In the Provincial Court of Alberta

Citation: R. v. Camardi, 2015 ABPC 65

Date: 20150327
Docket: 140489543P1
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Nicolino Ivano Camardi

Sentencing Judgment of the Honourable Judge G.J. Gaschler

[1] Nicolino Camardi is charged with two counts that he did willfully cause pain, suffering or injury to an animal or bird, contrary to section 445.1(1)(a) of the *Criminal Code of Canada*.

[2] On 9th January 2014, in Calgary, the body of a Siberian Husky was found in an alley. On 16th January 2014 the body of a cat was found. Forensic examinations of the bodies led to an active police investigation.

[3] On 3rd May 2014, Mr. Camardi was arrested and charged. On 22 May 2014, Mr. Camardi was remanded for a 30 day assessment to determine fitness to stand trial. He was determined fit. With respect to release from custody Mr. Camardi was entitled to a bail hearing. With counsel Mr. Camardi scheduled a bail hearing – which was held before a Provincial Court Judge on 12 September 2014. Mr. Camardi was detained in custody. Mr. Camardi requested review of the Order for detention. Upon review, the Order for detention was upheld.

[4] On 12th December 2014, with counsel, Mr. Camardi entered pleas of guilty to the two charges. Mr. Camardi's counsel and the Crown have entered a Statement of Agreed Facts which had been signed by Mr. Camardi and is attached to this Judgment as Appendix "A". Mr. Camardi's guilty pleas were entered after his counsel had informed him of S. 606(1).1. I was satisfied that he understood the nature and consequences of the pleas, and that his pleas were voluntary.

[5] After hearing read the Statement of Agreed Facts and receiving confirmation of pleas, I accepted the guilty pleas.

[6] Sentencing was adjourned for the opportunity to have prepared a Pre-Sentence Report by Probation Services, and a Forensic Assessment by Alberta Health Services.

[7] Mr. Camardi cooperated with the preparation of both reports, which have been received by the Court, Crown and Defence.

[8] The PSR states that Mr. Camardi is the only child of parents who were in conflict with each other. Mr. Camardi was the subject of an ongoing custody dispute between his parents. He acted out to get attention and had excessive unsupervised free time from an early age. He began to misbehave at home and in school. By the age of 8 he had already experimented in the use of alcohol, by the age of 10 he had used marijuana and psychedelic drugs. By the age of 14 he began excessively consuming alcohol and cocaine. By 17 he had progressed to intravenous drug use. His habits precluded any meaningful engagement in schooling, which he described to the author of the PSR as pointless, since he had begun to support himself by selling illicit drugs. He attended few classes. He consumed illicit drugs. He became a bully at school and sold illicit drugs at school.

[9] Mr. Camardi's education is incomplete. He reports a work history of only one month's employment. He self-reported that he was unsuitable for work due to the regular ongoing influence of illicit drugs.

[10] Mr. Camardi has neither education, nor job skills to support himself. He does not have a stable or any home to return to.

[11] Twice he tried treatment for drug addiction. At 14 he enrolled at the Alberta Adolescent Recovery Centre and succeeded to enjoy 6 months drug free. However, he relapsed. After the events giving rise to these charges he returned to AARC, where he was enrolled when he was arrested in May 2014.

[12] The author of the PSR reports that there is doubt concerning Mr. Camardi's ability and commitment to make changes in his life due to a severe overwhelming addiction to cocaine, marijuana and alcohol. Mr. Camardi is reported as not suitable for community supervision.

[13] The Forensic Assessment report states as a primary diagnosis; Polysubstance Use Disorder of a severe degree. Mr. Camardi reported extensive history of substance abuse dating back to 10 years of age including alcohol, marijuana, prescription drugs, crack cocaine, crystal methamphetamine and heroin. The report states that Mr. Camardi also presents with an Antisocial Personality Disorder in which he "has demonstrated a pervasive pattern of disregard for and violation of the rights of others, including a failure to conform to social norms with respect to lawful behaviour, deceitfulness, impulsivity, irritability and aggressiveness, a reckless disregard for the safety of others, consistent irresponsibility and a lack of remorse for his actions."

