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2014 BCPC 0230

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Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

STEVEN ANTHONY SEIDEL

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE C.D. CLEAVELEY**

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

Ms. A. Janse
Mr. K. Tessovitch
Kamloops, B.C.
July 4, 2014
October 9, 2014

INTRODUCTION

[1] Mr. Seidel is before me for sentencing on a single count of causing unnecessary pain and suffering to his cat, Oreo, contrary to s. 445.1(1)(a) of the *Criminal Code*. Mr. Seidel strangled and killed Oreo, and was convicted of this charge after trial.

[2] The Crown, focusing on denunciation and deterrence, seeks a jail sentence of six months, a two year probation order and a 10 year prohibition order pursuant to s. 449.1(1)(a) of the *Criminal Code*.

[3] The Defence submits that a conditional discharge or a non-custodial sentence is appropriate in the circumstances. Alternatively, if a jail sentence is necessary, it should be a conditional sentence order.

[4] It is my view that the call for a non-custodial sentence, and especially a conditional discharge, must be rejected. The circumstances of Mr. Seidel strangling Oreo, the weight of the case law, which focuses primarily on denunciation and deterrence, and the increased penalties imposed by Parliament, lead me to the conclusion that a non-custodial sentence would be contrary to the existing sentencing principles in a case such as this.

[5] The real issue in this case is whether a conditional sentence order is consistent with the fundamental purpose and principles of sentencing as set out in sections 718 to 718.2 of the *Criminal Code*. Or to put it another way, can such a sentence address the principles of denunciation and deterrence in these circumstances?

CIRCUMSTANCES

[6] On March 14, 2013, Mr. Seidel and Ms. Moriah Smith had been in a common-law relationship for approximately 20 months. Oreo had been Mr. Seidel's cat before he met Ms. Smith. Oreo was healthy and well-cared for.

[7] Mr. Seidel and Ms. Smith had a troubled relationship. Both struggled with alcohol issues, they were on income assistance and their finances were poor. Ms. Smith had two young children from a previous relationship who had been removed from her care by child welfare authorities. Ms. Smith was six or seven months pregnant with their child and they were concerned that the child welfare authorities would remove the child at birth.

[8] Oreo would not use the litter box. He urinated and defecated on the floor, their clothes, and on the car seat which the parties had managed to purchase. This situation was exacerbated by reason of Ms. Smith's pregnancy and concerns of harm to their child from contact with Oreo's faeces.

[9] Mr. Seidel and Ms. Smith were at a loss as to what to do. They had considered their options, which included, giving Oreo to family and friends (which was not realistic because of his poor habits), and had approached the SPCA, but they did not have the money for his care or to get him neutered.

[10] Mr. Seidel testified that in the several days leading up to the events of the morning of March 14, 2013, he had been drinking heavily. Mr. Seidel was uncertain, if

on the evening of March 13th he had gone to bed or stayed up drinking all night. At one point in his evidence, he said that he had slept 4 or 5 hours the previous evening, and when he woke up, he started drinking. His evidence is that he drank 9 or 10 beer before killing Oreo. He does not remember Ms. Smith leaving the apartment, which would have occurred at approximately 7:45 a.m. He described himself as “pretty intoxicated”.

[11] Mr. Seidel was sitting on the living room couch when he heard Oreo scratching in the bedroom closet. From his past experiences, Mr. Seidel recognized that Oreo was either urinating or defecating.

[12] He picked up Oreo, grabbed him by the throat, and started squeezing. He testified that before he knew it, Oreo went limp. He was certain that he had choked Oreo for less than one minute. Afterwards, Mr. Seidel placed Oreo on the floor and went outside to clear his head.

[13] A short time later, Mr. Seidel returned to the apartment, washed his face, placed Oreo inside a box he had found, and then put the box in a dumpster.

[14] Mr. Seidel described his mood as swinging from shock to sadness, anger, and fear. He phoned Ms. Smith and told her what he had done. Ms. Smith said that Mr. Seidel was crying.

[15] Mr. Seidel described a couple of scratches on his arms. He said that there were probably two or three on each arm, with the worst being on his right arm and 2 ½ to 3 inches in length. He said that the scratches bled for a “couple of seconds”.

[16] In cross examination, Mr. Seidel said that he felt guilt and remorse because “there was a better way to deal with the situation”. He also admitted that he “lost control” and did something out of character. He was angry at himself for allowing the situation to occur. He was frustrated when he heard the cat in the closet.

