

Case Name:

R. v. Haaksman

Between

**Her Majesty the Queen, and
Travis K. Haaksman and Carl K. Wood**

[2013] O.J. No. 927

2013 ONCJ 66

Files Nos. 2011-998-12-00323-01 (Travis K. Haaksman),

2011-998-12-00323-02 (Carl K. Wood)

Ontario Court of Justice
Napane, Ontario

G.J. Griffin J.

Heard: January 29, 2013.

Oral judgment: January 29, 2013.

(53 paras.)

Criminal law -- Sentencing -- Criminal Code offences -- Wilful and forbidden acts in respect of certain property -- Cruelty to animals -- Particular sanctions -- Imprisonment -- Probation -- Sentencing considerations -- Deterrence -- Denunciation -- Rehabilitation -- No previous record -- Remorse -- Age of accused -- Sentencing of Haaksman and Wood after they were convicted of killing dog -- Haaksman sentenced to three months' imprisonment and two years' probation; Wood sentenced to two months' imprisonment and two years' probation -- Haaksman and Wood caused Haaksman's dog to drown by throwing him into water-filled quarry after leashing him to cement cinder block -- Both offenders were 19, of below average intelligence, with no prior record -- Wood expressed remorse -- Need to deter and denounce were paramount considerations, but rehabilitation and restraint had to be considered.

Sentencing of Haaksman and Wood after they were convicted of killing a dog. Haaksman and Wood caused Haaksman's dog to drown by throwing him into a water-filled quarry after leashing him to a cement cinder block. Both offenders were 19, of below average intelligence, with no prior record at the time of the offence. Wood expressed remorse, but Haaksman denied any direct involvement. A psychologist believed that there was a low probability that either would engage in similar actions again. The Crown sought a sentence of four to six months' imprisonment and two years' probation for Haaksman and a shorter sentence of imprisonment and two years' probation for Wood. Haaksman argued for probation. Wood argued for a conditional sentence and probation.

HELD: Haaksman sentenced to three months' imprisonment, two years' probation, a 10-year animals prohibition, a 10-year weapons prohibition and a DNA order; Wood sentenced to two months' imprisonment, two years' probation, a five-year animals prohibition, a 10-year weapons prohibition and a DNA order. The need to deter and denounce were paramount considerations, but the potential for rehabilitation and the principle of restraint had to be considered. Real jail was required to address the gravity of the offence and the moral blameworthiness of the offenders. However, they were capable of rehabilitation and their below average intelligence would make vulnerable while in jail. Sentence: For Haaksman, three months' imprisonment; two years' probation; 10-year animals prohibition; 10-year weapons prohibition; DNA order; for Wood, two months' imprisonment; two years' probation; five-year animals prohibition; 10-year weapons prohibition; DNA order -- Criminal Code, s. 445(1)(a).

Statutes, Regulations and Rules Cited:

Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 445, s. 445(1)(a), s. 445(2)(b), s. 718, s. 718.1, s. 718.2(b), s. 742.1

Counsel:

Mr. R. Floyd: Counsel for the Crown.

Mr. R. Smart: Counsel for Mr. Haaksman.

Mr. J. Wonnacott: Counsel for Mr. Wood.

REASONS FOR JUDGMENT

1 G.J. GRIFFIN J. (orally):-- Travis Haaksman and Carl Wood entered pleas of not guilty to the offence of willfully and without lawful excuse killing a dog, contrary to section 445.(1)(a) of the Criminal Code of Canada.

2 The trial took place on November 15 degrees', 2012, and after hearing the evidence, both accused were found guilty. A pre-sentence report was ordered as well as a psychological assessment, and both reports have now been completed.

3 With respect to the matter of sentence, the Crown suggested a jail sentence of four to six months for Mr. Haaksman, followed by two years probation, and a ten year ban from owning animals, as well as a DNA sample, and a weapons prohibition.

