

Case Name:

R. v. Courchesne

Between

**Her Majesty the Queen, and
Marcel A. Courchesne**

[2005] O.J. No. 4601

Ontario Court of Justice
Ottawa, Ontario

D.W. Dempsey J.

Oral judgment: April 21, 2005.

(7 paras.)

Sentencing -- Quantum -- Offences -- Criminal Code -- Wilful and forbidden acts in respect of certain property -- Cruelty to animals -- The offender, after pleading guilty to a cruelty to animals offence, was sentenced to imprisonment for 30 days, to be followed by probation for one year, and was prohibited from owning or having custody of any animal for two years -- Criminal Code, s. 446(5) -- Sentencing -- Particular sanctions -- Imprisonment -- Prohibition orders -- The offender, after pleading guilty to a cruelty to animals offence, was sentenced to imprisonment for 30 days, to be followed by probation for one year, and was prohibited from owning or having custody of any animal for two years -- Criminal Code, s. 446(5) -- Sentencing -- Sentencing considerations -- Deterrence -- The offender, after pleading guilty to a cruelty to animals offence, was sentenced to imprisonment for 30 days, to be followed by probation for one year, and was prohibited from owning or having custody of any animal for two years -- Criminal Code, s. 446(5).

Sentencing of the offender following his guilty plea to a cruelty to animals offence -- In front of a 9-year-old child, the offender took a cat by its legs and swung the animal against a cement wall, causing its death -- The offender had recently been convicted of another cruelty to animals offence -- A conditional sentence was not appropriate -- To properly address the principles of general and specific deterrence, a period of incarceration was required -- Sentence: imprisonment for 30 days to be followed by probation for one year -- The offender was prohibited from owning or having custody of any animal for two years.

Statutes, Regulations and Rules Cited:

Criminal Code s. 445(a), s. 446, s. 446(5)

Charge: Section 446(5)

Counsel:

T. Wightman, Esq. Counsel for the Crown

S. Konyer, Esq. Counsel for the accused

1 D.W. DEMPSEY J. (orally):-- Mr. Courchesne, you have entered a plea of guilt to a charge under section 446 of the Criminal Code dealing with an incident that took place in July of 2003. The evidence indicates that on that date, you, after some argument and dispute, took a cat by its legs and swung the animal against a cement wall causing its death.

2 The matter was adjourned following your plea for preparation of a Pre-Sentence Report. The report speaks of the ongoing concerns that you must deal with. It outlines as well the health problems with which you are dealing.

3 The suggestion raised by Mr. Konyer, your counsel, in terms of sentence, was that the Court consider a Conditional Sentence in this matter. I am mindful of the requirements in terms of the granting of a Conditional Sentence. Clearly, there is no minimum period of incarceration prescribed with respect to this charge, but I note, and I am mindful of the fact that in July of 2003, some two weeks prior to this incident, you were convicted of an offence under section 445(a) of the Criminal Code. In the circumstances and given the further aggravating fact of the presence of a nine-year-old child when this incident was taking place, I find that this would not be a case for the imposition of a Conditional Sentence.

4 It is my belief that to properly deal with the principles and purposes of sentencing and to deal both with the issues of general and specific deterrence, that a period of incarceration is required in this matter.

5 In the circumstances, given the mitigating fact of your plea and the submissions of counsel, as well as the evidence, I am satisfied that a period of incarceration of thirty days is appropriate in this matter, and that is the sentence that is imposed. That will be followed by a period of probation which will run for a period of twelve months. The probation order will include the normal statutory terms and will include the term that you report forthwith upon release and no later than two business days of your release from custody to the Probation Service and thereafter at a time and in a manner directed by the Probation Officer. You will, as well attend for, participate in and complete any assessment, counselling, or treatment that shall be directed by the Probation Officer. You will, as well, provide the Probation Service with any consent to disclosure that may be required by the Probation Officer assigned to your case.

6 As well given the facts in this matter as well as the previous conviction, I am satisfied that the Court should in this case pursuant to section 446(5), prohibit you from owning or having in your custody or control any animal or bird during a period of two years from this date.

7 Given your circumstances at this time, Victim Fine Surcharges will be waived.

D.W. DEMPSEY J.

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