

R. v. Sponaugle, 2006 BCPC 127 (CanLII)

2 years for offender with lengthy record for participating in unsophisticated scheme to pass \$6,000 in counterfeit money

Mr. Sponaugle pled guilty to various counts of possession of counterfeit money. He was involved with 5 other individuals in the passing of Canadian and U.S. counterfeit currency in a number of businesses in the Kamloops area. He was not involved in the production of counterfeit money. Approximately \$6,000.00 worth of counterfeit money was put in circulation.

Mr. Sponaugle was 53 at the time of the sentencing and had difficult health issues. He had a lengthy criminal record which included 3 years for trafficking in heroin in 1972 and 9 years in 1982 for conspiring to traffic in narcotics. For the previous 8-9 years he had been before the court regularly for petty offences.

There was a joint submission for 2 years.

The Court considered the unsophisticated nature of the scheme as a mitigating factor and adopted the joint submission. In passing judgment, the court noted:

[11] It is the type of crime that invites a severe sentence, based upon the emphasis on deterrence, that the crime is economically motivated and requires considerable premeditation, and that offenders are apt to engage in some degree of risk or reward analysis before committing the crime. That paper refers to the British Columbia Court of Appeal of *R. v. Le*, where the court said:

Counterfeiting is an offence for which, in my view, deterrence is a far more important factor than it is for many other offences. It requires premeditation and planning and is driven entirely by greed.

...

[17] So, this activity has a substantial financial impact on law enforcement, businesses and the financial section, which must devote additional resources to respond to the problem. As well, this goes to the very heart of the efficacy, integrity and operation of our economic system which basically relies on the exchange of currency for goods and services.

The court adopted the joint recommendation for a sentence of 2 years of imprisonment. The judge concluded that: "It is the type of crime that invites a severe sentence, based upon the emphasis on deterrence, that the crime is economically motivated and requires considerable premeditation."

Citation: R.v. **Sponaugle**
2006 BCPC 0127

Date: 20060210
File No: 77894-1
Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal Division

REGINA

v.

CODY JOHN SPONAUGLE

**EXCERPT FROM PROCEEDINGS
ORAL REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE B. W. SUNDHU**

Counsel for the Crown:

J. Oliphant

Counsel for the Defendant:

A. P. Watt

Place of Hearing:

Kamloops, B.C.

Date of Hearing:

February 10, 2006

Date of Sentence:

February 10, 2006

[1] **THE COURT:** Mr. **Sponaugle** has changed his plea to that of guilty on Counts 1, 2, 6 and 7. He did so on December 15, 2005, and this matter is before the court for sentencing.

[2] The court has received a joint submission from Crown and defence on all issues, save and except one minor issue of items which were seized by the police and which have been referred to in an exhibit report before the court, and even in that regard there is no issue save and except on one specific item.

[3] The circumstances are that these are offences generally referred to as counterfeiting. The specific counts refer to different forms of conduct, wrongdoing and, therefore, relate to different sections of the **Code**.

[4] The court is told that had this matter gone to trial, there would have been some effort or complications for the Crown, simply in the nature of volume, perhaps. The Crown has used the description of having to jump through a number of hoops, and that has been avoided, at least in relation to Mr. **Sponaugle** and Ms. Winters. There appear to be matters which still require to be resolved in relation to, at least two, if not the remaining three persons charged on this information.

[5] The court is told by the Crown, firstly, and it is submitted that Mr. **Sponaugle** has a lengthy criminal record. In particular, 1972, he received a sentence of three years in relation to trafficking of a narcotic being heroin. In 1982, conspiracy to traffic in a narcotic, nine years in custody. I am referring to the most significant sentences that he has received. His record is lengthy. Over the past at least eight or nine years, if not a little bit longer than that, he has been before the court regularly, but they are petty type of offences or what is often referred to as petty crime.

[6] The Crown submits that the concern in this particular case is that in relation to counterfeiting, those are serious offences and that the court ought to give considerable weight to general deterrence and that the courts have, in other cases, emphasized the importance of general deterrence.

[7] In that regard, the court has, for example, referred to the case of **R. v. Grozell**, in British Columbia Provincial Court, a decision dated September 30, 2004, by Judge Caryer. In that case Mr. Grozell was sentenced to twenty-six months imprisonment. The court stated that counterfeiting was a very serious crime and statistics showed that it was growing at an alarming rate. The damage caused both to individuals and to local economies was astronomical.

