Court of King's Bench of Alberta

Citation: R v Abraham, 2025 ABKB 637

Date: 20251104
Docket: 23032835S1
Registry: Edmonton

2025 ABKB 637 (CanLII)

Between:

Abraham Daniel Abraham

Appellant

- and -

Her Majesty the King

Respondent

Decision
of the
Honourable Justice M. Hayes-Richards

Appeal from the Sentence of
The Honourable Justice Michelle Doyle

Dated the 8th day of November 2024
(23032835P1)

I. Introduction

[1] Mr. Abraham (Appellant) was convicted after trial of two counts of willfully causing unnecessary pain, suffering, or injury to his dog (Simba), contrary to s 445.1(1) of the *Criminal Code of Canada*, RSC 1985, c C-46 (*Criminal Code*). He was sentenced to 120 days incarceration followed by 24 months of probation. He appeals his sentence.

[2] The Appeal is dismissed. The sentence imposed does not warrant appellate intervention.

II. Background

[3] The Appellant's trial was held on March 26 and 27, 2024, after which he was found guilty. The findings of fact on which the Sentencing Judge relied were as follows:

- On February 16, 2023, the Appellant held Simba by the collar, punched Simba several times in the head area, and kicked Simba in the hind quarters. He tied Simba to a post high enough so Simba could not sit or lay down. Simba was left in that position for approximately 45 minutes. Simba was crying and yelping because the Appellant's actions were causing him unnecessary pain and suffering.
- On March 2, 2023, the Appellant held Simba by the collar, punched him several times, and kicked him once in the hind quarters. He tied Simba to the same post high enough so Simba's front legs could not touch the ground, and he could neither sit nor lay down. Simba was left in this position more than half an hour. Simba was crying and yelping because the Appellant's actions were causing him unnecessary pain and suffering.
- On February 16, 2023, the Appellant's elderly neighbours witnessed the incident with Simba and contacted the Appellant's wife about their concerns. On March 2, 2023, the same elderly neighbours called police and reported the two incidents. Afterwards, the Appellant's family posted a sign on their fence saying, "Beware Nosey Neighbours."
- Tying Simba to the post on both occasions caused unnecessary suffering at law.

III. Sentencing Decision

[4] A sentencing hearing took place on November 8, 2024. Both parties provided written submissions in advance and made oral submissions. The Crown sought 3-6 months gaol followed by 12-15 months probation. The Defence sought a conditional discharge, or alternatively, a conditional sentence order (CSO). The Sentencing Judge imposed a global sentence of 120 days gaol followed by 24 months probation: 45 days gaol for the first offence and 90 days gaol consecutive for the second, reduced to 75 days gaol for totality.

[5] The Sentencing Judge gave an extensive oral decision explaining why a custodial sentence was required. She reviewed the facts as found at trial, the positions of the parties, and the objectives of sentencing. She explained the principle of proportionality as involving an assessment of the gravity of the offence and degree of responsibility of the offender, informed by relevant aggravating and mitigating factors.

[6] The Sentencing Judge found the Appellant stood in a position of trust to Simba, who was entirely dependent upon the Appellant for his care. The Appellant's breach of that trust on two separate occasions was aggravating. That the Appellant abused Simba a second time three weeks after his neighbours intervened the first time was further aggravating. This aggravating factor spoke to the need for specific deterrence. The only mitigating factor found was the Appellant's previous good character.

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[7] The Sentencing Judge thoroughly reviewed ***R v Chen***, 2021 ABCA 382 [***Chen***], which affirmed denunciation and deterrence as the primary sentencing objectives for animal cruelty. In considering proportionality, the Sentencing Judge concluded the offences were serious crimes of violence committed upon a helpless animal. She acknowledged Simba's lack of injury, although not mitigating, was a factor in considering the gravity of the offence. She noted the Appellant is well respected in the community and found the Appellant must have acted out of frustration. However, she found the "Beware Nosey Neighbours" sign to be disturbing and effectively isolated the elderly neighbour witnesses in their own neighbourhood because they intervened to protect Simba. The Sentencing Judge concluded the Appellant's personal responsibility was high. He knew what he was doing and was not labouring under some form of mental illness or emotional breakdown.

[8] The Sentencing Judge considered parity, reviewing numerous animal abuse cases where sentences ranged from a suspended sentence to 18 months gaol. All such cases where a CSO was imposed involved guilty pleas.

