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File No: 91934-3-C
Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

S.A.S.

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE DONEGAN**

Counsel for the Crown:
Counsel for the Defendant:
Place of Hearing:
Date of Judgment:

A. Janse
K. Walker
Kamloops, B.C.
September 1, 2011

[1] THE COURT: Mr. S. pled guilty today to Count 3 of Information 91934-KC-3, a charge of wilfully causing unnecessary pain, suffering, or injury to an animal, his girlfriend's cat, specifically contrary to s. 445.1(1)(a) of the *Criminal Code*.

[2] I am told that on the night before this happened, February 16, 2011, he and his girlfriend who had been living together, J.D., got into a verbal argument. Mr. S. was very upset. She left and stayed at the home of a friend. He was consuming alcohol and drugs and became more and more desperate and upset as the night went on.

[3] In the course of the early morning hours of February 17th he made a series of phone calls, not only to Ms. D. but to his own family members, indicating that he was distraught by her absence and the fact that she was with someone else and the end of their relationship, and threatened to kill her cat in apparent retribution for her conduct. He told her that if she did not come home that he would kill her cat.

[4] Unfortunately, no one in the family seemed to believe that he was capable or was going to follow through with those acts. So they spoke to him many times throughout the night, but no one did attend at his home and, in fact, the cat did die. I am told that Mr. S. does admit to choking and kicking his girlfriend's cat causing some injury to the cat. The death was caused accidentally by him later dropping a couch on the cat. He was under the influence of alcohol and drugs at the time, which made his coordination obviously not what it should be. In any event, what he did on this evening caused this pet of his girlfriend's to undergo, over a protracted period of time, some considerable pain and suffering.

[5] Mr. S. was arrested by police and determined to be somewhat suicidal. He was also arrested under the *Mental Health Act*. He was released on the criminal charges and spent, I believe, a bit of time in hospital.

[6] Turning now to Mr. S.'s background, he does have a criminal record which was filed, Document 1, and as Ms. Janse on behalf of the Crown points out, he has several prior convictions for violence including assaults with a weapon and assaults in the context of domestic violence. He has breaches of probation orders scattered throughout his criminal record, as well.

[7] His counsel advises that he has had a drug and alcohol addiction for some period of time, is very anxious to seek treatment and more than willing to engage in any treatment that is offered to him or that he can pursue. He also has suffered for quite some considerable period of time in his life from depression. He takes medication to assist with that.

[8] I am also told that he does have good family support and has a family -- I believe he had a family member here this morning, I believe his uncle.

[9] MR. WALKER: Yes, Mr. S. was here this morning. He said he would not be able to be back until this afternoon, later.

[10] THE COURT: Yes. So he does have some family support and, when Mr. S. is released, he will be able to live with him for a bit until he is able to get his feet under him. He has made applications in the community for some assistance which is positive.

[11] I have not heard about victim impact specifically, but I can only imagine that Mr. S.'s girlfriend was distraught. I did hear at the time of the offence she was considerably distraught over the loss of her pet.

[12] The Crown in this case seeks a six-month jail sentence, which is not disputed by the defence. Both counsel urge me to consider that he has spent the last six months in custody, although at least for part of that time serving other sentences, but submit that had he pled guilty at that time, a concurrent sentence would have been imposed.

[13] So both counsel urge me to give him credit for the full six months and have his record reflect six months imprisonment and to have him released today. Where counsel differ in their positions are with the length of the probation order, a certain condition that is sought by the Crown in the probation order, the length of the prohibition against owning animals, and whether or not a s. 110 firearms prohibition is in order.

[14] In order to assess this case, I have got to start with the purpose and objectives of sentencing. I have been provided with three cases by the Crown, which I have reviewed in their entirety. In fact, one is a decision that I gave, **R. v. Mercredi**, in February of 2011.

[15] The purpose and objectives of sentencing in short in s. 718 of the *Criminal Code* provide that:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives ...

[16] They include denunciation, general and specific deterrence, separating the offender from society where necessary, rehabilitation, repairing harm, promoting a sense of responsibility in the offender, and acknowledging the harm caused to the victim and the community. When I am determining a fit sentence for you, Mr. S., I have got to consider not only those objectives, but the aggravating and mitigating circumstances in a case, all available sanctions other than imprisonment that are reasonable, the least restrictive sanctions. Then I also have to look at parity of sentence or a sentence should be similar to similar offenders in similar situations.

[17] As I say, I have been provided with some guidance in the three cases provided by the Crown. Here, the aggravating factors are as outlined by the Crown. I agree with those.

[18] Mr. S., you were in a position of some authority over this small animal. You were left home alone with your girlfriend's pet. She entrusted her pet to your care and you abused that trust. Your conduct toward this animal was egregious and it was inflicted solely as a form of retribution to your girlfriend, which is aggravating. It did occur in the context of a domestic dispute against a very helpless creature that you were to look after. Obviously, the cat had to have been in some significant pain while all of this was going on.

[19] The mitigating circumstances are, of course, as outlined by both counsel. You have pled guilty at not the earliest opportunity, but an early opportunity sufficient enough to cancel the witnesses that were required for trial and save testimony that would have

been a challenge for your former girlfriend and others, I am sure, including your family members that were likely to be witnesses. So that is mitigating.

[20] It is also mitigating, in my view, that you have assumed responsibility, expressed your remorse, which I find to be genuine, and are desirous of seeking treatment for your addictions which no doubt played a role in this offence.

[21] I agree with Judge Quantz in the decision that was provided to me, **R. v. Connors**, a judgment delivered on February 2, 2011, in very similar circumstances where he discusses, and I will not go through it in any great detail, but he discusses the attitude that the courts take towards these types of offences and the reason why. He says quite clearly that cases of animal cruelty such as this are deserving of punishment. It is conduct which most members of our society find repugnant and morally reprehensible.