[14] Mr. Camardi is assessed to be a very high risk for future criminal behaviour, and a high risk for future violence. The significant contributors to these future conduct assessments are drug and alcohol use, unstable lifestyle, lack of motivation to address lifestyle choices and few educational and employment life skills. Directed to these issues and recognizing that Mr.

Camardi is only 19 years old and has voluntarily engaged in treatment and counselling in the past; the learned author of the report has made 14 in custody and after custody recommendations.

[15] Mr. Camardi has a record of past youth and adult criminal convictions, including:

2009 – Arson – Probation
2010 – Fail to Comply with Probation Terms
2011 – Breach Recognizance –
Assault causing bodily harm
Assault with a weapon
2x Failure to Comply – Global Sentence: Deferred custody, 6 months Probation.
2013 – Breach Recognizance – 12 months Probation

[16] He was on probation at the time of the present offences.

[17] Crown's submission is that a sentence of 2 ½ to 3 years is appropriate. Defence submission is that the appropriate range of sentence is 12-18 months. I will summarize each of the submissions.

[18] Crown submits a 3 year period of Probation should commence upon release. Crown submits that an Order under s. 447.1(1) prohibiting custody, control or residing in the same premises as an animal or bird ought to be made for the lifetime of Mr. Camardi. Defence does not oppose either.

[19] Mr. Camardi has been in custody since 3 May 2014, which is pre-sentence custody of 10¾ months. Crown does not oppose enhanced credit of 1.5 to 1 for the period of pre-sentence custody credit which I determine to be 16 months.

Principles of Sentencing

[20] The fundamental principle of sentencing is set out in s. 718.1 and emphasized in the Alberta Court of Appeal decision in ***R. v. Arcand***, 2010 ABCA 363. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. S. 718.2(b) directs that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. In this latter regard I have received from Crown and Defence sentencing decisions for similar offences.

[21] Of these numerous authorities it must first be observed that Parliament amended the *Criminal Code* in 2008, creating a hybrid offence whereby an accused person may be facing a summary offence with a maximum sentence of 18 months or an indictable offence with maximum sentence of 5 years.

[22] The Ontario Court of Appeal, in ***R. v. Wright***, 2014 OJ No. 5659 described the 2008 amendment as a signal of Parliament's determination to deter and punish those who engage in acts of cruelty to animals. Similarly this Court by the decision of Judge Lefever in ***R. v. Chailler***, 26 Aug 2013 unreported (121450597P1) observed that sentences for acts of animal cruelty have been increasing, reflecting the change to the code made by Parliament. At page 6, of the judgment he states:

> "offences of animal cruelty are seen in a far more serious light today than they were in previous years. This is in part due to our better understanding of how cruelty to animals presages other more chilling possible adult behaviours".

[23] Further this Court in ***R. v. Habermehl***, 2013 ABPC 192, Judge Fraser, at page 2 stated that by increasing the range of sentence in the 2008 amendment; Parliament:

> "gave effect to widespread concerns that the *Criminal Code* provisions concerning cruelty to animals had fallen drastically out of step with current social values and thus restructured the sentences available".

[24] Therefore sentencing authorities providing relevant guidance are those decided after the 2008 amendments.

[25] Determining a fit and proper sentencing that respects the fundamental principle includes a consideration of aggravating and mitigating circumstances.

[26] The Crown Submits the following aggravating circumstances:

1. Both the dog and the cat were subjected to gratuitous unprovoked violence; the dog was tethered such that his front feet were off the ground, the dog was struck by thrown food cans, kicked, and urinated upon. The dog died of starvation and dehydration. The cat was placed in a plastic bag and thrown against the floor. The cat suffered from malnutrition and dehydration. The cat was strangled by a ligature. Both animals had their muzzles taped closed.