[17] Mr. Seidel testified that as he was choking Oreo, the cat briefly struggled to get away.

[18] In his statement to Special Constable Wiltse, Mr. Seidel said “I found it was the easy way to get rid of him, cuz it’s hard to get help”. Also in his statement, Mr. Seidel agreed that both of his arms had “deep scratch marks”.

[19] At trial, Dr. Ann Britton, an expert in animal health and husbandry, testified that strangulation is not an accepted method of euthanasia for cats. Based on her experience as a veterinarian, and her knowledge of physiology, it would take a cat one to one and a half minutes to lose consciousness, but it would take at least four to five minutes for its heart to stop, if the strangulation was effective. Strangulation would also cause a great deal of pain, suffering and fear.

[20] It my view, it would have been obvious to Mr. Seidel, when Oreo was fighting for his life by clawing at him, that he was causing his cat considerable pain and suffering.

MR. SEIDEL’S PERSONAL CIRCUMSTANCES

[21] In this case, I have had the benefit of a pre-sentence report and a full Gladue report.

[22] Mr. Seidel is 29 years of age. He has no criminal record. He is a member of the Kanaka Bar Indian Band, but has no involvement with his traditional community.

[23] Mr. Seidel is separated from Ms. Smith and living with his mother in Kamloops.

[24] Mr. Seidel and Ms. Smith's child, Nathaniel, was born shortly after Oreo's death and was taken into care by Secwepemc Child and Family Services. Mr. Seidel also considers Ms. Smith's son, Caleb, as his child. Both children remain in care and Mr. Seidel has supervised access to the children. His social worker confirmed that Mr. Seidel has completed the Mind Over Madder Program and is working towards becoming a better parent. During submissions, I was told that Mr. Seidel's access to the children has been increasing.

[25] Mr. Seidel has always been a hard worker. During his school years he worked, and since leaving school in Grade 11, he has had consistent long term employment in the general construction industry. Although unemployed at the present time, he hopes to return to his work at a local veneer factory.

[26] Mr. Seidel acknowledges a significant problem with alcohol. He began drinking as a young teen and admits that drinking has caused problems in his relationships, employment, and with his health. His drug and alcohol counsellor confirms that Mr. Seidel is doing well and continues to work hard at his recovery.

[27] Mr. Kidd, who wrote the pre-sentence report, said, "Seidel...has shown to this writer he is remorseful and ready to be accountable for his actions. Although he fails to recognize the full spectrum of his impulsive decision making, he shows to be motivated

to work on himself. Recognizing how to change his thinking and decision making may still be a challenge going forward”.

[28] Between March 6th, 2014 and April 15th, 2014, Mr. Seidel attended and completed the “Medicine Wheel and 12 Steps Program” offered by the Kamloops Friendship Society.

[29] Also in March, Mr. Seidel also completed the Respectful Relationships Program offered through the Corrections Branch.

[30] At the present time, Mr. Seidel reports he is sober and “will comply with any rules and regulations handed to him by the courts”.

[31] The Gladue report sets out Mr. Seidel’s family history. Both his grandmothers attended residential school in Lytton. Mr. Seidel’s mother, June Seidel, who is a member of the Kanaka Bar Indian Band, said that both her parents were alcoholics and their father was violent when he drank. As a child, she and her two siblings were in and out of foster care. Ms. Seidel stated that she was raped at age 8. Ms. Seidel said that there was racism on her father’s side of the family and that they were shunned because of being of mixed heritage. Ms. Seidel left home at 16 years of age and said “I never really had a childhood”.

[32] Mr. Seidel’s father, Lance Huntington, is a member of the Lytton First Nation. Mr. Huntington said that “when his mother married a non-Indian she lost her status, and was excommunicated from the community”. Mr. Huntington said that he has no connection to his culture.

[33] Mr. Seidel is the second oldest of eight siblings from a blended family. His parents separated when he was approximately 18 months old and he was raised by his mother. He never had much contact with his father when he was growing up. As a child, there was considerable turmoil in his mother's home. There was alcohol abuse, his mother's multiple relationships, visiting his mother's partners in various jails, serious violence, including that handed out to Mr. Seidel, very little money, and what there was, was spent on alcohol, and the family moved often, making school and friendships very difficult. While at school, Mr. Seidel reports experiencing racism. At a young age, Mr. Seidel and his older sister were very involved in the raising of their younger siblings.

[34] Not surprisingly, Mr. Seidel has kept to himself a great deal and has a history of conflict with other people.

