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2025 BCPC 89

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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

M.K.V.

BAN ON PUBLICATION PURSUANT TO s. 486.4 (1)
Of the Criminal Code of Canada

ORAL REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE R. LAMPERSON

Counsel for the Crown:	B. Webber
Counsel for the Defendant:	M. Ritzker
Place of Hearing:	Nanaimo, B.C.
Dates of Hearing:	October 7, November 4, 2024, March 28, 2025 and May 6, 2025
Date of Judgment:	May 6, 2025

Introduction

[1] M.K.V. is before the Court for sentencing. He has pled guilty to a charge that on May 15, 2023 at Qualicum Beach, British Columbia he committed bestiality with a dog, contrary to section 160(1) of the *Criminal Code*.

[2] The Crown seeks a sentence of incarceration followed by a period of at least 18 months probation.

[3] The Crown also seeks two ancillary orders. First, it asks for an order pursuant to section 160(4) of the *Criminal Code* prohibiting M.K.V. from owning, having the custody or control of or residing in the same premises as an animal for a period of 10 years.

[4] Second, the Crown asks the Court to order that M.K.V. be required to register under the provisions of the *Sex Offender Information and Registration Act* for a period of 10 years.

[5] The Defence asks the Court to impose a non-custodial sentence and is not opposed to the ancillary orders being made.

[6] A pre-sentence psychiatric/psychological assessment was ordered at the time M.K.V. entered his guilty plea. Subsequently, M.K.V. was assessed by Dr. John Toma, a registered psychologist, with Forensic Psychiatric Services. Dr. Toma provided a written report.

[7] Following the offence, the dog who was victimized was immediately taken by a police officer to a veterinary clinic where he was examined and treated by a veterinarian. The veterinarian, Dr. Paravicini, prepared a written report.

[8] C.R., the former partner of M.K.V. and mother of their children, provided an initial and a supplemental written victim impact statement.

[9] Mr. Webber, provided initial written sentencing submissions on behalf of the Crown.

[10] Sentencing proceedings began on November 4, 2024. In his oral submissions, defence counsel, Mr. Ritzker, argued that based on Dr. Toma's written report, the Court should find that M.K.V.'s moral blameworthiness is reduced. At that time, I said I believed further opinion evidence may be necessary. I advised counsel that I would permit Dr. Toma to be called as a witness to give *viva voce* evidence to elaborate on his written report. The case was then adjourned to allow for further evidence from Dr. Toma.

[11] On March 28, 2025 Dr. Toma was called to testify. He was examined by defence counsel, Mr. Ritzker, and then by Mr. McLean for the Crown.

[12] After Dr. Toma testified, Mr. Ritzker called M.K.V. as a witness. The Crown then called the primary investigating officer, Constable Munro. The case was then adjourned for further submissions.

[13] On April 11, 2025, Mr. McLean provided the Crown's written submissions on the issue of Mental Illness, Intoxication and Culpability. Earlier today, May 6, 2025, I heard further oral submissions from Mr. Ritzker and a brief reply from Mr. Webber.

[14] In determining the appropriate sentence, I must consider the circumstances of the offence, the background and circumstances of the offender, M.K.V., the victim impact, the purpose and principles of sentencing, the aggravating and mitigating factors and the case law provided.

[15] Sentencing is a very individualized process because the circumstances of each offence and of each offender are unique.

[16] In this case, I must also consider whether, taken together, the accused's mental health, personal background and substance use disorder lessen his moral culpability.

The Circumstances of the Offence

[17] The facts in this case are set out in the Crown's written Sentencing Submissions. In summarizing the circumstances of the offence, I will refer to parts of them.

[18] At all material times, M.K.V. lived with his wife, C.R., and their two children at a residence in Qualicum Beach, B.C. (the “residence”).

[19] At 2153 hours on May 15, 2023, C.R. contacted the RCMP and reported that she had found her husband, M.K.V., in the backyard of the residence having sexual intercourse with the family dog, named Tucker. She reported that their two small children were in their bedrooms at the time.

[20] RCMP constables Munro and Forcier attended at the residence in response to C.R.’s telephone call.

[21] M.K.V. met the officers in the driveway of the residence and spontaneously stated to Cst. Munro, “I fucked the dog”. Cst. Munro then arrested him for bestiality and provided him with his police warning and rights pursuant to the *Charter of Rights*.

