

THE PROVINCIAL COURT OF MANITOBA
Brandon Centre

BETWEEN:

| | | |
|----------------------|---|-------------------------------|
| His Majesty the King |) | S. Sass and Y. Mathu |
| |) | for the Crown |
| |) | |
| -and- |) | |
| |) | |
| |) | |
| Jess Nichols |) | L. Miclette |
| |) | for the Accused |
| |) | |
| |) | |
| |) | Reasons for Decision |
| |) | Delivered Orally: May 5, 2025 |
| |) | at the City of Brandon, |
| |) | in the Province of Manitoba |

HEWITT-MICHTA, P.J.

INTRODUCTION

[1] Mr. Nichols brutally killed eight kittens in June of 2022. Five months later, while on a bail order not to possess animals, he viciously killed fifteen more kittens and two rabbits. Mr. Nichols has mental health difficulties that were likely exacerbated by methamphetamine use around the time of the offences. He pled guilty and has no criminal record. At issue is the appropriate sentence for the now thirty-year-old offender of Indigenous ancestry.

[2] The Crown seeks a total sentence of five years with a lifetime prohibition from possessing animals while the defence urges the court to impose a lengthy Conditional Sentence Order atop credit for his 82 (enhanced to 123) days of pre-trial custody.

OFFENCE CIRCUMSTANCES

[3] Police attended the accused's residence on June 7 in response to an animal welfare complaint from the accused's roommate. She described Mr. Nichols as a "meth addict" with mental health problems who collected animals, including via internet advertisements, and sometimes sold them for profit. She cited abusive behaviour by Mr. Nichols in the past such as picking animals up by the limbs and hitting them. She'd heard Mr. Nichols acquired kittens in early June but had not seen them in the home. She searched and found several dead kittens outside the residence which prompted her call to police. Officers seized a tote container with eight dead kittens. Injuries and dried blood were visible. An hour later, Mr. Nichols contacted the roommate threatening suicide. Police located, arrested, and transported him to hospital. Police charged the accused and released him on an undertaking with several conditions, including a ban on possessing or having care of any animals.

[4] Approximately five months later, suspicious citizens alerted the office of the Chief Veterinary Officer to concerns about the accused accumulating kittens through internet ads. On November 15, police officers attended the accused's residence

where they observed pet food, paw prints outside, three rats, and one live cat inside the home. A roommate lied, telling police the accused was not home but officers found him hiding under a blanket in a back room. Police located two deceased rabbits in the kitchen and fifteen dead kittens in a trash bag outside. Officers arrested Mr. Nichols.

[5] In a cautioned statement, Mr. Nichols admitted possessing animals including seeking out more rats because he felt he “could not live without them”. He conceded collecting animals in violation of his bail order but claimed to have “slowed down”. While he portrayed himself as acting impulsively, his statement revealed a deliberate gathering of animals from advertisements on the internet with the claimed intention of helping them. He told police he was bored and wanted to get back into fostering animals. Initially, he told the interviewer that he experienced “episodes” when overwhelmed wherein he was not himself. He reported leaving kittens in a garbage can to die. When confronted with the obvious injuries, he answered, “well, I have episodes...”. Challenged further, he conceded hitting kittens over the head with hard objects like the leg of a stool. He claimed one episode erupted out of a dog attacking one of the kittens. He said one rabbit died in a “freak accident” and the other died of a broken heart the following day after losing its partner. Necropsies performed by an expert veterinarian disproved the feigned dog attack as well as the passive and romanticized explanations asserted by the offender during the interview.

[6] The Crown filed detailed necropsy reports specifying a spectrum of gruesome injuries, confirming the considerable force required to cause those injuries, and establishing the moderate to severe pain the animals would have suffered at the hands of the offender. In summary, with respect to the kittens there were skull fractures and severe brain trauma. Some experienced cervical neck dislocation. On most of the bodies, there was evidence of acute blunt trauma including hemorrhages and contusions across the chest, thorax, abdomen, and limbs as well as fractures of arms, pelvises, and / or livers. The injuries were consistent with death due to strangulation or acute severe blunt trauma to the head with fractures of skull and body.

[7] The two rabbits were necropsied. Suffice it to say, neither died of a broken heart. Both died of injuries consistent with severe acute blunt trauma in the chest evidenced by multiple rib fractures with hemorrhaging in the chest and skeletal muscles of the thorax. Lung tissue was macerated by the gravity of the blunt trauma. The rabbits died of suffocation and blood loss. The veterinarian's summary indicates the rabbits suffered the pain of the injuries as well as "the anxiety and pain of suffocation prior to death" (Exhibit 1, tabs 6-9 and see tab 9, page 3).