CASE AUTHORITY

[35] The Crown provided me with three unnecessary pain and suffering cases where a six month jail sentence was imposed: **R v. Connors**, 2011 BCPC 0024; **R v. Mercredi**, Kamloops Registry 91772-1; and **R v. Stich**, Kamloops Registry 91934-3-KC.

[36] In each of the three cases, denunciation and deterrence were the sentencing principles which were emphasized.

[37] In **Connors**, the offender beat to death his friend's puppy, which was not well trained and was defecating in the apartment. Examination of the young pit bull disclosed 10 broken ribs, a broken jaw and orbital bone, missing teeth, a lacerated liver and

lacerations to the tongue. The dog died from internal bleeding and injuries caused by a blunt force trauma. A search of the apartment found alcohol, illegal steroids, and drug trafficking paraphernalia. The offender had a criminal record for two drug offences and careless use of a firearm and had spent approximately five months in jail for these offences. The court mentioned that the offender's inhibitions were only minimally diminished by the consumption of alcohol, he was in breach of a court order to abstain from illegal drugs, his actions were largely unexplained, and there was no significant remorse. The court was given very little information regarding the offender's background, and prospects for the future.

[38] In ***Mercredi***, the offender, while intoxicated and upset, broke the neck of the family's pet kitten. Prior to the cat's death, one of his brothers heard him say "something, someone, somewhere could get hurt". He also bragged to his brother that he tried to break the kitten's neck. The offender was a 25 year old single man from a nearby Indian band. The offender had a minor criminal record. The psychiatric report prepared concluded that the offender had an anti-social personality disorder, he was a high risk to re-offend violently, and displayed no remorse. The court found that the offender's prospects of rehabilitation were dim. The offender also did not put forward any plan and had no insight towards rehabilitation. The offender was not a candidate for a conditional sentence order because of his high level of risk and the poor prospects of him complying with a conditional sentence order.

[39] In ***Stich***, the night before the offence, the offender and his girlfriend argued. He became very upset and his girlfriend left their home. The offender was consuming alcohol and drugs and became more desperate and upset as the night went on. Over

the course of the evening and early morning the offender told his girlfriend that if she did not return home, he would kill the cat, apparently as retribution for her conduct. The offender did choke and kick his girlfriend's cat causing some injury to the animal. The cat's death was caused accidentally by him when he later dropped a couch on the cat. When arrested, the offender was suicidal and detained under the *Mental Health Act*. The offender had several prior convictions for violence and breach-related matters. The court noted that the offender's conduct was egregious because he was in a position of trust and that the pain and suffering was inflicted solely as a form of retribution against his girlfriend. The court accepted the joint submission of a six month, time served jail sentence.

[40] The Defence also provided me with three cases: *R. v. S.A.S.*, 2011 B.C.P.C. 0470 (this is the *Stich* case also presented by the Crown); *R v. Fawcett*, 2012 B.C.P.C. 0421; and *R. v. Bourque*, [2012] B.C.J. No. 2777.

[41] The *Fawcett* decision, which is the Whistler sled dog cull case, resulted in a fine of \$1,500 being imposed. The offender caused unnecessary pain and suffering to nine sled dogs when attempting to euthanize them over the course of four days in April, 2010. The court described the pain and suffering of those dogs as horrific. The offender was in a dissociative state and in counselling at the time the dogs were put down. The court concluded that denunciation and deterrence, in the offender's present circumstances, was best met by a fine and a three year probation order.

[42] In *Bourque*, the offender was sentenced to an effective jail sentence of six months after pleading guilty to two counts of wilfully causing unnecessary pain and

suffering to two animals. The offender disclosed that she had disembowelled, dismembered, and killed cats in the Prince George area. A search warrant issued for her computer disclosed videos showing the offender killing the family dog. It was hanging by its neck. The offender had also narrated parts of the video as she eviscerated the dog. Another video clip depicted the offender causing unnecessary pain and suffering to the family cat. In sentencing the offender, the court said that her personal circumstances were “unsettling, and determining an appropriate disposition has been very challenging”. The psychiatric report prepared disclosed that the offender was a very troubled young woman. She was diagnosed with an anti-social personality disorder, she demonstrated schizoid borderline and narcissistic traits, she displayed multiple paraphilias or sexual deviations and was a moderate-high to high risk of future violence and was deemed to be likely to target vulnerable individuals. The court acceded to the joint submission of a time served sentence of seven months to reflect the principles of denunciation, deterrence, and the protection of the public.