[22] M.K.V. told Cst. Munro that he had consumed six beers. Cst. Munro observed that he had an odour of liquor on his breath and glassy eyes. He was cooperative and coherent.

[23] C.R. provided a statement to Cst. Munro later that evening. A summary of what she told the police is as follows:

M.K.V. appeared to have been drinking alcohol that day. He went from being extremely calm to extremely angry, so she put the children to bed and then came outside of the residence to look for him. M.K.V. indicated to C.R. that he was picking up dog feces in their backyard. C.R. suggested that he go inside and go to bed. M.K.V. came inside for a moment and then went back outside. After approximately 10 minutes, C.R. went outside to check on him. She went into the backyard and looked under the children’s trampoline where she observed M.K.V. bent over their dog, Tucker and holding him by his hind legs. He told C.R. that he was killing Tucker because the dog had been problematic. When Tucker ran away, C.R. then noticed that he was yelping and had lotion on him. C.R. asked M.K.V. if he was having sex with the dog. He denied the allegation and showed C.R. his penis. She then observed that there was cream all over his penis. Based upon its smell and texture she recognized it as being a lubricant he had tried to convince her use in their previous encounters.

C.R. went inside the residence and examined Tucker. She lifted his tail and observed blood on his anus and lubricant all over him. She then

asked M.K.V. to leave. He became defensive and angry and said he would not leave. She then called the RCMP. She also called her mother to come over to the residence because she was scared of what M.K.V. would do in angry state.

After C.R. called the RCMP, M.K.V. admitted to her that he did have sexual intercourse with Tucker and said it was the first time. He indicated to her that it was not a big deal and said she should not involve the police.

[24] When Cst. Munro attended at the residence, he observed that the dog's anus area was swollen and was covered in a lubricant consistent with the cream found under the trampoline.

[25] Cst. Josefsson took Tucker to the Bellevue Animal Hospital where he was examined by veterinarian, Dr. Jessica Paravicini.

[26] It was necessary to sedate because Tucker was visibly uncomfortable and kept pulling away when his anal region was touched. Dr. Paravicini confirmed that there was visible trauma to the dog's anus. She noted that he displayed extreme avoidance behaviour, which is atypical in a heavily sedated animal. Dr. Paravicini says that dogs do not copulate anally and that, therefore, the forced penetration of Tucker by M.K.V. would have produced fear and pain.

[27] In her written report, Dr. Paravicini concluded, in part, as follows:

In conclusion, there are physical, behavioural and radiographic signs that are consistent with sexual abuse. Animals that experience trauma have both physical and emotional changes. The impact of psychological trauma will far exceed beyond the duration of the physical experience. It is important to consider the long-term impact of pain and suffering on an animal that has experienced the trauma of sexual abuse.

[28] Dr. Paravicini collected samples from Tucker. Constable Munro took possession of them and had them forwarded to the National Forensic Science and Identification Services Laboratory.

[29] In due course, M.K.V. provided a sample of his DNA for comparison. Subsequent DNA testing conclusively established that his DNA was on the family dog, Tucker.

The Circumstances of the Offender

[30] In setting out the background and circumstances of M.K.V., I will refer to the psychological report written by Dr. Toma, Dr. Toma's testimony, M.K.V.'s testimony and the testimony of Cst. Munro.

[31] M.K.V. is 34 years of age. He was born in a small township in Ontario, lived in Ontario until he was about five years old and then moved with his family to Vancouver Island. His parents separated when he was 13 or 14 years old. After his parents separated, M.K.V. lived with his mother and sisters. In school, he struggled with speech dysfluency and had difficulty with reading and writing. He attended an alternative school and completed up to Grade 10. By attending an alternative school, he was able to work part-time. He began doing roofing work at age 14. He continues to work as a roofer to this day.

[32] M.K.V. told Dr. Toma that he moved out of the family home after it burned down when he was 18. According to M.K.V., he met C.R. when he was 22 years of age. He reported that they moved in together when he was 23 years old and she was 19 years old. They have a son and a daughter together, both of whom are of elementary school age.

[33] M.K.V. lived with C.R. and their two children in the residence in Qualicum Beach until May 15, 2023, the day he committed the offence.

