

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

DIONNE BOWDEN

Transcript of the Reasons for Sentence by The Honourable
Deputy Judge R.M. Bourassa, at Yellowknife in the
Northwest Territories, on April 1st A.D., 2011.

APPEARANCES:

Mr. B. MacPherson:

Counsel for the Crown

Mr. J. Bran:

Counsel for the Accused

1 THE COURT: It is the Court's duty to
2 impose sentence in this matter. I am grateful
3 to counsel for their able submissions and
4 arguments, and the cases that they have
5 researched and provided me. I am grateful for
6 the pre-sentence report, and the comments of
7 the victim on the victim impact statement were
8 useful.

9 The goal of sentencing has been described
10 by learned academics and Judges in many and
11 various ways including principles of general
12 deterrence, specific deterrence, and
13 rehabilitation. The Sentencing Commission
14 from a few years ago stated that the only and
15 one true goal of sentencing should be to
16 instill a respect for the law. In many ways,
17 our law reflects our society's values and the
18 country's. Surely 'thou shalt not steal' is a
19 basic tenant of our society and law, and it is
20 that matter which brings the accused before
21 the Court today.

22 Through forged cheques and by manipulating
23 her employer's books over a period from August
24 2008 to January 2010, the accused stole
25 approximately \$181,000 from her employer.

26 Sentencing under the legal system in
27 Canada is an individualized process. The

1 Court has to answer the question - what
2 sentence should be imposed for this offence
3 and this offender?

4 Various factors and principles are
5 considered, including the circumstances of the
6 offender as I have mentioned, and those of the
7 offence, to try and achieve a balance that
8 fits the crime and the offender and to find
9 that balance on the scale set out by the law
10 which, in this case, is from a non-custodial
11 sentence, though house arrest, to ten years
12 imprisonment per count. In fact were the
13 Crown to ask for consecutive sentences, the
14 sentence could conceivably be in decades.

15 In some ways the offence is inarguably
16 worse than a physical attack. A blow with a
17 knife or a club can cause damage, but it will
18 heal and people can get on with their lives in
19 reasonably short order. In a breach of a
20 trust case such as this - theft from a small
21 business - we have heard from the victim that
22 it is going to take years and years and years
23 to recover from the injury.

24 A breach of trust is involved. The fact
25 that the accused has no record is not uncommon
26 in these matters. White collar crimes are
27 usually committed by people with no criminal

1 records and in fact a good background. It is
2 those very qualities that allow them to be
3 granted trust by their employers. We can lock
4 our doors against intruders and criminals but
5 we are defenceless from attack from within,
6 and by virtue of their good records, white
7 collar criminals such as the accused are able
8 to attack and cause significant damage from
9 within.

10 From almost every court decision that I
11 have reviewed provided by counsel, and the
12 general law, I understand deterrence is an
13 important consideration and described in some
14 cases as the paramount consideration although
15 not exclusively in sentencing for this kind of
16 matter.

17 The loss to the victims in this case is
18 significant and can't be downplayed: The
19 spouse of the owner of the business has to go
20 back to work full-time. Trust is lost. The
21 business has been compromised and in fact
22 their pensions have been compromised. It may
23 very well be that they will be paying for this
24 crime longer than the perpetrator. In my
25 view, after hearing the facts as alleged by
26 the Crown and agreed to, and the pre-sentence
27 report, it is obvious that the offence was

1 deliberate, planned, continuing, and had a
2 devastating effect on the victims.

3 The offender is described thoroughly in
4 the pre-sentence report and with the
5 assistance of counsel for the defence.

6 She had an uneventful, ordinary
7 upbringing, and nothing particularly
8 remarkable other than normal ups and downs
9 that occur in every family and all of our
10 lives. She has no criminal record, no
11 antisocial indicia from anything that she has
12 done in her past. She appears, therefore,
13 before the Court without any criminal blemish
14 and but for these offences, and as I said, a
15 normal upbringing with the normal ups and
16 downs that we all have in life. She is
17 strongly supported by her family and her
18 partner, and that she should be grateful for.

19 I would like to highlight some matters
20 that come to the fore in my assessment of the
21 material before me.

22 I am unpersuaded that the accused was or
23 is suffering from some species of gambling
24 disorder or addiction. I have no evidence to
25 suggest that other than her own statements
26 that the fraudulent activity was based on some
27 kind of medical gambling condition. The

1 fraudulent activity that was described in my
2 view cannot be linked to any treatable form of
3 illness such as compulsive gambling. It seems
4 to me, rather, that the self-described
5 addiction is almost in the nature of an
6 attempt to rationalize the crime, including
7 her as a victim, and thereby distance herself
8 from the mens rea or the criminal intent.
9 There is no evidence she gambled before August
10 of 2008. The first proceeds of her fraud were
11 to pay off a Visa charge and must have been so
12 easy that she kept drawing money from the
13 victim and gambling it presumably to pay back
14 the initial draw.

