

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2018-092-012517
[2022] NZDC 13368**

THE QUEEN

v

**JANINE ANNE WALLACE
BARBARA GLOVER**

Hearing: 13 July 2022

Appearances: D Gardiner for the First Defendant (Wallace)
J Philson for the Second Defendant (Glover)

Judgment: 13 July 2022

NOTES OF JUDGE K GRAU ON SENTENCING

[1] Janine Wallace and Barbara Glover, you are for sentencing today. I found you both guilty after a three-week trial in January and early February on 26 charges of failing to meet the physical health and behavioural needs of an animal and six charges of failing to alleviate the pain or distress of an animal.

[2] Ms Glover was responsible, as the owner of these German Shepherd dogs and Ms Wallace, you were the person who was primarily in charge of them, responsible for their day-to-day care.

[3] Each charge has a maximum sentence of 12 months' imprisonment or a \$50,000 fine. These penalties were doubled in 2010 with the intention said to be to

deter offenders and to send a strong signal to judges that the government and the general public wanted to see heavier penalties for this type of offending.

[4] Having said that, it is important for me to record that this is not a case of deliberate violence or abuse of animals, this is a case of neglect and failing to care for sick animals. It is a bad case of neglect, in my view.

[5] I heard extensive evidence during that three-week trial about the SPCA's investigation into Volkerson Kennels that you were both running. I also heard extensive evidence from you, Ms Wallace, for about a week, during which you strenuously denied every allegation and you denied that there was anything at all that was concerning about the way you were caring for the dogs.

[6] I rejected your evidence. It was obvious on the evidence that these kennels were very poorly run. Dogs did not have proper living conditions; many were living in filth. Some were ill. There were just far too many dogs that could be cared for properly, and my view was that the SPCA inspectors were doing their best to work with you to try to get you to improve the dogs' conditions. I accepted their evidence that this prosecution was really a last resort.

[7] You both apparently believed, and still appear to believe, that the SPCA is engaged in some sort of conspiracy to take your best breeding stock for financial purposes. There was, and is, absolutely no evidence of that. You kept saying there was evidence being hidden. So did Mrs Glover after the hearing. I have not seen any such evidence. You still do not accept you have done anything wrong at all. You intend to appeal your convictions. You are absolutely entitled to do that but I have found you both guilty of these charges so I must sentence you on them.

[8] Mrs Glover, it appears you bred German Shepherd dogs for many years with success and you were held in high regard in the German Shepherd breeding world. You are 83 and you have never appeared in Court or have any criminal history.

[9] Ms Wallace, your involvement with the kennels seems to have started in around the last 10 years, during or after a real estate career you had that ended in

criminal charges from what I can tell. It appears that Volkerson Kennels was selling puppies online for between \$2,000 and \$5,000. Ms Wallace, you strongly denied at the trial that this was a money-making operation. I must say I find that hard to believe. It seems implausible given the number of dogs you had and the significant cost and effort that must have been involved.

[10] The SPCA's involvement began in mid-2017 when they received information that raised concerns about the dogs' welfare. The first inspection showed concerning conditions. The inspectors gave you a statutory notice, an instruction to prevent or mitigate suffering under the Animal Welfare Act 1999. That required you to take steps to improve conditions. You did not do so. When they returned there was no meaningful improvement. They told you there were far too many dogs and not enough facilities. You appeared to have some insight at that point; you agreed to surrender five dogs.

[11] A week later the investigators saw some improvement but there were still a large number of dogs that were in poor living conditions. As I have said, I accept the SPCA were trying to work with you to get you to drop your numbers to improve the conditions the dogs were living in.

[12] You have both been very critical, saying that the SPCA were focused on the numbers of dogs that you had. But that was because you had too many dogs to care for.

[13] When they returned in October, they had given you time to make improvements, and, importantly, to reduce the number of dogs. But that reinspection was disappointing when the change was not meaningful. So they returned the next day with a veterinarian and seized 15 dogs. Those were the dogs whose welfare was the most concerning.

