

Case Name:
R. v. Collier

Between
Her Majesty the Queen, and
Susan Collier

[2003] O.J. No. 3743

Ontario Court of Justice
Newmarket, Ontario

De Filippis J.

Oral judgment: August 21, 2003.

(85 paras.)

Criminal law -- Punishments (sentence) -- Conditional sentence -- Restitution -- Prohibition orders -- Sentencing -- Sentence, particular offences -- Neglect of animals -- Considerations on imposing sentence -- Deterrence -- Denunciation.

Sentencing of Collier, who pleaded guilty to a charge of animal cruelty. She was charged with causing pain to a dog by refusing to obtain veterinary treatment for it. Animal control officers found Collier's dog in her basement with a festering open wound. They charged her with cruelty to animals. The dog was taken to a veterinarian, who determined that it had been in that condition for one to two years. The dog was put down. Collier was 64 years old and had no prior criminal record.

HELD: Collier was given a conditional sentence of 60 days, as well as a term of probation. Collier was further prohibited from owning or being in a residence with animals for a period of two years, and she was ordered to pay restitution of the \$700 veterinary bill. The restitution was to be paid to the Ontario Society for the Prevention of Cruelty to Animals. Despite Collier's lack of criminal record, this was a crime which required specific and general deterrence and denunciation.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 446(1)(a), 446(5).

Counsel:

J. Gorda, for the Crown.

C. Still, for the accused.

DE FILIPPIS J. (orally):--

1 MR. STILL: Good afternoon, Your Honour. For the record, Still, initial C. I represent Susan Collier who is present. We've had a pretrial discussion and my client will be entering a plea to the count under s. 446(1)(a).

2 THE COURT: Mrs. Collier, do you understand that by pleading guilty you are giving up your right to a trial?

3 MRS. COLLIER: Yes.

4 THE COURT: All right. And if what I hear formally on the record accords with what I was told informally at the pretrial, what is going to happen is this, is that you will be sentenced to a term of house arrest for 60 days. There will be exceptions for that if you need medical attention, or religious worship, but I'll get into that. That will be followed by a period of probation on certain terms, but which would include that you not possess animals, or be in any residence with animals. And thirdly, following that, there will be an order of prohibition for another two years prohibiting you from owning animals. And then lastly, I believe there will be an order of restitution for a veterinary bill of about seven hundred dollars. Do you understand that?

5 MRS. COLLIER: Yes.

6 THE COURT: All right. And you wish to plead guilty knowing that is what is going to happen then?

7 MRS. COLLIER: Yes, sir.

8 THE COURT: All right. If she could be arraigned.

9 THE CLERK: Susan Collier did between September 29th, 2002, and January 29th, 2003, inclusive, in the town of Markham, in the said Region, did wilfully cause unnecessary pain to one dog by failing to provide suitable and adequate veterinary care, contrary to s. 446(1)(a) of the Criminal Code of Canada. How does the Crown elect to proceed?

10 MR. GORDA: Summarily.

11 THE CLERK: And how do you plead to the charge, ma'am, guilty or not guilty?

12 COURT REPORTER: Mr. Still, the plea did not record.

13 MR. STILL: Oh, it wasn't recorded. She said "guilty".

14 THE COURT: So, you're pleading guilty. All right then. Thank you.

15 MR. GORDA: Your Honour, the facts are that on or about January 29th, 2003, members of the Ontario Society for the Prevention against to animals, or the Ontario Humane Society, as they are commonly known, received a call from an individual indicating that they had some concerns about an animal that was located in the Collier residence. The residence being at 215 High Glen Avenue in Markham where Susan Collier, before the Court, resides with her husband, Gordon Collier.

16 As a result of this call officers attended at the Collier residence, spoke to Mrs. Collier, who indicated that she did have a dog. They were allowed inside. At that time they were brought to the downstairs area of her residence where she indicated that a pet dog that they had owned for approximately four to five years was residing. When officers went into the downstairs of the residence they saw a red retriever, setter-type dog, that was muzzled. They could see that the dog was extremely thin, the ribs were visible. Officers could immediately smell a foul, rotting odour. And as they proceeded

towards the dog they saw a large open wound on its lower back and tail. The wound was raw with blood and had a pussy discharge.

17 At that time, officers indicated to Mrs. Collier and cautioned her that she was going to be charged with cruelty to animals. The inspectors learned that the dog had apparently been in that condition for approximately a year to two years. Apparently the dog had not been taken to a veterinarian for at least two years. As a result of this finding, officers removed the dog from the premises immediately and brought it to a veterinarian clinic at the Humane Society where it was determined that the dog, in fact, had a cancerous growth on the rear portion of the dog's back.

18 It was learned that if the dog had been taken to be treated the dog may have, in fact, had the tumour, which was later learned to be benign, removed, and the dog would have fully recovered. These are essentially the allegations.

19 It was learned that Mrs. Collier, in fact, had had a belief that the growth in fact was cancerous, but had chosen not to take the dog to the veterinarian clinic. And it was also learned from family that the dog had, in fact, been in that condition for approximately a year prior to the SPCA investigating.

