

**3 years and 2 months in addition to 5 months pre-trial for counterfeiting \$1.4 million in addition to forged credit and debit card operation**

5 Mr. Senthilkumar engaged in a substantial and sophisticated operation to manufacture counterfeit credit and debit cards, identification, and \$1.4 million in counterfeit 50s and 20s in a 98 day period ending in March of 2006. He was sentenced on June 12, 2007. The court found the operation was a sophisticated one where the offender had gone to great lengths to produce high quality counterfeits.

10 Mr. Senthilkumar pled guilty to numerous counts including conspiring to defraud the public, possessing cards adapted to commit forgeries, and two counts of possessing an instrument for the purpose of producing counterfeit money. One of the latter counts related to a Heidelberg printing press used to print counterfeit money. A printing expert retained by the police indicated 10,000 sheets of paper could be processed a day.

Mr. Senthilkumar had a reasonably lengthy record but most of it was committed while he was a young offender. He had not been convicted since 1999.

15 The court found the decision of Justice Harris in *R. v. Mihalkov*, [2005] O.J. No. 4178, which in turn had relied heavily on *R. v. Caporale*, [2005] O.J. No. 1509 and *R. v. Weber*, [2001] O.J. No. 6103 to be particularly helpful in its analysis of the appropriate sentence. The court noted that *Mihalkov* had concluded that sentences for large-scale counterfeiting operations ranged from 3 to 5 years.

20 The court noted this was a substantial operation involving \$1.4 million in counterfeit notes. In addition, the court held the possession of a large amount of credit card data together with the associated equipment for manufacturing credit cards was a significantly aggravating factor. The court indicated that after trial a sentence of 6-7 years would have been appropriate. The court imposed a sentence of 3 years and 2 months in addition to the 5 months of pre-trial custody in view of the guilty plea.

*Information Nos. 06-11452*

25 06-3393  
06-3960  
06-5465

30 ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

ELLANCHSENTHURAN SENTHILKUMAR

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R E A S O N S F O R S E N T E N C E

BEFORE THE HONOURABLE JUSTICE H.K. ATWOOD  
on June 12, 2007, at BRAMPTON, Ontario

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APPEARANCES:

J. Raftery

Counsel for the Crown

D. Paradkar

Counsel for Ellanchsenthuram Senthilkumar

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ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

<u>WITNESS</u>	<u>Exam. In-Ch.</u>	<u>Cr.- Exam.</u>	<u>Re- Exam.</u>	<u>Exam. In-Reply</u>
None	-	-	-	-

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E X H I B I T S

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EXHIBIT NUMBER

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None

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TUESDAY, JUNE 12, 2007

R E A S O N S   F O R   S E N T E N C E

ATWOOD, J. (Orally):

Mr. Senthilkumar has pleaded guilty to a number of offences during a 98 day period ending the 7<sup>th</sup> of March in 2006, in a number of jurisdictions.

He conspired to defraud the public. During that same period he possessed credit card data belonging to a large number of financial institutions enabling him to access credit.

He also possessed cards that might have generated findings of guilt with regard to possession of a counterfeit mark, but pleaded guilty to possessing cards that were adapted to commit forgeries and possessing a machine that was for the purpose of producing counterfeit monies.

In addition, he pleaded guilty to possessing a credit card embosser of use in forging credit cards. And some two weeks subsequent to the original charges, a Heidelberg printing press was discovered at a different location and he was charged with possessing that machine as well for the purpose of making counterfeit money.

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It is not within the facts that I have been received that he was setting up a new printing operation for monies on the charges that were laid on 21<sup>st</sup>, March '06, but rather that that press was in his possession prior to that time.

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The facts are certainly startling. During November and December of 2005, Peel Regional Police began to receive reports of a large number of counterfeit credit cards and counterfeit monies from a new source. Arrests were made, and as often is the case, those arrests were tracked to higher levels and eventually to Mr. Senthilkumar who was investigated.