[8] In that particular case, Mr. Grozell had not been a mere distributor. He had been involved in all aspects of the scheme, including printing, transportation, distributing and passing, and the ring was very sophisticated and far reaching. The court determined that it was an aggravating factor that Mr. Grozell had engaged a young woman or young women to assist him in the passing of bills.

[9] This case does not have at least two of the features involved in that case or perhaps even more. One is, there is no evidence before the court that Mr. **Sponaugle**, or anyone charged in this matter, I believe, was involved in the printing or creating of the counterfeit currency. Secondly, this particular set of circumstances is not sophisticated and appears to have the characteristic or appearance of being quite unsophisticated. And, in this case, furthermore, Mr. **Sponaugle** did not have young women assist him, which has some other implications, as did in the Grozell case.

[10] The court has also been provided with an extract, basically a paper prepared by a Mr. Wakely (phonetic) in relation to sentencing for counterfeiting offences. Basically, that paper reviews a number of sentencing principles, what the courts have done, and it emphasizes that it

is settled law, that general deterrence is of primary importance in sentencing for counterfeiting and that there are a number of reasons.

[11] It is the type of crime that invites a severe sentence, based upon the emphasis on deterrence, that the crime is economically motivated and requires considerable premeditation, and that offenders are apt to engage in some degree of risk or reward analysis before committing the crime. That paper refers to the British Columbia Court of Appeal of *R. v. Le*, where the court said:

Counterfeiting is an offence for which, in my view, deterrence is a far more important factor than it is for many other offences. It requires premeditation and planning and is driven entirely by greed.

[12] The paper also refers to aggravating and mitigating factors and clearly the sophistication involved is a factor that bears on either aggravation or mitigation. The courts have noted, as referred to in this paper, that the making of counterfeit money or documents is treated more severely than distribution or possession, and that has been recognized by the courts. And, furthermore, the sophistication of the counterfeiting scheme, as opposed to the product, can be an aggravating factor. The rationale for this is twofold. First, a sophisticated scheme requires premeditation, would suggest greater moral culpability and, second, a sophisticated scheme possesses a greater chance of success and thus of consequential harm.

[13] In regard to mitigating factors, the paper refers to the converse can be where the counterfeiting is sloppy, amateurish, or otherwise unrealistic, which can be a mitigating factor in looking at the seriousness of the crime.

[16] The affidavit also notes that the victims of counterfeit currency are not compensated, for example, as are credit card fraud transactions and that there is a policy reason for that. Also, that counterfeiting has a strong impact on businesses, that there are increased security costs for the Bank of Canada, not only in the actual changes which have been made to print currency which might not be so susceptible to counterfeiting, that that costs more per bill, but it also costs more for business persons and individual consumers in relation to security issues and losses which result from counterfeiting. There are some businesses, approximately five per cent of businesses in Canada, now, that refuse to accept one or more bank notes; and I think that is a common experience in our society now, where certain businesses do not take certain denominations.

[17] So, this activity has a substantial financial impact on law enforcement, businesses and the financial sector, which must devote additional resources to respond to the problem. As well, this goes to the very heart of the efficacy, integrity and operation of our economic system which basically relies on the exchange of currency for goods and services.

[18] The Crown submits in this case that it acknowledges that this was, on the face of it, an unsophisticated scheme. It involved the use of Canadian and U.S. currency; that approximately five persons, over the course of approximately two days, went to a number of businesses in the Kamloops area and passed or attempted to pass counterfeit bills for goods and services, and also received goods and services and Canadian currency, which was valid and legal, in exchange, as change.

[19] The currency which was seized within a vehicle and on the persons arrested was approximately \$4,600 U.S. currency or denomination, and \$700 Canadian currency or denomination. The Crown submits that a number of businesses were affected; that the amounts, however, fortunately, were not significant, that the most amounted to a few hundred dollars, not more. That the total amount in question, when converted, when taking into the U.S. currency and the Canadian currency, was approximately \$6,000 value or equivalency in Canadian currency.

[20] The Crown submits general deterrence is the primary factor, that it acknowledges there was a lack of sophistication in this case and there is no evidence that Mr. **Sponaugle** was involved in the creation or manufacturing of this currency. Nonetheless, the Crown submits that in relation to looking at all of Mr. **Sponaugle's** criminal record, the nature of the offence, that is the distribution, use or possession of unlawful currency, the impact of that on society, the harm that occurs from that type of activity and the emphasis the courts have placed on deterrence, ought to result in a two-year sentence.