4 For Mr. Wood, the Crown suggests a shorter jail sentence along with a two year period of probation, a ten year ban from owning animals, along with DNA and a weapons ban.

5 While counsel for Mr. Haaksman respectfully submits that a sentence should not include jail, but be one of probation with counselling provisions, that such a sentence would meet the ends of justice. While counsel for Mr. Wood urges a non-custodial sentence, but being realistic, urges a conditional sentence, also known as house arrest, so Mr. Wood can assist his grandparents, followed by probation, and an order that does not include a provision about residing in a home with a pet.

6 As Chief Justice Lamer wrote in the Supreme Court of Canada decision of R. and C.A.M. [1996] 1 S.C.R. 500 at paragraph 82:

"In the final analysis the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a just and appropriate sentence which reflects the gravity of

the offence committed, and the moral blame worthiness of the offender."

7 Prior to addressing the legitimate principles of sentencing, I'll set out briefly the circumstances of the offence.

Circumstance of the Offence:

8 Travis Haaksman had a pet dog named Jake. Jake weighed 13 kilograms, and was a black and white, medium length hair dog. It seems that Jake may have had some behaviour issues such as chewing on shoes and barking. The nature of Jake's behaviour was never developed as part of the evidence at the trial so it's completely unclear as to the extent of the behaviour issues. In any event, Travis Haaksman told an Ontario Provincial Police Officer that his mother asked him to get rid of the dog, Jake.

9 On or about April 23rd, 2012, Travis Haaksman, along with his friend Carl Wood, and a third person who was not charged with the offence, took Jake for a walk by way of a leash to a water filled quarry. Along with Jake, they brought with them a cement cinder block. Once at the quarry, they tied the cinder block to that part of the leash a person would hold onto as they walked the dog, while the other end of the leash remained attached to the chain collar around Jake's neck. Mr. Haaksman and Mr. Wood threw Jake into 12 to 15 feet of water, while attached to the cinder block, thereby causing the dog's death by drowning.

10 Photographs of Jake submerged in the water were taken on April 28th, 2012, as were photographs of the dead carcass attached to the cinder block by way of the black leash. Those photographs were marked exhibits 1(a) to (h) in the trial. The autopsy report from the University of Guelph Laboratory Services was made exhibit 2, and established that Jake was alive when he was thrown into the quarry, and his death was by drowning.

11 Section 445 of the Criminal Code of Canada: I think it's helpful and worthwhile to say comments made by my colleague, Justice Fergus O'Donnell in the 2010 case of R. and Munroe [2010] O.J. No. 2579, found at paragraphs 2, 27 and 29:

- "2. On 17 April, 2006 Parliament gave effect to the widespread concern that the Criminal Code provisions concerning cruelty to animals had fallen drastically out of step with current social values and restructured those provisions. In addition to fine tuning the offences themselves, Parliament took what had been a pure-summary conviction offence in the Power case with a maximum sentence of six months no matter what the nature of the offence, and created a hybrid sentencing structure with a maximum sentence of five years' imprisonment by indictment and a "super-summary" sentencing maximum of eighteen months' imprisonment. Accordingly, the overall maximum penalty for offences of this nature increased ten-fold.
- 27. The April 2006 amendments to the Criminal Code were no mere housekeeping changes; rather, they represent a fundamental shift in Parliament's approach to these crimes. Such a dramatic change in penalty provision is virtually unheard of in our criminal law.
- 29. Parliament has expressed that people's will in relationship to penalties for these offenses, and it is important that the court not confound that clearly stated intention. That will also require the court, through both its reasons and its sentence, to denounce Mr. Munroe's infliction of months of pain and suffering on these two dogs. The nature of the offences is serious and Mr. Munroe's degree of responsibility is as the relentless driving force behind it."

12 In this case, the Crown elected to proceed summarily, so by operation of section 445(2)(b) of the Criminal Code of Canada, the maximum period of imprisonment is not more than 18 months and a fine not exceeding \$10,000.