[14] Dr Beer, the SPCA vet, said she was struck by the number of dogs tied up in locations that were clearly not set up for managing dogs. Dogs were tethered to poles and fences. Dogs were being housed in places that were not proper housing. Dogs were tethered unattended with choke chains which risks causing injury to them. As

their name suggests, they can choke a dog. They significantly restrict movement and were described by the experts in the trial as a punitive or punishment device.

[15] Ms Wallace, you kept saying during the trial that the SPCA were only seeing these dogs at a particular moment in time and that, every time the SPCA saw a dog they had concerns with, it had only just been put there. It was obvious to me that that was simply not correct. It was clear that many dogs were being tied up or otherwise kept in unsatisfactory or risky conditions for extended periods of time.

[16] There were two dogs whose conditions were particularly bad. Debbie, a pregnant bitch, was locked in a small, filthy crate inside a locked, dark utility shed. She had a dirty and matted coat. She had an untreated and obvious ear infection. Ms Wallace, your explanation was fanciful. You said this dog was being monitored and observed because she was pregnant and that she was being groomed for one to two hours daily by your mother and another volunteer worker. But the reality was she was hidden away lying in her own faeces and likely in pain. She had pus coming out of her ear which would have been obvious to anyone who was actually caring for her.

[17] I found it likely that she was being hidden from the SPCA. She was a dog who was about to increase the population of dogs at the very time the SPCA was telling you that you needed to reduce numbers so that you could care adequately for those dogs.

[18] Mr Radich has pointed out, in written submissions, that you said in your evidence you had her in the crate to protect her against being taken by the SPCA. I think that was a slip by you as you quickly denied you had said or meant that. But I think that was a rare example of the truth slipping out when you gave your evidence at trial.

[19] Even worse was the state that the dog, Ritza, was found in. She was tied up inside a small enclosure in a hay barn. The tether was twisted around her leg; her leg was forced up next to her head. The tether was cutting into her leg and acting as a tourniquet, cutting off the blood supply. This dog was completely helpless, not even able to make a sound. The expert evidence was that it would have been very

distressing and painful for the dog and that it was likely she had been in that position for hours at least. She had to be euthanised after her treatment was unsuccessful. The leg and the dog could not be saved.

[20] Again, Ms Wallace, your explanation was fanciful. You blamed the SPCA for causing the injury. You tried to suggest the dog's leg got tied up in a matter of seconds when the SPCA went into the hay barn, despite the expert evidence that this injury would have taken hours. You denied there was anything wrong with the dog despite it being obvious that there was. You could not give a straight answer as to how the dog came to be tethered in there and by who. You tried to blame the dog's death on the SPCA's treatment of her when they took her. But it was very clear to me they were trying to treat the injury that was caused from the way she had been tied up and left.

[21] Thirteen other dogs were seized that day due to concerns they were underweight. Some had obvious ear infections, some had coats that were matted with dirt and faeces. Some dogs did not have proper access to water. Some were unsafely tethered. Three puppies were unsafely housed.

[22] You attended an interview with the inspectors in November 2017, Ms Wallace. You said you wanted to work with them, but you would not give them any meaningful information about the number of dogs at the kennels. However, there was some improvement after that time, and you did build new kennels.

[23] But then in May 2018 the SPCA was alerted to the presence of distressed dogs on your property. They found six dogs by following the noise of the dogs barking. Those dogs were tied to trees at the back of the farm, a considerable distance from the house. It took the SPCA about half an hour to drive there over rough terrain. These dogs were all underweight, some had ear infections. One had an obvious skin infection. Some had no access to water. Again, this seems to have been an attempt to hide dogs, and again, there was an explanation that was fanciful, that these dogs had just been put there to rest after exercise, despite it being obvious that they had been there for quite some time. They were only found because they were barking in distress. They were not resting and relaxing after exercise as you claimed.

[24] I need to set a starting point for this offending. I look at aggravating and mitigating features; matters that make the offending worse or less serious.

[25] What is aggravating is the scope of the neglect in this case.

[26] I accept the prosecution's submission that the general condition showed a high level of neglect. Looking at many aspect – for example, the tethering with the choke chains, the unhygienic conditions, the lack of any opportunity for behavioural enrichment - it seems to me that dogs were simply being warehoused because there were not enough people to care for them and give them the attention they needed, not just to meet their physical needs but also to meet their emotional needs.

