Penalties

24.1 A person who commits an offence under this *Act* is liable on conviction to a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 2 years, or to both.

[14] The principles of sentence as articulated in the common law and in the *Criminal Code* are applicable and I have considered them all.

[15] As these offences are regulatory in nature the factors to be considered are those set out in *R. v. Cotton Felts Ltd.* 1982 CanLII 3695 (ONCA). The paramount factors which must be addressed in determining an appropriate penalty are general deterrence and denunciation. The Court must also impose a substantial and significant penalty to create “a moral or educative effect” to warn others that the impugned conduct will not be tolerated. The amount of a fine must not be harsh but can be expected to cause an offender some “pain” which can properly be addressed by allowing a reasonable period of time to pay.

[16] *R. v. Chrysler* 2013 BCPC 0241 is a decision on sentence for an offence under s. 9.1(2) of the *Act*. The Court found that the offender was responsible for permitting six horses to be in distress for a period of six to eight weeks. Ms. Chrysler had been left to deal with the horses which belonged to another person. Ms. Chrysler refused to obtain assistance from the SPCA due to an animus she held toward the society. She was physically disabled and with very limited financial means. A probation order was imposed.

[17] At paragraph 15 the Court said:

In all of the circumstances, when I analyze the principles of sentence and consider the authorities that have been provided to me by Crown counsel, which include the four cases before me and an additional handout one, all of those cases identify that the predominant principles of sentence deal with denunciation,

deterrence and, in some cases, rehabilitation. Given that Ms. Chrysler has no previous record, I must consider rehabilitation at least to some extent and balance the principles of sentence having regard to the aggravating and mitigating factors that I have identified. The circumstances are such that I highlighted in this decision, together with my reasons for judgment, that animals are dependent upon their caregivers, particularly domesticated animals who are at the whim and mercy, if you will, of the owners with whom they reside. The *Prevention of Cruelty to Animals Act* is in place in order to ensure that those animals are maintained in a manner that they are provided with the necessities of life, which include shelter, water and food. In these circumstances, those were woefully absent for those horses.

[18] *R. v. Zhou* 2018 BCPC 425 (Reason for Conviction) 2018 BCPC 426 (Reasons for Sentence) was also relied upon by the Crown. Ms. Zhou was convicted of an offence under s. 9.1(2) for permitting a large number of cats and dogs to be in distress. The animals were suffering from a number of health issues and the facilities were unsanitary and unfit.

[19] Ms. Zhou had undertaken a commercial enterprise to raise and sell cats and dogs. Regrettably, she had little knowledge and no experience about how to do so in a manner that would have ensured the animals were properly cared for. She also chose not to seek the assistance of the SPCA when she became unable to meet the needs of her animals. Ms. Zhou was found not to have intentionally harmed her animals but rather lacked the necessary knowledge and skill. She was willing to take training in that regard. A probation order was imposed. She was prohibited from possessing any domestic animals for a period of seven years.

Circumstances of the Offender

[20] Due to Ms. Tsin-Minions' submissions and conduct during the hearing, the Court ordered a Pre-Sentence Report be prepared to provide for some independent information about her circumstances. Ms. Tsin-Minions refused to provide any collaterals other than her common law husband. Mr. Minions was a co-accused on the

charges but at the end of their evidence the Crown directed a stay of proceedings as there was insufficient evidence against him to support a conviction.

[21] Ms. Tsin-Minions is 61 years of age and in good physical and mental health. She is employed with a courier company and has held that employment since mid 2021. She has three adult children.

[22] A number of letters of reference were provided that speak to her love of dogs and from people who obtained healthy puppies from her. However, many did not reference having knowledge of the convictions, some referenced dated events and others were of limited weight given the context. Some seemed to suggest she continued to have “dogs” in the spring of 2023.

[23] Ms. Tsin-Minions submitted that she now has one dog that she bought as a puppy in early January of 2023. Veterinary records were filed indicating a dog named Tucky, belonging to Ms. Tsin-Minions has been properly vaccinated. A dog which appears to be a small poodle, and which Ms. Tsin-Minions said was Tucky appears from photographs to be healthy, well groomed and kept in a proper environment.

[24] The Court has concerns that Ms. Tsin-Minions is not being candid with the Court and may possess other dogs that she is not admitting to. On July 21, 2022 she told the Court she had two dogs. The Court advised Ms. Tsin-Minions that she needed to bring independent evidence as to the condition of those dogs or they would be seized from her. In March of 2023 she said they actually had three dogs and Mr. Minions had taken them with him when he moved to Alberta.

[25] She said she and her common law husband recently separated. The PSR does not reference a separation as of June of 2022. However, there is a screen shot of an email from Mr. Minions in which he says he left and moved to Alberta in September of 2022 and took three dogs with him. He also said he is no longer supporting Ms. Tsin-Minions, which is contradicted by their joint banking records.

[26] Ms. Tsin-Minions said her landlady was Melinda Leung who could confirm the number of dogs she had and their condition. Ms. Tsin-Minions said she had lived there

for three years which directly contradicts the information she provided in the PSR about where she and Mr. Minions were living. The Crown determined the landlady at the address Ms. Tsin-Minions had given was a Ms. So. This person was unable to attend court for medical reasons. Ms. Tsin-Minions said Ms. Leung had two dogs of her own. She now says Ms. So has two dogs.

Aggravating and Mitigating Factors

[27] The aggravating factors are the number of dogs that were in medical distress found in Ms. Tsin-Minions' possession. Some of the dogs were clearly in need of basic care and grooming. The condition of some dogs was simply appalling.