[21] The defence concurs with the sentence sought by the Crown, submitting that it is not inappropriate. It takes no issues with the documentation, including the case law relied on or the principles relied on by the Crown. It acknowledges that there are a number of principles or concerns which have been acknowledged, that there are significant costs to the economy with this type of misconduct. It is submitted that it is not necessarily agreed that deterrence is effective; that a great many persons who commit offences operate on the belief, ultimately misbelief, that they are not going to get caught.

[22] It is submitted that this was an unsophisticated operation, that Mr. **Sponaugle** has a lengthy criminal record and it is drug related and that problem is something that has plagued him for most of his life. That, in particular, those have basically resulted in his life going continually downhill. That since 1997, if one looks at his criminal record, those are petty crimes, property crimes, thefts and offences of that nature, which indicate that he has basically been on the borderline as far as his survival and level of functioning.

[23] Mr. **Sponaugle** is age fifty-three. He has considerable health challenges or has had considerable health difficulties. He has a heart problem and he has had seven back surgeries. He has expressed a concern in relation to Ms. Winters, who was a co-accused, and in relation to whom the Crown has entered a stay of proceedings. He wants to have her continue her life as is, as best as she can function, without any restrictions on her liberty.

[24] He is experienced with the federal system. He acknowledges that that is something that may be a blessing in disguise. He knows what it entails. He feels he needs it. He tells the court that he had a son die approximately four years ago, that Mr. **Sponaugle** was a single parent and was on the methadone program and his son consumed methadone and died, and since then, Mr. **Sponaugle's** life has taken perhaps even a more marked decline. He says he has not really cared about life, but that perhaps there is some light at the end of the tunnel for him, in the sense of the relationship he has developed with Ms. Winters.

[25] The court will direct that the criminal record can be entered as Document 1 in this proceeding.

[26] MR. WATT: Your Honour, may I just run next door, please. I've got a video appearance at 11:30, that they don't wait.

[27] THE COURT: Okay. I will be two minutes. No longer.

[28] MR. WATT: Oh, thank you. Well --

[29] THE COURT: Document 1 -- you may be excused, because I am going to do what I was asked to do.

[30] MR. WATT: Oh.

[31] THE COURT: So if you need to go, you may go, but that is up to you.

[32] MR. WATT: Thank you very much. I just want to make sure that I don't miss this.

[33] THE COURT: All right.

[34] MR. WATT: I'll be right back. Thank you very much. No, you can go ahead.

[35] THE COURT: All right.

[36] MR. WATT: Continue please. Thank you.

[37] THE COURT: So, the criminal record will be entered as Document 1. The remaining documentation, the affidavit, should be entered as Document 2. The case of **Grozell** and the sentencing paper can simply be filed.

[38] The court will be imposing a two-year sentence, which is a federal sentence, upon Mr. **Sponaugle**. I do agree that the court is required to give weight to general deterrence and that is a significant factor. There are also other factors which are denunciation and protection of the public and protection of the public clearly captures the day to day functioning of the public and their needs in relation to our financial system and the integrity of our financial system, which relies on, in a very fundamental way, on currency and currency exchange and the efficacy and integrity of that.

[39] The exhibit report, which has been filed with the court, I note on the record that neither Mr. **Sponaugle**, nor Ms. Winters makes any claim or any legal interest in any of the items referred to in the exhibit report, which can be entered as Document 3 in these proceedings, save and except item number 9. All of these items will be dealt with at the conclusion of all proceedings. That includes in relation to other persons charged and we will defer the issue of item number 9, in relation to Ms. Winters in particular, possibly Mr. **Sponaugle**, but certainly in relation to Ms. Winters, until the conclusion of all proceedings, and that remains to be dealt with at that time, so the court will be making no other order in relation to the items.

[40] Basically, they release any interest on all items except item number 9 and, therefore, that remains to be seen how that will be dealt with at the conclusion of all proceedings. So, Mr. **Sponaugle**, you will have to go with the sheriff.

[41] THE ACCUSED: Okay.

[42] THE COURT: It is a two-year term. No victim fine surcharge.

[43] MR. OLIPHANT: Two years concurrent on each count?

[44] THE COURT: Yes. Concurrent on all matters.

[45] MR. OLIPHANT: Thanks. (EXCERPT CONCLUDED)