

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Perrin, 2012 NSPC 134

Date: November 20, 2012

Docket: 2402715

Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Ricky Ashward Perrin

Decision

Judge: The Honourable Judge Frank P. Hoskins, J.P.C.

Oral Decision: November 20, 2012

Charge: That he on or about the 3rd day of December, 2011 at or near Cole Harbour, Nova Scotia, did wilfully and without lawful cause, kill a cat, the property of Karen Campbell that was kept for a lawful purpose contrary to section 445(1)(a) of the *Criminal Code*.

Counsel: Melanie Perry, for the Crown
Marian Mancini, for the Defence

By The Court (Orally):

Introduction

[1] The Accused, Mr. Perrin, pleaded guilty to a single charge of killing a cat, contrary section 445.1(a) of the *Criminal Code* (*Code*). The matter is before the Court for disposition. The Crown proceeded by indictment and thus the maxim sentence is a term of imprisonment of not more than 5 years.

[2] In accordance with section 726. 2 of the *Code*, what follows are my reasons for imposing the sentence that I view as “just and appropriate”, or a “fit and proper punishment”, for this offence and offender.

Facts

[3] The disturbing circumstances surrounding this case involve the brutal slaying of a healthy domestic cat that belonged to Mr. Perrin’s girlfriend, Ms. Karen Campbell.

[4] On December 3, 2011, at approximately 9:00 p.m., Mr. Perrin contacted the landlord of his apartment building to seek her assistance in removing a splinter from his left heel. He attended the landlord’s apartment and received her assistance in removing the splitter. At that time, the landlord did not notice any scratches on Mr. Perrin.

[5] Later in the evening, sometime around 9:30 p.m., the landlord heard a loud banging noise coming from Mr. Perrin’s apartment, which was below her apartment. The loud noise was the result of a concerned resident pounding on the door of Mr. Perrin’s apartment attempting to get a response from within the apartment. Residents of the apartment building heard thrashing and banging noses

emanating from within the apartment. They described the terrible noise as sounding like a cat crying out, screaming in pain. Having heard this, a resident tried to kick in the door to Mr. Perrin's apartment, but was unsuccessful. At that point the resident could hear a cat whimpering from the other side of the door and then he called the landlord.

[6] At one point, a resident did speak with Mr. Perrin and observed that Mr. Perrin was intoxicated and that there was blood in several locations in the apartment. Mr. Perrin informed the resident that he had cut himself and showed a cut on his finger. When asked where the cat was, Mr. Perrin replied that the cat was somewhere in the apartment.

[7] Ms. Campbell arrived home from work at approximately 11:30 p.m., and noticed blood in the apartment and that her roommate, Mr. Perrin, was asleep on the bed. She discovered her cat was deceased lying in a pool of blood in the apartment's storage room behind a box with a bag draped over the cat. It appeared that the cat's throat was cut. Consequently, she called the police.

[8] Shortly after midnight, the police attended the apartment. The police entered and found Mr. Perrin asleep in bed; wearing a T-shirt. There was a pair of bloody jeans on the bed. Mr. Perrin's sneakers were also covered in blood. The officers also noticed numerous scratches on Mr. Perrin's arms, hands and legs. He was also quite intoxicated.

Aggravating Circumstances Surrounding the Offence

[9] The inherent nature of this offence is aggravating because it involves a senseless act of extreme violence against a household pet, a cat. This act of brutality can only be described as an unprovoked attack against a helpless and

defenceless animal. Indeed, there are no mitigating factors surrounding the offence that could provide a plausible explanation of why Mr. Perrin acted in the manner that he did in killing the cat. This inexplicable extreme act of violence is of concern because it raises troubling questions about whether Mr. Perrin's possesses a real propensity toward violence. I am mindful that he was intoxicated at the time, but that clearly does not explain why he became extremely violent toward the helpless cat. Nor is there any evidence proffered to establish a causal connection between Post Traumatic Stress Disorder and the offence. To put it another way, there is no plausible explanation offered to explain what caused Mr. Perrin to become extremely violent toward the cat. Further, Mr. Perrin cannot offer an explanation because he professes not to have any memory of the incident.

