

**File No: 21463-1-T
Registry: Nelson**

In the Provincial Court of British Columbia

REGINA

v.

DAVID WAYNE CANADAY

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

COPY

Crown Counsel:	S. Patola
Defence Counsel:	T. Underwood (Duty Counsel)
Place of Hearing:	Nelson, B.C.
Date of Judgment:	May 4, 2010

[1] THE COURT: Okay. All right. Do you have anything you want to add, Mr. Canaday?

[2] THE ACCUSED: No, ma'am.

[3] THE COURT: Okay, all right. Well, it is a disturbing set of facts, sir --

[4] THE ACCUSED: Yes, ma'am, it is.

[5] THE COURT: -- that have been set out here. I don't begin to understand why you would attack a defenceless animal with the end of a broom. And obviously, the circumstances are that the cat was attacked for a prolonged period of time and that it was extremely painful for the cat, and when the description is that there were pieces of broom handle and evidence of not only cat blood, but cat fur and cat feces all around the house, it indicates that it was a horrific attack on a defenceless animal. This is a concern not only because of the animal and the pain that the animal suffered, but because that is indicative of a very strange mindset, sir, that obviously is a concern not only to animals, but other defenceless people.

[6] And I am mindful that you have a seven year old daughter and I have to say that causes me a great deal of concern, but I understand that you do not have custody of her, or at least

she does not live with you here.

[7] In terms of the sentencing, this has been waived in from the Island. The Crown is recommending a period of custody of 30 days. They have referred to a case which was not available for me to look at, but Crown relies on a similar case in which a cat was essentially beaten to death, as this cat was here. That is the case of *R. v. Paul*, an Alberta case dated August 30, 1995. The individual in that case received a custodial sentence in the amount of 60 days.

[8] The Crown here is seeking a custodial sentence in the amount of 30 days and I consider that to be entirely appropriate.

[9] Now, as I understand it, you are 33 years of age. You are now living with someone here in Nelson and, for whatever reason, you appear to be the only individual bringing any money into the home, and that arises out of your job as a contractor presently learning the business of drywalling. For that reason, your counsel is recommending an intermittent jail sentence and I am considering that. And the only reason I am considering that, I should say -- I mean, I have indicated and I have expressed I think this is a horrific --

[10] THE ACCUSED: Yes, ma'am.

[11] THE COURT: -- crime on your part. It is a crime that calls for deterrence; it is a crime that calls for denunciation.

[12] THE ACCUSED: I --

[13] THE COURT: I am not sure where the rehabilitation in this case.

[14] THE ACCUSED: I am extremely remorseful [indiscernible/voice fades/12:33:56].

[15] THE COURT: I do not know what it is going to take to rehabilitate someone that does something like that. All right. But clearly a jail sentence is necessary. On the other hand, I am not minded to have you out of work. I do not think that is of any assistance either. So I will grant the sentence be served intermittently.

[16] THE ACCUSED: Yes, ma'am.

[17] THE COURT: That is going to start this Friday here in Nelson, all right. You are going to attend Friday no later than 7 p.m. You will be released on Sunday at 3 a.m. You are going to continue to do that each and every weekend until the end of the sentence. All right.

[18] THE ACCUSED: Yes, ma'am.

[19] THE COURT: And you are working. There is going to be a victim fine surcharge in this case. I am going to have you pay that. Can you pay that today?

[20] THE ACCUSED: I --

[21] MS. UNDERWOOD: Fifty -- is it \$50?

[22] THE COURT: It is \$50.

[23] THE ACCUSED: I'm -- I think I can come up with that today, ma'am.

[24] THE COURT: Yes. You can pay that into court by the end of today, okay, before 4:30 today, all right.

[25] MS. UNDERWOOD: Your Honour, I think you said release Sunday at 3 a.m., although you --

[26] THE COURT: Oh, three -- well, I mean 3 p.m.

[27] MS. UNDERWOOD: Thank you.

[28] THE COURT: We would not want him to get out that early. All right, 3 p.m.

[29] MS. PATOLA: And I think a probation order has to --

[30] THE COURT: Mm-hmm.

[31] MS. PATOLA: -- be involved with this intermittent.

[32] THE COURT: Yes. And as I say, I struggle to understand what rehabilitation process might be put in place. But in addition to the 30 days you are going to be on probation for a period of six months, all right.

[33] THE ACCUSED: Yes, ma'am.

[34] THE COURT: You are going to report -- that has got to start today. You are going to report to a probation officer within 24 hours of today's date by telephone and thereafter as directed by the probation officer.

[35] You are going to take any counselling as directed by the probation officer. That counselling should include at the very least anger management counselling. All right, sir?

[36] THE ACCUSED: Yes, ma'am.

[37] THE COURT: And there may be something else, I am not sure what it is, but I am going to have you complete some anger management counselling during the period of the probation order.

[38] You are going to keep the peace and be of good behaviour during the probation.

[39] You are going to provide the probation officer with your address, and not change that address without prior written

notice to the probation officer. You will attend court when required to do so by the court during the period of probation. All right?

[40] THE ACCUSED: Yes, ma'am.