[34] M.K.V. told Dr. Toma that he has a very good relationship with his mother, who lives in Parksville, and that he now views his father as one of his best friends. He also reported that he has a good relationship with his three older sisters, all of whom live in the Qualicum Beach area.

[35] When interviewing M.K.V., Dr. Toma asked him about any discipline he experienced when he was growing up. He said his father gave him spankings with his hand, including "smacking him upside the head". He said his father was emotionally abusive and called him such things as a "fucking little idiot" and a "little fucking bastard".

[36] Dr. Toma also asked M.K.V. if he had ever experienced any sexual abuse. M.K.V. reported that, when he was three or four years old, he was sexually abused by a male cousin who was then 12 or 13 years old.

[37] Mr. Ritzker, provided the Court with a letter from M.K.V.'s family doctor, Dr. Julia Hickey Somerville. Her letter reads as follows:

I am writing as M.K.V.'s family doctor of 21 years. He has always struck me as a young man of good character. He unfortunately has struggled with anxiety for many years, initially seeking medical help for this in 2007. His anxiety became acutely worse in May 2023 and he saw me for this on four occasions between May and July 2023. He told me he had been trying to deal with his anxiety through alcohol and cannabis use. To his credit, he stopped drinking and using cannabis later in May 2023. At that time he was started on medical treatment for anxiety. He last saw me for anxiety symptoms near the end of July 2023 and at that time he was sober, doing well and engaged in counselling.

[38] I will now consider what Dr. Toma says in his written report related to M.K.V.'s state of mind and mental health at the time and as to his risk for further offending.

[39] At the time the assessment was ordered, Dr. Toma was asked to address "causation of the accused's sexual activity with the family dog" and to assess risk.

[40] After the assessment was ordered by the Court, M.K.V. was scheduled to meet with a psychology associate of Dr. Toma for testing on July 22, 2024. Three days before his appointment, someone called to remind him. He did not attend. His appointment was then re-scheduled for July 29, 2024. Again, M.K.V. did not attend. Consequently, the testing could not be done.

[41] Dr. Toma met virtually with M.K.V. on August 12, 2024. At that time M.K.V. said he could not remember committing the offence and described himself as being "completely out of it". He told Dr. Toma that, on the day in question, he drank about 24 beer and a 26 ounce bottle of Fireball whiskey and ingested two to three grams of magic mushrooms (psilocybin).

[42] In his report, Dr. Toma writes:

He reported no prior instances of sex with animals and repeatedly told me that he has no memory of the event to which he pled guilty.

He did not endorse sexual interest in, or arousal by, animals.

[43] Based upon his interview with M.K.V. and on other information reviewed, Dr. Toma provided the following DSM 5 Psychiatric Diagnostic Impression of M.K.V.:

- Bipolar Disorder, Moderate;
- Panic Disorder;
- Alcohol Use Disorder in Sustained Remission;
- Hallucinogen Use Disorder (psilocybin) in Sustained Remission.

[44] With respect to the issue of causation, Dr. Toma stated as follows:

It is difficult to explain the “causation” of the abuse of the family dog as M.K.V. stated that he had no memory for the event. He stated that he was ‘out of it’ having ingested mushrooms (psilocybin) and consumed a significant amount of alcohol. It may have been an isolated incident related to the active effects of a hallucinogen.

[45] With respect to the risk of further offending, Dr. Toma, concluded:

M.K.V.’s history is more related to his own victimization than being the perpetrator of offences (criminal and societal). His victimization can, however, result in risk for future acts, primarily if he continues to self-medicate with drugs and alcohol. I do not believe that he would reoffend in a sexual manner, either with animals or humans. He is more likely at risk for future self-harm than he is for harm to others.

[46] As I stated earlier, Dr. Toma was called as a witness and provided testimony to supplement his written report. He provided his oral evidence over video.

[47] In his testimony, Dr. Toma highlighted three factors, which, in his opinion, contributed towards M.K.V. offending behaviour:

1. Bipolar disorder;
2. History of childhood trauma, and
3. Alcohol use disorder.

[48] He noted that M.K.V. committed the offence after consuming alcohol and psilocybin.