2. The mistreatment and failure to provide food and water continued for a prolonged period of time between October 2013 and January 2014.

3. The mistreatment of the animals was not an isolated or single act but were numerous and continuing instances of abuse, infliction of injury and ongoing neglect.

4. The actions of Mr. Camardi were not impulsive, not provoked by any event, nor were they actions following upon a triggered rage.

5. There was an intentional infliction of suffering requiring at least some deliberation, for example, ligature, plastic bag, taping.

6. The two animals were concurrently subjected to this ongoing cruelty.

7. The acquisition of an animal involved a responsibility to provide food, care and protection. Mr. Camardi's actions were a breach of trust.

8. Mr. Camardi was on probation at the time of these offences.

[27] The Crown submits that several of the aggravating features as listed, demonstrate that a greater sentence should be ordered than in precedent cases which are briefly summarized as follows:

1. ***R. v. Chailler***, *supra*: Killing the family dog to demonstrate to a girl that had spurned him that he was serious and ought not be ignored. A single but

calculated act – 16 months.

2. ***R. v. Habermehl***, *supra*: In a failing relationship and exasperated with the family cat's behaviours, the accused inflicted blunt force trauma, leading to the cat being euthanized – 90 days and one year probation.

3. ***R. v. Anderson***, ABPC 29 November 2012, unreported (110049731P1): The accused was frustrated by the family dog yipping, defecating and urinating. When the accused reached for the dog, the dog snapped at him; the accused grabbed the dog and in frustration threw it from a second floor window; outside the accused approached the dog, which was injured and yipping and kicked it to death – 10 month Conditional Sentence Order.

4. ***R. v. Chalmers***, ABPC 23 April 2013, unreported, (110779394P1): Frustrated by being awakened by a family cat knocking something off a counter, the accused grabbed the cat, choked it, put it under water and threw it 15-20 feet against a wall. The cat required surgery. A second family cat was hit against a wall with such force as to have broken the drywall – 9 months and 15 months of probation.

5. ***R. v. McKinnon***, ABPC 7 October 2014, unreported (140370248P1): The accused, age 19, visited a home where he had been formerly a resident and employing a ruse stole the family cat. His intention was to kill and cook the cat. The cat was stabbed, it's neck broken and the body dismembered. The accused was discovered by smoke from a small fire, with a frying pan – 10 months and 3 years probation.

6. ***R. v. Connors***, 2011 BCPC 24: The accused was asked to care for a friend's dog which was at the time suffering from an infection. The dog was not well trained and was defecating inside. Fueled by anger, alcohol and steroids, the accused exploded with violence to the dog that died from broken ribs, internal injuries and bleeding caused by blunt force trauma - 6 months and two years probation.

7. ***R. v. Munroe***, 2012 ONSC 4768: The accused over a period of approximately one month tortured and injured his girlfriend's dogs, causing numerous injuries and the death of one dog – 12 months and probation.

8. ***R. v. Tremblay***, 2012 BCPC 410: The accused looking after his girlfriend's dog while he was under the influence of heroin was seen kicking the dog and hitting it with a dish. The next day, the accused was seen hitting the dog repeatedly with a hammer to the dogs toes, head and body ignoring the dog's cries of pain and attempts to flee. The dog survived – 6 months and 30 months probation.

9. ***R. v. Rodgers***, 2012 OJ No. 6287: Following an argument with his girlfriend, the accused threw a 12 week old puppy down stairs, then picked up the

puppy and threw it to the ground. The puppy was killed as a result of a skull fracture – 8 months and 2 years probation.

10. ***R. v. Helfer***, 19 June 2014, unreported, Ontario Court of Justice: Following an argument with his mother, the accused pulled the family dog out of the home, kicked her, lifted her up by the chain around her neck, hit her with a rake, then repeatedly hit her with a shovel until the dog lay motionless and bloody. The accused threw the body in the dumpster, the dog survived – 2 years and 3 years probation.