ANALYSIS

[43] Earlier in these Reasons I posed the question whether a conditional sentence order can address the sentencing principles of denunciation and deterrence. For the following reasons I have concluded that conditional sentence is the appropriate disposition in this case.

[44] In **R. v. C.A.M.**, [1996] 1 S.C.R. 500, the Supreme Court of Canada said:

In the final analysis, the overarching duty of a sentencing judge is to draw upon all legitimate principles of sentencing to determine a “just and

appropriate” sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

[45] As well, I am required to consider Mr. Seidel’s Aboriginal background as required by s. 718.2(e) of the *Criminal Code*.

[46] In a recent British Columbia Court of Appeal case, **R. v. D.J.**, 2014 B.C.C.A. 84, the court had this to say about proportionality and moral blameworthiness:

[32] The sentencing judge turned his mind to the issue of D.G.’s historical Aboriginal antecedents. He did not, however, weigh this background or any of the individual circumstances of D.G.’s upbringing when he fixed the sentence. He seemed to suggest that he would not apply an “Aboriginal discount” when he said “I do not consider [his aboriginal background] to be a factor which would justify a lesser sentence for him than would be imposed on an offender of different ethnicity” (para. 26). In *Gladue*, the Court clearly stated that s. 718.2(e) was not simply a discounted sentence. The fundamental principle of sentencing is proportionality (s. 718.1), which requires an assessment of the moral blameworthiness of the offender. The historic and individual circumstances of an Aboriginal offender are highly relevant to the assessment of moral blameworthiness - an assessment that cried out to be performed in this case, but was not considered by the sentencing judge.

[47] In terms of aggravating factors, Mr. Seidel, as Oreo’s owner, was in a position of trust, he was to care for his cat. This trust was breached when Mr. Seidel strangled Oreo, with the cat fighting for its life right up to the very end. Mr. Seidel allowed his anger and frustration to get the best of him. Lastly, Dr. Britton described a very painful and fearful death for Oreo.

[48] In terms of mitigating factors, Mr. Seidel has no criminal record. When I consider what Mr. Seidel has been through in his life, this is a very significant accomplishment. Up to the point when Mr. Seidel killed Oreo, he did a reasonable job of caring for his

pet. Mr. Seidel has been remorseful for his actions from the outset, he immediately phoned Ms. Smith and was upset and crying.

[49] I also believe that the publicity which this case has garnered in Kamloops is a mitigating factor. The publicity in this case is clearly not on the same scale as the **Fawcett** dog cull case, but the public denunciation of Mr. Seidel's actions has been clear and strong, and I know it is not over.

[50] Also to Mr. Seidel's credit, are the steps he has taken to address two of the significant factors which led to Oreo's death: his anger and use of alcohol. Mr. Seidel has completed two anger management courses. His decision-making abilities are still a work in progress, and he has the support of his probation officer for his efforts to date. Similarly, Mr. Seidel has taken positive steps to deal with his alcohol issue and continues to work on his recovery.

[51] Mr. Seidel is also prepared to comply with court orders relating to both these issues.

[52] Mr. Seidel's overall plan is more wide-ranging. He hopes to return to work, obtain his own residence, and to see more of his two children.

[53] These goals Mr. Seidel has set for himself are reasonable, and attainable, if he continues his present rehabilitation path. As well, Mr. Seidel also has the support of his two sisters.

[54] Mr. Seidel's plan is much different than in the **Connors** and **Mercredi** cases, where concrete rehabilitation plans were not put forward.

[55] In **Connors**, **Mercredi** and **Stich**, the court in each case found a high degree of moral blameworthiness regarding the manner in which each offender treated the animal in question.

[56] In Mr. Seidel's case I must not be too quick to assign moral blameworthiness simply on account of the manner of Oreo's horrific death. The offence must be considered through the filter of Mr. Seidel's aboriginal roots and his particular circumstances. This assessment is required, even though Mr. Seidel has had no involvement with his traditional community. The factual background as provided in the **Gladue** report, and to some extent, in the pre-sentence report, makes it very clear that Mr. Seidel has experienced the intergenerational effects of residential schools and is clearly the product of two prior tumultuous generations.

[57] As a child, teenager, and a young adult, Mr. Seidel did not have the opportunity, which is given to most, to grow and mature into a healthy member of the community.

[58] When this offence is considered, after a **Gladue** assessment, it is understandable how this tragedy unfolded.