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On March the 8<sup>th</sup>, a search warrant was obtained and executed in Toronto and a number of items were found there, some of which are those items that are routinely found in investigations of this sort, and some of which are, at least in this Court's experience, quite unique. Eight pinhole cameras were discovered. It is, of course, commonplace to observe (but I will observe it anyway) that pinhole cameras are used to obtain pin numbers by simply observing and recoding persons at ATM's and other locations entering their pins.

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The government cards that I referred to earlier constituted a health card and three driver's licences. On all of them, identification had been removed but the accused's photo remained on those cards.

Several plastic debit cards without any embossing, but with the mag. stripes, were discovered in a motor vehicle. At the same location, at least two forged credit cards, again, on blank plastic but with mag. stripes attached.

More unusually, in an office in that location, a hot metal stamping press with several die pieces used to forge credit cards was obtained during the execution of the search warrant, and another for use in creating counterfeit currency. Again, an Advantage 2001 model M1 credit card embosser was found, used to forge credit cards, of course. And another embosser from Pitney Bowes, rolls of foil with 50s and maple leaf logos were on site. And I received expert evidence with regard to the use of that material to create counterfeit currency and to provide the foils for counterfeit credit cards where those are embossed and intended to be passed, rather than used simply at locations where they do not have to be shown.

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In addition, there were several pin pads used to forge credit cards, and, I am informed, worth more than ten thousand. And a Verifone pad belonging to the Bank of Montreal with a value of approximately two thousand, and another pad belonging to Shell Gas.

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As part of these seizures from the initial search, business cheques for a business registered in the name of Mr. Senthilkumar were obtained and after tracking addresses through the registry, a search warrant was executed again at a location in Toronto. That was the search that I have already referred to as being on 21, March of '06, and there the Heidelberg printing press was found, which is used, of course, (aside from its legitimate uses) to print currency.

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Very unusually, that printing press was rigged up with a retrofitted heat source for bonding foil strips to counterfeit currency. I am informed by the officer conducting, at least in part conducting the seizure, that even the foil strip adhesion to the counterfeit currencies had been automated so that with the automatic feeding of the foil and the retrofitted heat source, it was the opinion of a printing expert that the police obtained, that approximately 10,000 sheets of paper could be processed in a given day.

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There were other materials that are worth noting, but I will limit my notes on them to a few. There were card readers found. Printers, computers with more than 10,000 credit card data or debit card data. Metal dies for stamping holographs on bills, and paper with watermarks similar to the watermarks that are on Canadian fifty dollar bills.

The credit card data, again, in this Court's experience, is at the very upper limit of numbers that have been skimmed. In addition to the readers, one of the readers was also a writer. And, of course, it is commonplace to observe, but I will observe it again that reader/writers are integral to the process of providing counterfeit credit cards and debit cards.

Mr. Senthilkumar has a criminal record that is reasonably long. There has been, however, nothing on his record since 1999. And only one of his fairly extensive findings of guilt was in adult court. The rest are all youth court matters.

I have received two reports, one from Mr. Manuel Parreira, an official with the Bank of Canada, and another from a qualified expert in the investigation and identification of

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counterfeit currency. Mr. LeBel, that official, provided a report that is extremely thorough and useful.

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The Crown and defence during a recess were able to agree that in spite of the very large figures provided during portions of Mr. LeBel's testimony before me, that the only amounts that the Crown can be absolutely certain of proving beyond a reasonable doubt total 1.4 million dollars of forged 50s and 20s attributable to Mr. Senthilkumar. The remaining three million dollars cannot, in Mr. Raftery's very fair position, be proved beyond a reasonable doubt, although, of course, the Crown is of the view that all of that originated from Mr. Senthilkumar.