13 So it is clear, prior to the amendments in April of 2008, the maximum sentence would have been six months imprisonment, so it's readily apparent that Parliament is representing and expressing the views of society at large and determined that an offence such as this must be seen as serious.

14 It is serious because as human beings we have the ability to reason, and as such we owe a duty to a vulnerable creature, such as a pet dog, to treat it in a humane manner. The society we wish to live in understands that cruelty to animals simply cannot be tolerated.

15 An interesting quote from Mahatma Gandhi provides some insight on this issue:

"The greatness of a nation and its moral progress can be judged by the way its animals are treated. I hold that the more helpless a creature, the more entitled it is to the protection by man from the cruelty of man."

16 Certainly there can be no question that a significant number of community members have made it very clear, from their attendance at court, information pickets outside the court, on-line petitions, and letters, that they view this matter as serious, and deserving significant sanction. I am told there is a petition with over 8,000 signatures demanding harsh punishment, which of course is one indication of the level of community concern.

The Personal Circumstances of the Accused: Travis Haaksman

17 He is 19 years of age. He himself was abused sexually when he was a young person. He suffers from anxiety, for which he is on medication, and in the past been diagnosed with attention deficit hyperactivity disorder. He is below average intelligence. He has poor coping skills, and low self esteem. His upbringing has been described as dysfunctional, and a chaotic rearing environment. He has five credits short of completing highschool. He does not work. He was described as an aimless individual with no ambitions or life plans. He does have a 15-year-old girlfriend who is eight months pregnant, and it is felt that with proper supports in place he could manage his mental illness.

18 A pre-sentence report however, indicates that despite referrals from the probation office, his doctor, and Quinte Detention Centre, the local community health agency is not prepared to assist him.

Carl Wood

19 A 19-year-old who expressed genuine remorse for what took place. He has a grade ten education, and is presently involved in adult education. He too is below average range intellectually, which results of course in sub par decision making. Carl was bullied throughout his school years. In the pre-sentence report the following comment is made:

"He spends his time at home watching television, playing video games, and wishing this never happened."

20 He, in fact, was recently attacked while out in the community resulting in stitches to his face and broken glasses.

21 Both these individuals present as young, simple men of somewhat diminished capacity, with Carl Wood having no criminal record, and Travis Haaksman having no criminal record at the time he killed the dog, Jake. Accordingly, they must be viewed as young, adult offenders, as well as essentially first time offenders.

22 There is in my view, a significant distinction between the two, and that is that Carl Wood has expressed genuine remorse, while Travis Haaksman has denied any direct involvement in the incident, despite the fact that it was his dog.

Principles of Sentencing:

23 One of the principles of sentencing is found in section 718.2(b), which provides that, "A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances."

24 Bearing in mind the amendment to the Code in April of 2008, I am aware of three cases. The first is the Ontario Superior Court case of R. and Munroe [2012] O.J. No. 4405 a decision of Justice Code where he reduced the 12 month jail sentence by Justice O'Donnell to one of six months, along with various other orders. That case involved the accused

killing one dog, wounding another dog. The extensive injuries over a period of time that Mr. Munroe did, what he did to the two Boston Terriers dogs, was much more significant than what took place in this case. As well, it was done in the context of a domestic relationship, the dogs belonging to Mr. Munroe's girlfriend. Justice Code, at paragraph 94 of that decision noted,

"What the trial judge failed to do was to continue his analysis by acknowledging the length of the custodial sentence in the case of a first offender with Mr. Munroe's strong antecedents should be as short as possible, and should be determined only after consideration given to the rehabilitation of the offender."

25 Justice Code is an Ontario Superior Court Judge. He found that six months imprisonment was the proper balance of denunciation, deterrence and the rehabilitation for a man who was 25 years old, and seriously injured one dog and killed another.