[27] You suggested they had a rich life because they lived on a rural property. But some of the dogs were locked away in dark conditions. Others were tied up outside, hardly able to move. Others were in filthy dog runs skating through their own faeces. That is not behavioural enrichment.

[28] Also, an aggravating factor is the opportunities that were given, but not taken, to improve matters. Instead you hid dogs; you were still breeding dogs instead of reducing the numbers. I accept the prosecution's submission that this was conduct that can be described as wilful rather than negligent.

[29] Next there is the extent of illness and injury with associated pain and distress to the animals. Six dogs with untreated ear infections, two with untreated skin infections, seven assessed as medically underweight. I record here that there were a significant number of other dogs that were very likely underweight too. I did not find you guilty in relation to those dogs only because the evidence did not establish that to the high criminal standard of beyond reasonable doubt. Nevertheless, I consider it very likely those other dogs were underweight too. Worst, of course, was Ritza who had to be euthanised as a result of being left unsafely tethered and unattended.

[30] I also accept there appears to be a financial motivation behind the overpopulation and the neglect that has resulted, which makes this worse than the

hoarder type of situation that the courts see, where a person keeps acquiring animals in the misguided hope they can care for them.

[31] I do not accept Mr Gardiner's submission that, Ms Wallace, you were trying to improve the German Shepherd breed. Nor do I accept Ms Philson's submission that there cannot be an inference of financial motivation. But even if it is so that Ms Glover had bred and shown dogs for decades, I cannot accept there would have been so many dogs if it was just a hobby, given the work and the expense that is necessarily involved. And I would have expected that, if the motivation was primarily to breed and show dogs, then the dogs would have been very well cared for, when they simply were not in this case.

[32] There are also the attempts you have made to conceal the scale of your operation. You have never disclosed the true number of dogs that you had. The numbers kept changing. They are still changing as I am sentencing you. Despite that dogs were surrendered, the numbers never added up. Dogs kept being found in places where inspectors had been told there were no dogs. Some dogs were only found after inspectors heard barking in places where they had been told there were no dogs. There was Debbie, the pregnant bitch, hidden in a locked utility shed and the six dogs in May 2018 way up the back of the property. That was at the very time when you were engaged in court proceedings with the SPCA in an attempt to get back the dogs that had been seized, and there is a clear inference available that you were hiding dogs at that time.

[33] Even now at sentencing you seem to be doing the same thing. Last night I received an updated pre-sentence report. Ms Glover had said that there were 30 dogs; nine belonged to a friend living there and the other 21 belonged to Dogs New Zealand. But there was no information about who cares for them. Ms Wallace, you were saying that you do not own any of the dogs and you had no idea how many dogs were on the property. Today I am told that it is not Dogs NZ, it is your sister, Anne, who owns the dogs. But there is no information about who looks after them.

[34] At this stage I have to say I consider this as yet another attempt by you both to hide the extent of the dogs and your involvement with them and I will return to that matter later.

[35] In terms of mitigating factors, I accept that you made some attempts to improve during the investigation. The new kennels were built and the inspections that followed after the 15 dogs were seized showed improvements. The SPCA said the numbers appeared to be lower and the cleanliness had improved. When the SPCA returned in May 2018 they did not see dogs tethered without shelter or water as they had previously and they saw no dogs in the woolshed or the deer shed, which were unsuitable for housing dogs.

[36] That said, at the same time you were hiding dogs up the back of the property in less than ideal conditions.

[37] Mr Gardiner submits that the number of dogs was significantly reduced by the voluntary surrender of five dogs and the seizure of the other dogs. I have to say that remains unknown when it has never been clear how many dogs were actually there, and you are both completely unwilling to disclose the true extent of the number of dogs and the responsibility for them at the property.

[38] In terms of setting a starting point there is no guideline decision. There cannot be when the circumstances of such offending can vary so widely, and a lot of the cases do not even consider a starting point.

