

Regina (respondent) v. Ram Prakash Subhag (appellant)
(CA039628; 2012 BCCA 246)

Indexed As: R. v. Subhag (R.P.)

British Columbia Court of Appeal
Low, Groberman and MacKenzie, JJ.A.
May 31, 2012.

Summary:

This case concerned identity theft involving almost \$250,000. Subhag pleaded guilty to attempted theft of money (two counts), and theft of money (two counts), on Information 173471. On Information 185945, Subhag pleaded guilty to one count of theft of money. Because of the Crown's inadvertent delay in charge approval, Information 185945 was not sworn until after the coming into force of the amendments under the Truth in Sentencing Act, limiting credit for pre-sentence custody to one day for each day in custody.

The British Columbia Provincial Court, in a decision not reported in this series of reports, imposed an effective sentence of two years' imprisonment. For the four counts on Information 173471, the judge imposed concurrent sentences resulting in a two-year period of imprisonment, reduced by four months as double-time credit for time served in pre-sentence custody. For the count on Information 185945, the judge imposed a sentence of two years, reduced by credit for the two months actually served before sentencing. Subhag applied for leave and if granted, appealed the effective sentence. He claimed the sentence was excessive, given his contention that his commission of the offences was unsophisticated. The Crown conceded its delay in charge approval deprived Subhag of two extra months reduction for "dead time".

The British Columbia Court of Appeal granted leave to appeal and allowed the appeal to the limited extent of reducing the sentence on Information 185945 from 22 months to 20 months' imprisonment. The effective sentence of two years was fit.

Criminal Law - Topic 2101

Fraudulent transactions - Personation - General - [See second **Criminal Law - Topic 5899**].

Criminal Law - Topic 5831.2

Sentencing - Considerations - Delay - [See **Criminal Law - Topic 6203**].

Criminal Law - Topic 5833

Sentencing - Considerations on imposing sentence - Deterrence - [See second **Criminal Law - Topic 5899**].

Criminal Law - Topic 5835

Sentencing - Considerations on imposing sentence - Protection of public - [See second **Criminal Law - Topic 5899**].

Criminal Law - Topic 5848.2

Sentencing - Considerations on imposing sentence - Time already served - [See **Criminal Law - Topic 6203**].

Criminal Law - Topic 5848.7

Sentencing - Considerations on imposing sentence - Denunciation or repudiation of conduct - [See second **Criminal Law - Topic 5899**].

Criminal Law - Topic 5899

Sentence - Debit and credit card offences (incl. fraud, theft, etc.) - The accused pled guilty to two counts of attempted theft and two counts of theft, charged under Information 173471, and a count of theft charged under Information 185945 - All counts were perpetrated through various banking transactions involving the impersonation of two individuals - The accused appealed the effective sentence of two years' imprisonment - He submitted the sentencing judge attributed a higher than justified degree of sophistication to the offences based, in part, on the 30-month time period between the commission of the theft offence in Information 185945 and the swearing of that Information - The British Columbia Court of Appeal held there was no merit to that ground of appeal - The Crown's delay in charging, of which the sentencing judge was unaware, did not negate the judge's concerns about the seriousness of identity theft offences and the challenges of bringing the perpetrators to justice - The accused was hard-pressed, in any event, to maintain that his offences, requiring the planning and attention they did, were unsophisticated - The amount obtained by way of the fraudulent transactions, almost \$250,000, offered further support for that conclusion - See paragraphs 26 to 34.

Criminal Law - Topic 5899

Sentence - Debit and credit card offences (incl. fraud, theft, etc.) - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial sentences, less time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.

Criminal Law - Topic 5915

Sentence - Personation - [See second **Criminal Law - Topic 5899**].

Criminal Law - Topic 6203

Sentencing - Appeals - Variation of sentence - Grounds for varying sentence imposed by trial judge - This sentence appeal concerned identity theft involving almost \$250,000 - The Crown took responsibility for the delay in charging under Information 185945 that deprived the appellant of the double-time credit for time served that he would have enjoyed had he been charged prior to the coming into force of the amendments under the Truth in Sentencing Act - Thus, conceding its delay that deprived the appellant of two extra months reduction for "dead time", the Crown submitted the 22 month sentence on Information 185945 should be reduced to 20 months - The British Columbia Court of Appeal, "[i]n the unique circumstances of this case, and given the Crown's position that the sentence should be reduced", allowed the appeal to that limited extent - See paragraphs 3 to 5, 22 to 24.

