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R. v. Olendy

Between
Her Majesty the Queen, and
Paul Olendy

[2001] O.J. No. 1957

Information No. 00-8291

Ontario Court of Justice
London, Ontario

Schnall J.

Oral judgment: April 23, 2001.

(45 paras.)

Animals -- Cruelty to animals -- Punishments (sentence) -- Suspended sentence -- Probation or probation order -- Conditions -- Fines, penalties and compensation orders -- Victim fine surcharge.

Sentencing hearing of the accused Olendy. Olendy was convicted of wilfully causing pain to his guide dog. The dog was a 90 pound Labrador. Olendy lost his sight in a motor vehicle accident. He properly fed the dog and took it out to play. However, he repeatedly yelled at the dog and hit it. Olendy expressed no remorse for his actions. He previously abused the dog in 1996.

HELD: Olendy received a suspended sentence. He was placed on three years probation. The offence occurred because Olendy was frustrated because of his blindness. He took out his frustrations on his dog. He was therefore required to take courses for alcohol abuse and anger management. After the completion of probation, he was not to have any animal in his possession for two years. A victim fine surcharge of \$35 was imposed. Olendy's conduct was equivalent to the abuse of a family member.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 446(5).

Ontario Society for Prevention of Cruelty Act.

Court Note:

Charge: S. 446(1)(a) Criminal Code

Counsel:

T. Mauth, for the Crown.

A.H. Little, for the accused.

1 SCHNALL J. (orally):-- I have read the pre-sentence report. I also took the opportunity to review my notes when I gave my decision, when I found Mr. Olendy guilty, and I reviewed some of the transcript evidence of the trial. I am familiar with the cases that counsel provided to me on our previous attendance. I have since given those back to counsel when we adjourned the sentencing.

2 Those cases clearly dealt with very severe examples of pain and suffering occasioned to animals. I have read the case that Ms. Mauth just provided to me on the bench, that is Justice Livingstone's case in JOHNSTON, and as I say, I have read the pre-sentence report.

3 I found Mr. Olendy guilty of wilfully causing pain and suffering to his guide dog, Jay. I want to say that I have sympathy for Mr. Olendy, an individual who as a young man suffered a very tragic injury, losing his sight on a permanent basis as a result of what has been described as, and clearly was, a horrendous motor vehicle accident.

4 On a scale of severity, the physical abuse that Mr. Olendy occasioned to his dog and which was witnessed by Mr. Porter, is, as Mr. Little suggests, near the low end. However, the 1996 report that has been filed of a complaint from a member of the public to the Humane Society indicates that there were prior examples of physical abuse, and clearly, the dog's behaviour as we heard about it in evidence at trial reflects something in the way of a longer-standing abuse of a non-physical nature.

5 I do not overlook the evidence that is also set out in the materials that have been filed, that Mr. Olendy fed the dog properly, took him out to play, took him to the park to play frisbee and so on, but he is not charged with neglecting the dog.

6 When I heard the evidence, it was my observation that Mr. Olendy's conduct towards his guide dog was tantamount to abuse of a member of his household. I consider it to be parallel in many respects to spousal or domestic abuse, except that the dog victim has no voice and cannot complain to anyone.

7 It was abuse of a verbal, psychological and physical nature that was all a part of Mr. Olendy's relationship with this canine companion. He was only charged with the physical hitting of the dog which, as I concluded on the evidence, was substantial enough in the fifth or sixth blow, the last blow, that the dog buckled under, his back legs buckled under and as Ms. Mauth reminds all of us, this was a male 90 pound Labrador.

8 There was evidence that I heard of Mr. Olendy yelling and hollering at the dog. Mr. Porter in fact heard him from the other end of the hallway when he first entered the apartment building. There is evidence in the 1996 report that the dog was described as whimpering and whining and in the evidence before me, he was observed to cower when he was called by Mr. Olendy.