[41] THE COURT: Okay.

[42] MS. PATOLA: And, Your Honour, I just want to make sure the probation order, part of the conditions is the reporting each Friday by 7 p.m. to the Nelson City Police, that's how it's worded on the probation orders.

[43] THE COURT: Is that how it is worded?

[44] MS. PATOLA: I believe that has -- yes, it has to be --

[45] THE COURT: That it has to be worded that way, does it?

[46] MS. PATOLA: It has to be part of the probation order that --

[47] THE COURT: Okay.

[48] MS. PATOLA: -- he report.

[49] THE COURT: Oh, okay, it is part of the probation order. That is right. I will make it part of the probation order as well, you are going to report to the Nelson City Police

station by no later than 7 p.m. on Friday and you will be released by no later than 3 p.m. on the Sunday.

[50] You will have no alcohol or drugs in your system when you report to the Nelson City Police Department. All right.

[51] THE ACCUSED: I do not drink or do drugs, ma'am.

[52] THE COURT: Well, you will not have any whether you do or you do not.

[53] THE ACCUSED: Oh, no, ma'am.

[54] THE COURT: Okay, so it will not be a problem --

[55] THE ACCUSED: Sure.

[56] THE COURT: -- for you.

[57] THE ACCUSED: No, ma'am.

[58] THE COURT: All right. Now in terms of the 447.1, I am going to make an order, sir, that you -- and I am just going to find that section again -- new section here. All right, so pursuant to s. 447 of the *Criminal Code* I am also going to make an order prohibiting you from owning, having the custody or control of, or residing in the same premises as an animal or a bird for a period of 10 years from today's date. All right. Okay.

[59] MS. PATOLA: And it's 447.1.

[60] THE COURT: Yes, 447.1. Yes.

[61] MS. PATOLA: Okay.

[62] THE COURT: All right, so that is part of that. You are going to be signing some things before you go, sir, so all right, thank you.

(REASONS CONCLUDED)

**21463-1-T
Nelson Registry**

**In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE MROZINSKI)**

**Nelson, B.C.
May 4, 2010**

REGINA

v.

DAVID WAYNE CANADAY

PROCEEDINGS AT SENTENCING

COPY

Crown Counsel:

S. Patola

Defence Counsel:

T. Underwood (Duty Counsel)

INDEX

Submissions by Ms. Patola:	1
Submissions by Ms. Underwood:	3

EXHIBITS

NIL

RULINGS

[REASONS AT SENTENCE]	4
------------------------------------	----------

Proceedings

Nelson, B.C.

May 4, 2010

1
2
3
4 MS. UNDERWOOD: Ca -- I mean, Calanaday.
5 MS. PATOLA: Canaday.
6 MS. UNDERWOOD: Canaday.
7 THE COURT: I have a fellow in the back area -- there
8 he is. Okay.
9 MS. UNDERWOOD: Yes.
10 THE COURT: He was hoping to get up here.
11 THE ACCUSED: Yes, yes, ma'am.
12 THE COURT: All right.
13 MS. UNDERWOOD: I understand -- I'm Tyleen Underwood.
14 I am appearing as duty counsel. May I see the
15 information?
16 MS. PATOLA: Yeah.
17 MS. UNDERWOOD: I understand -- yes, this is a --
18 THE COURT: Thank you.
19 MS. UNDERWOOD: -- waiver in and it's with respect to
20 Information 29685 and he wishes to enter a plea of
21 guilty with respect to this.
22 THE COURT: To that charge?
23 MS. UNDERWOOD: Yes.
24 THE COURT: All right. Okay.

SUBMISSIONS BY MS. PATOLA:

25
26
27
28 MS. PATOLA: Ms. Merrett owned a grey and white female
29 cat named Guber [phonetic]. She owned that cat
30 since 2004. Mr. Canaday was an acquaintance of
31 Ms. Merrett. On December 17th, 2006 he showed up
32 at her residence with his girlfriend because they
33 had nowhere to live and no jobs.
34 THE COURT: Right.
35 MS. PATOLA: Ms. Merrett offered Canaday a home until
36 he found a job and a place to live.
37 On Christmas Day she was visiting with her
38 mother and Mr. Canaday was left alone in Merrett's
39 home with Guber. The summary is that he used a
40 broom handle that inflicted multiple injuries to
41 the cat that were so extensive that the cat had to
42 be euthanized. When she returned home, the cat
43 was obviously in distress, it was bleeding. She
44 took it to the vet. In various parts of the house
45 there were broom -- well marks through the walls
46 consistent with the same size as a broom handle.
47 There were pieces of broom handle all over the

Submissions by Ms. Patola

1 house. There was blood, cat fur and feces all
2 over the house. The vet tried to put the cat
3 under watch and tried to save it, but advised her
4 that there was extensive soft tissue trauma to its
5 head and chest and it should be euthanized, so she
6 did follow that advice. She was quite --
7 obviously quite distressed at this. She said
8 there were paw prints on the sills leading out of
9 the house that indicated to her the cat had been
10 trying to escape.

