

R. v. Bernard, Ontario Superior Court of Justice, April 21, 2010.

30 months for conspiracy to defraud the public

Mr. Bernard was found guilty of conspiracy to defraud the public and mischief. The conspiracy took place during the summer, fall and winter of 2005 and in early 2006. Mr. Bernard and his accomplice, Mr. Reid, hired individuals, usually young women, who would purchase consumer items in departmental stores such as Winners, HomeSense etc. The purchased items were then returned to the same stores, but at different locations, in exchange for legal currency.

The Crown recommended a sentence of four years of imprisonment, consecutive to the sentence Mr. Bernard was serving for unrelated offences. The Crown filed an affidavit from the Bank of Canada, pursuant to section 722 of the *Criminal Code*, in which the prevalence of counterfeiting in Canada and elsewhere in the world was outlined. The Crown stated that Mr. Bernard played a central role in the scheme, as he was in charge of the operations and responsible for the recruitment and supervision of the young women. The Crown indicated that a large volume of counterfeit money was passed and, as a result, Mr. Bernard made a lot of money. One employee testified that she often passed \$1,000 a day or \$5,000 a week and that the scheme went on from the summer of 2005 until January of 2006. Finally, the Crown raised the sentencing principle of parity in relation to the sentences already imposed co-conspirators.

Defence counsel argued that the accused should receive a sentence of 12 to 18 months of imprisonment, consecutive to the sentence he was serving. Defence counsel highlighted Mr. Bernard's personal circumstances and suggested that the court should take into consideration the sentence he was already serving, pursuant to the "totality principle".

The judge considered the sentencing objectives set out in s. 718 of the *Criminal Code* and concluded that the dominant sentencing objectives in the present case should be general deterrence, given the impact of such a fraud on society, and specific deterrence for Mr. Bernard. She also considered the need for rehabilitation, taking into account the relatively young age of the offender (the accused was 23 years old at the time of the arrest and 27 years old at the time of the sentence). She weighted aggravating and mitigating factors before imposing a sentence of 30 months for the conspiracy to defraud the public, consecutive to the sentence Mr. Bernard was serving, and 30 days for the mischief, concurrent with the conspiracy to defraud the public but consecutive to the sentence Mr. Bernard was serving.

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IN THE SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

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against

GREGORY BERNARD

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REASONS FOR SENTENCE

GIVEN BY THE HONOURABLE MADAM JUSTICE MOSSIP

on

April 21, 2010, at BRAMPTON, Ontario

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APPEARANCES:

D. Maylor, Esq.

Counsel for the Crown

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J. Penman, Ms.

Counsel for the defendant

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5 April 21, 2010

REASONS FOR SENTENCE

10 MOSSIP, J. (Orally):

 Mr. Bernard was found guilty by me sitting as a judge alone of the following crimes.

- 15 (1) Conspiracy to defraud the public;
- (2) Commit mischief by wilfully damaging property, namely display cases of The Shoe Company.

20 Mr. Bernard is presently in custody on various robbery charges and imitation gun charges, serving a sentence of seven and a half years. He received pre-trial custody credit of 35 months for an actual sentence to be served as of August 25 21, 2007 of four and a half years or 55 months. There is no dispute that there is no pre-trial custody credit for the offenses I am sentencing 30 Mr. Bernard on. Further, the sentence I impose will run consecutively to the sentence Mr. Bernard is currently serving pursuant to s. 718.3(4)(a).

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At the sentencing hearing, I heard from Mr. Parreira for the Crown. He is employed by the Bank of Canada and has been for 29 years. He is the senior regional representative of the Bank of Canada since July 2, 2002. As set out in his affidavit sworn February 1, 2010, he is responsible for local delivery of the Bank of Canada's public currency education program and he monitors local developments related to currency and counterfeiting activity.