Mitigating Factors Surrounding the Offence and Offender

[10] There are several mitigating factors surrounding Mr. Perrin which has been ably stressed by Ms. Mancini on behalf of Mr. Perrin, and appropriately conceded by the Crown, which include the following:

- (a) Mr. Perrin has pleaded guilty and has accepted responsibility for the offence, thereby saving substantial resources to the justice system;
- (b) The Pre-Sentence Report is generally positive;
- (c) He has expressed remorse for having committed the act, and is deeply sorry for the pain he has caused Ms. Campbell to suffer;
- (d) He has complied with the conditions of his release for an extended period of time; and
- (e) Mr. Perrin is gainfully employed.

Personal Circumstances surrounding Mr. Perrin

[11] Mr. Perrin is 49 years of age, single and is gainfully employed with a wood renewal company.

[12] It would appear from the contents of the Pre-Sentence Report that he has had a normal upbringing as he could not recollect anything out of the ordinary during his formative years. Mr. Perrin was married for approximately 11 years. Ever since his divorce, Mr. Perrin has been involved in several relationships, including the most recent relationship with Ms. Campbell. This relationship lasted for approximately one year, and has ended as a result of the commission of this offence. Mr. Perrin has been struggling with a serious alcohol addiction for many years. More recently, he has been diagnosed as having Post Traumatic Stress Disorder as a result of his involvement in the recovery process of Swiss Air disaster, which includes symptoms of depression and alcohol dependence.

[13] Interestingly, Mr. Perrin's mother, Ella Perrin, was surprised to learn of this offence because she stated her son always loved animals, and there were no issues in the past with family pets.

[14] Mr. Perrin's mother also observed a marked difference in her son since his involvement in the recovery aspect of the Swiss Air disaster, as he was not the same person.

[15] Mr. Perrin reported to the author of the Pre-Sentence Report that he has no memory of the offence, however, he believes that it was a combination of alcohol and consumption of Ms. Campbell's prescription drugs that contributed to the killing of the cat.

[16] The author of the report also stressed that Mr. Perrin proclaimed his remorsefulness for the pain he has caused his ex-girlfriend, Ms. Campbell. It was also noted in the report that Mr. Perrin was very remorseful for having killed the cat.

[17] Mr. Perrin possesses a criminal record for unrelated offences, which includes convictions for breaches of court orders and alcohol related offences. His last conviction was in 2007, wherein he received a thirty-day period of incarceration for having breached section 145 of the *Code*.

Victim Impact Statement

[18] Ms. Campbell is also a victim of Mr. Perrin's actions because she lost her pet cat of 6 years. She described the emotional impact that this offence has had upon her, which included loss of work and sleep. She stated that Mr. Perrin has breached the trust reposed in their relationship. She also expressed her concern for her own safety and is trying to understand why Mr. Perrin killed her cat.

Position of the Parties

[19] The Crown contends that an appropriate and just disposition for this offence and offender is a 90 day period of incarceration followed by an eighteen month period of probation.

[20] The defence submits that a conditional sentence of imprisonment is a fair and appropriate disposition for this offence and offender, as it strikes a just proportion between the circumstances surrounding the offence and the offender.

Relevant Statutory Provision

[21] Section 445.1(1)(a) of the *Code* prescribes that:

Every one commits an offence who:

- (a) willfully causes or, being the owner, willfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird;...

[22] Section 445.1(2) of the *Code* provides:

Every one who commits an offence under subsection (1) is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or both.

Purpose and Objectives of Sentencing

[23] Parliament has articulated the fundamental purpose and principles of sentencing in section 718 of the *Code*.

Section 718 provides that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Section 718.1 provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Section 718.2 sets out the other sentencing principles that the sentencing court is mandated to take into consideration, which for the purposes of this case are:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(d) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[24] The Supreme Court of Canada has enunciated the correct approach to sentencing in *R. v. M.* (C.A.), (1996), 105 C.C.C. (3d) 327.