[49] In its written submissions, the Crown states that, although Dr. Toma identified a connection between the accused's childhood trauma, bipolar disorder and substance use disorder, he could not pinpoint the precise trigger for committing bestiality because the accused professes to have no recollection of the event. The Crown submits that as a result, the evidentiary record is insufficient to demonstrate that these factors played a substantial role in bringing about the offence

[50] I find it is clear that Dr. Toma's opinion as to M.K.V.'s mental state at the time of the offence is based on him accepting, at face value, M.K.V.'s statement to him that he drank approximately 24 beer and a bottle of Fireball whiskey, had ingested psilocybin and had no memory of committing the offence.

[51] During cross-examination, Dr. Toma agreed that his opinion is impacted by M.K.V.'s purported lack of memory and the absence of any independent sources of information as to his mental state at the material time.

[52] As already noted, Dr. Toma diagnosed M.K.V. as having bipolar disorder. When asked about the possible effects of bipolar disorder, he explained that while bipolar disorder can cause high-energy (including sexual energy), impulsivity and difficulty with self-regulation, it does not cause delusions, hallucinations or disordered thinking.

[53] After hearing the testimony of Dr. Toma, the Court heard testimony from M.K.V. M.K.V. testified that he has no memory of committing the offence due to being very intoxicated. He said that what he had told Dr. Toma about his alcohol consumption was correct. He testified that, on the day in question, he began drinking beer early in the morning and believes he went out and purchased a 24 pack of beer and a 26 ounce bottle of Fireball whiskey. He said that he does not specifically recall purchasing

alcohol, but based upon his practice, he believes he would have purchased it at the Errington General Store. He said he recalls eating a chocolate bar containing magic mushrooms sometime on the day of the offence.

[54] M.K.V. testified he has no memory of dealing with the police and does not recall saying he had consumed six beer. He said his first memory is of waking up at a friend's place.

[55] He testified that his statement to Dr. Toma about his alcohol consumption on the day in question was based on the fact that, the next day, he found that he had four beer and one quarter of a bottle of Fireball whiskey left over.

[56] After M.K.V. gave his evidence, the Crown called the main investigating officer, Constable Munro, as a witness.

[57] Cst. Munro testified that he arrived at the residence at about 10 p.m. on May 15, 2023 and found M.K.V. in the driveway. Almost immediately, M.K.V. spontaneously stated, "I fucked the dog". He then arrested him for bestiality, placed him in handcuffs and escorted him to the rear of his police vehicle.

[58] Cst. Munro said that, initially, he had no reason to think that M.K.V. was under the influence of alcohol. He did not detect an odour of liquor or observe anything else to suggest that M.K.V. had been drinking. M.K.V. was stable on his feet and did not seem to have any difficulties with his motor skills.

[59] When M.K.V. was sitting in the rear of the police vehicle, Cst. Munro advised him of the reason for his arrest and of his right to contact a lawyer. M.K.V. told him he understood. He provided him with his name and date of birth. They had a discussion about what court date would work.

[60] Cst. Munro testified that when he began to explain to M.K.V. that he would be releasing him on an Undertaking with some conditions, including a condition that he could not go to the residence, M.K.V. raised the concern that he would need to come back to pick up his vehicle. Cst. Munro told M.K.V. that he could take his vehicle that

same evening. At that point, M.K.V. said that he had consumed six beer. Cst. Munro testified that he then told M.K.V. that he could provide a breath sample into an Approved Screening Device to see if it was okay for him to drive. M.K.V. blew into the screening device and a “fail” reading registered. Cst. Munro said that it was when dealing more closely with M.K.V., he detected “alcohol on his breath and glossy eyes”.

[61] In cross-examination, Constable Munro said that M.K.V. was coherent and very cooperative and did not display any visible signs of experiencing hallucinations or delusions.

The Victim Impact

[62] Based upon the victim impact statements provided by C.R., it is clear that M.K.V.’s offending has had a very significant negative effect on her. In her initial statement, she says the offence has affected her emotionally in many ways, has shaken her confidence in trusting people and caused her to feel extremely alone and scared. She says her mind has been invaded by flashbacks and intrusive thoughts which have triggered uncontrollable vomiting.

[63] In her supplemental victim impact statement C.R. reports that thoughts and memories of observing the offence continue to replay in her mind and that she still has nightmares. She says that what she observed has shattered any sense of human decency she had. She states it breaks her heart that Tucker “couldn’t talk, couldn’t defend himself and was beyond vulnerable”.

