2013 CarswellAlta 3145

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2013 CarswellAlta 3145
Alberta Provincial Court

R. v. Chailler

2013 CarswellAlta 3145

HER MAJESTY THE QUEEN v. BRANDEN MARCEL CHAILLER (Accused)

Lefever Prov. J.

Heard: August 26, 2013
Judgment: August 26, 2013
Docket: Edmonton 121450597P1

Counsel: C.M.T. Lim, for Crown
T.Q. Nguyen (Agent), for L.I. Wood, for Accused

Subject: Criminal; Property
Related Abridgment Classifications
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XXII Sentencing procedure and principles
XXII.4 Purposes of sentencing
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XXXVI.1.f Miscellaneous

Headnote

Criminal law --- Sentencing by offence — Offences against the administration of law and justice — Failure to comply with conditions of undertaking or recognizance — Adult offenders

Criminal law --- Sentencing by offence — Offences against rights of property — Breaking and entering and related offences — Breaking and entering and committing indictable offence — Adult offenders

Criminal law --- Sentencing by offence — Wilful and forbidden acts in respect of certain property — Cruelty to animals

Criminal law --- Sentencing by offence — Wilful and forbidden acts in respect of certain property — Mischief — Adult offenders

Criminal law --- Sentencing procedure and principles — Purposes of sentencing — Denunciation

Deterrence and denunciation as central principles of animal cruelty sentencing.

Criminal law --- Youth offenders — Youth Criminal Justice Act — Miscellaneous

Adult offender's breach of previous disposition under s. 137.

Table of Authorities

Statutes considered:

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Generally — referred to

Criminal Code, R.S.C. 1985, c. C-46

s. 348(1)(e) — referred to

s. 430 — referred to

s. 430(1)(a) — referred to

s. 445(1)(a) — referred to

Young Offenders Act, R.S.C. 1985, c. Y-1

Generally — referred to

Youth Criminal Justice Act, S.C. 2002, c. 1

Generally — referred to

s. 137 — referred to

SENTENCING of accused on conviction for breaking and entering, mischief under $5000, mischief over $5000, cruelty to animals, and breach of youth justice disposition.

***Lefever Prov. J.*:**

1 THE COURT: Thank you.

2 MR. NGUYEN: Good afternoon, Your Honour.

3 THE COURT: Could I just see the Information, please, madam clerk.

Discussion

4 MR. LIM: Good afternoon, Your Honour. For the record it's Christian Lim, Lim from the provincial Crown prosecutor's office and I'm here of course on the matter of Chailler.

5 THE COURT: Yes.

6 MR. LIM: And my friend here is acting as agent for Ms. Wood.

7 MR. NGUYEN: It's Nguyen.

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8 THE COURT: Pardon me? Yes.

9 MR. NGUYEN: Nguyen, first initial T, student-at-law and agent for Laurie Wood.

10 THE COURT: Thank you.

11 MR. NGUYEN: My client has expressed an interest in sitting next to me. Is that all right with you, sir?

12 THE COURT: No, it is not. He will stay where he is.

13 MR. NGUYEN: All right.

Reasons for Sentence

14 THE COURT: Just give me a moment, I want to check something. Just give me a second, please, just a second here. I want to thank counsel and Ms. Wood who obviously is not here but who I knew would not be here today because of having a commitment, a court commitment out of Edmonton today. Mr. Chailler has pled guilty to six offences.

Count 1:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, did unlawfully break and enter a place located at 21210 - 97 Avenue NW, the property of Mario Joseph Carbonneau, and did commit an indictable offence therein, to wit: mischief, contrary to section 348(1)(e)/430 of the *Criminal Code of Canada*.

Count 2:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, did unlawfully break and enter a place located at 9527 Winterburn Road NW, the property of Winterburn Elementary School, and did commit an indictable offence therein, to wit: mischief, contrary to section 348(1)(e)/430 of the *Criminal Code of Canada*.

Count 3:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, did wilfully and without lawful excuse kill, maim, wound, poison or injure a dog that was kept for a lawful purpose, contrary to section 445(1)(a) of the *Criminal Code of Canada*.

Count 4:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, did wilfully damage property of a value exceeding $5,000.00, to wit: household furnishings and electronics belonging to Roxanne G. Lafreniere, thereby committing mischief, contrary to section 430(1)(a) of the *Criminal Code of Canada*.

Count 5:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, did wilfully damage property of a value not exceeding $5,000.00, to wit: vehicles and windows belonging to Mario Joseph Charbonneau and 1567789 Alberta Limited and Fraser Way RV, thereby committing mischief, contrary to section 430(1)(a) of the *Criminal Code of Canada*.