OFFENDER CIRCUMSTANCES

[8] Mr. Nichols was twenty-seven years old at the time of the offences and is now thirty. He does not have a criminal record. He entered guilty pleas demonstrating remorse and an acceptance of responsibility.

[9] I have the benefit of a Pre-Sentence Report [PSR]. Mr. Nichols told the PSR author he does not remember committing the offences; that he blacked out. He went on to attribute the impetus of the first incident to one of the kittens being attacked by a dog. That is a variation or continuation of a lie he told police in November as well as the attending physician when originally taken to hospital after his arrest in June. He told that doctor his dog attacked his kittens killing some and severely injuring others such that he had to “put some down”. Necropsy findings wholly discredit that assertion. It is concerning that he persisted in a version of that story even after pleading guilty.

[10] Mr. Nichols told the PSR author he was using drugs around the time of both incidents. He was sober but experiencing withdrawal symptoms when he killed the kittens in June. Despite knowing he was not allowed to have animals in his care after that incident, he believed animals gave him purpose and resumed collecting them eventually accumulating more than he could manage. He explained the second incident (wherein he killed the kittens and rabbits in November) occurred in the

context of mental health difficulties, a relationship breakdown, drug use, and suicidal ideation.

[11] Mr. Nichols did demonstrate some insight into the seriousness of his offending, conceding he took his frustrations out on animals in his care who were innocent and could not defend themselves.

[12] Mr. Nichols grew up in Portage la Prairie. The absence of his biological father during his formative years impacted him negatively. He otherwise enjoyed a stable and loving upbringing free of abuse, neglect, or child welfare interventions. He has notable support in the community as evidenced by the family and friends who attended his sentencing hearing and filed letters of support. He engages in pro-social activities.

[13] Mr. Nichols has some employment history, including two years working as an educational assistant with disabled children. He is currently unemployed and reliant on social assistance.

[14] Mr. Nichols began experimenting with drugs and alcohol in his teenage years. He used marijuana for an extended period. He developed an issue with methamphetamine in his twenties, last using in November of 2022 before the second incident. He says he has been abstaining from illicit drugs since the November incident. He attended for addiction programming at Willard Monson House in Ste Rose du Lac in the Fall of 2023, Summer of 2024, and January of 2025. He regularly

participates in twelve-step meetings. He is diligently pursuing placement at the Bruce Oakes Recovery Center but will not be eligible until he disposes of these charges.

[15] Mr. Nichols identifies as Metis. He was not raised with any connection to that heritage but is interested in learning more and participating in additional cultural activities. Aside from the disconnect with his Metis ancestry, there are no pronounced *Gladue* considerations (*R. v. Gladue*, [1999] 1 S.C.R. 688).

[16] Anger management is a long-standing issue though the accused believes he is in better control of his anger now that he is sober. There was, however, an angry outburst in 2024 that resulted in a brief return to custody.

[17] Probation assesses the accused at low risk to reoffend. The risk assessment rests on information known to the PSR author at the time of writing and is merely a predictive tool so actual risk may be higher or lower.

[18] The disposition of this matter was substantially delayed pending the receipt of a private forensic assessment regarding Mr. Nichols' mental health. I have the benefit of a detailed report authored by Registered Psychologist David Hill. He reviewed relevant materials related to Mr. Nichols' background and the offences. He met with Mr. Nichols over a span of three hours in addition to psychological testing completed by Mr. Nichols online.

[19] During the interview, Mr. Nichols again misrepresented the details of the June incident claiming it started with a dog harming a kitten in his care. He said this infuriated him and sent him into a rage during which he “took it out on” cats in his care. He minimized the number of kittens harmed saying it was six when in fact it was eight. He conceded he went back to possessing animals that summer despite the bail order. He reported “another big outburst after feeling overwhelmed” in November during which he punched walls and hurt ten animals in his care. This was again a minimization of the number of victims – police located seventeen deceased animals. Psychological testing confirmed an above average tendency for Mr. Nichols to be deceptive which reminds me to approach uncorroborated assertions by Mr. Nichols with caution.

[20] Both the PSR and Psychological Assessment Report confirm long-standing mental health challenges and interventions. Available information points to likely diagnoses of Bipolar Disorder, Borderline Personality Disorder, and Attention Deficit Hyperactivity Disorder.