[64] C.R. says further that she had to comfort Tucker in the days after the offence when he whined and cried every time he had to have a bowel movement.

[65] In addition, she writes as follows:

At some point, the children will be wiser and want to know the truth of why their father had to abruptly leave their lives. It will be incredibly difficult to explain this to them, even as young adults, without affecting their mental health in a way I can’t even comprehend. You’ve put me in an incredibly compromised position as a mother, which I don’t think I can ever forgive you for.

The Purpose and Principles of Sentencing

[66] The purpose and principles of sentencing are set out in sections 718 to 718.2 of the *Criminal Code*.

[67] Amongst other things, the objectives of sentencing include denunciation, deterrence and rehabilitation of the offender.

[68] Section 718.1 provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[69] Pursuant to section 718.2 of the *Code*, a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances; a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; 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 and consistent with the harm done to victims or to the community, should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders

Mitigating and Aggravating Factors

[70] The primary aggravating factor in this case is the egregious nature of the offence. M.K.V. violently abused, and physically and emotionally harmed, the family dog he was entrusted to care for. The dog was vulnerable and helpless to defend itself.

[71] There are some mitigating factors in this case. One is that M.K.V. entered a guilty plea. His guilty plea means that a difficult trial is not necessary and that C.R. has not been required to testify. It also shows he accepts responsibility for committing the offence.

[72] A second mitigating factor is that M.K.V. has no prior criminal record.

[73] There is also the potential that M.K.V.'s moral culpability is reduced because of Dr. Toma's opinion that M.K.V.'s bipolar disorder, childhood trauma and substance use disorder contributed, in some way, to his offending behaviour.

[74] Another positive factor to consider is that, by all accounts, M.K.V. has complied with the bail conditions imposed upon him and has not committed any further substantive offences.

[75] There is also a collateral consequence, which I have considered. Today, counsel advised the Court that there have been a large number of very negative posts on social media about this case and about M.K.V. in particular. According to Mr. Ritzker, these posts have been very upsetting to his client and have caused difficulties in relation to his employment and ability to secure accommodation. Counsel advise that these posts, which may be in contravention of the ban on publication, are now being investigated by the police.

The Law as to Mental Illness, Intoxication and Moral Culpability

[76] The law in Canada is clear that mental illness and/or cognitive deficits may be mitigating factors in sentencing if there is an established link between the offender's condition and the offending conduct.

[77] In *R. v. Badhesa*, 2019 BCCA 70, para. 40, the B.C. Court of Appeal states that:

Impaired reasoning, delusional disorders and other compromised mental conditions distinguish those afflicted from ordinary, fully accountable offenders for sentencing purposes.

[78] Sentencing judges must carefully consider the mental state of the offender at the time the offence is committed. A judge may find that an offender's moral blameworthiness is reduced, only if they find that mental illness and/or cognitive disability contributes, directly or indirectly, to the offending.

[79] In *Badhesa*, at paragraph 42, the Court states:

When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and the sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example of others: *R. v. Belcourt*, 2010 ABCA 319 at para. 8. Nor do specific deterrence or severe punishment play a significant role in the determination of the fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's degree of responsibility: *R. v. Batisse* 2009 ONCA 114 at para. 38.

[80] Pursuant to s. 724(3)(b) and (d) of the *Criminal Code*, the offender bears the evidentiary burden of establishing, on a balance of probabilities, the existence of mitigating factors such as mental illness and its connection to offending: *R. v. Penttila*, 2020 BCCA 63, at para. 68.

[81] On its own, self-induced intoxication does not impact the assessment of moral culpability. However, when mental illness exists, the assessment changes. Our Court of Appeal in *R. v. Forner*, 2020 BCCA 103 recognized that the impact of combined mental health and additional addiction on moral culpability is inherently complex.

[82] Ultimately, the task of the sentencing judge is to consider all of the relevant evidence and determine the extent to which an offender's mental illness may have contributed to the offending conduct, including any contribution to his self-induced intoxication: *Badhesa* at para. 43.

The Law as to Conditional Sentences

[83] Counsel for M.K.V. submits that the Court should consider imposing a conditional sentence order to allow any jail sentenced to be served in the community.