9 All of that assists me in concluding that what Mr. Porter saw was a tip of the iceberg. Mr. Olendy's evidence is, to capsize it, he blames the victim. He consistently blamed the victim, the dog, for his own, that is Mr. Olendy's conduct to the dog. He said that the dog was not trained properly, that it would never listen, that it did not do what it was told. It

was obvious from the evidence that I heard from Mr. Olendy's own testimony that his attitude towards wives and dogs is the same, and that is, if they do not listen, you hit them.

10 Abusing one's guide dog is heartless. These dogs are picked because they have a certain personality and disposition. They are smart, they are trainable and they are compliant. They are trained to make life easier for a visually challenged individual. Screaming at them and hitting them is the behaviour, in my view, of a man who has no appreciation for their worth and value as life companions.

11 For Mr. Olendy, this dog was a scapegoat for his anger management problem. The evidence that I heard was that Mr. Olendy really had not wanted a guide dog initially, but it was suggested to him that he have one and so he went along, did the training, and eventually got Jay.

12 In my view, Mr. Olendy ought not to have an animal. If I had the jurisdiction to do so, I would make that a lifetime prohibition. The legislation does not provide me with that jurisdiction. Mr. Olendy, in my view, neither values nor respects the integrity of an animal, particularly a special animal like a seeing-eye dog or a guide dog.

13 He has expressed no remorse for his actions. It is clear from his evidence in court, as well as what is reported in the pre-sentence report that he has demonstrated, in my view, neither an ability nor a desire to learn to do things differently.

14 The 1996 report which has been filed is useful. It demonstrates that there have been no changes since then. I recall the evidence of Mr. Porter that it is not the intent of the Society when it first goes in, to immediately remove the animal unless there are dire circumstances, but rather to take an approach that is remedial, preventative and educational in its purpose. And in 1996, that is what appears to have been done.

15 The approach was of a remedial nature, suggesting remedial steps to be taken. I conclude that Mr. Olendy effected no change as a result of that very unintrusive intervention by the Society in 1996.

16 Before I impose sentence, I would like to include in my decision a commendation for Mr. Erik Eskildsen, who I do not believe is here. Mr. Eskildsen was the civilian who lodged the complaint that ultimately brought about this charge. He lodged the complaint to protect this animal. As I said before, animals have no voice and it is only when members of the community take heed of the wrongdoing to which such animals may be subjected and come forward to the authorities that animals such as Jay can be protected from further suffering.

17 I feel it is important to commend Mr. Eskildsen because Mr. Olendy clearly is of the view that he can do what he wants with his animal and "that it is nobody else's business". Mr. Eskildsen did step forward and he did so at a cost. He had to appear in court and he was obviously, as the evidence indicates, subjected to the severe displeasure of Mr. Olendy, who, as Mr. Porter was leaving, and even while Mr. Porter was there, screamed and hollered at Mr. Eskildsen through the wall. When Mr. Porter was leaving, Mr. Olendy was banging on Mr. Eskildsen's door.

18 Mr. Olendy suggested people should mind their own business. I think we should commend and credit good citizens like Mr. Eskildsen who are prepared to, and are forced to, pay the cost of not minding their own business in order to help and protect helpless animals. When I am done, Ms. Mauth, I would request that either someone from the Crown's office or the London Humane Society official provide Mr. Eskildsen with a notation of my comments or even provide him with a copy of the transcript of my decision so that he is aware that he did the right thing and that the Court, on behalf of this community, recognizes and appreciates his actions on behalf of animals like Jay.

19 I have considered the Crown's request that I impose a monetary penalty for Mr. Olendy as well as a period of probation. Although the general deterrence factor might incline me to impose a monetary penalty, under Mr. Olendy's particular circumstances, I think that would be too onerous. He can, however, in my view, pay a victim surcharge and that would be in the amount of \$35.00. He will have 60 days in which to pay that.

20 Otherwise, I am suspending the passing of sentence and placing Mr. Olendy on probation for a period of three years. I am invited by defence counsel to consider that such a lengthy probation is not necessary given that it is not necessary to protect animals from being in the care of Mr. Olendy. I do not accept that submission.

