

*Case Name:*

**R. v. Fernandez**

**Between**

**Her Majesty the Queen, and  
Nestor Fernandez**

[2001] O.J. No. 5668

Ontario Court of Justice  
Guelph, Ontario

**Douglas J.**

Oral judgment: November 20, 2001.

(10 paras.)

*Criminal law -- Punishments (sentence) -- Discharge of accused -- Conditional discharge -- Sentencing -- Sentence, particular offences -- Cruelty to animals.*

Sentencing of Fernandez for conviction of cruelty to animals. Fernandez had pleaded guilty. He had delegated the responsibility of caring for the animals to someone else who failed to care for the animals properly. Fernandez had no intent to inflict cruelty on the animals.

HELD: Fernandez was placed on probation by way of a conditional discharge for 12 months. Considering the lack of intent and Fernandez's guilty plea, the court accepted the joint submission as to sentence.

Offence: Cruelty to animals

**Statutes, Regulations and Rules Cited:**

Criminal Code.

**Counsel:**

M. de Vos, for the Crown.

J. Maggisana, for the accused.

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**1 DOUGLAS J.** (orally):-- This is a sad case. Anyone who takes responsibility for looking after animals accepts the responsibility to care for them, and when somebody delegates that responsibility and the animals end up starving, dying by childbirth, not being looked after, not being cared for, then it is no wonder that the Criminal Code calls this cruelty to animals.

**2** The facts here are accepted that there was no intent by Mr. Fernandez to inflict cruelty on these animals. If that had been proven, of course, there would be no question that a conditional discharge would not meet the ends of justice. This case borders more on negligence and a delegation of responsibility to someone else and then not making sure that the animals that he is responsible for were well looked after. Because of that, because of his guilty plea, and because of the position taken by both counsel, I will accept the joint submission and place him on probation by way of a conditional discharge for 12 months.

**3** Stand up, please, Mr. Fernandez. There will be a condition discharge imposed here. It will be for a period of 12 months. The terms will be:

1. You will report to and be under the supervision of a probation officer.
2. You will not have in your possession or control any deer, and
3. You will be of the peace and be of good behaviour.

**4** That document will be ready for him to sign shortly, Mr. Maggisana. He should wait in the corridor until his name is called. He can sign the document, I will be signing it, and then he can report to the Probation Office which is downstairs. Now does he live in this area?

**5 MR. MAGGISANA:** No, he does not. He lives in Toronto.

**6 THE COURT:** In Toronto? Then I can assign the transfer of that probation order for him, but he will have to begin his reporting here, okay?

**7 MR. MAGGISANA:** What's the frequency of the reporting, Your Honour?

**8 THE COURT:** Well, that will be up to the probation officer. That will be something that they will determine, okay? But their office is right downstairs here, Mr. Maggisana, okay?

**9 MR. MAGGISANA:** Thank you.

**10 THE COURT:** Thank you.

qp/s/qlhcc