

Case Name:
R. v. Kolak

Between
Regina, and
Sylvia Kolak

[2003] Y.J. No. 189

2004 YKTC 11

Whitehorse Registry No. 03-06457A

Yukon Territorial Court
Whitehorse, Yukon Territory

Cameron J.P.

Oral judgment: November 25, 2003.

(16 paras.)

Criminal law -- Offences -- Property offences -- Cruelty to animals -- Sentencing -- Particular sanctions -- Probation -- Fines.

Sentencing of Kolak who had pleaded guilty to one count of s. 119 of the Animal Control Bylaw. One of Kolak's ten dogs was found to be so severely malnourished that it had to be put down. The Crown sought the voluntary penalty of a \$250 fine and a probation order requiring that Kolak not be in possession or care of dogs for a period of 18 months.

HELD: A fine of \$100 and 18 months of probation with a prohibition on possessing or caring for dogs was imposed. Kolak's neglect was unintentional and her financial means were somewhat limited. She was granted two months to pay the fine.

Statutes, Regulations and Rules Cited:

Animal Control Bylaw, s. 119.

Counsel:

James Van Wart Appearing for Crown

Rose Wilson Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

1 CAMERON J.P. (orally):-- Ms. Kolak has plead guilty to one count of s.119 of the Animal Control Bylaw. The facts are that on July 15, 2003, Bylaw became aware of a badly malnourished springer spaniel that had been in the care of Ms. Kolak. The animal could not stand or walk on its own. It was clearly in substantial distress. It was taken to the vet. The vet did a number of things and found the animal to be in a very, very malnourished state. It could not be properly revived and eventually the animal was put down.

2 It was clear that the dog had just had a litter of puppies. Ms. Kolak had three other dogs in her care, plus seven puppies, all of which were healthy at the time they were checked.

3 Crown is seeking the voluntary penalty of \$250 and a probation order requiring that Ms. Kolak not be in the possession or care and control of dogs for a period of 18 months.

4 Ms. Kolak is of very restricted, limited means. It does not offer an excuse but it is understood by the court how, for someone who may not be a particularly knowledgeable pet owner and not particularly involved each and every day with the pets, it may be possible for a pet to become somewhat unhealthy before it shows any signs. I find it a bit surprising. If this animal had been actually seen by you within the 24-hour period or the day before it was actually found, it should have been evident that it was fairly unhealthy. Having done nothing at that point is certainly what constitutes this offence.

5 I guess the point that I am trying to make, Ms. Kolak, is that you may not have been aware of how unhealthy your dog was, but if that is the case then you should not have dogs. You either have to become more cognizant of healthy dogs versus unhealthy dogs if you are going to be in the care of dogs, or do not be in the care of dogs. It is very unfair to this dog to have been neglected, whether it was intentional or unintentional, and I believe in your case it was unintentional. I do not believe you intentionally neglected this dog but, unfortunately, the dog was neglected, and the one person who was in a position to have noticed and/or changed that situation was yourself.

6 I am going to accept that you are somewhat limited in your financial means. I am going to impose a \$100 fine, which is less than the normal \$250 fine but I think is still a substantial fine for your particular set of circumstances.

7 I am going to, however, place you on probation for a period of 18 months. The terms and conditions of that probation are specifically that you are not to be in the possession or care and control of any dogs for that period of time.

8 Now, I guess the questions that probably are going through your mind are, so can your son have any dogs? I would suggest that yes, there is nothing here that says your son had the responsibility for this particular dog, but if the bottom line is that your son's dogs are being taken care of by you, no, your son cannot have dogs. Your son must be taking active care and control of the dogs himself.

9 THE ACCUSED: He has his own dog.

10 THE COURT: He has his own dog, yes. But it is at your place, right? Yes.

11 The other two dogs that are there, which are in your care and control, you will have to find other homes for them.

12 I think it is very important for dog owners to try to appreciate what quality of life they provide for their dogs. If the quality of life that you provide for your dogs are that, for most of their time, they are tied up in the backyard with feed and water that comes once a day, that is no quality of life. You have got to realize these dogs are not there as work dogs. Historically, when we had sled dogs and so on and so forth, they were work dogs and that was very often the case

for work dogs. These dogs supposedly are pets and pets are supposed to have a quality of life. They are supposed to have an interaction with people. It is more than simply being fed once a day, more than simply being taken for walks on occasion, or taken camping on occasion. They have to have interaction. It has to be positive interaction and that is how dogs thrive and maintain a healthy existence. Those are the things that appear to have been lacking for this dog. If there had been some interaction between yourself and this dog, I am sure you would have recognized that this dog was not healthy and, hopefully, you would have pursued some positive action in order to ensure that the dog did not reach the stage that it did.

13 How long would you need to pay the \$100 fine?

14 MS. WILSON: She'll need two months time to pay, Your Worship, and then I will explain to Ms. Kolak, if she requires any further time to pay, the process to do that.

15 THE COURT: Two months time to pay and you can explain the fine option program as well to her.

16 MS. WILSON: Thank you, Your Worship.

CAMERON J.P.

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