[22] The principles of sentencing to be emphasized in these types of cases are denunciation and deterrence, but we cannot lose sight of rehabilitation, as well, and those are the factors that I focus on. I find that what has been proposed in terms of a jail sentence, the equivalent of six months in prison, is appropriate. That is what I imposed in the **Mercredi** case. That is what Judge Quantz imposed in the **Connors** case. It is within the appropriate range. It is what I do impose today.

[23] I give you credit based on the submissions of the lawyers for a full six months. So you will have one day in jail as your actual sentence to be served. The effective sentence was six months in jail and that is to be followed by a period of probation.

[24] Your lawyer submits that one year of probation is sufficient to meet the sentencing aims. The Crown seeks a lengthier period. I have to bear in mind that when imposing probation there are two goals that need to be achieved. One is your rehabilitation which is important and which you are going to be pursuing, and the second is to protect the public. Based on the material before me, the circumstances of the offence, and your violent criminal history, those two aims cannot be met by a short probation order.

[25] A two-year probation order is, in my mind, the absolute minimum that I can impose in order to properly protect the public and to promote your rehabilitation. You need quite a bit of help, sir, to deal with your issues and addictions. So it will be a two-year probation order with the following terms, and I will just ask counsel to pay close attention because I did not get everything down and I want to make sure I have not missed anything.

[26] First, you shall keep the peace and be of good behaviour, appear before the court when required to do so by the court.

[27] 401A, within 24 hours after completion of your jail sentence, which is likely to be today - should be today - you shall report in person to the probation office nearest the place of your release from custody and, after that, you shall report as and when directed by the probation officer. So you are going to be released today. You may not make it to the probation office by the time it closes. So you have 24 hours in which to report and the probation office is just downstairs.

[28] 302, when first reporting to your probation officer, you shall inform him or her of your present residential address and telephone number and you shall not change your address and telephone number without first obtaining the written consent of your probation officer.

[29] 307, you shall have no contact or communication directly or indirectly with J. - and I have just lost her last name - D.

[30] THE ACCUSED: D.

[31] MR. WALKER: D.

[32] THE COURT: D., she is named in Count 1, yes, and was there anyone that was sought in the no-contact order? No, all right. So you understand that, sir, no contact at all? All right.

[33] 312, you shall not attend at or be within 50 metres of any place which you know to be the residence, school, or workplace of J.D.

[34] Now, the no alcohol and drugs condition that is sought by the Crown is an appropriate condition. Your offending in this particular instance was not caused by your drinking and drug consumption, but it certainly was exacerbated by it. There is a real concern, sir, when you are drinking, that your violence increases, and I have your counsel's comments in mind in that you do suffer from alcoholism and drug addiction. I have to balance that with protection of the public and in order, in my view, to properly protect the public, I do have to ban you from alcohol and drugs. Now, that will be tough for you, but if you are sincere about your rehabilitation and are going to treatment, then

you can do it. So 315A, you shall not possess or consume any alcohol or drugs, except as prescribed for you by a physician.

[35] 316, you shall not enter any liquor store, beer and wine store, bar, pub, lounge, or other business premise where minors are prohibited entry by operation of that business liquor licence.

[36] 322, you shall not possess any weapons as defined in s. 2 of the *Criminal Code of Canada*.

[37] 327, you shall attend, participate in, and successfully complete any assessment, counselling, or program as directed by the probation officer. Without limiting the general nature of this condition, such assessment, counselling, or program may relate to anger management, alcohol or drug abuse, a full-time attendance program for alcohol or drug abuse, and such other full-time attendance program as may be directed by your probation officer and you shall comply with all rules and regulations of any such assessment, counselling, or program.

[38] Those, subject to any comments by counsel, are the terms on your probation order. Nothing? All right.

[39] The Crown has also sought an order pursuant to s. 447.1(1)(a) of the *Criminal Code*, which is an order prohibiting you from owning, having custody or control of, or from residing in the same premises as an animal or bird. Now, when I consider the length of time that you should receive this prohibition, I consider a few things, your

criminal history which does have several convictions for violence, but I do note that there are no other prior animal cruelty charges.

[40] I also consider the level of brutality directed toward this small animal and, when I consider all of those things, I am satisfied that it is appropriate to make that order for a period of 10 years and I do so at this time. I note in the cases that I have been provided, the ***Mercredi*** case and the ***Connors*** case, that the same prohibition was ordered for a period of 10 years and those were offenders that did not have the same criminal history as you - much less serious, in fact. So 10 years is appropriate.

[41] Now, I have struggled a little bit with the s. 110 firearms application. My reading of the section is the same as yours, Mr. Walker, that it makes it quite clear that it is a discretionary order and it is only applicable when violence against a person was used, threatened, or attempted, and I have not heard any submissions from you, Ms. Janse, in regard to that. I am finding it hard to characterize the facts as a threat of violence against a person.

[42] MS. JANSE: Yes, I think there were threats to Ms. D., but it was to do --

[43] THE COURT: With the animal.

[44] MS. JANSE: -- to do injury to an animal. So I certainly -- I agree with the court's position. I do not think it --

[45] THE COURT: Yes, and I looked at a few of the authorities and there were no s. 110s ordered --

[46] MS. JANSE: I am not aware of any.

[47] THE COURT: -- in respect to those either. All right.

[48] So I will decline to make that order in these circumstances, sir, and there will be -
- well, let us see. You are not working, are you? I will waive the victim fine surcharge in
this case particularly given everything that you have to do in your probation order. So
good luck.

[49] MS. JANSE: Thank you, Your Honour. The Crown enters a stay of proceedings
on Counts 1 and 2.

(REASONS CONCLUDED)