[39] The SPCA refer to a case called *Kondratyeva v R*,¹ a 2015 decision of the Court of Appeal that related to two charges for 50 cats found at a person's property. The sentence was 125 hours' community work, 12 months' supervision and a disqualification from owning animals for a period of 10 years. That offender had been involved in rescuing and caring for wild and unwanted cats. Fifty cats were found in conditions described as filthy and disgusting. Twenty three cats required treatment for various conditions; one had to be euthanised. There were another 14 who had issues that were not significant. That sentence and disqualification were upheld on appeal.

¹ *Kondratyeva v R* CA6/2015 2015 NZCA 266 [23 June 2015].

[40] Another case called *Green v SPCA* involved two charges.² One related to 21 cats housed in filthy conditions; cats being distressed and with health issues. The other charge related to 15 dogs who were kept in an enclosed yard with water and shelter but in a dirty enclosure with most dogs having matted coats and eye and ear issues. Eight dogs had to be destroyed. That sentence was 300 hours' community work which was upheld on appeal.

[41] I have also been referred to a case that involved ill treatment of an animal but with the same 12-month maximum sentence. That case is called *SPCA v Peart*.³ It related to a horse that had a wound and other injuries. The owner and a neighbour treated it. A vet attended some weeks later but the injuries had no chance of healing. The horse would have been in great pain and was described as starving. The Judge set a starting point of six months' imprisonment, given that the horse had been in pain for some period of time.

[42] Doing the best that I can, I see this case as broadly comparable to those cases, particularly the first one, *Kondratyeva v R*, but it is more serious given the sustained period of your offending, the apparent financial motivation, the attempts that you have made to avoid detection or responsibility, and the failure to improve when you were given many opportunities to do so.

[43] I agree with the prosecution that a starting point of imprisonment is warranted. I set that at 12 months for you, Ms Wallace, to reflect the scope of the neglect, that an animal had to be euthanised and would have suffered significant pain and distress, the woeful conditions the pregnant dog was in, and the significant number of other dogs found in poor condition. You had a significant or primary role in the day-to-day care of these animals and you are the primary offender.

[44] In contrast, Ms Glover, you do not appear to have had such a significant role, which is unsurprising given your age. You, at trial through your lawyer, took a rather passive role with little to no challenge to the evidence. That changed after the trial when you filed your own submissions that exactly mirror your daughter's attitude that

² *Green v SPCA* HC New Plymouth CRI-2006-443-000012, 18 October 2006.

³ *SPCA v Peart* [2018] NZDC 14948.

you are somehow the victims of an SPCA conspiracy or some corrupt practice, which I have rejected.

[45] I assess the starting point for you, Ms Glover, at eight months' imprisonment to reflect that your role was less. I do not accept Ms Philson's submission that there should not be a 12 month starting point, that being the maximum penalty. That is the maximum penalty for one charge; here there are 32.

[46] Ms Philson submits that the starting point should be community work but I consider it should be a starting point of imprisonment. It is academic to an extent anyway when any end point will allow me to consider alternatives to imprisonment and where I have no intention, Ms Glover, of sentencing you to imprisonment in any event.

[47] I need to look at personal circumstances now. Ms Wallace, at age 63 you have two previous convictions. One is a theft by a person in a special relationship in 2016. You were sentenced to six months community detention, a year's supervision, 150 hours' community work, and \$4,000 reparation. You also have a conviction for making a false representation in relation to land on which you were convicted and discharged.

[48] In my view that means you cannot be given credit for good character. That is because those previous convictions are dishonesty offending reasonably close in time to this offending. And the current offending was not a one-off either. It was sustained over a considerable period and there are elements of dishonesty involved here as well.

[49] The pre-sentence reports are not encouraging. In the first one you relitigate the trial. You are absolutely entitled to disagree with the verdicts, but the result is that you show no insight or remorse. In the first pre-sentence report you agreed to provide details of how many dogs you care for. You did not. You saw yourself as the victim. The report-writer assessed you as being at a high risk of harm and of re-offending. I agree with that assessment given your attitude.