[59] Mr. Seidel was in a troubled relationship and abusing alcohol. He was faced with a problem which seemed insurmountable: Ms. Smith was six to seven months pregnant, Oreo was defecating and urinating in the apartment, he was concerned about the health of the unborn baby, the Ministry of Children and Family Development were monitoring the family, he approached the SPCA, but because of being on income assistance he could not afford a solution, he could not give Oreo away because of the cat's poor

habits, so Mr. Seidel did what he has been doing throughout his life, he solved his own problem, because there was no one else to help or assist him.

[60] As Mr. Seidel said to Special Constable Wiltse, “I found it was an easy way to get rid of him, cuz it’s hard to get help”.

[61] In my view, when Oreo’s death is considered in the full context, Mr. Seidel’s blameworthiness is not as high as it otherwise would be, for strangling a cat, and does not approach the moral blameworthiness of the **Connors**, **Mercredi**, and **Stich** cases.

[62] When I balance the accepted animal cruelty sentencing principles, the aggravating factors, and the legislation, with the mitigating factors and Mr. Seidel’s reduced moral blameworthiness, I find that it would be disproportionate to impose a jail sentence. In my view, the sentencing objectives stressed by the Crown can be met by the imposition of a conditional sentence order.

[63] There will be a nine month Conditional Sentence Order with the following terms:

- 1) You shall report in person to a Conditional Sentence supervisor today at the Probation Office at Kamloops, BC, and you shall thereafter report as and when directed by the supervisor and in the manner directed by the supervisor.
- 2) When first reporting to your supervisor, you shall inform him/her of your present residential address and telephone number and you shall not change your address or telephone number without first obtaining the written consent of your supervisor.

- 3) For the first four months of this Conditional Sentence Order, you shall obey a curfew by being inside of your residence (or on the lot on which your residence is located) between the hours of 8:00 p.m. and 6:00 a.m. each day, except as follows:
- a) with the written consent of your supervisor. Such consent is to be given only for compelling personal, family or employment reasons.
- 4) You shall present yourself at the door to your residence when any Peace officer or supervisor attends there for the purpose of determining your compliance with the curfew condition of this Order.
- 5) You shall respond personally and immediately to the telephone when a Peace Officer or supervisor makes a telephone call to your residence for the purpose of determining your compliance with the curfew condition of this Order.
- 6) You shall not possess or consume any alcohol or any controlled substance within the meaning of s. 2 of the *Controlled Drugs and Substances Act*, except as prescribed for you by a physician.
- 7) You shall not enter any liquor store, beer and wine store, bar, pub, lounge or other business premise from which minors are excluded by the terms of their liquor license.
- 8) You shall attend, participate and successfully complete any assessment, counselling or program as directed by your supervisor. Without limiting the general nature of this condition, such assessment, counselling or program may

relate to anger management, alcohol or drug abuse, and a full-time attendance program for alcohol or drug abuse.

9) Under the direction and supervision of your supervisor, you shall successfully complete 40 hours of community work service, which shall be completed no later than January 31, 2015.

[64] On the expiration of the Conditional Sentence Order there will be a one year Probation Order on the following terms:

- 1) Within 48 hours after completion of your Conditional Sentence Order, you shall report in person to the probation office located at Kamloops, British Columbia, and after that you shall report as and when directed by your probation officer.
- 2) When first reporting to your probation officer, you shall inform him/her of your present residential address and telephone number and you shall not change your address or telephone number without first obtaining the written consent of your probation officer.
- 3) You shall not possess or consume any alcohol or any controlled substance within the meaning of s. 2 of the *Controlled Drugs and Substances Act*, except as prescribed for you by a physician.
- 4) You shall not enter any liquor store, beer and wine store, bar, pub, lounge or other business premise from which minors are excluded by the terms of their liquor license.

5) You shall attend, participate and successfully complete any assessment, counselling or program as directed by your probation officer. Without limiting the general nature of this condition, such assessment, counselling or program may relate to anger management, alcohol or drug abuse, and a full-time attendance program for alcohol or drug abuse.

[65] Mr. Seidel will also be bound by an order pursuant to s. 447.1 of the Criminal Code prohibiting Mr. Seidel from owning, having the custody or control of or from residing in the same premises as an animal for a period of five years.

[66] On account of Mr. Seidel's current financial situation, I am not requiring him to pay a Victim of Crime Surcharge fee.

C.D. Cleaveley
Provincial Court Judge