

Case Name:
R. v. Dean

Between
Her Majesty the Queen, and
Tom Dean

[2005] O.J. No. 1408

Information No. 04-596

Ontario Court of Justice
Hamilton, Ontario

B. Zabel J.

Oral judgment: March 16, 2005.

(32 paras.)

Criminal law -- Sentencing -- Considerations -- Mitigating factors -- Guilty plea -- Presentence report -- Remorse -- Seriousness of offence or circumstances -- Particular sanctions -- Conditional sentence -- Probation -- Conditions.

Sentencing of the accused, Dean, who pled guilty to causing unnecessary injury to a dog by throwing it. A joint submission as to sentencing was made by counsel.

HELD: Dean was sentenced to 30 days incarceration to be served in the community as a conditional sentence. He was given reporting probation of 12 months and required to attend substance abuse and anger management counseling. Dean was ordered not have possession of any animal during his probation nor reside or work in a location with animals. Restitution was ordered in favour of the SPCA in the amount of \$3,689. The joint submission was accepted as within the appropriate range of sentence. The plea of guilty was considered a sign of remorse. Also considered was Dean's criminal record, the circumstance of the offence, the pre-sentence report and the positive letters of reference that had been filed.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 446(1)(a), 446(5), 718-742.

Charge: S. 446(1)(a) - Cruelty to Animals

Counsel:

M. Fox Counsel on behalf of the Crown

R. Startek Jr. Agent for Richard Startek Sr., Counsel on behalf of Tom Dean

REASONS FOR SENTENCE

1 B. ZABEL J. (orally):-- On a prior occasion, Tom Dean pleaded guilty to the following count in the information:

That on or about the 21st day of December, 2003 at the City of Hamilton, did wilfully cause unnecessary injury to a dog by throwing it, contrary to s. 446(1)(a) of the Criminal Code of Canada.

2 The matter was eventually remanded to today for sentencing.

3 In imposing sentence today, I have considered the plea of guilty as a sign of remorse, the circumstances of the offence, the personal background of the accused as set out in the pre-sentence report filed, and as well, the criminal record of the accused and the positive letters of reference filed by defence counsel on the last occasion.

4 Crown and defence counsel have presented a joint submission to the court. The Ontario Court of Appeal has directed that trial courts should give serious consideration and weight to a joint submission by counsel. In this case, the joint submission has been arrived at by two senior and experienced counsel; Mr. Fox on behalf of the Crown and Mr. Startek Sr., on behalf of the defence.

5 In light of everything presented to me and in applying the applicable principles of sentencing, and as well, considering s. 718 and s. 742 of the Criminal Code, I find that the joint submission of counsel is within the appropriate range of sentence for the circumstances of the offence as presented to the court. Accordingly, the joint submission is accepted by the court.

6 Stand, sir. You are sentenced as follows:

7 The first part of your sentence, sir, is a 30 day period of incarceration to be served in the community as a conditional sentence on the terms as presented in the draft order to the court.

8 There are two changes in the draft order. I have deleted paragraph 21 and in paragraph 22, instead of giving access to the SPCA to the home, in light of the comments made by Mr. Fox and the comments made by defence counsel, that has been changed to provide that the Hamilton police will have access to the home.

9 There are remaining now some 22 paragraphs. Have you reviewed all these with your client, counsel?

10 MR. STARTEK JR.: Yes.

11 HIS HONOUR: You are content that I just file this and attach it to the conditional sentence order instead of reading it into the record?

12 MR. STARTEK JR.: Yes, Your Honour.

13 HIS HONOUR: That is the first part of your sentence, the conditional sentence. It is for a period of 30 days on the terms as indicated by counsel. Here are the terms as I have changed and I have endorsed, Madam Clerk, for a period of one month.

14 In addition, there will be reporting probation for a period of 12 months containing the following terms:

15 It is a reporting probation order, and as well, besides reporting, you are to attend for counselling as recommended by your supervisor with special consideration given to the anger management and substance abuse Change as a Choice series of orientation sessions as offered by the probation and parole office.

16 You are, sir, to provide the supervisor with documentation of attendance at any such programme and sign any required releases and complete these courses in a timely fashion.

17 As well, sir, you are not to have in your possession or ownership, any animal for the period of your probation and to immediately surrender any animals to the Hamilton SPCA. You are not to reside or work in an environment that has animals.

18 As well, sir, you are to provide access to the Hamilton police to any residence that you live in for the purpose of advocating animal safety protection. This access is during daylight hours.

19 Lastly, sir, you are to maintain regular attendance with a family physician for the purpose of monitoring chronic pain, sign any releases required for the purpose of verification of attendance.

20 In addition, a free-standing restitution order is made in favour of the Hamilton SPCA in the amount of \$3,689.42. The surcharge is waived.

21 I should indicate on the record that the terms of this conditional sentencing order as drafted by both counsel is one of the most complete and restrictive that I have seen, that I have imposed.

22 Any comments from counsel?

23 MR. FOX: No Your Honour. I do request - I know you prohibited him from owning pets under the probation order. I would request as well there be a prohibition under s. 446(5).

24 HIS HONOUR: In light of the conditional sentence and the probation, I think the prohibition is long enough in light of the terms I have imposed and especially the counselling.

25 MR. FOX: Thank you.

26 HIS HONOUR: Any comments from the defence?

27 MR. STARTEK JR.: No, Your Honour.

28 HIS HONOUR: Does your client have any questions?

29 MR. STARTEK JR.: No, Your Honour.

30 HIS HONOUR: I am going to rely upon you, counsel, to explain to your client the criminal consequences of breaching the conditional sentence order and the probation order. Will you do that, counsel?

31 MR. STARTEK JR.: Yes.

32 HIS HONOUR: Thank you. So ordered.

qp/s/qlsxk