15 The counselling referred to by her counsel
16 has consisted of two visits to the Salvation
17 Army within a few weeks of sentencing. I
18 don't see that as indicative of someone who
19 has looked into their hearts and made some
20 decisions to do something significant. It
21 doesn't strike me as a serious attempt by a
22 person to deal with an "addiction". And I
23 don't find it mitigating.

24 I note as well from the pre-sentence
25 report that the accused's \$10,000 Registered
26 Savings Plan disappeared shortly after the
27 charges were laid. There has been no

1 restitution. Courts have taken efforts, even
2 attempts, at restitution, full or partial, as
3 a very significant mitigating factor. That is
4 not available to the accused here.

5 It is, in my view, inescapable that there
6 was planning, forethought, in preparing,
7 signing, and processing the forged cheques
8 over such an extended period of time. I note
9 that all of the cheques were for different
10 unique amounts which would appear to avoid a
11 pattern. It was cleverly done.

12 The accused explains that her crime
13 commenced when she was faced with a \$19,000
14 Visa debt that "ended up" on her credit card
15 as if happened without any action by her.
16 Again, it's perhaps understandable that she
17 would try and rationalize her conduct and the
18 crime that she is convicted of. I don't think
19 it matters, insofar as the crime is concerned,
20 if the money was squandered on gambling or
21 high living, luxuries, or trips to Mexico.

22 The victim's impact statement speaks
23 plainly of the difficulty and the effect that
24 the crimes have had on her family - people,
25 not an anonymous corporation or some
26 multinational but ordinary people trying to
27 make a living for themselves and their family,

1 innocent people who trusted her. As I have
2 said earlier, it will probably affect them for
3 years after any court-ordered consequence will
4 have on the accused.

5 Dealing with the law, the Courts have
6 emphasised and stressed general deterrence as
7 a principle of sentencing of those guilty of
8 fraud and breach of trust circumstances.
9 Because of the abuse of trust, this kind of
10 fraud has been regarded by the Courts as a
11 particularly serious form of fraud. Many
12 Courts have stated that save for exceptional
13 circumstances, incarceration must be
14 considered.

15 The sentencing regime that we have in
16 Canada consists of both statutory and
17 nonstatutory principles and a fit and proper
18 sentence is to be arrived at by consideration
19 of the principles, amongst other things.

20 In particular, Section 718 of the Criminal
21 Code sets out a number of principles. The
22 relevant ones in this particular matter are
23 under Section 718.2(iii),

24 Evidence that the offender, in
25 committing the offence, abused a
26 position of trust or authority in
27 relation to the victim.

1 It is statutorily required to be an
2 aggravating circumstance.

3 The law also states that a sentence should
4 be similar to sentences imposed on similar
5 offenders for similar offences committed in
6 similar circumstances.

7 Notwithstanding that statement, there
8 still remains in the jurisdiction of this
9 Court, as well as other Courts across the
10 country, quite a disparity in the approach on
11 sentencing. I am presiding in this
12 jurisdiction, and it is the precedents set in
13 this jurisdiction that are the most persuasive
14 in this Court. What goes on in other
15 jurisdictions is much less so.

16 718(d) goes on to say that,

17 An offender should not be
18 deprived of liberty, if
19 restrictive sanctions may be
20 appropriate in the circumstances;
21 and (e) all available sanctions
22 other than imprisonment that are
23 reasonable in the circumstances
24 should be considered for all
25 offenders...

26 Counsel have provided me with a number of
27 cases that I have studied. Some of them I

1 find are completely distinguishable on the
2 facts. It is difficult to compare a
3 fraudulent breach of trust of \$181,000 with
4 one of \$16,000 or \$15,000 where there has been
5 almost 50 percent restitution. Those cases are
6 of little assistance to the Court.

7 The Crown has provided me with R. v. Shott,
8 a decision of Judge Bruser in 1994. He cites
9 Kirkwood, a decision of the British Columbia
10 Court of Appeal, and he goes on to conclude,

11 From the passages from which I
12 have quoted, and from my review of
13 the extensive authorities filed by
14 counsel, people who steal from
15 their employers should expect a
16 sentence of imprisonment
17 proportionate to all of the
18 circumstances unless there are
19 exceptional reasons for not doing
20 so.

21 And in that case he went on to say,
22 In my view exceptional personal
23 circumstances alone do not
24 necessarily amount to exceptional
25 reasons for not imprisoning the
26 offender.

27 In addition, Crown has provided the Court

1 with R. v. Holmes which I found useful. A
2 community-based sentence of 18 months was
3 imposed at trial for a fraudulent theft of
4 \$100,000 from a person's employer.