[9] The Sentencing Judge concluded a custodial sentence was the only sentence that could achieve the primary sentencing objectives of deterrence and denunciation. She then addressed whether that custodial sentence could be served in the community and concluded a CSO could not achieve the sentencing objectives in this case. She found it was difficult to forecast what objectives would be achieved by a CSO considering deterrence and denunciation were the primary sentencing objectives, there had been no acknowledgement of wrongdoing, and no real rehabilitative plan had been proposed.

IV. Grounds of Appeal

[10] The Appellant argues the Sentencing Judge erred in four ways:

1. She failed to explain why a conditional discharge was unsuitable;
2. She failed to recognize a CSO achieves denunciation and deterrence;
3. She failed to uphold the parity principle; and
4. She failed to consider immigration consequences.

V. Standard of Review

[11] Sentencing decisions are discretionary and owed a high level of deference on appeal: ***R v Lacasse***, 2015 SCC 64 [***Lacasse***] at para 41; ***R v Proulx***, 2000 SCC 5 [***Proulx***] at paras 123, 125; ***R v Nahanee***, 2022 SCC 37 at para 40; ***R v Sheppard***, 2025 SCC 29 [***Sheppard***] at para 38. Sentencing judges enjoy an advantageous position relative to appellate courts. They hear the evidence and submissions first-hand. They are immersed in the jurisdiction where the offence took place and understand the needs of the community as they relate to denunciation and deterrence: ***Sheppard*** at para 38, citing ***Lacasse*** at para 48; ***R v M(CA)***, 1996 CanLII 230 (SCC) at para 91. Appellate repetition of the exercise of judicial discretion by a sentencing judge, without any reason to think a second effort will improve upon the results of the first, is a misuse of judicial resources and delays the final resolution of the criminal process without any countervailing benefit to the process: ***Sheppard*** at para 38, citing ***R v Ramage***, 2010 ONCA 488 at para 70.

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[12] An appellate court is entitled to intervene only where the sentencing judge has committed an error in principle that impacted the sentence or when the sentence is demonstrably unfit: ***Lacasse*** at paras 44, 46; ***R v JW***, 2025 SCC 16 at para 51; ***Sheppard*** at para 39. Errors in principle include an error of law, a failure to consider a relevant factor, or an erroneous consideration of an aggravating or mitigating factor: ***R v Friesen***, 2020 SCC 9 [***Friesen***] at para 26. The appellate court must identify such an error and be satisfied the error had an impact on the sentence: ***Lacasse*** at para 44.

[13] Appellate courts must take great care not to allow their own assessment of the record, and what weight they would have given to various factors, to colour the lens through which they view the sentencing judge's reasons. The integrity of appellate intervention would be compromised if a supposed error in principle could serve as a pretext for the appellate court substituting its own view of the appropriate sentence: ***Sheppard*** at para 40, citing ***Lacasse*** at para 44; ***R v V(W)***, 2023 ONCA 655 at para 26.

[14] Sentencing judges are required to provide reasons for sentence. Appellate courts are to review those reasons functionally and contextually: ***Sheppard*** at para 44, citing ***R v Sheppard***, 2002 SCC 26 [***Sheppard 2002***]; ***R v GF***, 2021 SCC 20 at paras 68-69 [***GF***]; ***R v Gagnon***, 2006 SCC 17 at para 19; ***Hill v Hamilton-Wentworth Regional Police Services Board***, 2007 SCC 41 at para 101; ***R v REM***, 2008 SCC 51 [***REM***] at para 15; ***R v Villaroman***, 2016 SCC 33 at para 15. The functional and contextual approach rejects a fine parsing of reasons in search of error: ***Sheppard*** at para 48, citing ***R v Chung***, 2020 SCC 8 at paras 13, 33.

[15] Reviewing reasons functionally means assessing whether they are sufficient in relation to the fundamental purposes for which reasons serve: holding judges accountable to the public, providing an intelligible result to the parties, and enabling effective appellate review: ***Sheppard*** at para 45, citing ***Sheppard 2002*** at para 45; ***GF*** at para 68. Reviewing reasons contextually means assessing whether the foundations of the judge's decision are discernable when looked at in the context of the evidence, the submissions of counsel, and the history of how the trial unfolded. When read in conjunction with the record, reasons must show why the judge reached a particular result: ***Sheppard*** at para 46, citing ***REM*** at paras 17, 37; ***R v Parranto***, 2021 SCC 46 at para 39. An appellate court should only intervene if the reasons are legally or factually insufficient or if they are so muddled that meaningful appellate review is impossible: ***Sheppard*** at para 47, citing ***GF*** at paras 71, 108; ***Sheppard 2002*** at paras 28, 46; ***REM*** at para 17.