[25] It is trite to say that the imposition of a just and appropriate sentence can be as difficult a task as any faced by a trial judge, as it was in this specific case. However, as difficult as the determination of a fit sentence can be, that process has a narrow focus. It aims at imposing a sentence that reflects the circumstances of the specific offence and the attributes of the individual offender. Sentencing is not based on group characteristics, but on the facts relating to the specific offence and offender as revealed by the evidence adduced in the proceedings.

[26] Although the sentencing process is highly contextual and necessarily an individualized process, the judge must also take into account the nature of the offence, the victims and community. As Lamer C.J. (as he then was), noted in *R. v.*

M. (C.A.), sentencing requires an individualized focus, not only of the offender, but also of the victim and community as well.

[27] The fundamental purpose to be pursued in sentencing offenders is to contribute to respect for the law and the maintenance of a just, peaceful and safe society, taking into account the rehabilitation and, where appropriate, the treatment of offenders, and acknowledging the harm done to victims and the community.

[28] The purpose of sentencing is achieved by blending the various objectives identified in section 718(a) to (f). The proper blending of those objectives depends upon the nature of the offence and the circumstances of the offender. Thus, the judge is often faced with the difficult challenge of determining which objective or combined objectives deserves priority. Indeed, section 718.1 directs that the sentence imposed must fit the offence and offender. Section 718.1 is the codification of the fundamental principle of sentencing which is the principle of proportionality. This principle is deeply rooted in notions of fairness and justice.

[29] While the paramount sentencing objectives at work in the present case are denunciation and deterrence, I must not lose sight of the prospect of rehabilitation. Indeed, I am mindful of the principle of restraint which underlies the provisions of section 718 of the *Code*.

[30] Given that sentencing is a highly contextual and necessarily an individualized process, the Court must impose a sentence that addresses the two elements of proportionality: the circumstances of the offence and the circumstances of Mr. Perrin and thereby reach a sentence that fits not only the offence, but also Mr. Perrin. The Court must fashion a disposition from the limited options available which take both sides of the proportionality inquiry into account.

Animal Cruelty Sentencing Decisions

[31] There appears to be a plethora of cases involving the infliction of severe injury and/or death of animals in the case law. I am mindful that some of the cases predate both the inception of the conditional sentence regime which was in 1995, and the recent, 2008, amendments to section 445 of the *Code* which, amongst other things, increased the maximum punishment for the offence.

[32] The following animal cruelty sentencing decisions have been considered: *R. v. Paul*, [1997] B.C. J. No. 808 (Ont. Prov. Ct.); *R. v. Jones*, [1997] O.J. No. 1288 (Ont. Ct. of Justice); *R. v. Fowlie*, [1998] N.B.J.No. 539 (N.B.Q.B.); *R. v. Power*, [2003] O.J. No. 2414 (Ont. C.A.); *R. v. Campbell Brown*, [2004] A. J. No. 201 (Alta. P.C.); *R. v. Courchesne*, [2005] O. J. No. 4601(Ont. Ct of Justice); *R. v. Materi*, [2005] B.C. J. No. 545 (B.C.P.C.); *R. v. Barnes*, [2005] B.C.J. No. 1934 (B.C. P.C.); *R. v. Pedersen*, [2005] B.C. J. No. 985 (B.C. P.C.); *R. v. Perrault*, [2007] N.S.J. No. 162 (N.S.P.C.); *R. v. Wicker*, [2007] A.J. No. 566 (Alta. P.C.); *R. v. Piasentin* [2008] A.J. No. 629 (Alta. P.C.); *R. v. Rabeau*, [2010] A. J. NO. 567 (Alta. C.A.); *R. v. Munroe*, [2010], O.J. No. 2579 (Ont. Ct. of Justice); *R. v. Ainsworth*, [2010] A.J. No. 810 (Alta. P.C.); *R. v. Connors*, [2011] B.J. No. 168 (B.C.P.C.); *R. v. White*, [2012] N.J. No. 263(N.L.P.C.).