[84] In accordance with section 742.1 of the *Criminal Code*, a court that imposes a sentence of imprisonment of less than two years may order the offender to serve the sentence in the community in accordance with the conditional sentence order if satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing.

[85] The leading decision with respect to conditional sentences is that of the Supreme Court of Canada in *R. v. Proulx*, 2000 SCC 5.

[86] At paragraph 127, Mr. Justice Lamer, writing for a unanimous court, summarizes the important aspects of his reasons. I will quote those which I find to be relevant in this case:

- Bill C-41 in general and the conditional sentence in particular were enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing.
- No offences are excluded from the conditional sentencing regime except those with a minimum term of imprisonment, nor should there be presumptions in favour of or against a conditional sentence for specific offences.
- A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.
- No party is under a burden of proof to establish that a conditional sentence is either appropriate or inappropriate in the circumstances. The judge should consider all relevant evidence, no matter from whom it is adduced. However, it would be in the offender's best interest to establish elements debilitating in favour of a conditional sentence.

Sentencing Case Law

[87] Crown counsel provided recent sentencing decisions in cases involving bestiality. I have reviewed them all. My understanding is that counsel were not able to find a case, such as M.K.V.'s case, where an offender was sentenced only for committing bestiality.

[88] In all of the sentencing cases provided by counsel, the offence of bestiality was committed in conjunction with other sexual offences. However, judges have separated the sentences imposed for the offence of bestiality from those imposed for other sexual offences. Generally, a concurrent jail sentence has been imposed. I will now discuss the cases relied upon by Crown Counsel.

[89] In *R. v. S.W.* [2000] O.J. No. 5101, the accused was sentenced on charges of sexual interference and bestiality. He admitted committing the offence of bestiality when confronted by his wife and pleaded guilty. The judge does not describe the particulars of the bestiality offence but notes that the breach of trust involved was an aggravating factor. The accused was sentenced to three years imprisonment on each count, to be served concurrently.

[90] In *R. v. Black*, 2007 SKPC 46, Ms. Black and her husband pleaded guilty to committing several offences of making child pornography and sexual touching arising from their babysitting of three children. Ms. Black also plead guilty to committing bestiality. The bestiality offence involved her engaging in sexual activity with a dog. The dog licked her vagina and she attempted to stimulate the dog's penis. She had a lower than average intellectual abilities and an abusive childhood; however, she comprehended the moral, emotional and legal implications of what she did. Ms. Black received a sentence of four years concurrent on two sexual offences, one year consecutive on the child pornography charge and one year concurrent on the bestiality charge.

[91] In *R. v. C.H.*, 2021 ABPC 119 the accused was 28 years old and had no criminal record. He was sexually abused as a young boy. He entered guilty pleas to multiple offences including possessing and distributing child pornography, sexual assault, sexual

interference and bestiality. The Crown sought a global sentence of 10 years imprisonment. The defence on a global sentence of 6 ½ years.

[92] At the age of 13 years, the offender began fantasizing about sexual contact with animals. By age 16, he had his first sexual encounter with dogs. The bestiality offence before the Court involved dogs. He never penetrated them but rather allowed dogs to penetrate him. He made videos of his interaction with dogs, which he asserted was a way of making his sexual fantasy in that regard come to life. After applying the totality principle, the Court imposed a sentence totalling 7.5 years' incarceration. He was given a six month jail sentence on the bestiality offence to be served concurrently

[93] In *R. v. D.K.M.*, 2024 BCSC 1126, Mr. M, aged 79, was convicted after trial of committing historical sexual offences. He was found guilty on four counts of invitation to sexual touching relating to three of his granddaughters and on one count of bestiality involving one of the children and a dog. The bestiality involved Mr. M making his dog lick margarine from the vaginal area of the child and preventing the dog from escaping. He received a total jail sentence of nine years, reduced to seven and half years based upon the totality principle. The judge was satisfied that a temporal relationship existed between the sexual offences against the children and the bestiality offence. Accordingly, for the bestiality offence, he was given a one year jail sentence to be served concurrently.

[94] The final case provided by the Crown is *R. v. Chen*, 2021 ABCA 382. It is not a case involving bestiality; however, the Crown submits that the sentencing principles involved are directly applicable to the case before me.