11. ***R. v. Alcorn***, ABPC December, 2014, unreported, (130018757P1): The accused acquired a cat for the purpose of killing the cat in the context of a sexual engagement with a partner, whose participation was clouded by intoxication. The cat was hung from the rafters, stabbed multiple times and bled out. The body of the cat was displayed for viewing while the accused and his partner had intercourse – 20 months and 3 years probation.

[28] The Defence submits that a custodial sentence is appropriate but in consideration of the extremely troubled background, severe drug addiction and age of Mr. Camardi, a sentence demonstrating only punishment is inappropriate. Defence supports a 3 year term of Probationary Supervision on the terms recommended in the psychiatric assessment. Referring to the report Defence noted that for this young man, there is a window of opportunity to change peer groups, attend addictions counselling and residential treatment, and acquire life skills, educational upgrading and acquire employable skills.

[29] I accept that there is rehabilitative requirement in a fit sentence of a very troubled, and severely addicted young man. There is also a need for close community supervision of Mr. Camardi who is at risk of relapse and consequent further criminal and violent behaviour. A most significant consequence of Mr. Camardi's addiction and related behaviours is that he has suffered lost years – years when every young person should be attending school and acquiring at least a basic education and should be developing life and employment skills. Mr. Camardi is deficient in all of these.

Probationary Supervision

[30] Upon release from custody Mr. Camardi will be bound by Probation for a period of three years. The terms are:

1. Keep the peace and be of good behaviour;
2. Appear in Court when required;
3. Report in person to a Probation Officer within 2 business days following release and continue to report as directed. I encourage the supervising Probation Officer to direct frequent regular and in person reporting, taking into account Mr. Camardi's counselling, treatment and employment attendances;
4. Reside where approved by Probation and notify in advance any changes in residence, educational programming, employment or occupation;
5. Attend Southern Alberta Forensic Psychiatry Centre as directed and comply with counselling and treatment as recommended by the Centre including recommendations for medical management;

6. Attend for assessment and counselling with respect to alcohol and drug addictions, anger and aggression management;
7. Mr. Camardi is prohibited from having in his possession any alcohol or intoxicants and all medications excepting over the counter and those prescribed by a Doctor or Dentist;
8. Mr. Camardi is prohibited from attending any place or business where the primary business carried out is the sale of alcohol;
9. Mr. Camardi is prohibited from contact directly or indirectly with Terry Jo Smoker;
10. Mr. Camardi is prohibited from possessing any weapons including knives except for the preparation or consumption of food or if required as a tool in the workplace, when employed and then only in the workplace;
11. Mr. Camardi is prohibited from owning, having the custody or control of or residing in the same premises as an animal or bird; and
12. Mr. Camardi is to engage in, educational upgrading, employment training and life skill acquisition.

Order of Prohibition

[31] In addition there will be a s. 447.1(1) Order of Prohibition from owning, having the custody or control of or residing in the same premises of an animal or bird, for life.

Custodial Sentence

[32] Several of the animal cruelty sentencing cases reviewed have made the statement that cases in this area are so dissimilar as to provide little direct comparison guidance.

[33] Contextual comparison however, may be made against the fundamental principle of sentencing, namely proportionality. In this consideration the gravity or severity of the offences committed by Mr. Camardi is very high, likewise his degree of responsibility for the offences he committed is very high. The prolonged abuse, neglect and wilful infliction of suffering causing the death of both animals calls for a custodial sentence at the high end of the range of sentence.

[34] As well as the aggravating circumstances however, there are mitigating circumstances which must be considered in determining a fit, proper and proportional sentence.

[35] It is mitigating that Mr. Camardi has entered guilty pleas. A guilty plea represents an acceptance of responsibility and is an indication of remorse. In respect of the guilty plea the Crown submits caution should be exercised in accepting that Mr. Camardi is remorseful and accepts responsibility. Crown points to the FAOS report where Mr. Camardi deflected responsibility by blaming his drug abuse and concordant limited recollection of events. The appropriateness of caution is accepted. Mr. Camardi however took the opportunity to speak for himself at the end of counsel submissions. He stated to the Court and to the gallery of people attending the hearing that he was sorry and that everyone has the right to feel about him as they do. Mr. Camardi has had a long period of time, free of alcohol and drugs, to reflect upon his actions.