[33] What can be seen by comparing these cases is that no two cases are exactly alike, and it is often difficult to compare cases because of the multitude of varying factors that are considered and weighed accordingly. Cases are often distinguishable, as they vary in terms of the relative culpability of the offenders, and the extent of the injuries sustained by the animals subjected to abuse. However, the cases are helpful in that they provide an instructive discussion of the

relevant principles and factors to consider in the sentencing of animal cruelty cases.

[34] Indeed, there are two cases which are similar to the case at bar. The first is the *Wicker*, case. In that case, the accused pleaded guilty to willfully injuring his pet cat by putting it into a bathtub full of scalding water, causing injuries so severely that the cat had to be euthanized. Mr. Wicker had a very dysfunctional and unhappy childhood, which included mental, physical and sexual abuse. Mr. Wicker required intense medical intervention for serious mental health issues. He had attempted suicide six times. On the date of the offence, Mr. Wicker was depressed over his abiding sense of personal failure, the recent death of his grandmother, losing his job, and being thrown out of his girlfriend's apartment. Mr. Wicker claimed that he had no recollection of his actions in injuring his cat. He could not recall putting his cat in the bathtub or explain why he did so. He, nevertheless acknowledged what he did and expressed deep remorse for his actions, felt embarrassed, ashamed, and distraught for his actions. Notwithstanding, Mr. Wicker's challenged background and clear need for psychological intervention, the court imposed a custodial sentence of 90 days, followed by a twenty-four month period of probation. An aggravating feature acknowledged by the sentencing judge was the fact that on a previous occasion Mr. Wicker had injured the same cat.

[35] Similarly, in *Connors*, the accused was living in an inn and caring for his friend's dog. He was bound by a recognizance that prohibited him from using drugs and imposed a 6:00 p.m. curfew. Other residents observed the accused exit a vehicle with the dog at midnight. Shortly after, they heard smashing sounds and the dog crying and called the police. The police noted the accused appeared calm at first but became very agitated when they noticed the dog on the bed suffering

from serious injuries. The officers observed dog feces, and blood all over the walls and floor and found vodka, cocaine, and steroids. The dog died of blunt force trauma. It had numerous broken bones, missing teeth, and lacerations. The 24-year-old accused was a steroid user with a record of drug, and weapon offences. The accused was sentenced to five months imprisonment, followed by two years' probation and a 10-year prohibition from owning or living with an animal. The Crown proceeded summarily so the maximum term of imprisonment was 18 months. The accused was credited for 1 month in custody. The brutality of the attack precluded a conditional sentence, which the Court concluded would not meet the principles of denunciation or deterrence. The accused showed little remorse and had not explained his actions.

[36] The sentencing judge accepted that at the time of the offence, the accused's judgment and control over his emotions were somewhat impaired by the consumption of drugs and alcohol. The accused also expressed a willingness to engage in rehabilitation including seeking treatment for drug and alcohol counseling. The accused also pleaded guilty.

[37] In *Connors*, after reviewing a number of animal cruelty sentencing decisions which were decided before the 2008 *Code* amendments, Judge E. Quantz, of the British Columbia Provincial Court, imposed a period of five months incarceration. In concluding that a period of five months was a just disposition for the offence and offender, the judge observed, at paragraphs 40-41:

The *Criminal Code* makes it clear that the willful infliction of unnecessary pain and suffering on animals violates one of the basic tenants of our society and is deserving of punishment. It is also conduct which most members of our society find repugnant and morally reprehensible.

The objectives of sentence to be emphasized in this case are denunciation and deterrence without losing sight of the offender's prospects for rehabilitation.