GRAVITY AND MORAL CULPABILITY

[21] The court is tasked with identifying a proportionate sentence; one that reflects the serious nature of these offences while also accounting for the reduced level of personal responsibility arising from the accused’s mental health deficits.

[22] Parliament amended the animal cruelty section of the *Criminal Code of Canada* in 2008 and again in 2019. Those amendments twice increased the maximum available sentences for both summary and indictable offences; increased the maximum length of prohibition orders as well as implementing mandatory prohibition periods for second and subsequent offences; and made restitution orders a sentencing option. The amendments reflect the progression of societal views about the wrongfulness and harmfulness of animal cruelty including an increased recognition of the serious nature of such offences and need for improved protection of animals.

[23] The seriousness of Mr. Nichols' offending is further informed by several aggravating factors. The accused killed an alarming number of animals - twenty-five within five months. The level of violence involved and the brutality with which he killed them is stunning. The animals experienced pain: they suffered at the hands of Mr. Nichols. He defied a bail-ordered condition prohibiting possession of animals and re-offended. In doing so, he expended deliberate effort actively locating and retrieving animals from more than one source knowing he was bail-ordered not to do so. The second incident was an escalation in seriousness in that he killed more than double the animals he'd killed in June. Mr. Nichols was in a position of trust vis a vis all the animals he killed. He did not kill a stray that wandered onto his

property but rather animals he intentionally obtained from others with the undertaking that he would care for them.

[24] Mr. Nichols entered guilty pleas to the charges sparing a trial. He articulated remorse. He engaged in programming following the second incident aimed at reducing his risk to reoffend. He demonstrates an intention to pursue further programming and continues to attend twelve-step meetings. He has considerable personal support from family and friends.

[25] I reviewed the many reference letters filed by defence, many of which describe him as a caring pet owner and express disbelief at these offences. While these letters reflect an image Mr. Nichols projected to others, they shed incomplete light on his true character as revealed by his conduct. The fact that those closest to him had no inkling of his capacity for such violence and cruelty highlights a distinction between the persona he maintained in public and the person he sometimes was in private. Serious offences like these, committed behind closed doors and involving deliberate acts of violence perpetrated on more than one occasion are not minimized on the basis that others failed to detect the offender's darker inclinations. The suggestion that something is "out of character" is more compelling in the context of an isolated incident. Here, the assertion is undermined by the number of animals killed, the fact that there were at least two incidents, Mr. Nichols' warned statement wherein he referenced having "episodes" plural, reference in the psychological

report to related acts of animal cruelty perpetrated in 2021, and the roommate's report to police in June that she was aware of previous acts of cruelty by Mr. Nichols to animals in his care.

[26] There is no evidence the accused suffers from cognitive limitations that undermined his ability to appreciate that his criminal acts were morally wrong or to understand the link between the offences he committed and the punishment that will be imposed by this court. There is, however, evidence that Mr. Nichols suffers from mental illnesses that likely contributed to his commission of the offences.

[27] Psychologist David Hill opines factors related to Mr. Nichols' mental health issues impacted his decision making and behaviour during the June incident. He may have been in the throes of a manic episode pursuant to Bipolar Disorder and displayed problems with emotional regulation, coping, and anger management in response to stress consistent with Borderline Personality Disorder. With respect to the November incident, David Hill relies on the accused's reported mood instability in the preceding months (likely exacerbated by ongoing methamphetamine use) and evidence from others about suicidal ideation, emotional dysregulation, anger, and poor coping to opine that his actions were impacted by Bipolar and Borderline Personality Disorders as well as substance abuse. He suggests "mental health, stress, and substance use likely resulted in his aggressive behaviour towards animals in his care." (See Exhibit 2, tab 1, page 12).

[28] In assessing the extent to which Mr. Nichols' mental illness mitigates his moral culpability, I make these additional observations. The mental illnesses that likely contributed to Mr. Nichols' crimes were diagnosed before the offences. He was prescribed medications and follow up with mental health services in 2020. Despite a documented concern with "cruelty to cats and kicking a pet bunny to death" in 2021 prompting admission to the Center for Adult Psychiatry, Mr. Nichols refused to attend for in person appointments over a 2-year period between 2021 and 2023 (See Exhibit 2, tab 1, pages 4-5). After Mr. Nichols was charged in June, aware he was not allowed to possess animals and why, he contemplated his inability to live without animals and deliberately breached his release order accumulating a substantial number of animals creating the conditions in which the November offence occurred. Mr. Nichols has not been charged with new substantive offences since November of 2022. He is reportedly sober, taking his medications, and told the PSR author in 2024 that he had recently begun seeing a new psychiatrist in Portage. The lack of substantive reoffending suggests that the mental illness is well-regulated when Mr. Nichols chooses to follow the recommendations of mental health professionals.

