

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Gerling*,
2014 BCSC 2203

Date: 20140408
Docket: 60138-2
Registry: Chilliwack

Regina

v.

Melvin Leonard Gerling

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Sentence

Counsel for the Crown:

A.D. Janse

Counsel for the Defence:

D. Petri

Place and Date of Hearing:

Chilliwack, B.C.
April 8, 2014

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[1] **THE COURT:** This is a serious matter. It is considered seriously by the *Criminal Code*, R.S.C., 1985, c. C-46 since 2008, much more seriously than the *Code* considered it before that.

[2] I have accepted the opinions of Dr. Steinebach. He has said in his evidence that it was reasonable to date the pathological changes to a year at the least, and most of the changes required significantly longer to develop than a year. So it was not a case of putting the dogs in the care of Mr. McPhate and not having any responsibility for them. The dogs' issues preceded that time period for many, many months according to Dr. Steinebach.

[3] I also reject any suggestion that this was not a puppy mill. It was a puppy mill. If Mr. Gerling did not make any money off it, then he is a poor businessman. But he definitely was breeding these dogs and selling these dogs, and it was a puppy mill.

[4] Looking at the cases that the Crown has cited, I consider it necessary for Mr. Gerling to be given jail time. I am going to put him on a conditional sentence order. The conditional sentence order will be as the Crown has suggested, six months. I am not going to order house arrest. I am going to put Mr. Gerling on a curfew. That curfew is 6:00 p.m. to 8:00 a.m. the next day, every day of the six months. So he must be in his residence during those hours.

[5] He is 69 years old. He has some failing health issues. I do not think he is any danger to the community whatsoever. I do not see any downside to imposing a 20-year prohibition on Mr. Gerling from owning any dogs under s. 447.1(a) that is from owning, having the custody or control or residing in the same premises of any dogs during the 20 years. Mr. Gerling has already said in the past that he is out of the business. He has no intention of being back in the business, so this should not be of any consequence for him to have this imposed for 20 years.

[6] These dogs were in atrocious circumstances, as found by Dr. Steinebach. I think, quite frankly, the whole situation got out of hand for Mr. Gerling. He did not know how to deal with all of these issues. He may not have had enough sales to

cover all the costs necessary for veterinarian attention for these dogs. I do not consider Mr. Gerling to have been a malicious person. I think he tried his best, but it was far beyond his abilities and he should have given up long before the dogs were seized by the Society for the Prevention of Cruelty to Animals (“SPCA”).

[7] So I do have a problem with s. 447.1(b) restitution, not for the reasons given by Mr. Petri. My memory is that Mr. Gerling was given an option on the seizure of these dogs. If he wanted to fight the seizure, he would be charged with the costs. If he did not fight the seizure and gave up the dogs, he would not be charged with the costs. That is my understanding of the deal that he was offered. He, therefore, gave up the dogs. I do not think, in these circumstances, via the back door, so to speak, he should be obliged to pay those costs having made the choice to give up the dogs to avoid the costs. As a consequence, I issue no restitution order in those circumstances.

[8] Mr. Gerling, there are some mandatory orders here for conditional sentence orders, and Mr. Gerling, during the conditional sentence order, will keep the peace and be of good behaviour. I am trying to find them in the *Code* right now. 742.3: you will also appear before -- and this would be in this case, I assume, a probation officer, would it?

[9] **MS. JANSE:** The same person, but they call it a CSO supervisor.

[10] **THE COURT:** Yes, conditional sentence order supervisor when required to do so by the supervisor; report to that supervisor within -- can it be two working days, or what longer period? Within two working days after the making of this order and thereafter as required by the supervisor in the manner directed by the supervisor.

[11] You will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor, and notify the court or the supervisor in advance of any change of name or address. Promptly

notify the court or the supervisor of any change of employment or occupation, although I understand Mr. Gerling is now fully retired.

[12] I think on top of the curfew, Mr. Gerling should be ordered to provide 50 hours of community service over his CSO period of six months.

[13] I believe that completes.

[14] **MR. PETRI:** With respect to the curfew, My Lord, can the Court include an exception with respect --

[15] **THE COURT:** Pardon me?

[16] **MR. PETRI:** Can the court include an exception with respect to medical appointments if they are early or --

[17] **THE COURT:** He will not have a medical appointment between 6:00 at night and 8:00 in the morning.

[18] **MR. PETRI:** My only concern is that if he's at the hospital.

[19] **THE COURT:** If Mr. Gerling has a medical emergency that requires him to breach the curfew, then he is entitled to do that. But, of course, he may have to satisfy that with the CSO supervisor.

[20] **MR. PETRI:** Thank you.

[21] **MS. JANSE:** Thank you, My Lord.

[22] **THE COURT:** Is that it?

[23] **MR. PETRI:** With respect to the offences, given his limited income, My Lord, I would ask that Mr. Gerling be given -- I believe there's some victim fine surcharges attached to these offences.

[24] **THE COURT:** I think you cannot waive the surcharge anymore.

[25] **MS. JANSE:** It predates that amendment, so should Your Lordship wish to waive it, then you can. Otherwise, it will be \$50 per count.

[26] **MR. PETRI:** I would ask that --

[27] **THE COURT:** I waive the surcharges.

[28] **MR. PETRI:** Thank you.

[29] **MS. JANSE:** Thank you, My Lord.

[30] **MR. PETRI:** Thank you.

“Truscott J.”