[38] Another case, where the principles of denunciation and deterrence were emphasized is the decision of the New Brunswick Court of Queen's Bench, in *Fowlie*. In that case, the accused pleaded guilty to willfully killing his horse. The accused was observed dragging his horse behind his truck. He stated that he was attempting to train the horse. He was also observed hitting the horse with a piece of wood. The police discovered the dead horse on the accused's property with a rope around her neck. The veterinarian discovered that the animal had been beaten and showed signs of severe trauma around the neck. No cause of death could be established. Mr. Fowlie had also been drinking on the day of the incident. At the time of sentencing Mr. Fowlie was fifty-five years of age, considered a first-time offender, married, and a father of four children; three of whom resided with him. He was gainfully employed for approximately 27 years with the Provincial Department of Transportation. In reaching the conclusion that an imposition of a conditional sentence would be improper, the sentencing judge, after reviewing several cases, placed a great emphasis on the principles of denunciation and deterrence and imposed a 90 day intermittent sentence.

[39] Lastly, in *Zeller*, the Alberta Provincial Court considered the case where the accused pleaded guilty to killing a dog. In that case, the accused and his wife were engaged in a heated argument during the course of which they discussed their sixteen week old puppy. As the accused went to put the puppy outside, the puppy urinated on the floor. The argument then centered on the dog. At one point the accused threw a sewing machine from the balcony onto the sidewalk. Fearing for her safety, the accused's wife ran from the home. Upon returning to the house, she

advised the accused that she was not sure if she wanted him in her life, to which the accused responded by stating that he was going to kill the dog before he left. Upon uttering those words the accused obtained a shovel from the back yard, went over to the puppy and struck it on the head. The puppy immediately went down. While its legs were shaking the accused continued to strike it with the shovel, striking its head until it was dead. The accused's wife fled to the neighbour's for assistance. By the time the police arrived, the accused had taken the dog's body and dumped it in a dumpster at the north end of his alley. The trial judge imposed a period of sixty days incarceration, followed by a year period of probation. In reaching the decision to impose a period of incarceration, the judge commented at paragraph 44:

This is a case where the actions of the accused in killing the dog were both cruel and despicable. I have considered the motive in this case as an aggravating factor and in my view the actions of the accused in killing the puppy were abusive acts perpetrated against his wife, as was the action of destroying the sewing machine. They were both violent acts carried out during the course of a serious domestic dispute.

The animal was helpless and faultless at the time it was killed. It was merely an object upon which the accused vented his rage in the same way he vented his rage against the domestic property he destroyed at the time. The law does not permit the cruel and despicable death to which the puppy in this case was subjected by this accused. The law recognizes a responsibility on those who assume the ownership of an animal not to treat the animal with unnecessary cruelty and not to unlawfully kill the animal, whose very life depends upon the human decency of its owner.

[40] While recognizing that rehabilitation is an important objective in the sentencing calculus, the sentencing judge emphasized the need for a denunciatory sentence as well as one directed at both specific and general deterrence.

[41] It should be noted that there are a number of animal cruelty sentencing decisions which have imposed non-custodial sentences, such as, probation and conditional sentences, including the following cases: *Materi*; *Campbell Brown*; *Piasentin*; *Rabeau, and, Ainsworth*.

[42] In *Perrault*, my colleague, Judge Derrick sentenced an accused to a three-month conditional sentence, followed by two years' probation, for using a pair of scissors to cut the genitals of a kitten he had acquired for his daughter. In reaching her conclusion to impose a conditional sentence, rather than a custodial term of imprisonment, Judge Derrick considered the need for denunciation and deterrence, the accused's troubled background, his physical and mental illnesses arising from his time in the Navy, his expressed remorse, and his agreement to being subject to a lifetime ban on animal ownership. She found that while Mr. Perrault's heinous act, mutilating a kitten in the presence of his daughter, was tortuous, his actions were not maliciously directed at anyone nor intended to punish or terrorize and he was not acting in a violent rage. This is unlike the present case, where it can be reasonably inferred from the circumstances of the offence that Mr. Perrin acted in a violent rage. Moreover, there are other distinguishing features, which include: the offence in the *Perrault* case occurred prior to the 2008 *Code* amendments and was a summary proceeding offence with a maximum sentence of 6 months imprisonment; and, Mr. Perrault was a first offender, without any previous criminal convictions. Although there are distinguishing features between the two cases, the personal circumstances surrounding Mr. Perrault and Mr. Perrin are very similar in that they both suffer from post-traumatic stress disorder acquired from their involvement in the recovery of body parts following the Swiss Air tragedy, and both men have mental health issues.