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It is clear from the information before me that Mr. Senthilkumar's operation was a very sophisticated one, indeed. It is seldom that an operation of this sophistication turns to the production of counterfeit monies rather than counterfeit credit cards. In fact, many of the Court of Appeal decisions on counterfeiting of money date from a period some 30 years ago. That, of course, is in part because credit cards are worth far more than 50 dollar bills; that they are often easier to pass in the sense that there is not the requirement of recruiting large numbers of

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5 persons to pass bills, essentially, one at a time. And, finally, because officialdom's response to the forging of credit cards appears in large measure to be quite different from that that is occasion by the forging of money. Without meaning any disrespect to Mr. Parreira, that is in microcosm part of his report. At page six, paragraph fourteen of his report, he states in part:

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Victims of credit card fraud are usually protected from direct financial loss by the card's issuer if they have observed the card issuer's rules of use. In contrast, the Bank of Canada, like all other central banks in the world, provides no financial protection for a person who accepts a counterfeit bank note. All central banks, including the Bank of Canada, have concluded that providing reimbursement would act as an incentive that would inevitably increase counterfeiting activity.

There is no doubt that all of the facts in that paragraph are correct. And yet, it somehow fails, in my view, to capture the seriousness of credit card forgery. Credit cards often have limits in the thousands of dollars, and the proliferation of forged credit cards is extraordinary, both in this

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jurisdiction and other jurisdictions through  
Canada.

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The losses, however, as Mr. Parreira sets out,  
can have a very significant impact not only on  
individuals but on the economy as a whole.  
And that is particularly the case where very  
large amounts are counterfeited and where the  
operation is sophisticated and the  
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possibility(ph) of the bills is great.

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I have not received any examples of Mr.  
Senthilkumar's work, but certainly the lengths  
to which his operation went, are as I have  
already observed, virtually unique. The use  
of very heavy gauge printing presses, hot  
stamp presses, credit card readers, superior  
quality paper and foil, all are the hallmarks  
of a counterfeiter with a real attention to  
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detail.

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The Ontario Court of Appeal and other courts  
have provided some useful guidelines in  
sentence ranges. Both the Crown and defence  
have provided me with a copy of R. v. Kiss, a  
1995 decision of Mr. Justice Belleghem,  
reported [1995] O.J. No. 5002. And in  
addition, I have received a very useful  
overview of the law by my brother Judge Harris  
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in  
R. v. Mihalkov, reported [2005] O.J. No. 4178.

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Justice Belleghem has referred to a number of appellate decisions. There are very few details from R. v. Sarab, other than it was the Ontario Court of Appeal. But the trial sentence of six years for the making of counterfeit money is, of course, a fact that is significant given the Crown and defence positions.

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The Court of Appeal decision in Sonsalla, referred to simply as 1971 by Justice Belleghem, resulted in a sentence of four years for approximately \$24,000.

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Justice Belleghem referred to R. v. Grosse, a decision which I will refer to again in a moment, a decision of the Ontario Court of Appeal. And to a Court of Queen's Bench decision from Quebec in 1965, R. v. Lacoste, indicated that a sentence of three months for counterfeiting \$32,000 resulted, on appeal, in an increase to two years.

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Perhaps the high watermark of sentencing for counterfeiting was R. v. Pisani (referred to by Justice Belleghem) a 1970 decision of the Ontario Court of Appeal in which Mr. Pisani received a six year term for three counterfeit ten dollar bills. Justice Belleghem does  
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comment that Mr. Pisani had an extensive criminal record.

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Again, from 1970, R. v. Zezima, a Quebec Court of Appeal decision, and a number of other decisions are referred to in passing by Justice Belleghem. And he comments at paragraph 27 of R. v. Kiss, "Many of [these] cases are of little assistance because the amount involved does not begin to approach the amount involved in this case."

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I note that in Kiss the amount was certainly extraordinary being some 6.5 million in total. The amounts distributed over five years were 3.5 million, and Justice Belleghem comments that the money surfaced in a total of 20 countries and that when Mr. Kiss was arrested he had another 3 million dollars, which had been manufactured, in his possession.

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Justice Harris provides, as I have already indicated, a very useful overview of sentences for this offence. At paragraph 69, he referred to R. v. Grosse, the decision to which I referred a moment ago, Ontario Court of Appeal decision, (1972) C.C.C. (2d). Justice Harris commented that the decision was dated. The defendant in that case received six years in custody.

