

*Case Name:*  
**R. v. R.P.**

**IN THE MATTER OF the Youth Criminal Justice Act, S.C.  
2002, c. 1  
Between  
Her Majesty the Queen, and  
R.P.**

[2005] O.J. No. 2896

Information No. 02-YM32

Ontario Court of Justice  
**Youth Justice Court - Cornwall, Ontario  
B.E. MacPhee J.**

Oral judgment: March 24, 2005.

(31 paras.)

*Criminal law -- Offences -- Property offences -- Cruelty to animals -- Sentencing -- Considerations -- Pre-sentence report -- Seriousness of offence or circumstances -- Particular sanctions -- Probation -- Conditions -- Young persons -- Particular sanctions -- Open custody.*

Sentencing of RP upon conviction for various offences, arising from RP's participation in the shooting of two horses, one of which died, and the subsequent mutilation of the dead horse's body. RP pleaded guilty but later an issue arose because he claimed he did not remember committing the acts he was accused of. After his arrest, RP was subject to restrictive bail conditions and complied with them. He started college and underwent a psychological assessment. The assessment report concluded RP was not a significant threat to society and was a good candidate for community supervision.

HELD: RP was sentenced to a six-month deferred custody and supervision order, with all statutory conditions as well as a non-contact order prohibiting RP from associating with the other person involved in the offences. He was prohibited from consuming alcohol and non-medical drugs and was confined to his home except for permitted absences for work, school and those other reasons permitted by his supervisor. Following his custodial term, RP would be placed on 18 months' probation, with the same alcohol and drug prohibitions as well as a prohibition on RP having the care and control of any animals. He was subject to a ten-year prohibition on possession of weapons. The offences were shocking and inhumane.

**Statutes, Regulations and Rules Cited:**

Criminal Code of Canada, s. 85(1)(a), s. 88, s. 334(b), s. 430(4), s. 444(a), s. 446(1)(a)

Youth Criminal Justice Act, s. 38, s. 39, s. 39(a), s. 39(b), s. 39(c), s. 39(d), s. 42, s. 51(1), s. 51(2)

Charges: S. 444(a) Criminal Code of Canada x 2 -- S. 88 Criminal Code of Canada -- S. 334(b) Criminal Code of Canada -- S. 446(1)(a) Criminal Code of Canada -- S. 430(4) Criminal Code of Canada -- S. 85(1)(a) Criminal Code of Canada

**Counsel:**

J. Pilon Counsel for the Crown

S.W. Konyer Counsel for the accused

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REASONS FOR SENTENCE

**1 B.E. MacPHEE J.** (orally):-- On March the 3rd, 2002, R.P. in the company of Jason Crump participated in events that resulted in the death and mutilation of a horse and serious injuries to another. R.P. fired two shots from a stolen shotgun at a horse named Pirate and the horse died. Thereafter, the gun was taken from him by his co-accused Crump and another horse, Prince, was wounded. They then proceeded to mutilate the dead horse. A subsequent investigation led to the young persons and they have been brought before the court and have been held responsible for their conduct.

**2** It's important to note that there was an issue that arose whereby R.P. indicated that, as a result of his lack of recollection, he took issue with respect to admitting guilt and, at a previous hearing, it was determined by me that the pleas would stand and we would proceed to sentencing today.

**3** Earlier on in this matter, I had the opportunity to sentence Jason Crump. The offenders are dissimilar in terms of background. Their participation in this event can be said to be similar. When I was dealing with Mr. Crump, I said the following: "The acts that are contained in the evidence that I've heard are very disturbing. There isn't a member of our community who wouldn't be revolted by what Jason and his companion participated in on the date in question. The treatment and the abuse of these animals was of a kind, a duration and a fashion which is just beyond understanding. I cannot believe how anyone, let alone two youths in our community, could visit such unspeakable violence on these animals.