[28] The offences were the result of Ms. Tsin-Minions choosing to pursue profit from the sale of the Coton de Tulear puppies over providing a clean and safe environment, proper food, adequate grooming and proper veterinary care for all of the dogs in her possession.

[29] The mitigating factors are that Ms. Tsin-Minions paid \$1,543.69 in expenses in order to have her puppies returned to her for sale. However, the evidence at trial was that the sale of the puppies seized would have resulted in at least \$1,000 to \$2,000 each in proceeds. According to the Crown, more puppies were born after the seizure. 20 puppies were returned which would have resulted in sale proceeds of \$20,000 to \$30,000. Ms. Tsin-Minions did not take issue with that submission.

[30] The SPCA obtained an order from the Farm Industry Review Board (FIRB) that she pay their expenses for the care of the dogs seized from her in the amount of \$13,171.09. Ms. Tsin-Minions has satisfied that order.

[31] She has no prior history of convictions for any related offences nor does she have any criminal or quasi-criminal convictions.

[32] Ms. Tsin-Minions said she had paid \$20,000 as compensation for the dogs which were located in the vehicle in the garage, seized and not returned to her. I found the suggestion these were not her dogs to be improbable and I find it even more improbable

she paid such compensation given the very poor condition those dogs were in when seized.

Ability to Pay

[33] Following her conviction on March 25, 2022, then at the commencement of the sentencing hearing on July 21, 2022, and again at an adjournment application on August 31, 2022, Ms. Tsin-Minions was advised by the Court that she would need to provide documentation to establish she would be unable to pay the fine suggested by the Crown. She was also reminded that she needed to establish any mitigating circumstances to the balance of probability with supporting documentation.

[34] She and Mr. Minions sold their property in Brackendale in 2017. Documentation was produced which established they had \$291,000 in equity after the sale. Ms. Tsin-Minions said she received half of the proceeds. No evidence was presented to explain where those monies are or, in the alternative, when and on what they were expended.

[35] At the continuation of the sentencing hearing on March 10, 2023, Ms. Tsin-Minions produced an account statement she said was for the only bank account she had. This turned out not to be a truthful assertion. It did not reflect the kinds of expenses that would be expected if a person had only one bank account.

[36] On the final day of the hearing on sentence on July 28, 2023, she produced her chequing account statement for mid June to mid July and two months of savings account statements for end of April and end of June 2023. Both of these accounts reflect minimal balances. She has a line of credit that shows that on June 1, 2023 the interest was paid on a balance of \$10,000. There are no banking records to show the payment came from Ms. Tsin-Minions.

[37] Joint account statements held in her and Mr. Minions' names were also provided. Only one page of six for mid June to mid July was produced for a joint chequing account. A payment of \$10,241.00 was made on that account. The large payment is inconsistent with what Ms. Tsin-Minions reported in the PSR about their incomes and

financial circumstances. The joint credit card shows she is making purchases but there is no evidence she is making payments toward the balance.

[38] She presented a T4 for 2022 with an annual income of \$30,587.00.

[39] I find that Ms. Tsin-Minions has not established to the balance of probability what the state of her finances is and as such has failed to establish she would be unable to pay the fine suggested.

Analysis and Conclusion

[40] Ms. Tsin-Minions does not accept the verdict of the Court. This is a neutral factor in determining an appropriate penalty.

[41] It is clear that Ms. Tsin-Minions has not been forthright about her circumstances in many respects. I suspect the mis-information she has provided about her housing has been an attempt to obscure where she is or has been living to prevent the SPCA from determining how many dogs are in her care.

[42] Unlike the offenders in *Chrysler* and *Zhou*, Ms. Tsin-Minions took the position that she was an expert in dog care. She suggested the evidence of the expert veterinarian called by the Crown and even that of her own veterinarian was wrong.

[43] In order to meet the principles of sentence, the terms of any probation order would need to require her to perform community work and attend programs to assist in her rehabilitation. Given Ms. Tsin-Minions' contemptuous and belligerent attitude toward the SPCA officers who investigated and testified, and which she demonstrated throughout the proceedings, the Court has no confidence she would comply with a probation order.

[44] I find the need to denounce and deter her conduct outweighs any rehabilitative interest.

[45] Ms. Tsin-Minions has not demonstrated an understanding of the harm suffered by the dogs in her care. I find she has not demonstrated any remorse about or insight

into the seriousness of her offending conduct. I find a significant fine is also necessary to specifically deter Ms. Tsin-Minions and to hopefully instill a sense of responsibility.

[46] The total fine suggested by the Crown, in addition to the other amounts she has already paid, will be equal to the minimum amount of profit she would likely have realized from the sale of the puppies. I find this to be appropriate in principle.

[47] In all the circumstances of this offence and this offender, I find the imposition of a fine is necessary. I impose a fine of \$3,000 on each count. I will give Ms. Tsin-Minions one year time to pay the total fine of \$6,000. Should she require further time to pay she may apply for an extension. However, she will again be required to establish why she is unable to pay the fine.

[48] By my calculation, the default time she would spend incarcerated would be 45 days.

[49] I also find she must be prohibited from possessing more than one dog as a pet for life and should be specifically prohibited from engaging in the breeding of dogs in any manner including the provision of stud services. I make that order under s. 24 of the *Act*.

[50] For clarity and by way of explanation, after giving these reasons on August 10, 2023, and in the course of imposing the prohibition under s. 24, it was discovered that Ms. Tsin-Minions had very recently changed her residence. The Court required her to establish her new address with independent evidence. This was necessary as a term of the prohibition is that she keep the SPCA advised of where she is living so that they can enter her residence to ensure she is in compliance with the prohibition and that any dog she has in her residence is properly cared for. As a result the sentence was not fully imposed until October 20, 2023.