Cases Noticed:

- R. v. Nasogaluak (L.M.), [2010] 1 S.C.R. 206; 398 N.R. 107; 474 A.R. 88; 479 W.A.C. 88; 2010 SCC 6, refd to. [para. 25].
- R. v. McNeil (B.C.) (2006), 229 B.C.A.C. 297; 379 W.A.C. 297; 2006 BCCA 375, refd to. [para. 29].
- R. v. Ireland (J.J.) (2007), 244 B.C.A.C. 317; 403 W.A.C. 317; 2007 BCCA 387, refd to. [para. 29].
- R. v. Mahoney (R.A.) (2011), 302 B.C.A.C. 69; 511 W.A.C. 69; 2011 BCCA 132, refd to. [para. 29].
- R. v. Lambert (S.E.) (2007), 246 B.C.A.C. 246; 406 W.A.C. 246; 2007 BCCA 473, refd to. [para. 36].
- R. v. Goertzen (D.K.) (2004), 207 B.C.A.C. 165; 341 W.A.C.165; 2004 BCCA 639, refd to. [para. 36].

Counsel:

M.M. Ranspot, for the appellant;
E.A. Campbell, for the (Crown) respondent.

This sentence appeal was heard on May 29, 2012, at Vancouver, British Columbia, before Low, Groberman and MacKenzie, J.J.A., of the British Columbia Court of Appeal. MacKenzie, J.A., delivered the following oral reasons for judgment on May 31, 2012.

Appeal allowed to an extent.

Editor: E. Joanne Oley

Criminal Law - Topic 2101

Fraudulent transactions - Personation - General - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial sentences, less

time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.

Criminal Law - Topic 5831.2

Sentencing - Considerations - Delay - This sentence appeal concerned identity theft involving almost \$250,000 - The Crown took responsibility for the delay in charging under Information 185945 that deprived the appellant of the double-time credit for time served that he would have enjoyed had he been charged prior to the coming into force of the amendments under the Truth in Sentencing Act - Thus, conceding its delay that deprived the appellant of two extra months reduction for "dead time", the Crown submitted the 22 month sentence on Information 185945 should be reduced to 20 months - The British Columbia Court of Appeal, "[i]n the unique circumstances of this case, and given the Crown's position that the sentence should be reduced", allowed the appeal to that limited extent - See paragraphs 3 to 5, 22 to 24.

Criminal Law - Topic 5833

Sentencing - Considerations on imposing sentence - Deterrence - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial sentences, less time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.

Criminal Law - Topic 5835

Sentencing - Considerations on imposing sentence - Protection of public - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial

sentences, less time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.

Criminal Law - Topic 5848.2

Sentencing - Considerations on imposing sentence - Time already served - This sentence appeal concerned identity theft involving almost \$250,000 - The Crown took responsibility for the delay in charging under Information 185945 that deprived the appellant of the double-time credit for time served that he would have enjoyed had he been charged prior to the coming into force of the amendments under the Truth in Sentencing Act - Thus, conceding its delay that deprived the appellant of two extra months reduction for "dead time", the Crown submitted the 22 month sentence on Information 185945 should be reduced to 20 months - The British Columbia Court of Appeal, "[i]n the unique circumstances of this case, and given the Crown's position that the sentence should be reduced", allowed the appeal to that limited extent - See paragraphs 3 to 5, 22 to 24.

Criminal Law - Topic 5848.7

Sentencing - Considerations on imposing sentence - Denunciation or repudiation of conduct - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial sentences, less time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.

Criminal Law - Topic 5915

Sentence - Personation - The accused pled guilty to three counts of theft and two counts of attempted theft, all perpetrated through various banking transactions involving the

impersonation of two individuals, and involving almost \$250,000 - The sentencing judge imposed concurrent two-year custodial sentences, less time served - On appeal, the accused asked the court to substitute a global custodial sentence of 12 to 15 months - The British Columbia Court of Appeal held that the effective sentence of two years was fit - "[T]he sentencing judge properly and carefully exercised his discretion, in light of all the relevant factors, emphasizing the paramount sentencing objectives of deterrence and denunciation. He considered the substantial amount of money involved, the critical role of the appellant in the scheme, the degree of planning and difficulty in investigating these crimes, the aggravating features of the appellant's probationary status and record, and the expense and devastation to the victims. The judge's language reflects that he considered the case law and was aware that identity theft poses an enormous threat not only to our system of banking in the modern age, but also to our individual identities and privacy." - See paragraphs 35 to 44.