V. Grounds of Appeal

1) Did the trial judge fail to explain why a conditional discharge was unsuitable?

[16] The Appellant argues the Sentencing Judge's reasons do not give the Appellant or a reviewing Court clarity on why a non-custodial sentence was rejected. The Appellant submits the Sentencing Judge's reasons, read in context, including the evidence and arguments, do not clearly set out why she concluded a community-based sentence was not proportionate. Defence counsel's submissions on why a conditional discharge was appropriate were significant and included references to the factors in ***R v MacFarlane***, 1976 ALTASCAD 6 (CanLII) [***MacFarlane***]. Although the Sentencing Judge acknowledged the arguments were made, she said nothing about them, and her reasons are unclear as to why she rejected that argument.

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[17] The Appellant's argument suggests the Sentencing Judge was required to specifically reiterate the factors from ***MacFarlane*** when rejecting a conditional discharge, despite her extensive reasons concluding a custodial sentence was required in the circumstances of the case. The Appellant's argument puts form over substance, which is contrary to the clear and consistent direction from the SCC, most recently reiterated in ***Sheppard*** at paras 45-50. Appellate courts must look at a sentencing judge's reasons functionally and contextually. Scrutinizing the text of reasons in search for error is not the correct approach: see ***GF*** at para 76.

[18] The Sentencing Judge gave thorough and extensive reasons for finding a custodial sentence was required. When her reasons are read as a whole and in context, it is clear the Defence's arguments for a conditional discharge were rejected because such a sentence could not meet the primary goals of sentencing in this case. The Sentencing Judge did not have to go through the ***MacFarlane*** factors separately. Based on her conclusion that a custodial sentence was required, it is evident a conditional discharge was not a fit and appropriate sentence.

[19] The Appellant submits the Sentencing Judge concluded a custodial sentence was required simply because she classified the offences as "serious" and identified the primary sentencing objectives as denunciation and deterrence. I disagree. Applying the functional and contextual approach, it is clear the Sentencing judge considered and rejected a non-custodial sentence for many more reasons. Those included the Appellant's high level of personal responsibility, the need for specific deterrence, the serious crimes of violence inflicted on Simba by the Appellant, the breach of trust on two occasions, and the extended nature of the infliction of suffering on each occasion.

[20] The Appellant submits the facts disclose the actions of the Appellant were spontaneous and impulsive and argues such actions should be punished less severely than planned or premeditated ones: ***R v Bertrand-Marchand***, 2023 SCC 26 at para 127. Nowhere in the Sentencing Judge's reasons did she indicate the Appellant's actions were impulsive. Rather, she found the Appellant must have acted out of frustration. That finding was available on the evidence before the Sentencing Judge. It is not impulsive to tie a dog up in a manner that prevents him from sitting or lying down for over 30 minutes. It is not impulsive to do so a second time after neighbours intervened.

[21] The Appellant submits the facts disclose a low level of moral culpability on the part of the Appellant. This was not the Sentencing Judge's finding. She found the Appellant's personal responsibility to be high. That finding was available on the evidence before the Sentencing Judge. The Appellant knew what he was doing at the time. He was not suffering from any mental illness or emotional breakdown. He did the same thing twice, the second time being after neighbours intervened.

[22] I agree the Sentencing Judge failed to address the Appellant's pre-sentence rehabilitation efforts. The Appellant took a 35-hour dog training program to learn how to better manage his dog without resorting to frustration or anger. However, this error would not have impacted the sentence imposed. The Sentencing Judge noted the Appellant was hard working, dedicated to his family, and was well respected in the community. However, she also found the Appellant had not taken personal responsibility for the offences, the authors of his letters of support denied the Appellant committed the offences, and there was no real rehabilitation plan put forward. It was not an error in principle to find these factors weighed against a community-based sentence. This error does not warrant disturbing the sentence imposed.

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2) Did the trial judge fail to recognize that a conditional sentence order achieves denunciation and deterrence?

[23] The Appellant argues the Sentencing Judge erred by failing to recognize a CSO can achieve denunciation and deterrence. Her reasons for why a CSO could not achieve those objectives are not clear and insufficient. Further, the Sentencing Judge did not meaningfully grapple with the key issues in the Defence's arguments for a CSO. Specifically, while the Sentencing Judge recognized the primary sentencing objectives were denunciation and deterrence, she did not articulate why a CSO could not achieve those objectives.