20 THE COURT: So, you said the dog has recovered, is that what you just said?

21 MR. GORDA: No, no. The dog was put down.

22 THE COURT: The dog was put down.

23 MR. GORDA: But the veterinarian indicated that after examining the growth, and doing an autopsy, they learned that the growth, in fact, had been benign.

24 THE COURT: And it could have been saved, I suppose.

25 MR. GORDA: And if the dog had been taken to a veterinarian clinic immediately the growth would have been discovered to be benign and it would have been removed. And the dog, more than likely, would have had a full recovery.

26 THE COURT: All right. Thank you.

27 MR. GORDA: And the veterinarian report clearly indicated that this type of growth would have caused the dog to be in a substantial amount of pain for quite a long period of time.

28 THE COURT: All right. Thank you.

29 MR. STILL: The facts are substantially correct, Your Honour.

30 THE COURT: All right, then. There will be a finding of guilt. Unless Counsel wish to say anything -- do you wish to put any comments on the record?

31 MR. GORDA: I just want to put on the record, Your Honour, I understand that we have had a pretrial on this matter, and as I indicated to Your Honour Mrs. Collier is 64-years of age. She has no prior record. However, given the length of time that the dog was clearly suffering, as I indicated during the pretrial, the Crown's position is that some form of custodial sentence is necessary for specific and general deterrence in this type of incident, just to indicate that the courts now are starting to take these type of matters seriously, and that cruelty to animals is not an offence that the court will turn a blind eye to in the sense of considering the severity of these type of offences. And clearly, this animal was helpless and relied on its owners to take care of it, and that clearly was not done in this situation. And that's why the Crown feels, given the severity of the illness, the fact that the dog had to be put down because it didn't get treatment, and because of the time period that we're dealing with, that the dog more than likely suffered quite a bit, the Crown does feel that some form of custody is appropriate, followed by a lengthy probation order and a prohibition order to follow

consecutive to the probation order with a number of terms that I've indicated. Being; that she have not pets, not live in any premises where there are pets being kept. And also to allow any member of the Ontario Society for the Prevention of Cruelty against animals, or known as the Humane Society, to attend upon the premise to ensure compliance with the probation, or prohibition order, with prior advance notice. And again, those are conditions that I have case law that if Your Honour wishes to review that has been ordered in prior cases. Thank you.

32 THE COURT: No, Anything further, Mr. Still? I intend to impose the sentence that I have indicated.

33 MR. STILL: No. Nothing further, Your Honour.

34 THE COURT: Mrs. Collier, would you stand up, please. There are several objectives that I seek to accomplish in this sentencing. The first objective is to make certain that for the next while at least you are not caring for or possessing animals, because your conduct is such that we don't trust you to do that for the next while.

35 Secondly, what I wish to do is to express the community's denunciation of your conduct. Because this is a crime that affects people in a very personal, and a very vivid way. Nobody likes to see animals suffer. People react viscerally to it. And that's a perfectly human reaction, and it's appropriate that I express the community's denunciation of that through the sentence. And that will be done by a period of incarceration.

36 But I must also take into account that you are without a criminal record. I must assume that you have otherwise led a decent and productive life, and it's right that I take that into account. And so, the period of incarceration will not be in a jail, it will be in your home. And that reflects your otherwise good background.

37 The house arrest is real in this sense, you won't be followed by a police officer to make certain that you are always in your home when you should be. But if you are caught outside the home when you shouldn't be, then you can be charged with breaching the conditional sentence order. And my practice in those cases, absent some compelling submission, is to convert the conditional sentence to a real jail sentence. So you will have to make sure that you abide by the conditional sentence. And by "house arrest" I mean the physical building, not the yard. It's a substitute for jail. You have to stay within the home.

38 And I see you're getting a bit upset, so why don't you have a seat and I'll continue with the rest.

39 So, you will serve a conditional sentence of sixty days. During that time you will follow the statutory terms of keeping the peace, and reporting to a supervisor. A supervisor is like a probation officer. You are confined to your home at all times except for the following: if there any medical emergencies for you or your husband, then you are free to leave and deal with that emergency. If you have medical appointments, you are free to go to those medical appointments provided that beforehand you have reported that fact to the supervisor, the probation officer. So if you have a routine dental appointment on a Tuesday, you can leave for that dental appointment provided before then you have contacted the supervisor and let him or her know that. For medical emergencies, of course, you don't need to do that. Just get yourself to the doctor, or to the hospital.

40 Do you observe any form of religious worship?

41 MRS. COLLIER: No.

42 THE COURT: All right. Is your husband at home at all times, or does he work?

43 MRS. COLLIER: No, he's not working right now.

44 THE COURT: Well then he can do the shopping for you. There doesn't need to be an exception for the purposes of shopping. Are there any other exceptions required?

45 MR. GORDA; Normally they are allowed out, as I said, for the shopping, or to get any personal items that they

require; but if Your Honour doesn't think that that's necessary, it's usually religious holidays, or doctor's appointments.