[43] While there appears to be a wide range of dispositions for this type of offence, the aggravating circumstances surrounding this specific offence necessitates a strong emphasis on the principles of denunciation and deterrence. Sections 718(a) and (b) of the *Code* identify denunciation and deterrence as appropriate objectives of sentencing. Where the primary objective of sentencing is denunciation, the sentence must publicly condemn the offender's conduct.

[44] Denunciation typically plays a more central role in extreme violent offences, such as, in the instant case, which can be fairly and accurately described as a vile act of violence because Mr. Perrin, in a violent rage, brutally killed Ms. Campbell's pet cat.

[45] Where the primary objective is also deterrence, the sentence must attempt to discourage individuals through specific deterrence as well as to deter other potential offenders from committing similar offences by way of general deterrence.

[46] In *R. v. Munroe*, F.C. O'Donnell J., observations about the 2008 *Code* amendments at paragraph 2, are apposite:

On 17 April, 2008 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 restructured those provisions. In addition to fine-tuning the offences themselves, Parliament took what had been a pure-summary conviction offence in the Power case with a maximum sentence of six months no matter what the nature of the offence and created a hybrid sentencing structure with a maximum sentence of five years' imprisonment by indictment and a 'super-summary' sentencing maximum of eighteen months' imprisonment. Accordingly, the overall maximum penalty for offences of this nature increased ten-fold.

[47] As observed by Brown P.C.J., *Campbell Brown*, at paragraph 31:

Protection of animals is part of our criminal law because a person's treatment of animals, like the treatment of children, the infirm or other vulnerable parties, is viewed as a barometer of that person's treatment of people. As with all other criminal offences, harming animals amounts to hurting everyone.

[48] Having reviewed numerous animal cruelty sentencing decisions, I agree with the comments of Judge M.J. Brecknell in delivering the judgement of the British Columbia Court, in *Pedersen*, wherein it was observed at paragraph 49:

Crimes against animals, and particularly pets, are viewed very negatively by the community and with great concern by the Courts. Courts have described behaviour like the accused's, as repugnant, horrendous, despicable, cruel, and malicious.

[49] None of those terms are too strong in describing the egregious circumstances surrounding Mr. Perrin's actions in this case. For that reason, the sentence imposed here today must reflect the seriousness of the offence, and the community's unequivocal denunciation of such conduct.

Appropriateness of a Conditional Sentence

[50] In the present case, a conditional sentence is an option that is not precluded by any of the relevant statutory provisions.

[51] In addressing the issue of whether a conditional sentence is appropriate for this offence and offender, I am required to proceed in stages, as noted in the Supreme Court of Canada decision, *R. v. Wells* [2000] 1 S.C.R. 207, at paragraph 27. At the preliminary stage, I must exclude as an appropriate sentence a non-custodial probationary sentence, and also a penitentiary term: a term of imprisonment of two years.

[52] It is obvious that a non-custodial probationary sentence would not be appropriate in the circumstances of this case, as a suspended sentence with probation is primarily rehabilitative in nature, and on its own does not adequately emphasize the denunciatory effect of the sentence that is required in these circumstances. In my view, a denunciatory sentence is called for in this case as well as one directed at both deterrence and rehabilitation.

[53] I am also of the view that a federal period of incarceration is not necessary in this case; although the maximum sentence for this indictable offence is five years imprisonment. However, given the gravity of the offence committed by Mr. Perrin, his level of moral blameworthiness, and his degree of involvement, he warrants a period of imprisonment coupled with a period of probation.