[24] The Appellant argues the Sentencing Judge misunderstood the guidance from the SCC in ***Proulx*** with respect to whether a CSO could achieve the objectives of denunciation and deterrence. ***Proulx*** held a CSO could achieve both punitive and restorative objectives. However, the Appellant says the Sentencing Judge ignored the portion of the case addressing that issue. The Appellant submits this is so because the Sentencing Judge failed to quote the appropriate passages from ***Proulx***.

[25] The Sentencing Judge was alive to this issue. Her reasons show she understood the appropriate principles in determining whether a CSO was appropriate and applied them to the case before her. She quoted passages from ***Proulx*** that explain a CSO can achieve the objectives of denunciation and deterrence as effectively as incarceration (para 100), and a CSO may provide sufficient denunciation and deterrence, even in cases where restorative objectives are of diminished importance (para 114). Importantly, the Sentencing Judge also quoted the portion of ***Proulx*** outlining the considerations in determining whether restorative objectives can be satisfied in a particular case. These include the offender's prospect and proposed plan for rehabilitation, the availability of appropriate community service and treatment programs, whether the offender has acknowledged his wrongdoing and expressed remorse, and the victim's wishes (para 113). The Sentencing Judge then applied those considerations to the case before her. She did not simply conclude the objectives of denunciation and deterrence could not be met with a CSO. She found it difficult to forecast what objectives could be achieved by the CSO proposed.

[26] I find no error in the Sentencing Judge's conclusion that a CSO would not achieve the sentencing objectives in this case. Her finding that incarceration was the proper sanction was available to her on the evidence before her. Incarceration will generally be the preferrable sanction where the need for punishment is particularly pressing, there is little opportunity to achieve any restorative objectives, and when punitive objectives such as denunciation and deterrence are particularly pressing (***Proulx*** at paras 100, 114). The Sentencing Judge considered the Appellant's lack of acknowledgement of wrongdoing and the absence of any real rehabilitative plan in addition to the primary sentencing objectives of denunciation and deterrence. She concluded neither punitive nor restorative objectives could be met with a CSO. There was no error in the Sentencing Judge's reasoning. Her reasons were discernable in the context of the evidence and submissions of counsel. She properly weighed the relevant factors and imposed an appropriate sentence. It is not the Appeal Court's role to reweigh the factors and determine if a different sentence would be appropriate.

[27] The Appellant further submits the Sentencing Judge did not canvass any of the four statutory pre-conditions for a CSO to be imposed. The Appellant argues if she had done so, there would have been little reason to deny a CSO.

[28] The four statutory pre-conditions for a CSO to be imposed are:

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- The offence for which the accused has been convicted must not have a minimum term of imprisonment;
- The appropriate sentence must be imprisonment for less than two years;
- Serving the sentence of imprisonment in the community would not endanger the community; and
- Serving the sentence of imprisonment in the community would be consistent with the fundamental principles of sentencing set out in *Criminal Code* ss 718 and 718.2.

[29] After the Sentencing Judge determined a custodial sentence was necessary, she clearly stated she had to consider whether that sentence could be served in the community. She understood the first three pre-conditions of a CSO had been met by stating "a conditional sentence order would be statutorily available in this case." The only statutory pre-condition that was left to determine was whether serving the sentence in the community would be consistent with the fundamental purpose and principles of sentencing. That condition was the focus of her conclusion that a CSO would not achieve the sentencing objectives present in this case. Her reasons were sufficient.

3) Did the trial judge fail to uphold the parity principle?

[30] The Appellant argues the Sentencing Judge failed to uphold the parity principle. The Appellant submits the Sentencing Judge imposed a carceral sentence that went contrary to the jurisprudence put before her, in which CSOs were imposed for similar charges but with more serious facts. Further, the Sentencing Judge failed to recognize the Appellant's strong rehabilitative supports.

[31] Parity is one of the objectives in the overall assessment of whether a sentence is demonstrably unfit: ***R v Skelly***, 2024 ABCA 332 [***Skelly***] at para 19. Judicial decisions are only precedents for principles of law, not findings of fact. They are primarily useful in illustrating the range of sentence for a particular offence. In this way, they are helpful in the assessment of parity: ***Skelly*** at para 20.

[32] The Appellant submits the Sentencing Judge recognized the Appellant's previously good character and that he acted out of frustration. However, she failed to consider the evidence before her of the Appellant's strong rehabilitative supports. The Sentencing Judge acknowledged the Appellant's numerous letters of reference that showed the Appellant was hard working and respected in the community. However, she gave little weight to those letters because the authors did not believe the Appellant had actually committed the offences. The Sentencing Judge made no error in this regard. The Appellant argues the letters nonetheless show a supportive community invested in the Appellant's rehabilitation and the Sentencing Judge erred in not taking that support into consideration. I find no such error. It is difficult to conclude the community will be invested in the Appellant's rehabilitation when the authors of the letters do not believe the Appellant committed the offences.