[29] The evidence does not support a conclusion that mental illness alone drove the accused's offending behaviour but rather that it was one factor and that it was likely exacerbated by Mr. Nichols' periodic abuse of illicit drugs and failure to

follow medical advice. He does not seem to have been impaired by drugs when he committed the offences. The offences did not occur in the context of a drug-induced psychosis.

[30] Weighing all the available evidence, I am persuaded that Mr. Nichols' degree of responsibility is reduced by mental illness, but that reduction is not fulsome, and his moral culpability remains significant. The reduction is more pronounced with respect to the episode in June than the slaughter in November.

SENTENCING PRINCIPLES AND OBJECTIVES

[31] Pursuant to section 718 of the *Code*, sentencing is fundamentally aimed at protecting society and contributing to respect for the law and the maintenance of a just, peaceful and safe society. The primary objectives of sentencing in this case are denunciation and deterrence. Rehabilitation and promoting a sense of responsibility in Mr. Nichols and an acknowledgement of the harm done are important objectives here as well.

[32] A denunciatory message is important to reflect society's advancing recognition of the harmfulness and wrongfulness of animal cruelty as well as the value the community places on the protection of animals.

[33] The Alberta Court of Appeal in *R. v. Chen*, 2021 ABCA 382 at para. 39 said:

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...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.

[34] Specific deterrence is necessary to protect animals from future harm at the hands of the offender. Mr. Nichols, though deemed a low risk to reoffend in the PSR, killed a large number of animals on more than one occasion, has some documented history of harming animals outside the charges before the court, reoffended in violation of a bail-ordered condition not to possess animals, has a history of resisting engaging with mental health services, and had an angry outburst under the influence of drugs that returned him to custody as recently as 2024.

[35] Long term protection of the public is best achieved through rehabilitation of offenders. Mr. Nichols has no prior criminal record. Repeat attendances to residential treatment, apparent periods of prolonged sobriety since the offence, and lack of reoffending inspire hope for his rehabilitation. Conversely, the accused had to attend treatment more than once to complete it successfully because of non-compliance with treatment center rules, has breached his bail order by using marijuana (Exhibit 2, tab 1, page 7) and had an angry outburst with family in 2024 that resulted in his return to custody for several days (Exhibit 7, page 16). Sentencing materials demonstrate a pattern of resistance to mental health interventions in the recent past.

[36] While Mr. Nichols pled guilty and demonstrated remorse, he has been dishonest and minimized the seriousness of the offences during interactions with hospital staff, the PSR author, and psychologist David Hill. His actions resulted in substantial harm to many animals and the sentence imposed should aim to acknowledge the harmfulness of his actions and encourage an increased recognition of his responsibility for that harm. There is no evidence of cognitive deficits that would interfere with his comprehension of the link between his conduct and the associated punishment.

CASELAW

[37] Counsel filed several cases in support of their respective positions. Each case is distinguishable on its facts. None of the cases filed involved an offender killing even half as many animals as Mr. Nichols.

Crown Cases

[38] In *R. v. Geick*, an unreported decision of the Alberta King's Bench (transcript – Exhibit 1, tab 1), the forty-year-old accused with no prior criminal record was convicted after trial of beating two family dogs to death during incidents two days apart. Defence counsel cited the accused's mental health deficits but did not file any psychological report or other supporting evidence. A total sentence of thirty-six months was imposed after reductions for totality.

[39] In *R. v. Raugust*, [2023] A.J. No. 1196, a twenty-six-year-old accused with no prior criminal record, pronounced mental illness, and poor rehabilitative prospects received a sentence of six and a half years (reduced from twelve years for totality) for the brutal killing of eight kittens and a pregnant cat. She entered early guilty pleas. The court reviewed many sentencing precedents as part of its decision all of which I have considered as well. The sentences in those cases ranged from twelve months to three years for killing or injuring one or two animals. Several of the accused in those cases had cognitive or mental health deficits.