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At paragraph 74 of Mihalkov, Justice Harris wrote the following:

5                   The decision of R. v. Leung, [1995]  
B.C.J.  
No. 2165, (B.C.C.A.) ... gets a little  
closer to the case before the Court  
because it is about a criminal  
10                   organization involving approximately  
\$500,000 worth of traveller's cheques.  
Some individuals ... were found in  
possession and each received ... three  
years. Concerning ... pre-trial custody,  
each one, as I say, received about  
15                   three years in custody. It seems to  
me that three years is pretty much the  
lower end of sentencing for members of  
a criminal organization involved in  
dispensing large amounts of counterfeit  
20                   currency or negotiable instruments.

In the Mihalkov case itself, Justice Harris  
had found that there was a criminal  
organization and conspiracy to distribute  
25                   twenty dollar accounts, twenty dollar notes I  
should say. The seizure of 480,000 twenty  
dollar counterfeit notes and 221,000 ten  
dollar counterfeit notes gives some idea of  
the extent of that organization, and a  
30                   photograph of a co-accused with Mr. Mihalkov

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standing by approximately 1.4 million dollars of counterfeit 20 dollar bills piled in bundles. There are, of course, many other types of notes and factors but some idea of the extent of Mihalkov's organization can be obtained from that.

The cases of Caporale, [2005] O.J. No. 1509 and Weber, O.C.J. [2001] O.J. No. 6103 are in Justice Harris' view of the greatest interest in a sentence application of the sort before this Court.

In Caporale, the defendant had sold to an undercover operator \$725,000 worth of purchases, the last one being 500,000 worth of counterfeit money. And upon the execution of the search warrant, a further half a million dollars worth of counterfeit money was found at Mr. Caporale's residence.

Justice Harris stressed that Mr. Caporale had a record for a similar offence and he was on parole as a result of a sentence in 2001. Mr. Caporale received a total of 5.5 years.

Mr. Weber counterfeited 3.5 million dollars worth of counterfeit monies. He was arrested and released, re-organized, and kept counterfeiting money. As Justice Harris sets out:

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5 He was on a conditional sentence for a related offence. He had two prior counterfeiting convictions and was on bail for counterfeiting money and kept right on counterfeiting money.

Justice Harris comments:

10 He seemed to be absolutely unstoppable. It was a rather massive scale of counterfeiting involving 3.5 million dollars worth of forged currency. [And] he received a total of five years.

15 Justice Harris concluded after his review of the law, at the lower end of large-scale counterfeiting with a criminal organization is three years and the upper end is five.

20 It must be noted, of course, that he is referring there to matters upon which the defendant plead, or at least in large measure upon which the defendants plead as he comments that the Ontario Court of Justice received several of those upper end sentences.

25 The record for Mr. Senthilkumar is, as I have already indicated, fairly long, but not that that would brand him as a career recidivist. His work is sophisticated and the amount of  
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money is significant; that is 1.4 million that can be directly attributed to him.

In addition, the large scale recording of credit card data and the various items, which I have already noted, which facilitate not only the obtaining of that data but the creation of forged credit cards is a significantly aggravating factor.

Nevertheless, it is my view that when all of the sentencing principles that are applicable are applied, that Mr. Paradkar's suggestion as to the appropriate sentence is correct. I say that because it is my view that had Mr. Senthilkumar gone to trial and been convicted, that a sentence of six to seven years would have been appropriate.

He is entitled to a reduction because not only has he saved the Court a very extensive amount of time indeed, but he has thereby exhibited remorse.

I have received some letters of reference that indicated that Mr. Senthilkumar is not the sort of person who simply is a career recidivist. He has some qualities that have generated favourable comment. It may very well be that he can rebuild his life in a way that is more pro-social.

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He served approximately five months and seven days of pre-trial custody, or in post-disposition equivalency some ten months and fourteen days. And in addition, he has been on, essentially, house arrest for some ten months.

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The Court of Appeal has directed me to consider house arrest in considering sentence of range. And I do consider the house arrest as being a very significant form of intrusion into his liberty. I would have thought that approximately three months of custody should be attributed to that house arrest in post-disposition equivalency.