5 The Court went on to say "that this
6 Court", the Appeal Court of BC,
7 has consistently held, as other
8 Courts have, that in the absence
9 of truly exceptional
10 circumstances, an individual
11 guilty of embezzlement should go
12 to jail.

13 And the Court of Appeal goes on to cite
14 R. v. John and R. v. McGyver.

15 Defence filed a number of authorities
16 which I, of course, have examined carefully.

17 The matter of R. v. Layton, in my view has
18 no application in this. The amount of money
19 puts it in a different league completely.
20 Although the Justice in that case goes on to
21 say, at page 7,

22 The relevant sentencing principles
23 here include the fundamental
24 purpose of sentencing which is to
25 contribute, along with crime
26 prevention initiatives, a respect
27 for the law and a maintenance of a

1 just, peaceful, and safe society
2 by imposing just sanctions which
3 have one or more of the elicited
4 objectives in Section 718,
5 which I have already referred.

6 In the case of R. v. Burkhardt, a decision
7 of the British Columbia Court of Appeal, there
8 are a number of statements made. The Court of
9 Appeal found an error by the trial Judge which
10 I hope I am not making.

11 The case of Cleary in my view is
12 inapplicable. There was \$20,000 involved in
13 there which pales in significance to what is
14 involved in this case.

15 I have considered a number of factors:

16 General deterrence; in other words, to
17 impose a sentence that will make others who
18 are similarly inclined to the accused think
19 twice before they embark upon a fraud
20 involving breach of trust.

21 Specific deterrence; in other words, a
22 sentence that will make this accused think
23 twice before she does this again. In my view
24 specific deterrence is not a primary factor.
25 She is not a master criminal and there is no
26 indication from past conduct that she will
27 continue this kind of criminal conduct.

1 Rehabilitation is important. One has to,
2 of course, keep in mind what rehabilitation
3 means. Rehabilitation means variously
4 "restored to a useful life", "to restore and
5 make habitable again", "to help readapt to a
6 former state of health and repute". (Oxford)

7 Up until a few months ago, rehabilitation
8 wasn't a word that we would even consider
9 using with respect to the accused. As a
10 result of these offences, she may have to
11 exercise some effort to get back into good
12 repute but that is going to occur regardless
13 of what the Court does. Additionally I don't
14 see her as a person who needs the Court to
15 restore her to a useful life. This crime
16 appears to be an aberration in her life. She
17 led a useful life up until this involvement.
18 I presume she will continue to lead a useful
19 life, perhaps a little older and a little
20 wiser, when this is over. In my view to base
21 the Court's response on rehabilitation is not
22 a sound basis in this case.

23 Her readaptation to society is going to
24 come from her making good in the community,
25 with her friends, family, and dealing with
26 this conviction. That will occur through her
27 good works, her efforts, her goodwill, and her

1 conduct. I don't see that the Court can order
2 that.

3 Finally, in dealing again with the request
4 for a community-based sentence, I have
5 carefully considered the matter and it is my
6 considered opinion that such a sentence is
7 incompatible with the gravity of these
8 offences and inconsistent in this particular
9 case with the principles that I seek to apply.
10 Rehabilitation, such as it may play a role, is
11 not incompatible with incarceration. In my
12 view the crime is of such significance that
13 anything other than a term of incarceration
14 would be inappropriate.

15 The Crown has suggested 15 to 17 months.
16 I notice that in the Shott case a term of
17 imprisonment was 18 months. I can see no
18 reason to depart from the Crown's suggestion.

19 I have taken into account her guilty plea.
20 I would only note that I am quite confident
21 that she was inescapably caught. Be that as
22 it may, she pleaded guilty. In the end, I am
23 satisfied that the Crown's submission is
24 reasonable, and I sentence the accused to 17
25 months in jail.

26 I am going to put her on probation for one
27 year following, and the probation order is

1 going to be very straightforward in that she
2 is simply to report once a month to the
3 probation worker. She is to provide her
4 address and her place of employment, if any,
5 each and every month, which information I
6 direct may be shared with the victims of the
7 crimes. That's my decision.

8 Is that everything, Mr. MacPherson?

9 MR. MacPHERSON: Yes, Your Honour, thank you.

10 THE COURT: Mr. Bran?

11 MR. BRAN: The only issue is the victim
12 of crime surcharge. Under the circumstances I
13 would ask that it be waived, Your Honour.

14 MR. MacPHERSON: No position, Your Honour.

15 THE COURT: I will waive it.

16 -----

17

18 Certified correct to the
19 best of my skill and
20 ability,

21

22

23

24

Lois Hewitt,
Court Reporter

25

26

27