[40] In *R. v. Chen*, 2021 ABCA 382, the accused pled guilty to animal cruelty for beating his puppy causing significant injuries. He was apologetic but, like Mr. Nichol, minimized his behaviour. The summary conviction appeal court overturned the ninety-day intermittent sentence and substituted a twelve-month Conditional Sentence Order. The Court of Appeal reinstated the original sentence without endorsing it as necessarily severe enough and affirmed the sentencing judge's rejection of a Conditional Sentence Order.

[41] In *R. v. Florence*, 2018 CarswellOnt 17980, the forty-six-year-old accused with an unrelated criminal record pled guilty to stabbing the family dog three times in the throes of a drug-induced psychosis causing pain and serious injuries. The sentence was six months.

[42] In *R. v. Alcorn*, 2015 ABCA 182, the Alberta Court of Appeal upheld a twenty-month sentence for killing a single cat by slitting its throat as part of a sexual ritual.

Defence Cases

[43] In *R. v. Kirkby*, 2023 ABCJ 171, a severely handicapped twenty-seven-year-old accused with Fetal Alcohol Spectrum Disorder received a suspended sentence for killing his cat in a single, quick episode. He pled guilty and the only evidence against him was his own confession.

[44] In *R. v. Perrin*, 2012 NSPC 134 (predating the 2019 amendments to the *Code*), the forty-nine-year-old accused received a thirty-day sentence for killing his girlfriend's cat while intoxicated. He pled guilty, had an unrelated criminal record, and good rehabilitative prospects.

[45] Defence filed other cases (see Exhibit 2, tabs 5-8) that did not involve animal cruelty fact scenarios for purposes of wider sentencing considerations, and I reviewed each of those cases as well.

[46] The caselaw satisfies me that generally, denunciation and deterrence are paramount sentencing objectives in animal cruelty cases; that lack of a prior related criminal record and cognitive or mental health challenges are common to many offenders before the court for sentencing on animal cruelty charges; that sentences are trending upwards since amendments to the *Code* in 2008 and 2019; and that real

jail sentences ranging from substantial provincial time to low end penitentiary sentences are not unusual in cases where one or two animals were seriously injured or killed.

SENTENCE

[47] The Conditional Sentence Order sought by the defence would be wholly inconsistent with the circumstances of this offence and offender bearing in mind the seriousness of the offences and reduced but still significant moral culpability of Mr. Nichols as well as the relevant sentencing objectives.

[48] Considered in the context of all the factors I have outlined and the caselaw provided by counsel, I am persuaded that the Crown's position is measured, within an appropriate range, and appropriately accounts for mental illness as a contributing and mitigating factor. In *Raugust*, the similarly aged accused with no prior criminal record and pronounced mental health deficits received a longer sentence for pleading guilty to killing less than half as many animals as Mr. Nichols. The lesser sentence I impose today for Mr. Nichols is, however, justified by his diminished degree of responsibility and the fact his rehabilitative prospects are better than those of Ms. Raugust.

[49] The Court sentences Mr. Nichols to:

S. 445(a) (June/2022) – 30 months reduced to 24 months after totality (730 days).

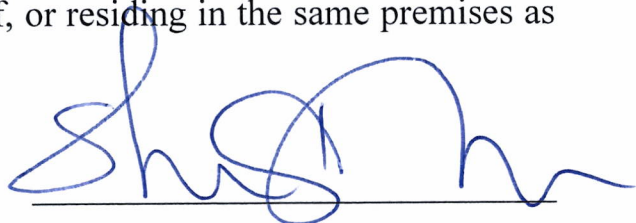
S. 445(a) (November/2022 - kittens) – 40 months consecutive reduced to 36 months consecutive after totality (1095 days).

S. 445(a) (November/2022 – rabbits) – 40 months consecutive reduced to 36 months, but concurrent to the S.445(a) offence from the same date.

S. 145(5)(a) – 3 months consecutive reduced to 3 months concurrent for totality (90 days).

[50] The total sentence is 5 years which equates to 1,825 days. The accused is entitled to credit for pre-trial custody of 82 days enhanced at time and a half to 123 days leaving a go forward sentence of 1,702 days.

[51] Pursuant to section 447.1 of the *Code*, the accused is prohibited for his lifetime from owning, having the custody or control of, or residing in the same premises as an animal or a bird.

A handwritten signature in blue ink, appearing to read 'Shauna', is written over a horizontal line.

SHAUNA HEWITT-MICHTA, P.J.