[50] In the first pre-sentence report you said you were still looking after dogs and see no reason not to and that you intend to start showing your dogs by the end of 2022. You said there were four people caring for the dogs, your mother, your sister, yourself and [another person] who lives in a cottage on the farm. At the same time you said your sister did not help with care of the dogs but pats the dogs when passing, although she helps when you go away to show the dogs. You would not consent to an electronically monitored sentence. You also said you would complete financial information but you have not.

[51] Corrections recommended a sentence of imprisonment and recommended that you be banned from owning any animals in the future.

[52] Given that recommendation of imprisonment when the prosecution was not seeking such a sentence, I redirected that the report be done to give you an opportunity to co-operate, Ms Wallace. There has been some limited co-operation but it is not particularly illuminating I have to say.

[53] When, during the visit, dogs were seen, you were asked how many dogs were there. You said they belonged to your friend. You did not respond to the question of how many dogs were there. Now it is said that you do not own any dogs.

[54] You continue, as you have throughout, to refuse to provide any information.

[55] I note here that in the second pre-sentence report you said that you do not own any of the dogs, you had no idea how many dogs were on the property. I find that simply unbelievable.

[56] Today it is said for you, by Mr Gardiner, that there could be an electronically monitored sentence in this house where the friend, [name deleted], lives. I have decided, however, that I am going to sentence you to supervision and community work. That is a sentence that is generally imposed in cases of this nature and has been the sentence in some of the cases that I have referred to. You will be sentenced to 18 months' supervision with a general condition to attend counselling and/or programmes identified as suitable by Probation. I am sentencing you also to 300 hours

of community work and I think this is a case for judicial monitoring. That means that I will get a report about your compliance with your sentence every few months and if you do not comply I can bring you to Court and I can look at resentencing you. Ms Wallace, I would urge you to comply with that sentence, particularly given the recommendations by Probation that you should be sentenced to imprisonment for this offending.

[57] Ms Glover, at age 83 you have no previous convictions. You have had great success in the past and have been highly regarded. I need to give you credit for your previous good character. I assess that at 20 per cent which is just over one and a half months taking that end point sentence to six and a half months. I did wonder during the trial whether you were under the direction or influence of your daughter. It appeared to me that that was a possibility but the submissions you filed after the trial seemed to suggest not.

[58] You did not engage at all in a pre-sentence report to start with. Again, I gave you an opportunity to do so. In the second report the writer said you were very upset and you appeared to be quite confused about what was happening because all you want to do is appeal. It is apparent that you have some medical conditions and you are not in the best of health. The suggestion in the pre-sentence report was to look at a different address for electronic monitoring. I am not going to do that, this matter needs to come to a conclusion.

[59] I am going to impose 9 months' supervision on you. That is not the recommendation in the report. And I think this offending is simply too serious for an order for you to come up if called upon. I sincerely hope that you will engage with the Probation Officer. It may be that there is some assistance available for you. At the very least it will get you off this property that you say you never leave.

[60] There will be an order for supervision for nine months with the generic condition to attend counselling and/or programmes identified as suitable by Probation.

[61] I turn now to the issue of disqualification. For you Ms Wallace, Mr Gardiner says it is not required, that she has had her life severely disrupted and is unlikely to re-

offend. I disagree entirely. I consider that a disqualification order is consistent with the purpose of the Act to ensure that owners and persons in charge attend properly to welfare. I also consider that a disqualification is warranted given the seriousness of the offending, Ms Wallace's character and previous offending history that I consider demonstrates dishonesty, as did her conduct during this lengthy investigation. There is also now this conduct in asserting they do not own any dogs, yet there are 30 dogs at the property possibly, it is quite likely there are more, it is simply impossible to know.

[62] It seems staggering to me that having been found guilty of neglecting animals, there is a sudden ownership change which can only be, in my view, an attempt to avoid the effects of being disqualified.

[63] Only a few days ago it was said that these dogs belonged to a company called Dogs NZ. Today it is said that it is sister Anne. A couple of weeks ago it was said that Anne does not have anything to do with the dogs' care.