"I need not review the graphic details and, of course, I must be cautious in reviewing the facts because we are dealing with the other offender who has not been dealt with by the system and I'm sentencing Jason for his responsibility. Jason was there all the while these acts were being visited upon these horses. This incident has attracted infamy in this area and beyond because of how callous and uncaring the two youths were towards these defenceless animals. There's no question, apart from the consideration that find themselves woven in the many intricate sections of the Act, that a court of any jurisdiction must, in some fashion, speak to the horror of this conduct and denounce what Jason has done. Your acts were simply deplorable and there isn't a thinking, caring human being in this community that would share any other view but that these acts were deplorable."

**4** And as I said to him, I say to you, R.P.: You have to accept responsibility for these acts.

**5** The Crown and defence have adopted different positions before the court and I have been asked to consider a

plethora of documents including the victim impact statement, which I have, and the previous testimony that was given on the plea of guilty and a pre-sentence report.

**6** The whole focus of the new Youth Criminal Justice Act is to place the focus on means other than incarceration to change the conduct of youths who have contravened the laws of this country. While many of the sections are interwoven, suffice it to say that the preamble speaks to the policy considerations underlying the Act itself, and what we wish to do is we wish to get young persons who run afoul of the law to understand and share a responsibility for their criminal acts and to change their behaviour so as to become productive, law-abiding members of the community. Crown counsel, Mr. Pilon, has asked me to consider incarceration in dealing this young person and Mr. Konyer has suggested that incarceration would not be appropriate and, indeed, may not be available in the circumstances which we are dealing with in this particular case.

**7** Section 38 speaks to the purposes and principles of sentencing and I need not repeat all of those provisions save as to note that what we want to do is we want to find the correct mix of sanction or sanctions in order to address the conduct, to bring sober reckoning in the part of the mind of the offender as to the circumstances, and to change the conduct so that the accused becomes a responsible member of our community and acknowledges the harm done.

**8** These events, I might say as an aside, were shocking. There is no other word to describe the act that one feels when hearing of this conduct. To shoot and kill a horse is beyond the pale. To thereafter mutilate the horse is simply conduct that I can only describe as being inhumane. It is callous in extremis and really the sort of thing that is simply not to be anything other than condemned by thinking, caring members of our community.

**9** Section 39 indicates that, and I read: "A Youth Justice Court shall not commit a young person to custody under subsection 42 unless a) the young person has committed a violent offence, b) the young person has failed to comply with non-custodial sentences, c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the Young Offender's Act, or in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38."

**10** When one looks at the impact of this event, particularly on the owner of the horses, and considers the definition of violence, in my view, both under subsection (a) and under subsection (d), because of the aggravating circumstances, these are events which are such that the court can properly consider the imposition of a period of custody. The question is whether or not that is the proper sentence to impose at this point in time.

**11** A good deal of time has gone by since the commission of these offences. I have noted that the offender before the court has been subject to very strict bail conditions for a lengthy period of time and, to my knowledge, has complied with them in every material particular. The pre-sentence report prepared by miss Connelly-Gadbois speaks to some mitigating circumstances on the part of the accused. Since September of 2004, R.P. has been employed as a full-time student in the 40-week motor vehicle techniques program at St. Lawrence College. At the time this report was authored, which is back in January of this year, his grade average at that time was 87 per cent. In June of 2005, upon graduation, the offender hopes to move into an apprentice program.

**12** R.P. has also met with psychologists in Ottawa and underwent a Family Court clinic assessment at the Royal Ottawa Hospital under Dr. Montayne. Dr. Montayne, inter alia, points out that this offender does not fit the psychological profile or has disruptive behaviour problems that one would see with people who are inclined to commit the sort of event that brings him here today, that is the injury to an animal and mutilation of that animal. The report goes on to speak at great length about the offender's difficulty in recollection of the events itself. Originally before the court, he took the view that while he did not remember the events, he accepted responsibility. Then we went into a hearing with respect to striking the finding of guilt.

