

ONTARIO COURT OF JUSTICE

Toronto

BETWEEN:

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HIS MAJESTY THE KING)	
)	For the Crown
)	E. Winocur
— AND —)	
)	
)	
ANITOSH CHOPRA)	
)	For the Defendant
)	E. Sinclair
)	
)	
)	Heard:
)	August 21, December 11, 2023
)	
)	

REASONS for SENTENCE

RUSSELL SILVERSTEIN, J.:

A. INTRODUCTION

[1] On August 21, 2023, Mr. Chopra pleaded guilty before me to one count of causing unnecessary suffering to his dog contrary to s. 445.1 of the *Criminal Code*.

B. THE CIRCUMSTANCES OF THE OFFENCE

- [2] On November 20, 2022, Niharika Ganotra and Anitosh Chopra had been in a domestic relationship for approximately 6-7 months. They were engaged to be married. They had no children at the time and still have no children. Ms. Ganotra was the only person on the lease at 409-1407 Dupont St. Mr. Chopra moved into the unit with his dog "Max" approximately 2 months earlier.
- [3] Police received a call for service from Ms. Ganotra who advised police that Mr. Chopra had abused their dog. Police attended and spoke with Ms. Ganotra who was in the apartment with Max and her cat. Mr. Chopra had left the apartment before the police arrived.
- [4] The complainant had CCTV video of the incident and played the video with accompanying audio for police. The recording shows Mr. Chopra at just after 0100 hrs becoming upset with the puppy because he had urinated on the floor. He then opens the crate, drags the puppy forward to the crate door and violently hits the puppy five times in the face and neck area. He then flips the crate upside down with the puppy still inside.
- [5] The complainant then confronts Mr. Chopra for his actions and is told to "shut the fuck up" and "go inside the bedroom and go to sleep". After some further argument between Ms. Ganotra and Mr. Chopra he reaches inside the cage, grabs the puppy by the neck with both hands, pulls him straight up into the air and then slams the puppy onto the hard floor. One hears a thud as the puppy hits the floor from the force of the throw. The puppy is silent. After this event the puppy vomited approximately five times.

- [6] Max was, at the time, a 6–7-month-old Lab / Shepherd mix and appeared to weigh approximately 45 lbs. Police contacted 3-1-1 and a Protective order # 01970873 was created. Mr. Chopra came back to the apartment a short time later and police were called to re-attend. Officers attended and he was placed under arrest and transported to 11 Division.
- [7] Max was seized by officers and brought to 11 Division. At the station, Max did not appear to have sustained any visible injuries, however given that Max had vomited several times after the event, there were concerns he may have sustained a concussion or other unseen injury. Max was taken to a veterinary emergency hospital and has since recovered.

C. THE CIRCUMSTANCES OF THE OFFENDER

- [8] Mr. Chopra is now 38 years old. He was born in India and became a Canadian Citizen in 2004. He is fully employed in the insurance industry. He continues to live in a common-law relationship with Ms. Ganotra. They have no children.

D. THE POSITIONS OF THE PARTIES

- [9] Ms. Winocur seeks a custodial sentence of 4-6 months followed by a 5-year animal prohibition pursuant to s. 447.1(a), and a two-year probation order.
- [10] Mr. Sinclair argues for an 8–12-month conditional sentence order. He does not oppose the proposed ancillary orders.

E. THE PRINCIPLES OF SENTENCING

- [11] The principles of sentencing are set out in Part XXIII of the *Criminal Code*.

- [12] According to s. 718 of the *Criminal Code*, the "fundamental purpose" of sentencing is to contribute 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, namely: (a) to denounce unlawful conduct; (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 the community; and (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and the community.
- [13] Further, according to s. 718.1 of the Code, 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."
- [14] Section 718.2 of the Code also dictates that, in imposing sentence, the court must also apply a number of principles including the following:
- A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
 - A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
 - Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
 - An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and,
 - All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

F. THE AGGRAVATING CIRCUMSTANCES

[15] Mr. Chopra's assault on Max, although impulsive, was somewhat prolonged. He struck the dog five times then threw it to the floor, while cursing and verbally abusing his domestic partner.

G. THE MITIGATING CIRCUMSTANCES

[16] Mr. Chopra's guilty plea has saved the state the expense of a trial. He has saved his spouse and several police officers the inconvenience of testifying. He has told the court how sorry he is, and I accept that.

[17] Mr. Chopra has taken significant steps towards acknowledging and addressing his anger management problems. He has enthusiastically partaken in intensive therapy with JFT counselling who have provided the court with a detailed report.

[18] Mr. Chopra has only one dated and unrelated conviction for a drinking and driving offence. There is no history of violence. Ms. Ganotra informs the court that Mr. Chopra has never behaved like this before and is of good character. She says that he has learned his lesson and has evolved because of his counselling efforts.

H. THE MOST RELEVANT PRECEDENTS

[19] As stated above, it is a well settled principle of criminal law that similar sentences should be imposed on similar offenders for similar offences in similar circumstances. *Criminal Code*, s. 718.2 (b); *R. v. Lacasse, supra* at para 2.