21 I am imposing the longest period I possibly can under the legislation, which is three years, probation, with terms, Mr. Olendy, that you keep the peace and be of good behaviour;

that you report to the court when required to do so;

you are not to change your address without first notifying your probation officer;

you are not to change your name without first notifying the probation officer;

you will report today to a probation officer and thereafter as directed and remain under the supervision of a probation officer;

you are to attend and actively participate for assessment with respect to alcohol abuse and for counselling with respect to alcohol abuse and anger management.

22 I am of the view that Mr. Olendy's anger management problems are of a very longstanding nature. Mr. Olendy has suffered very tragic consequences in his life and perhaps that is the underpinning of his personality and behaviour. I am not unmindful of his early family background which may have also contributed to this, so a period of three years probation is also warranted given the extent of the counselling that he ought to be considering, ought to be taking part in, and ought to successfully complete.

23 As well, and I say this even though I recognize that according to his counsel, Mr. Olendy does not presently have an animal in his possession, it is a term of probation, Mr. Olendy, that you surrender any animal found in your possession to the London Humane Society and that you not have in your possession, nor that you have any care or control of any animal of any kind during the course of the Probation Order.

24 And in addition, you are to allow any officers as defined in the Ontario Society for Prevention of Cruelty Act, to enter and inspect your dwelling house or any outbuildings on your property to ensure compliance with the Probation order that I have made today and I am as much as I can, trying to use the words that are found on page ten of Justice Livingstone's decision and, Madame Clerk, I am simply going to ask you to copy that out on the terms of probation when I am done. I am not rewriting it, but I have marked it on the page.

25 As well, an order will go pursuant to s. 446(5) of the Criminal Code, that after the completion of this Probation Order, and consecutive to it, you are prohibited for a period of two years, from having any animal in your possession, care or control, as provided for in that subsection.

26 I omitted to address the consequences aspect of what this sentence would mean for Mr. Olendy and I think it is appropriate to do so. Mr. Little went into it at some detail for my benefit, pointing out the ramifications and I appreciate his having done so.

27 I do recall Mr. Olendy's own evidence, however, and what is reported in the pre-sentence report, that basically Mr. Olendy does get along with his cane. He is able to do the things he did before, just that he is slower at doing it, by necessity. And as I said when I started, I have some sympathy for Mr. Olendy, but this Court has the mandate and the obligation under the Section with which he is charged to consider the animal first and Mr. Olendy second, when dealing

with the sentence.

28 Ms. Mauth, is there any other term of the Probation Order that you had brought to my attention that I have not addressed?

29 MS. MAUTH: I don't think so, Your Honour.

30 THE COURT: Alright, Mr. Olendy, sir, do you have any questions at all about the Probation Order I have made or the prohibition order.

31 PAUL OLENDY: No, Your Honour, I don't.

32 THE COURT: Alright. You are obliged to sign a copy of your Probation order, Mr. Olendy, and I am sure Mr. Little will give you some assistance in that regard, and advise you where you are to sit in the courtroom until the documents are prepared.

33 COURT REPORTER: Your Honour, could I get the spelling of the eyewitness?

34 MS. MAUTH: Yes, I'll provide that in a moment.

35 THE COURT: Madam Reporter, E-S-K-I-L-D-S-E-N.

36 COURT REPORTER: Thank you.

37 THE COURT: "D" as in "David" S-E-N. And it is E-R-I-K E-S-K-I-L-D-S-E-N.

38 MR. LITTLE: Have you ordered the transcript?

39 THE COURT: I am just going to do that, Mr. Little.

40 MR. LITTLE: Of your entire remarks?

41 THE COURT: I can do that, yes.

42 MR. LITTLE: Could you?

43 THE COURT: Yes, I will.

44 MR. LITTLE: Could I have a copy of it when it comes?

45 THE COURT: Just my comments, from when I start, please, with an extra copy for me, one for the file, one for the Crown, one for Mr. Little. Original plus three.

qp/s/qlala