[36] The second mitigating circumstance as recognized by the Crown and emphasized by Defence is that Mr. Camardi is a very young man.

[37] I have considered a sentence in the penitentiary range and decline to impose it upon this offender with the very troubled past who has not yet met his 20th birthday.

[38] There is a custodial sentence of 22 months.

[39] There will be credit for pre-sentence custody calculated at 16 months. That leaves a sentence of 6 months to serve. Victim fine surcharges of $200 on each count are imposed. Time to pay is refused. Default in payment will be served concurrently.

Dated at the City of Calgary, Alberta this 27th day of March, 2015.

G.J. Gaschler
A Judge of the Provincial Court of Alberta

Appearances:

G. Haight
for the Crown

J. Kelly
for the Defence

Appendix "A"

Docket No. 140489543P1

IN THE PROVINICAL COURT OF ALBERTA

CRIMINAL DIVISION

BETWEEN:

HER MAJESTY THE QUEEN

AND

NICOLINO CAMARDI

Accused

STATEMENT OF AGREED FACTS

Her Majesty The Queen hereby alleges and the Accused, Nicolino Camardi, hereby admits the following facts alleged against him in support of his guilty plea:

1. In the Fall of 2013, the accused resided at a townhouse located at #104-9960 Bonaventure Drive SE, Calgary, Alberta with his mother, Jaroslav Ciz ("Ciz") and his girlfriend, Terri-Jo Smoker ("Smoker").

2. Sometime in October, 2013, the accused and Smoker purchased a dog that had been advertised for sale on the internet by a couple in Scotfield, Alberta. The dog was an approximately 2 year old Siberian Husky named "Shadow". The accused and Smoker also obtained from the same couple an approximately 6 month old domestic short haired kitten named "One Tooth". The accused and Smoker thus became joint owners of Shadow and One Tooth and were solely responsible for their care. The animals resided with the accused and Smoker at their residence until the death of the animals on or about January 9th, 2014.

3. During the time that the animals lived with the accused, the accused often got angry at both of the animals for such issues as house soiling or making noise. During arguments with Smoker, the accused sometimes would threaten to kill the animals.

4. During the same time period, the accused physically abused Shadow numerous times in the basement of his residence. The abuse included the following:

    a. The accused tied Shadow to a post for extended periods of time, with the tether tied so high on the post that it prevented Shadow from being able to lie down.

b. When the dog would bark and make noise as a result of being tied up, the accused would throw full cans of beans at the dog's head, often striking the dog in the head.

c. The accused would punch the dog in the head.

d. The accused would shove feces in the dog's nose.

e. The accused would urinate on the dog's head.

f. Neither the accused nor Smoker provided adequate water for the dog. This resulted in the dog becoming so dehydrated that it would lick up the urine on the occasions when the accused urinated on the dog.

5. On a few occasions the accused's mother heard the abuse being committed by the accused on Shadow, and went down to the basement to investigate. The accused would then tell Ciz in a threatening manner that it was none of her business and to get back upstairs. Ciz, intimidated by her son, would comply with this demand.

6. Throughout the time that Shadow resided with the accused, neither the accused nor Smoker adequately fed the dog. Both the accused and Smoker were addicted to crack cocaine, and the majority of their money went to feeding their addiction. As a result, there was often no dog food in the house. Smoker on these occasions would sometimes feed the dog canned beans or fruits and vegetables. Due to the lack of adequate and proper food, Shadow became progressively more malnourished, and toward the end of her life became increasingly weak and lethargic.

7. A few days before Shadow died, the accused taped her muzzle shut with clear medical tape. Shadow was too weak from starvation to resist this.