- [20] Older cases of animal abuse offer limited guidance since in 2008 and again in 2019 Parliament increased the minimum sentences under the governing *Criminal Code* section. These increases signalled Parliament’s “added determination to deter and punish those who would engage in acts of cruelty to animals.” *R. v. Wright*, 2014 ONCA 675.
- [21] In *R. v. Chen*, 2021 ABCA 382 at paras. 23-24 the Alberta Court of Appeal said this regarding Parliament’s evolving attitude towards the status of domestic animals:

In 2008, Parliament amended the animal cruelty provisions of the *Criminal Code*. As this court noted in *R v Alcorn*, 2015 ABCA 182 at para 40, the amendments "reflect the recognition that the prior sentence range for such conduct was wholly inadequate." The amendments made the offences hybrid and increased the available maximum sentences. Prior to the amendments, the maximum sentence for causing unnecessary suffering to an animal was six months' imprisonment; the amendments increased the maximum for summary conviction offences to 18 months' imprisonment, and in 2019 that maximum was increased again to two years. The maximum sentence for indictable offences is now five years' imprisonment: s 445.1(2). The length of prohibition orders, by way of which a judge may prohibit the offender from owning, having custody or control of, or residing with an animal, was also increased from a maximum of two years pre-amendment. A judge may now impose a prohibition order of any length, including permanently. For second or subsequent offences, the court *must* impose a prohibition order of at least five years: s 447.1(1)(a). The court may also make a restitution order, to require the offender to pay costs incurred by another person or organization for the animal's care: s 447.1(1)(b).

The objectives of the amendments are apparent: to better reflect the serious nature of crimes of animal cruelty, provide better protection for animals who are the victims of such crimes, and enable flexibility in sentencing. In particular, the increase in maximum sentences is reflective of the gravity of the offence and assists in determining a proportionate sentence. As was noted by the Supreme Court in *Friesen* at para 97, "a decision by Parliament to increase maximum sentences for certain offences shows that Parliament 'wanted such offences to be punished more harshly'". The following direction from *Friesen*, at para 100, is apt: "To respect Parliament's decision to increase maximum sentences, courts should generally impose higher sentences than the sentences imposed in cases that preceded the increases in maximum sentences."

My review of the jurisprudence leads me to conclude that custodial sentences are generally reserved for prolonged animal abuse over a considerable length of time or abuse leading to the death or serious injury of the animal. *R. v. Munroe*, 2012 ONSC 4768; *R. v. Power* (2003), 176 C.C.C. (3d) 209 (Ont. C.A.); *R. v. Connors*, [2011] B.C.J. No. 168 (Prov. Ct.); *R. v. Carr*, 2023 ONCJ 22; *R. v. Chen*, *supra*.

I. IS A CONDITIONAL SENTENCE APPROPRIATE

[22] Ms. Winocur concedes that pursuant to recent legislation, a conditional sentence is a legal and available sentence in the circumstances.

[23] Section 742.1 sets out the conditions allowing for the imposition of a conditional sentence. There remain five (5) prerequisites for the imposition of a conditional sentence:

- The offender must be convicted of an offence that is not specifically excluded.
- The offender must be convicted of an offence that is not punishable by a minimum term of imprisonment.
- The court must impose a sentence of imprisonment that is less than two years.
- The safety of the community would not be endangered by the offender serving the sentence in the community.
- The conditional sentence must be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Code.

[24] The offence here in question is not specifically excluded from the imposition of a conditional sentence, nor does it attract a minimum sentence.

[25] Applying the principles of sentencing to Mr. Chopra's circumstances and the crime he has committed, I believe that a sentence of 12 months (less than two years) is called for.

- [26] Mr. Chopra has no history of violence and has been well-behaved and on a strong rehabilitative track since the commission of the offence. I find that he presents a low risk of re-offending, and I am thus satisfied that service of the sentence in the community would not endanger the safety of the community.
- [27] The final test I must apply to the circumstances of this case poses the greatest challenge. Mr. Chopra's mistreatment of Max was reprehensible, and any sentence imposed must deliver a strong message of denunciation and deterrence.
- [28] I believe that the principle of restraint, as articulated in s. 718.2, along with the Court of Appeal's directions in *R. v. Priest*, (1996), 110 C.C.C. (3d) 289 (Ont. C.A.) dictate the imposition of a non-custodial sentence and I am satisfied that a conditional sentence would be consistent with the fundamental purpose and principles of sentencing. Even though a conditional sentence does not involve incarceration, it can nonetheless be sufficiently strict that it satisfies all the objectives of sentencing in this case, including denunciation and deterrence, while also satisfying the need to demonstrate restraint: *R. v. Proulx*, [2000] 1 S.C.R. 61 at paras. 21-22, 36, 41, 102, 127.

J. CONCLUSION

- [29] The details of the sentence are as follows:
- Conditional sentence of 12 months, the first half to be under house arrest with exceptions to be addressed by counsel, the second half with a curfew;

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- Probation for two years on conditions to be addressed by counsel;
- A three-year prohibition pursuant to s. 447.1(1)(a).

Released on January 25, 2024

Justice Russell Silverstein