**13** The pre-sentence report also indicates that R.P. has struggled with the notoriety of this and I can well imagine that the family has suffered as well. Events like this can change a person and change a family fundamentally. The report goes on to speak positively about R.P. and his progress since that time and Miss Connelly-Gadbois indicates that the accused has clearly been impacted by all of this. He's nervous about the possible consequences that the court can impose and is doing whatever he can do to right the wrong by leading a law-abiding life. Miss Connelly-Gadbois says that R.P. does not pose a significant threat to society at this time and appears to be a good candidate for community supervision.

**14** In my view, the only way to speak to the gravity of this offence, taking into mind the positive nature of the pre-sentence report and the sentence that was imposed upon Mr. Crump, is to impose a multi-faceted sentencing on the accused before the court. What I propose to do is to impose a maximum period of deferred custody and community supervision on the offender, followed by a maximum term of probation in conjunction with a weapons prohibition of maximum duration.

**15** All of the conditions set out in the Youth Criminal Justice Act will be imposed so that the deferred custody and supervision order will be for a total of six months. In addition to all of the conditions that form part of the order by virtue of statute, R.P. is to have no contact with Jason Crump. He is to abide completely with the conditions of the probation order. He is to be confined to his premises for the custody portion of the order itself and only to be permitted absences for purposes of education, employment, and for whatever other reasons are permitted by his supervisor qua probation officer. He is to abstain absolutely from the non-medical use of drugs, and no alcohol. He is not to enter any licenced premises during the period of his deferred custody and supervision order.

**16** When the order expires, probation will follow for a period that I calculate to be 18 months. I want you to report. I want you to continue with the assessment and counselling as directed for substance abuse and personal counselling. And you're to abstain from the non-medical use of drugs and report as directed.

**17** The maximum length of the weapons prohibition, Mr. Pilon, would be?

**18** MR. PILON: I believe Your Honour has already imposed a ten-year weapons prohibition or at a minimum ten years. If I could just have a moment. I believe it's guided by s. 51(1) of the Youth Criminal Justice Act.

**19** CLERK OF THE COURT: Fifty-one (1), yes.

**20** MR. PILON: According to 51(1), the period is - The duration is in accordance with subsection (2) which indicates that an order made under subsection (1) begins on the day in which the order is made and ends not earlier than two years. I read that to be a minimum of two years. Given the circumstances, I would be seeking the ten-year weapons prohibition.

**21** THE COURT: Ten years consistent with the legislation, Mr. Konyer. Oh, it's already been imposed for ten years.

**22** MR. PILON: On the 21st of October, Mr. Clerk, ...

**23** CLERK OF THE COURT: That's correct.

**24** MR. PILON: ... 2003?

**25** MR. KONYER: That's fine.

**26** THE COURT: Thank you, gentlemen. Good luck to you, son. We'll stand the court in recess until 2:15.

**27** CLERK OF THE COURT: Mr. Pilon for the R.P. matter?

**28** MR. PILON: Yes, Your Honour. If we could just revisit the R.P. matter for just a bit of housekeeping. Mr. R.P. is still present at the back of the courtroom. Just prior to taking the lunch recess, we confirmed with Mr. Clerk and in the

presence of Mr. Konyer that Mr. R.P. will also be bound by conditions of no alcohol and no drugs, both during the probation and the deferred custody order. That was what I understood Your Honour's intention was. As well, we canvassed the condition that he not have the care or control or supervision of any animals during the time of his deferred custody order and his probation order, save and except for the chickens on the family property. And I understand that that is in agreement with the accused and we're content that that can be part of the conditions.

**29** THE COURT: Yes, that's fine.

**30** MR. PILON: Thank you. And the remaining counts can be withdrawn against Mr. R.P.

**31** CLERK OF THE COURT: So endorsed.

B.E. MacPHEE J.

qp/qi/s/qw/qlalc