[54] Section 742.1 of the *Code* lists four criteria that a court must consider before deciding to impose a conditional sentence:

- (a) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
- (b) the court must impose a term of imprisonment of less than two years;
- (c) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- (d) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.

[55] The requirement in section 742.1(c) that the judge is satisfied that the safety of the community would not be endangered by the offender serving his or her sentence in the community is a condition precedent to the imposition of a

conditional sentence, and not the primary consideration in determining whether a conditional sentence is appropriate.

[56] In making this determination, I must consider the risk posed by Mr. Perrin, not the broader risk of whether the imposition of a conditional sentence would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law.

[57] Thus, two factors should be taken into account:

- (a) the risk of the Mr. Perrin re-offending; and
- (b) the gravity of the damage that could ensue in the event that Mr. Perrin re-offends.

[58] A consideration of the risk Mr. Perrin poses should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals or animals.

[59] A criterion which is implicit in the regime as a whole given that the offender will be under the scrutiny of a conditional sentence supervisor throughout and the efficacy of the sentence depends on the offender's amenability to this supervision, it follows that the sentencing court must also be satisfied that the offender will be amendable to supervision.

[60] In the present case there is a substantial concern that Mr. Perrin's previous convictions for noncompliance of court orders suggest that he may not comply with restrictive conditions of a conditional sentence order, especially if he becomes intoxicated. As noted in the Pre-Sentence Report, Mr. Perrin was last supervised by a Probation Officer during an 18 month period of probation, for one count of

being at large before expiration of sentence, contrary to section 145(1)(b) of the *Code*, and two counts of escaping/being at large, contrary to section 145(1)(b) of the *Code*, which expired in August 2008. The Probation Officer's notes indicated there were several concerns, including Mr. Perrin's initial difficulty with reporting and his resistance to treatment for substance abuse issues which persisted throughout his period of supervision.

[61] With this history of noncompliance, coupled with his current mental health issues, which include a long-standing alcohol addiction, there is a real risk that he will breach the onerous conditions of a conditional sentence order, notwithstanding that he has complied with his release conditions. Moreover, given the nature and number of Mr. Perrin's previous criminal convictions, which include offences for impaired driving, it seems that the abuse of alcohol has played a significant role in causing most of his difficulties. Indeed, he was intoxicated during the commission of the offence before the Court. In light of that, there is very little assurance that Mr. Perrin has the ability to control his alcohol addiction to reduce the risk of further breaching court orders, particularly where there is a history of resistance to engage in a treatment programs, as suggested by Probation. Be that as it may, I am aware that there is always some risk of an offender re-offending. The risk must be reduced as much as possible, and one way to reduce or minimize the risk is to impose appropriate conditions to the sentence.

[62] I am cognizant that reasonable conditions for securing the good conduct and for preventing a repetition by the offender of the same offence or commission of other offences is necessary.

[63] Furthermore, the gravity of the damage that could ensue in the event of re-offending must be considered. A consideration of the risk posed by the offender

should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals or animals.

[64] In the present case, the most troubling concern for the Court is whether or not there is a real risk of Mr. Perrin repeating another serious violent offence: given that there is no explanation for what caused Mr. Perrin to engage in such an extreme act of violence. This was an unprovoked attack against a helpless and defenceless domestic cat. The gravity of the damage that could ensue in the event that Mr. Perrin commits another inexplicable violent act is of serious concern. In other words, unlike in some cases where there is some explanation for the offender's misconduct, such as, revenge or provocation, the actions of Mr. Perrin are largely unexplained. Consequently, it is more difficult to address the underlying causes or issues to minimize the risk of re-offending.

[65] In any event, I need to consider the possibility of a conditional sentence by examining whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.

[66] The Supreme Court of Canada recognized that a conditional sentence can provide significant denunciation and deterrence.

[67] As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be.

[68] I recognize that a conditional sentence can, in some circumstances, adequately address the objectives of denunciation and deterrence particularly where the conditions imposed have a significant punitive element. However, there are circumstances in which demands of denunciation and/or general deterrence are so pressing that incarceration is the only suitable way in which to express society's

condemnation of the offender's conduct or to deter similar conduct in the future. Indeed, in my view, this is one of those rare instances in which denunciation mandates a period of incarceration.