8. Sometime on January 8th or in the early morning hours of January 9th, Shadow died while tied up to the pole in the basement of the accused's residence. When he discovered that the dog was dead, the accused told Smoker he was concerned that the dog would "start stinking up the house". He then took Shadow's body and dumped it in an alley near his residence.

9. Shadow's body was discovered on January 9th by a neighbourhood resident. Shadow's body smelled strongly of urine. The body was transported to the Calgary Humane Society. Photographs of Shadow's body as it appeared on January 9, 2014 are attached as Appendix "A" to this Statement of Agreed Facts.

10. On January 16th, a necropsy was performed on Shadow's body by Dr. Margaret Doyle of the Calgary Humane Society ("Dr. Doyle"). The cause of death was determined to be starvation. It was also noted that there was blood in one of Shadow's eyes, which was determined to be related to head trauma. Further, there was a healed rib fracture which according to Dr. Doyle is highly suggestive of chronic abuse. The entirety of Dr. Doyle's report is attached as Appendix "B" to this Statement of Agreed Facts.

11. A few days prior to January 9th, 2014, the accused started a physical attack on One Tooth which continued intermittently for a few days and ultimately ended in the cat's death sometime overnight on January 8th – 9th, 2014. During this attack, the accused kicked the cat in the face a number of times which caused noticeable swelling. The accused also put the cat in a plastic bag, and threw the bag in the air numerous times causing it to hit the floor and other hard surfaces. As a result, One Tooth suffered multiple traumatic injuries to her head, tail and hind limbs.

12. One Tooth's injuries were severe enough that she was essentially immobile. The accused, in an effort to stifle her cries of pain, applied painters tape all over her mouth and nose. One Tooth was unable to resist due to her injuries.

13. Sometime overnight on January 8th – 9th, the accused strangled One Tooth using a string ligature tied around her throat. He then took One Tooth's body and dumped it in a snowbank in a nearby alley.

14. One Tooth's body was not discovered until January 16th, 2014. The body, still with the painters tape and the string ligature on it, was transported to the Calgary Humane Society. Attached as Appendix "C" to this Statement of Agreed Facts are photographs of One Tooth's body after its discovery on January 16th, 2014.

15. On January 17th, 2014, a necropsy was performed on One Tooth's body by Dr. Doyle. Cause of death was confirmed to be asphyxia due to ligature strangulation following multiple traumatic injuries to the head, tail and hind limbs. Dr. Doyle's examination also revealed that One Tooth was significantly underweight, with a lack of muscle development over the body, indicating that One Tooth was also not fed adequately during her stay with the accused. The entirety of Dr. Doyle's report is attached as Appendix "D" to this Statement of Agreed facts.

16. During their investigation, neighbourhood inquiries revealed to the Calgary Humane Society (CHS) investigators that a Siberian Husky had been seen living at the accused's residence. Ultimately, when a CHS investigator spoke to the accused on January 18th, 2014, the accused informed him that although he did have a Siberian Husky and a black and white cat living with him, both animals had been returned to their original owners. The CHS investigator also spoke to the accused's mother who told her the same thing.

17. On January 24th, 2014, a lawfully issued search warrant was executed on the accused's townhouse and yard, and a number of items were seized, including clear medical tape, green painters tape, dog feces and animal hair. Subsequent DNA testing revealed that the dog feces was from Shadow, and the hair was from One Tooth.

18. On March 24th, 2014 Terri Jo Smoker gave a statement to CHS investigators detailing the accused's abuse of Shadow and One Tooth as well as her own involvement. On April 9th, 3014, she confirmed under a *KGB* warning the truth of that statement.

19. The accused was arrested by members of the Calgary Police Service on May 3, 2014. The accused eventually admitted to some of his involvement in the abuse and ultimate deaths of Shadow and One Tooth, stating that much of it had occurred when he was under the influence of crack cocaine.

ALL OF WHICH IS ADMITTED this _____ day of December, 2014.

J.J. Kelly
Counsel for the Accused

Gordon E. Haight
Crown Counsel

Nicolino Camardi
Accused