[64] I have no evidence that the numbers have been reduced and I would not accept any submission that they have, without evidence in that regard. The fact that you acknowledge no deficiencies in care is another matter. Mr Gardiner says you have now been in charge of dogs without incident for about two and a half years but I do not have any comfort that any dogs that are currently there are being adequately cared for when you are saying that you do not own them or care for them.

[65] It is said you have had a chastening experience. I do not accept that either when you do not accept any responsibility.

[66] I do not have any confidence that you will care for animals adequately now or in the future. I distinguish the case of *Barnes* that Mr Gardiner placed some emphasis on.⁴ He was a person whose offending, although he was responsible for it, seemed to relate to staffing issues. He immediately accepted responsibility. He immediately took steps to address the problems that had arisen. That is the reason why he was not

⁴ *Barnes v Ministry of Primary Industries* [2015] NZHC 534.

disqualified. The situation is completely different here. You have a high risk of re-offending, in my view.

[67] The prosecution seeks a disqualification of between eight and 10 years. I am going to set it at nine years, which is in the middle of that range. That is having regard to the reservations I have about your ability to care for animals and your unwillingness to provide any comfort to the court in that regard. In my view you should not be owning or exercising control over any dogs.

[68] I also impose a nine year disqualification on Ms Glover. I consider she has the same inability to care for dogs properly or at all and, indeed, I am told through Ms Philson that Ms Glover, you do not own or care for any dogs.

[69] There is also the impossibility of enforcement if you were to have a lesser period of disqualification when you live at the same property. I do not accept that the investigation, publicity and proceedings have achieved any chastening or deterrent effect on you either, Ms Glover. I do not accept either that the fact that you have been able to keep dogs after charges were filed shows there are no genuine concerns and, as I have said, I have got no information about the dogs that are there and you say you do not own them.

[70] This transfer of ownership to another family member at the property to me appears to be a last-ditch attempt to avoid the effects of disqualification. The SPCA have pointed out that you both need to understand that this nominal transfer of ownership will not avoid the effects of disqualification. The simple fact is that there should be no dogs left at this property.

[71] The prosecution had no issue with Ms Glover being permitted owning a reasonable number of desexed dogs for security purposes. I had been minded to allow one or two dogs on that basis but given the developments with the ownerships of the dogs now, I have grave doubts about what is going on there and what you are trying to achieve and I have decided not to allow this. In any case, Ms Glover says she has no ownership of dogs or care of dogs.

[72] That means that these dogs will need to be divested.

[73] There will be an order under s 169(1) of the Animal Welfare Act that you will each be disqualified from being the owner of or exercising authority in respect of animals, being dogs, for a period of nine years.

[74] The next issue is costs. The prosecution seek \$50,000 as a contribution. The actual costs were \$311,161.63. The legal costs were slightly over \$70,000. The total cost is around \$383,000. The costs that the SPCA seeks are at around 13 per cent. I consider that is a reasonable proposal. I have been told Ms Wallace is on a benefit. Ms Glover is said to have no ability to pay, being a pensioner on a fixed income.

[75] I note that you live on a 600 acre farm. That has always been described as your farm and was said at trial to be a working farm with sheep, cattle, deer and possibly other animals. Again, you will provide no information about your financial situation. I comment this must be a very valuable property that is a source of income. I can only draw the inference that it is your property, whatever legal structure it is owned through. If animals are farmed there, if you are still selling puppies, you are earning an income. Clearly, you had the money to keep a large number of dogs. You still have a large number of dogs so I consider that you have the means to do that. I do not accept there is no ability to pay a contribution. I am going to set it at \$40,000. That is slightly less than the SPCA are seeking, given that there is some uncertainty as to the financial situation, but that in my view you are well able to contribute.

[76] There will be an order for payment of costs of \$40,000. There will be an order for \$20,000 each towards costs.

[77] Apologies Ms Wallace, it should be 12 months of intensive supervision, with judicial monitoring, and 300 hours of community work.

[78] Ms Glover, it is nine months of supervision.

[79] Both with that same general condition.

[80] There will be an order for both of you disqualifying you from owning or exercising authority, in respect of dogs, for nine years.

[81] There is an order for each of you to pay \$20,000 towards the cost of the prosecution.

Judge K Grau

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 21/07/2022