26 In the British Columbia Provincial Court case of R. and Connors [2011] B.C.J. No. 168, Mr. Connor killed a young pit bull dog he was caring for. The dog, on examination, had ten broken ribs, a broken jaw, a broken orbital bone, missing teeth, lacerated liver, and other injuries. The brutal beating took place while Mr. Connor was under the influence of alcohol and other drugs.

27 Judge Quantz sentenced this 24-year-old offender to six months, along with other orders.

28 Finally, the Provincial Court case of R. and Tremblay [2012] B.C.J. No. 2398, a decision of Justice Gouge, in that case Mr. Tremblay attacked his black Newfoundland Retriever dog, King, with a hammer, striking its toes, then its head and body. As well, Mr. Tremblay sprayed a substance into King's eyes. The dog did not die, but suffered serious injuries, including broken teeth, lacerations to its head, body and feet. The blows to the paws broke the dog's bones of the paws. Mr. Tremblay was a 21-year-old minimal record, and he received a sentence of six months, along with other orders.

29 These three cases are of some assistance, but it must be noted that in all three the injuries to the dogs in question were much more violent, brutal, and numerous. That is, they are dissimilar to the drowning by use of a cinder block. Despite the level of violence and brutality, as well as the extensive injuries, those offenders received jail sentences of six months.

30 While it is true that sentencing is an inherently individualized process, consideration must be given to the fact that more brutal versions of this offence have only resulted in six months jail sentences.

31 Section 718 of the Criminal Code of Canada, provides as follows:

"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:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community."

32 Section 718.1 sets out the fundamental principle,

"A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

33 In this case, I am of the view that a conditional sentence, or house arrest as set out in section 742.1 of the Criminal Code, is not an appropriate sentence for a very basic reason. The simple reason being that, a conditional sentence must be consistent with the fundamental purpose and principle of sentencing set out in section 718. And to impose a conditional sentence in this case, would not pay sufficient attention to the principles of denunciation, deterrence, and the need to promote a sense of responsibility in offenders, and acknowledgment of harm done.

34 Anything short of real jail would not address the gravity of the offence committed, or the moral blame worthiness of these offenders. While X have no doubt that Mr. Wood plays a vital role in caring for his grandparents, allowing him to live there under house arrest would really be no punishment at all, as that is how he lives right now. However, it must be acknowledged that these two, young men are of below average intelligence. They are themselves going to be vulnerable while in jail.

35 Not only will their crime be seen to as reprehensible by their fellow inmates, but their poor coping skills will make jail that much more difficult.

36 Just as Jake, the dog, was vulnerable and subject to extreme violence by Mr. Haaksman, with Mr. Wood's assistance, they themselves will likely be the targets of a great deal of unpleasantness while in jail, as well as months back in the community.

37 The point is, that for these first time offenders with somewhat diminished capacity, jail is going to be a very difficult experience.

38 Justice Code, in 2012, in the Superior Court case of Regina and Munroe, in reducing the sentence of 12 months to six months for killing a dog, and seriously injuring another, stressed the principle of restraint in that, where incarceration must be imposed, the terms should be as short as possible.

39 I must, as a matter of law, pay strict attention to principles clearly enunciated by an Ontario Superior Court Judge, sitting on an appeal from a Provincial Court Judge.

40 As well, both psychological assessments make it clear that neither of these men are psychopaths, who are heartless with streaks of cruelty running through them. They are both capable of rehabilitation. Although Mr. Haaksman is reluctant to accept responsibility, I am told that is consistent with his behaviour of history. Doctor Simard is of the view that there is a low probability that either of these men will engage in similar actions in the future.

41 So while the need to deter and denounce are paramount considerations in passing sentence for this offence, the potential for rehabilitation, as well as restraint when imposing a period of incarceration on youthful offenders must be considered.