11 He did say to the police that he -- he did
12 hurt the cat, but he didn't think he hurt it that
13 badly, that the cat had -- was being crazy and
14 running around and had bitten him or scratched
15 him. Yes. Now, this comes to us from Duncan --

16 THE COURT: Mm-hmm.

17 MS. PATOLA: -- and the Crown has recommended a
18 prohibition on animal ownership under a fairly new
19 section of the Code 447.

20 THE COURT: Four forty-seven.

21 MS. PATOLA: I'll just see if I can find it here very
22 quickly. Four forty-seven point one and it can be
23 in the amount that the court considers.

24 THE COURT: Four forty-seven point one.

25 MS. PATOLA: Yes.

26 THE COURT: Okay, just give me a second here. All
27 right, all right.

28 MS. PATOLA: Now, this -- this office has also
29 recommended by way of initial sentencing position
30 30 days --

31 THE COURT: Mm-hmm.

32 MS. PATOLA: -- and in support of that they have
33 printed out, and I tried to find this case, Your
34 Honour, unfortunately the Crown has just switched
35 from Quicklaw to Carswell and I was unable to
36 print this case. I could not find it. But it's
37 called *Paul*, P-a-u-l --

38 THE COURT: Mm-hmm.

39 MS. PATOLA: -- August 30th, 1995, Alberta Provincial
40 Court --

41 THE COURT: Mm-hmm.

42 MS. PATOLA: -- where the accused killed a cat owned by
43 his roommate by striking it on the head with a
44 hammer and then leaving it in his roommate's
45 closet.

46 THE COURT: Mm-hmm.

47 MS. PATOLA: He was sentenced to 60 days in jail --

Submissions by Ms. Patola

1 THE COURT: Right.
2 MS. PATOLA: -- after being found guilty.
3 THE COURT: Okay.
4 MS. PATOLA: So they did put that in support of the
5 position and it sometimes seems --
6 THE COURT: Mm-hmm.
7 MS. PATOLA: -- strange that an animal case would
8 receive maybe a greater sentence than if he hit a
9 person with a broom handle, but, of course, the
10 philosophy is that animals are innocent and in our
11 complete care and control and so they're almost
12 like children, almost like injuring a child when
13 you injure a cat.
14 THE COURT: Okay, thank you.
15 MS. PATOLA: Yeah.
16 THE COURT: All right.
17 MS. PATOLA: They didn't have any recommendation on
18 intermittent or...
19 THE COURT: Okay.
20

SUBMISSIONS BY MS. UNDERWOOD:

21
22
23 MS. UNDERWOOD: I'm sorry, Your Honour, I need just a
24 moment.
25 THE COURT: Mm-hmm.
26 MS. UNDERWOOD: Yes, Your Honour, Mr. Canaday indicates
27 to me that he agrees with the circumstances that
28 have been defined by Crown.
29 THE COURT: Oh, okay, all right.
30 MS. UNDERWOOD: Sorry, I missed my friend's sentencing.
31 She went on --
32 THE COURT: Thirty days.[sic]
33 MS. UNDERWOOD: Thank you. Your Honour, I can tell you
34 that this happened back in December of 2006.
35 Since then Mr. Canaday has made a lot of changes
36 in his life. He's presently 33 years old.
37 THE COURT: Mm-hmm.
38 MS. UNDERWOOD: He lives common-law in Nelson and he's
39 lived in Nelson for the last year.
40 THE COURT: Mm-hmm.
41 MS. UNDERWOOD: He has one seven year old daughter who
42 lives on Duncan [sic] Island and he pays child
43 support for her --
44 THE COURT: Mm-hmm.
45 MS. UNDERWOOD: -- sees her as frequently as possibly.
46 THE COURT: Mm-hmm.
47 MS. UNDERWOOD: He has managed to do a lot in terms of

Submissions by Ms. Underwood

1 his employment. For the last nine months he has
2 been working with Mud Man Contracting.
3 THE COURT: Mm-hmm.
4 MS. UNDERWOOD: In the last three months he's actually
5 commenced his drywalling apprenticeship with them.
6 THE COURT: Mm-hmm.
7 MS. UNDERWOOD: In addition because his common-law
8 spouse is financially dependent on him as well,
9 he's actually assumed a second job and that's with
10 Edo's [sic] Japan in the mall --
11 THE COURT: Mm-hmm.
12 MS. UNDERWOOD: -- in Nelson mall. He's asking this
13 court to consider as a sentence either a fine, or
14 in the event a jail sentence is being considered,
15 he'd ask that he be permitted to serve it
16 intermittently.
17 THE COURT: Mm-hmm.
18 MS. UNDERWOOD: He's very concerned that he is going to
19 lose his apprenticeship work --
20 THE COURT: Mm-hmm.
21 MS. UNDERWOOD: -- that he's managed to obtain and his
22 family is financially dependent on his work.

23
24 [REASONS AT SENTENCE]

25
26 MS. UNDERWOOD: Thank you.

27
28 (PROCEEDINGS CONCLUDED)

29
30
31
32 Transcriber: Thelma Christian
33
34
35
36
37
38
39
40
41
42
43
44
45
46