[33] The Sentencing Judge reviewed the cases provided to her and considered how they could assist in evaluating a proportionate sentence in this case.

[34] The Appellant argues the Sentencing Judge placed undue weight on ***Chen***, where the facts are so dissimilar as to be in an entirely different realm of moral culpability. The Sentencing

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Judge reviewed ***Chen*** in detail because it is the leading case in Alberta on sentencing for animal abuse. She cited the principles identified by the Alberta Court of Appeal and Parliament's indication that such offences be punished more harshly. She then applied the principles from ***Chen*** to the case before her.

[35] Many of the authorities provided to the Sentencing Judge resulted in community-based sentences, either by way of a CSO or suspended sentence. The Sentencing Judge reviewed all the jurisprudence. She noted each case included an extensive review of similar sentencing authorities, and all of them, including ***Chen*** involved guilty pleas, a powerful mitigating factor that was absent in this case. The Sentencing Judge clearly articulated that sentencing is an individualized process, and no two cases are the same.

[36] The cases cited by the Sentencing Judge had significant distinguishing factors from the case before her. Many involved one incident and offenders with significant mental health issues at the time of the offences who had significant remorse for their actions. In this case, the Appellant offended on two different occasions, including after his neighbours intervened after the first incident. He was not suffering from a mental disorder, and he did not express remorse or take responsibility for his actions. Further, the only mitigating factor the Sentencing Judge found was the Appellant's prior good character. The Sentencing Judge did not err in her application of the parity principle.

4) Did the trial judge fail to consider immigration consequences?

[37] The Appellant argues the Sentencing Judge failed to consider immigration consequences flowing from the sentence. There is nothing in the Sentencing Judge's reasons that addresses immigration consequences. The Appellant submits it cannot be simply implied that the Sentencing Judge took immigration consequences into account.

[38] I accept the Sentencing Judge did not specifically address immigration consequences in her decision. However, this is because there were none of the type contemplated in ***R v Pham***, 2013 SCC 15 [***Pham***] to consider.

[39] At the sentencing hearing, the Sentencing Judge asked the Defence to clarify its written submission that anything other than a conditional discharge would make it difficult for the Appellant to maintain his permanent residence status. The Defence explained if the Appellant were given a gaol sentence of six months or more, he would be inadmissible for serious criminality. And further, that the difference between the conditional discharge and any other disposition that includes probation, is that during probation, the Appellant cannot take the oath of citizenship. That would not be a factor with a conditional discharge because such a sentence is not considered a conviction for the purposes of immigration. The Appellant would therefore be able to take his oath of citizenship immediately if given a conditional discharge.

[40] The Appellant was not sentenced to six months or more of gaol. His inability to immediately take his oath of citizenship is not an immigration consequence. The Appellant is not prevented from taking his oath because of the sentence imposed. His eligibility to take the oath is simply delayed. Such a delay is not the type of immigration consequence contemplated in ***Pham***.

[41] Even if the Appellant's inability to immediately take the oath could be considered an immigration consequence, a judge has discretion to take collateral immigration consequences into account provided the sentence imposed is ultimately proportionate: ***Pham*** at para 14. The flexibility of the process should not be misused to impose inappropriate and artificial sentences

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to avoid collateral consequences that may flow from a statutory scheme. To do so would circumvent Parliament's will. Such consequences cannot be allowed to dominate or skew the process and must not lead to a separate sentencing scheme with a special range of sentencing options where deportation is a risk: ***Pham*** at paras 15-16.

[42] The Sentencing Judge determined a custodial sentence was required. The possibility of a delay in the Applicant's ability to take the oath of citizenship is not sufficient to override the principled basis for the Sentencing Judge's finding. Further, the ultimate sentence imposed was less than six months gaol and therefore had no impact on the Appellant's right of appeal if a deportation order should flow.

VI. Conclusion

[43] The appeal is dismissed. The Appellant must surrender himself into custody at the Edmonton Remand Centre no later than by 2:00 pm on November 10, 2025.

Appeal Heard on the 05th day of June, 2025.
Memorandum filed at Edmonton, Alberta this 4th day of November, 2025.

M. Hayes-Richards
J.C.K.B.A.

Appearances:

Zachary Al-Khatib
for the Appellant

Lilit Tokmajyan
for the Respondent

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