42 This is an extremely difficult case on which to impose sentence, as society requires that justice be done, which includes the need to denounce the criminal conduct and deter any other person who might engage in such a senseless killing of a pet dog. While the impact of the sentence on Mr. Haaksman and Mr. Wood cannot be ignored, considering all that I have set out herein, I am satisfied that a sentence, which reflects the purposes and objectives of sentencing, including the gravity of the offence and the offenders' level of moral worthiness, is as follows:

Mr. Haaksman will go to jail for three months. That will be followed by two years of probation. There will be an order, pursuant to section 447.1(a) for a period of ten years prohibiting him from having any animal in his care, control, custody. There will be a DNA Order, and there will be a weapons prohibition order.

43 Mr. Wood, the sentence will be one of two months incarceration, followed by a two year period of probation, along with an order under section 447(1)(a) for a five year period.

44 Now, I am going to, in the case of Mr. Wood, because I anticipate he's going to remain with his grandparents upon his release from jail -- what pets are at his grandparents' house?

45 Just so it's clear, he's not to have custody or control, or reside in the same premises as any animal; however, he may reside with grandparents only, and they can have a pet dog. I'm confident that while he's at his grandparents' no harm will befall that dog. His grandparents are dependent upon him. He's largely dependent upon his grandparents, and I'm not -- but it's only while he's at his grandparents'. If he moves from his grandparents' he has no animals, care or control, or reside, I'm not kicking him out his grandparents' house. I'm not making his grandparents get rid of their dog since they've had it for some time, and there's no suggestion of any problem with him.

46 The terms of the probation are going to be as largely set out by the probation officer, The terms of the probation, as I say, it's a two year period of probation. They're going to both comply by the mandatory conditions, that is report to a probation officer. Upon their release from jail, report as required, and they're going to attend and participate in counselling and treatment as recommended by the probation officer. They're going to sign all releases necessary, and consents, so that we can see that the treatment has been done. And they're both to make reasonable efforts to secure and maintain employment and/or schooling, and provide proof that they're either trying to get through highschool, or alternatively that they're working. They can't simply stay at home and play video games. They have to get on with their life in some fashion. And not to associate with anyone known to possess a criminal record. That's problematic, and in the sense of these boys in the background -- I'm going to put, not associate with anyone provided for, in writing, by the probation officer. So the probation officer can make those calls, and if they don't -- they feel they're not associating -- I really don't like the idea of these two offenders associating with each other, and I intend to make an order that they not associate with each other. I am absolutely satisfied that if Travis hadn't come up with his plan to get rid of Jake in the fashion that he did, Carl wouldn't be before the court, and so my intention is that they not communicate directly or indirectly, or associate with each other. I realize there is that family connection, so -- but I think Carl would be well advised to not associate with Travis. Do you understand that? Do you understand that, Carl?

47 I'm going to make DNA orders on both. If these guys are capable of killing one dog, I appreciate Dr. Simard says it's unlikely that they'll do it in the future, but if there were to be another animal who was hurt, and a baseball bat or something was left behind we could get DNA. As I say, all the reports indicate that's not going to happen, but if you're going to commit an offence of this sort I think we should have your DNA on our databank. This had nothing to do with guns, but both these fellows, if you can do this to a dog, what could you do with a gun? I have the authority to prohibit them from having firearms?

48 MR. FLOYD: Yes, sir, it's a criminal violence.

49 THE COURT: Is it ten years?

50 MR. FLOYD: I would ask for that, sir, yes.

51 THE COURT: Thanks. Neither of you fellows can have a firearm, okay, for a period of ten years, no guns for ten years. Okay. That's just a common sense inference that would be made from what you did on this day. So no guns. Are there any other terms?

52 MR. FLOYD: No, sir. Thank you.

53 THE COURT: Okay. So, fellows, you're both going to go into custody now. You're going to sign your probation orders, and you're going to give DNA to the police. Good luck, guys.

qp/s/qljel/qlrdp/qlwxy