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The reduction for the plea of guilt, the attribution of post-disposition equivalency for the pre-trial custody, and the provision of post-disposition equivalency for the house arrest portion of his release of ten months, in my view taken together, should reduce this sentence to three years, two months, which is what was requested by Mr. Paradkar.

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I am well aware that Mr. Parreira's comments about the impact on the economic well-being of Canada is well founded and I am also well aware that as a white collar criminal, Mr. Senthilkumar can be expected to be released at an early stage. Nevertheless, sentencing

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ranges are developed by appellate courts and those cases which disagree with the analysis of my brother Judge Harris are, in large measure, more than 30 years old, and in large measure, speak to an era in which counterfeiting of money was the most significant problem with regard to counterfeiting or forging of instruments of financial worth.

Given all of that, as I have indicated, I accept the conclusions drawn by my brother Judge Harris and for reasons given the sentence will be as requested by Mr. Paradkar. No probation is applicable on any sentence over two years. Mr. Senthilkumar, had it been possible to put you on probation I would have done so with simply the requirement that you maintain full employment.

I wish to simply finish by saying that you are clearly highly intelligent and a very able man. You have had some personal tragedies in your past, particularly with regard to your mother and father, but you have family that cares for you. And some of those are very closely related to you, indeed. I would think with the brain that you have and your abilities, that the world should very much be your oyster. And given the profit loss sheet that is generated by counterfeiting, I would

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have thought that it simply not worth the candle. And that given your intelligence, there is many better ways to spend your days and I hope that is the case. I hope we do not see you again. I will wish you better days, because it is clear that people that really care for you are very much upset by this and I hope you can make them proud. Thanks a lot.

MR. PARADKAR: Thank you very much, Your Honour.

THE COURT: I'm going to recommend, finally, that he serve his time at a minimum security institution. It is quite clear to me that Mr. Senthilkumar is not a danger of any sort of violence. That he is, other than his criminal activities, pro-social, if I can put it that way. And I hope that you can be processed at Millhaven as soon as possible, okay? Thanks very much.

ELLANCHSENTHURAN SENTHILKUMAR: Thank you, Your Honour.

MR. PARADKAR: Your Honour, I'm just going to ask that that portion of the transcript could be ordered to go with him to Millhaven as....

THE COURT: Absolutely. Madam Reporter, I'm going to order a portion of the transcript. If you could prepare that as early as possible. If you could simply indicate, Mr. Paradkar, to those persons that are appropriate that it will be coming about what I said. And maybe, Madam Reporter, if you

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5 don't mind, maybe even the last page could be  
generated tomorrow and faxed down. If you  
could give it to Mr. Paradkar. By that I mean  
the portion which I have asked that he be  
processed as soon as possible. I would just  
hate to see Mr. - Mr. Senthilkumar at  
Millhaven longer than he absolutely has to be.  
MR. PARADKAR: Thank you very much, Your  
Honour.  
10 THE COURT: Thanks very much both...  
ELLANCHSENTHURAN SENTHILKUMAR: Thank you...  
THE COURT: ...counsel.  
ELLANCHSENTHURAN SENTHILKUMAR: ...Your  
Honour.  
15 COURT CLERK: Your Honour, all the other  
charges before the Court for Mr. Senthilkumar?  
THE COURT: All other charges?  
MR. RAFTERY: The Crown's asking they be  
marked withdrawn.  
20 THE COURT: Thanks very much.  
MR. PARADKAR: And I think all the charges  
against Mr.[sic] Galatharayelege is also going  
to be withdrawn, is that correct?  
MR. RAFTERY: I have no information on that.  
25 MR. PARADKAR: Oh, so they....  
COURT CLERK: She's on our docket though, and  
she's co-accused with Mr. Senthilkumar on two  
informations.  
30 MR. RAFTERY: Put it over a week to be spoken  
to. The Crown's asking those charges be  
marked withdrawn.

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THE COURT: Withdrawn. Thanks very much.

MR. PARADKAR: Thank you very much, Your Honour. I thank...

THE COURT: Thank you.

MR. PARADKAR: ...my friend.

ELLANCHSENTHURAN SENTHILKUMAR: Thank you, Your Honour.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

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