46 THE COURT: Yes. You will be permitted to do personal shopping. There may be things that you want to buy yourself, without having to send somebody else to do it for you, and I should have thought of that, for three hours per week. Just pick a day, and a three-hour block of time now. When do you want to do that, Saturday two to five or Friday six to nine. What do you want to do?

47 MRS. COLLIER: I'm trying to figure out when my cheque comes on Friday.

48 THE COURT: Fridays? You're saying that your cheque comes once a month?

49 MRS. COLLIER: Once a month, because I'm on disability.

50 THE COURT: So, if I say Fridays from 5:00 until 8:00 p.m. that should do it?

51 MRS. COLLIER: Yes.

52 THE COURT: All right. You are permitted to be outside the home each Friday between 5:00 to 8:00 p.m. for the purpose of personal shopping. Is there any other exception that is needed that I am missing?

53 MR. STILL: No, Your Honour.

54 THE COURT: All right. The other condition is that while serving the conditional sentence you are not permitted to have care, or custody, or control of any pets. Following the conditional sentence you are placed on probation for a period of two years: the terms are that you keep the peace and be of good behaviour, and report as required to a probation officer. You are not to have care, custody, or control of any pets, or animals, perhaps I'll phrase it that way. You are not to live in a residence where there are pets, or animals. And on reasonable notice, representatives of the Ontario Humane Society will be admitted to your home by you for the purpose of monitoring compliance with that term. So if they show up at three in the morning you are perfectly free to shut the door on them. But if they call you on a Wednesday morning and say we're coming by in two hours, or three hours, or this afternoon or the next day, then it's expected that you will let them in to monitor compliance with that term.

55 Following that there is an order under s. 446(5) of the Criminal Code, prohibiting you from owning, or having custody, or control of an animal, or a bird, for a period of two years. So, the effect is that for the next four years and sixty days you are not to have any pets or animals.

56 Lastly, there will be an order of restitution in the amount of --

57 MR. GORDA: Six hundred and seventy-two dollars and fifty-seven cents. Payable to the Ontario Humane Society, or the OSPCA. And I do have the address and the postal code.

58 THE COURT: All right.

59 MR. GORDA: And that's the --

60 MR. STILL: Might she have four months to pay that, Your Honour?

61 THE COURT: What I propose to do is to make the restitution a term of the probation order, and just simply say that within sixty days of the probation order, so that will be four months from now, because the first sixty days is the house arrest, within sixty days of the probation order you are to provide the probation officer with proof that you have paid to the Ontario Humane Society the amount mentioned by the Crown. So, you'll serve the sixty days of house arrest. Within 60 days after that you will go to the Humane Society, because then you'll be permitted to leave your home, or make such other arrangements as you wish to pay that amount owing to the Humane Society. You will get a receipt, or a

note from them, give that to your probation officer and you have complied. All right?

62 MRS. COLLIER: Yes.

63 MR. GORDA: And I can just indicate that for the restitution it is 16586 Woodbine Avenue, R.R. No. 3, Newmarket, Ontario. And the Postal Code is: L3Y 4W1.

64 THE CLERK: So, it should be made payable to either the Humane Society or --

65 MR. GORDA: Well, it's the OSPCA. I mean, it's the Ontario Society for the Prevention of Cruelty to Animals.

66 THE CLERK: All right.

67 MR. GORDA: And if the other charges against Mrs. Collier and both charges against Mr. Collier are to be withdrawn.

68 THE COURT: All right. The other charge against you is withdrawn. All charges against your husband are withdrawn. We don't have the form for the prohibition order, is that correct, Madam Clerk?

69 THE CLERK: No we don't, Your Honour.

70 THE COURT: And maybe some arrangement will have to be made for her to sign that prohibition order when she sees the probation officer during the term of the probation. But what you need to understand is this, whether you get the document now or down the road, you are on probation for two years. You can't have pets, as I've described. And following that you are ordered not to have pets for another two years. You understand that, right?

71 MRS. COLLIER: Yes.

72 THE COURT: Okay.

73 MR. GORDA: Are there forms?

74 THE CLERK: No.

75 THE COURT: No. It is something that is going to have be drawn up. Quite frankly, it can be just written out.

76 THE CLERK: Can it be part of the conditional sentence?

77 THE COURT: No. It's a separate order. Madam Clerk, it is simply a form that can be written up in the words that I have used and she can sign it.

78 THE CLERK: All right.

79 THE COURT: So, if you want I'll endorse it right on the information.

80 MR. GORDA: But I wonder if there are any forms in the back of the Code for those orders?

81 THE COURT: I looked, but I didn't see any. So, if you want to give me the information and I'll just simply endorse it on there.

82 THE CLERK: Yes, Your Honour.

83 THE COURT: All right. I've written on here: "Prohibition order for two years as per s. 446(5): Not to own, or have custody or control of an animal, or bird." Frankly, if this is simply photocopied and she initials it, in my view that's

a valid order. It's a valid order now, I've explained it to her. But that's all you need to do. All right.

84 THE CLERK: Thank you, Your Honour.

85 MR. GORDA: Thank You, Your Honour.

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