[95] Mr. Chen pled guilty to causing unnecessary suffering to an animal, contrary to s. 445.1(a) of the *Criminal Code*. He beat his 10 month - old puppy relentlessly for over 20 minutes. He kicked her, dragged her across the floor, and threw her against a wall. The puppy sustained serious injuries.

[96] The sentencing judge imposed a jail term of 90 days, to be served intermittently, followed by two years' probation. He held that the primary sentencing objectives were

deterrence and denunciation and decided that a conditional sentence order would not be appropriate. Mr. Chen appealed his sentence. The appeal justice overturned the sentencing judge's decision concluding that a conditional sentence order ought to been imposed. The Crown then appealed to the Alberta Court of Appeal. The Court allowed the appeal and substituted the original sentence of incarceration.

[97] Justice Paperny wrote the decision for the full court. The Court took the opportunity to provide guidance on the appropriate sentencing principles in animal cruelty cases.

[98] The Court states:

Without drawing a moral equivalence between human victims of crime and animals as sentient beings, it is apparent that the views of society with respect to animal cruelty and the harms caused by this conduct must continue to evolve ... para [21]

[99] The Court noted that, in 2008, Parliament amended the animal cruelty provisions of the *Criminal Code* and states as follows:

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: para [24]

[100] The Court says further:

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: para [39]

While deterrence and denunciation are the primary sentencing principles, other sentencing principles are also engaged. The amendments to the animal cruelty provisions in the *Criminal Code* do not speak only of punishment but also protection for the animal victim ... para. [40]

[101] The Crown notes that the *Chen* decision has been referred to by British Columbia courts in animal cruelty cases and submits that there is no reason that same principles should not apply to cases of bestiality.

[102] I agree with the Crown and find that the statements and principles outlined in *Chen* relating to cases of animal cruelty are applicable to the case of bestiality before me.

Analysis

[103] Perhaps the most challenging question in this case is whether, because of M.K.V.'s bipolar disorder, history of childhood trauma, and alcohol use disorder together with the fact that he had consumed alcohol and psilocybin before committing the offence, his moral culpability is to be reduced.

[104] If the answer is yes, the next question is to what degree.

[105] In its written submissions, the Crown says it accepts Dr. Toma's evidence that M.K.V. suffers from bipolar disorder, which combined with his childhood trauma, influences his substance use disorder. The Crown acknowledges that these factors contributed to the commission of the offence and can serve as a modest mitigating factor.

[106] I agree with the Crown's submission that these factors do reduce, to some degree, M.K.V.'s moral blameworthiness for his criminal behaviour. The question is, by how much?

[107] The Crown submits that the Court should not place significance weight on this as a mitigating factor because Dr. Toma's evidence relies entirely on the accused self-reporting of his behaviour and intoxication. The Crown submits that the accused has significantly exaggerated the role intoxication played in his offending.

[108] As I already noted, Dr. Toma agreed that his opinion as to causation is limited because of M.K.V. professed lack of memory and because there is no other substantiating evidence. Dr. Toma accepted M.K.V.'s assertions at face value. That is, Dr. Toma took him at his word and did not question whether, or not, he was being genuine.

[109] I find that the testimony of Cst. Munro is important in my assessment. I note he testified after Dr. Toma and that Dr. Toma did not have his testimony to consider when giving his opinion.

[110] I have already summarized Cst. Munro's testimony as to his dealings with M.K.V. shortly after the offence was committed and will not repeat it. I found Cst. Munro's testimony to be clear and have no reason to question its reliability. Based upon his evidence, I conclude that M.K.V. was not grossly intoxicated. He was stable on his feet, did not slur his words, seemed able to understand the officer and was able to engage in meaningful and coherent communication with him. He said nothing to unusual to Cst. Munro to suggest he was suffering from hallucinations or delusions and was in a state of altered reality.

[111] The evidence also shows that immediately after committing the offence M.K.V. communicated effectively with C.R.

[112] I find that the fact that M.K.V. used lubricant in the commission of the offence shows a certain amount of pre-contemplation and planning. The fact that he immediately and spontaneously said to Cst. Munro "I fucked the dog" suggests that he was cognizant of what he had just done.