And finally:

On or about the 4th day of December, 2012, at or near Edmonton, Alberta, being a person subject to a youth sentence under the *Youth Criminal Justice Act of Canada* or disposition under the *Young Offenders Act of Canada* dated the 4th day of September, 2012, did wilfully fail or refuse to comply with the order, to wit: fail to abstain absolutely from the

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possession or consumption of any alcohol and not possess or consume any substances as identified in the *Controlled Drugs and Substances Act* without a medical prescription, contrary to section 137 of the *Youth Criminal Justice Act*.

15 The Crown submit that an appropriate sentence for these offences is the following, a 9 month global sentence for the break and entering and the breach, as well as the mischief and an 18 to 24 month sentence for the cruelty to animals. They seek ancillary orders, that being a DNA order and a lifetime ban on the owning of any pets. In making this submission, the Crown, as I see it, submit or propose that the offences fall into two discrete parts, one related to the break and enter and property related matters, and one related to animal cruelty.

16 Ms. Wood, on behalf of the accused, submits that a global sentence of 12 months less time served of approximately 10 months followed by three years of probation is a fit and appropriate sentence. In making this submission, Ms. Wood submitted that the offences should be viewed as a spree and sentenced globally.

17 I do take into account as a mitigating factor that the accused has pled guilty to these offences, thereby saving the time and cost and a trial and possible trauma to victims of any of the offences. He comes before me with a fairly minor prior criminal record consisting of youth court matters, one mischief and one theft over $5,000.00, both arising while he was a young person. What is aggravating, however, is that the offences before me were committed on December 4th, 2012 while Mr. Chailler was on probation for those offences. In his remarks to the Court, Mr. Chailler stated that he felt ready to be released and that it was a "really good opportunity for me to be on probation" suggesting or perhaps inferring that there were more opportunities to better himself as well as more opportunities to commit crimes and that he would eventually be released. He said, "I'll have the choice when I get out to be good or bad again and I'd like to be able to make that choice today, please."

18 As I have already noted, Mr. Chailler has had that opportunity following his youth court matters and using that opportunity he appears to have chosen badly. The pre-sentence report and the FACS assessment, if taken at face value, raise considerable concern for the safety of the public, for specific deterrence, for any kind of possibility of rehabilitation. I will refer only to two parts of those documents. The FACS assessment at page 3 and the pre-sentence report at page 8 have the same expressed view, and this is with respect to the death of the animal. Quoting from the pre-sentence report, Mr. Chailler is quoted as having said, "Animals die all the time and people kill animals all the time to eat meat, so what is the difference?" A sense or sentiment similar to that can be found at page 3 of the FACS assessment. At page 5 of the FACS assessment Mr. Chailler is reported to having said that he had intrusive thoughts of violence toward others including a specific thought to "bash girls over the head with a rock, drag them into the bus, rape and kill them." He now suggests that was an exaggeration and was not meant.

19 Mr. Chailler decided to make a point with a girl who had spurned him or was resisting his advances but with whom he was fascinated and that "killing his dog to prove that he was serious and should not be ignored." That gives me serious concern. An inability to accept rejection that leads to the killing of an animal to prove one was serious and should not be ignored is suggestive of a much deeper underlying pathology that carries with it significant risk in the future for the public. As Mr. Chailler's mother described to adult probation, she does not perceive he has demonstrated remorse and that his view of the offence was "the animal was his dog and they spent a lot of time together and he does what he did just dismisses his actions with no emotional response." Taken as his mother's comments alone, that view is to some degree unsubstantiated but Mr. Chailler admitted to adult probation that he had hurt other animals, had thrown a cat over a fence in anger and had opened a squirrel to see the insides. In my view his mother's expression is consistent with what he has done in the past and is a possible window into what he will do in the future.

20 It is suggested in response that these are not serious intentional thoughts of Mr. Chailler's view or of a predictor of any future behaviour. I find myself somewhat distressed by any suggestion that Mr. Chailler was not being truthful or revealing his thoughts at the time. In both instances, that of preparing the pre-sentence report and of participating in the FACS assessment, Mr. Chailler must have understood the seriousness of both processes, the purpose of both, and what use would be made of the information gained or given at that time. If he did and was being truthful, these are grave matters of concern. If he did not understand the seriousness of both processes, that is of equal concern as it indicates an individual whose word may not be reliable in any significant manner.