[69] In my view, having considered the totality of the circumstances surrounding the offence and offender, including: the level of moral blameworthiness, the degree of violence and Mr. Perrin's degree of involvement in the commission of the offence, and the level of suffering caused to the cat and Ms. Campbell, the imposition of a conditional sentence would not be consistent with the fundamental purpose and principles of sentencing set out in section 718 to 718.2 of the *Code*.

[70] I am mindful that, generally, a conditional sentence would be better than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and promotion of a sense of responsibility in the offender and acknowledgment of the harm done to the victim and the community.

[71] Where a combination of both punitive and restorative objectives may be achieved, a conditional sentence will likely be more appropriate than incarceration.

[72] Where objectives such as denunciation and deterrence are particularly pressing, however, as in this case, incarceration will generally be the preferable sanction. This is so notwithstanding the fact that restorative goals might be achieved.

[73] In my view, given the broad range of dispositions for this indictable offence, which has a maximum punishment of five years, a just and appropriate disposition for this offence and offender is thirty days of incarceration. I have arrived at thirty days because of the cumulative weight of all of the mitigating factors, which justify some leniency or reduction in the sentence range of three months.

[74] Notwithstanding, Ms. Mancini's very able argument, I do not find that the cumulative weight of the mitigating factors justify or warrant a conditional sentence for the reasons stated. Considering the need for denunciation and general deterrence as emphasized in the case law when sentencing persons involved in animal cruelty, and having considered the totality of the circumstances of the offence and Mr. Perrin, I am not satisfied that a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.

[75] In conclusion, I want to emphasize that the principles of denunciation and deterrence have guided me in reaching the decision here to impose 30 days of incarceration, which I am amenable to be served on an intermittent basis. However, the custodial disposition will be followed by a probationary period of 24 months. The period of probation is primarily to assist Mr. Perrin in his rehabilitation. There are several issues that Mr. Perrin needs to address including, alcohol addiction.

[76] Mr. Perrin, you are sentenced to 30 days to be served at the Central Nova Scotia Correctional Facility on an intermittent basis at the following times, Friday at 8:00 pm to Monday at 6:00 am, beginning on Friday, November 23, 2012 and every Friday at 8:00 pm to Monday at 6:00 am until the sentence is complete. You will also be placed on probation for 24 months commencing on today's date. You must abide by the following terms and /or conditions:

- keep the peace and be of good behaviour;
- appear before the Court when required to do so by the Court;
- notify the Court, probation officer or supervisor, in advance, of any change of name, address, employment or occupation;

- report to a probation officer at 277 Pleasant Street, suite 200, Dartmouth, today and thereafter as directed by your probation officer or supervisor;
- you are not to possess, take or consume alcohol or other intoxicating substances;
- you are not to possess, take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization;
- you are not to have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance;
- you are not to have any direct or indirect contact or communication with Karen Campbell;
- do not be on or within 50 metres of the premises known as Karen Campbell's place of residence or place of employment;
- you must make every effort to locate and obtain employment, or educational program as directed by your probation officer;
- you are to attend for mental health assessment and counselling as directed by your probation officer;
- you must attend for substance abuse assessment and counselling as directed by your probation officer;
- you must attend for assessment and counselling in anger management as directed by your probation officer;

- you must attend for assessment, counselling or a program directed by your probation officer;
- you must participate in and co-operate with any assessment, counselling or program directed by the probation officer, and pay the cost or a portion of the cost as directed by your probation officer.

[77] You must report back to this Court after 12 months of probation. So, that will be on November 6, 2013 for a status update.

[78] There is a victim surcharge of \$100.00 which is due on or before August 29, 2013. .

[79] The Crown also sought a prohibition order for 10 years, which is granted. Therefore, you are prohibited from owning or having custody of any animal for a period of 10 years.