[113] On all of the evidence, I very much doubt that, on the day of the offence, M.K.V. drank approximately 24 beers and most of a bottle of Fireball whiskey. I also find that it is very unlikely that M.K.V. does not recall committing the offence.

[114] I agree with the submission of Crown counsel that the evidentiary record in this case does not support a finding that mental illness and intoxication played such a

significant role that the M.K.V.'s moral culpability is significantly reduced. I find his moral blameworthiness is only reduced by a modest amount.

[115] I have considered the circumstances of the offence, the circumstances of M.K.V., the victim impact, the purpose and principles of sentencing, the aggravating and mitigating factors and the applicable law.

[116] I must now decide upon the fit and proper sentence to impose. While the sentencing cases provided by counsel offer some guidance, none are directly applicable. In all of the other cases, the offender was sentenced for serious offences in addition to bestiality. None of the cases involved the vaginal or anal penetration of an animal.

[117] In its written sentencing submissions, which were prepared and provided before it was known that Dr. Toma would testify, the Crown submitted that the appropriate sentence in this case is 12 months incarceration followed by at least 18 months of probation. The Crown now accepts that M.K.V.'s mental illness and intoxication can modestly reduce the one year jail sentence originally sought but says that incarceration is still required to meet the principles of sentencing.

[118] The Defence asks the Court to consider imposing a conditional sentence order such that M.K.V. would serve a jail sentence in the community.

[119] Given the M.K.V. has complied with his conditions of bail and has not been found to have committed any further offences, I am satisfied that having him serve a jail sentence by way of a conditional sentence order would not endanger the community.

[120] The remaining question is whether imposing a conditional sentence order would be consistent with the fundamental purpose and principles of sentencing. After careful consideration, I have decided a non-custodial would not adequately serve the objectives of denunciation and deterrence. Of primary importance in this case is the need for denunciation. I have concluded that a period of incarceration is necessary, not only for deterrence but to properly express society's condemnation of M.K.V.'s reprehensible behaviour.

[121] In all of the circumstances, and considering the applicable aggravating, mitigating and collateral factors I have concluded that the fit and proper sentence is nine months incarceration followed by two years of probation.

[122] M.K.V., please stand. I sentence you to nine months jail, to be served in a correctional facility, followed by two years of probation.

[123] The terms of probation are as follows:

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the Court.
3. Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.
4. You must report in person to a probation officer at Nanaimo Community Corrections office located at 101 – 17 Church Street, Nanaimo, BC within two business days after your release from custody. After that, you must report as directed by your officer.
5. When first reporting to a probation officer, you must provide them with the address or location where you live and regularly sleep and your phone number if you have one. You must not change them without notifying your probation officer before making the change
6. You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include counselling or programming for:
 - (a) Alcohol or substance use. (b) Mental health.
7. You must have no contact or communication directly or indirectly with C.R. The exceptions are: (a) As allowed by a family or child protection order made by a judge or associate judge who has been given a copy of this order.
8. You must have no contact or communication directly or indirectly with J.V. or I.V. The exceptions are: (a) As allowed by a family or child protection order made by a judge or associate judge who has been given a copy of this order.
9. You must not go to any place where C.R., J.V. or I.V. lives, works, attends school, or worships. You must not go to any place where C.R., J.V., or I.V. happens to be except as allowed by a family or child protection order made by a judge or associate judge who has been given a copy of this order. You must immediately file a copy of this

- order in any family or child protection proceeding in which you are a party or become a party.
10. You are not to be in the presence of any dog or other domestic animal except if you are in the company of another adult and only if in the course of your employment.
11. You are not to reside in any residence or on any property where dogs or any other domestic animals reside.

[124] I also make the ancillary order sought by the Crown.

[125] Pursuant to section 160(4) of the *Criminal Code*, for a period of 10 years you are prohibited from owning, having the custody or control of any animal, or residing in the same premises or on property where an animal resides.

[126] Pursuant to section 490.012 of the *Criminal Code*, you are required to comply with the *Sex Offender Information Registration Act* for a period of 10 years.

[127] Finally, because of your financial circumstances, pursuant to section 737(2.1) of the *Criminal Code*, you are exempted from paying the Victim Surcharge.

The Honourable Judge R. Lamperson
Provincial Court of British Columbia