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21 Should the offences to which he has entered guilty pleas be viewed as a spree situation for which a global sentence should be imposed. This submission asks me, as I see it, to treat the entirety of the offences as a singular continuum from beginning to end. Had the offences been of a similar nature or be linked by some common thread, I would have found that submission more compelling. Here, however, there are to my mind two discrete sets of offences. The first are the property offences which bear a similarity, that of unlawful entry, that of causing significant damage to the private property. The second unrelated is the breach of the youth justice disposition. The third is that of inflicting the pain and ultimate death upon the family pet and the underlying reason for inflicting that death. To my mind that bears no conceptual relationship to the property offences or the breach offence and because of my view that there are two discrete sets of offences, I am not prepared to view the entire set of offences as a spree situation.

22 In my opinion, the breaking and entry offence and the mischief offences are of a similar nature and imposing a global sentence for those offences is appropriate. Having reached that conclusion, I am of the view that the Crown's submission regarding the break and entry offences and the two mischief offences is well within the range of a global sentence. I am therefore imposing a global sentence on those four counts of nine months less time served of nine months, leaving today as the last day for that sentence to be served. The surcharge is waived.

23 The failure to comply with the youth court sentence arises from the same set of circumstances, and while not as egregious, requires a denunciatory sentence. I am imposing a sentence of 30 days concurrent to any other sentence — pardon me, consecutive to any other sentence Mr. Chailler is serving, less credit for time served, which by my calculations from the last time counsel were before me, leaves 22 days served that has not been taken up with the first sentence. I therefore impose a custodial sentence of 30 days less time served of 22 days, leaving 8 days left to serve on that sentence. The surcharge is waived on that offence.

24 The animal cruelty matter is far more serious. I have taken into account the fact that Mr. Chailler has pled guilty. That is of course and must be taken within the context of the following. Mr. Chailler took photos of the dog, he sent those photos to individuals. The photos were available to the Crown. It is difficult to see how the Crown case could have been much stronger on that charge, nor could it have been much stronger with respect to the damage to his mother's house. I accept there is some value in his plea but it is not of significant value.

25 Mr. Chailler wanted to impress a young lady. Words are hard to find to describe the very idea that killing an innocent animal and sending pictures would create any kind of positive impression. It illustrates a profound ignorance of what one might do to create a positive impression coupled with a callous disregard for the life of a family pet.

26 Offences of animal cruelty are seen in a far more serious light today than they were in previous years. This is in part due to our better understanding of how cruelty to animals presages other more chilling possible adult behaviours. There is clear evidence here of earlier acts of cruelty to animals. Mr. Chailler is not being sentenced for those earlier acts but they do put the current offence in a particular context. The decision he made to end the family dog's life was calculated, it was not in any way sudden, it could not be described as one done in the heat of the moment. To this point of his explanation for ending the life of his mother's dog, as far as I can see from the material given to me, show little if any remorse or understanding. Having considered the authorities that were submitted it is clear that general and specific denunciation and deterrence are the overarching sentencing principles and that the sentences for acts of animal cruelty have been increasing, reflecting the change to the legislation made by parliament.

27 Having considered the authorities and those changes, I have concluded that a custodial sentence of 16 months is a fit and just sentence to reflect the denunciation of this offender and of this offence, as well as to reflect general deterrence. I would not exclude specific deterrence but for the fact that Mr. Chailler appears to show little if any understanding of what he did or of any real remorse.

28 I note that both Mr. Chailler's mother and father have suggested that he might be managed within the community. The sentence I have imposed, which before I forget, is a consecutive sentence to any other sentence being served, is one that could

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be served by a conditional sentence served within the community. With respect, the views of the parents may reflect the sense of Alexander Pope from the 17th century that hope springs eternal in the human breast. In this case, I do not see any objective basis for that hope and believe that protection of the public requires that this sentence be served in a penal institution. Mr. Chailler appears to me to present a risk of further reoffending and is in my view a risk to the community were he to receive a conditional sentence order. The surcharge on that offence is waived. Break and entering is a secondary designated offence. Mr. Chailler will provide a bodily sample for analysis and inclusion within the convicted offenders database and there will issue a lifetime prohibition from the owning of any pet.

29 MR. LIM: Your Honour, I don't know if I asked for this, I thought I did, but would you consider a weapon —

30 THE COURT: I cannot hear you.

31 MR. LIM: Sorry. Would you consider a weapon prohibition, sir? I thought I asked for that in respect to the break and enter.

32 MR. NGUYEN: I have no objections.

33 THE COURT: A 109 or a 110?

34 MR. LIM: That would be 110, Your Honour, I believe.

35 THE COURT: And is it —

36 MR. LIM: It's for 10 years, sir.

37 THE COURT: I will issue a weapons prohibition under 110 for 10 years.

38 MR. LIM: The Crown would apply to withdraw all other charges, sir, with your permission.

39 THE COURT: All the other charges are withdrawn. Thank you very much. Thank you, madam clerk. I think we are adjourned.

Order accordingly.

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