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Mr. Parreira's affidavit was filed as exhibit two at this hearing. In the affidavit, Mr. Parreira sets out the role of the Bank of Canada in the economic welfare of Canada and the responsibility of the Bank of Canada for the issuance of bank notes. Mr. Parreira then goes on to outline in some detail the prevalence of counterfeiting in Canada and elsewhere in the world and gives a comparison of those figures. There is an outline of the impact of the counterfeits seized in connection with the project "More Money." This operation is alleged to have caused an economic

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5 loss of over \$1.7 million. Mr. Parreira candidly
admitted in cross-examination that there was no
10 way of determining what percentage of that loss
Mr. Bernard's activities accounted for. Finally,
Mr. Parreira sets out the impact of
counterfeiting on the direct victims in this
15 case, primarily large box stores, and the impact
on society at large, both on the issue of
confidence in the monetary system and on
increased costs to the Bank of Canada which
20 trickle down ultimately to taxpayers.

Also filed at this hearing were:

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- (1) Mr. Bernard's criminal record as exhibit three;
 - (2) Letter from Mr. Bernard's mother as exhibit four;
 - (3) Letter from Mr. Bernard as exhibit five.

30 Background to the Offenses

The conspiracy to defraud the public that Mr. Bernard was convicted of being part of took place

5 during the summer, fall and winter of 2005 and
into early 2006. The scheme to pass counterfeit
money was for someone Mr. Bernard and/or Mr. Reid
had recruited to use counterfeit money to
10 purchase consumer items from large stores such as
Winners or Home Sense as examples. The purchased
items were then returned to the same store, but
at a different location, and legal currency was
given to the persons returning the items. Mr.
15 Bernard recruited a number of young women to
purchase the items for him using counterfeit
money, usually \$50 bills. He would keep the
receipts and then give the items and the receipts
20 to the young women to return the items for legal
money which would be turned over to him.

25 The events related to the mischief charge
involved Mr. Bernard damaging some property at
The Shoe Company when one of the women tried to
return some shoes bought with counterfeit money.

30 Position of the Crown

The Crown's position is that Mr. Bernard should
serve a sentence of four years consecutive to the

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time he is currently serving. The Crown listed several aggravating factors which I will deal with below. The position of the Crown is that Mr. Bernard played a principle role in the scheme, that he is highly intelligent, manipulative and was able to make the scheme work. The Crown submitted that although Mr. Andre Reid and Mr. Bernard were partners in this scheme, Mr. Bernard was the more intelligent person and the one in charge. It was, the Crown submits, Mr. Bernard who primarily recruited and supervised the young women the two men used for their scheme. This major involvement of Mr. Bernard was evidenced by his own words in the wire taps and through the evidence of the young women carrying out the scheme. The Crown submitted that I should rely on the evidence of Mr. Parreira at this hearing as an aggravating factor because of the negative impact on society of the scheme that passed the counterfeit money. As to how much counterfeit money Mr. Bernard put into society, the Crown submitted that one of the women testifying stated she often passed \$1,000 a day or \$5,000 a week and that the scheme went on

5 from the summer of 2005 until January 2006. A
rough calculation demonstrates that there was a
lot of counterfeit money passed and a lot of
money made by Mr. Bernard as a result. The Crown
10 set out the sentences of the other major players,
namely Mr. Andre Reid, Mr. Ramanathan and
Christina Palin in addressing the sentencing
principle of parity. Lastly, Crown counsel went
through numerous cases filed in his brief of
15 authorities to support his position that a four
year sentence is within the range of other cases
for similar offenses.

20 Position of the Defence

The position of the defence is that Mr. Bernard
should receive a sentence of 12 to 18 months, to
run consecutively to the sentence he is currently
25 serving. Defence counsel highlighted the
personal circumstances of Mr. Bernard which I
will deal with shortly. Defence counsel stressed
the "totality" issue and submitted that since Mr.
30 Bernard is serving a seven and a half year
sentence, her proposed range of sentence would
result in a sentence of eight and a half to nine

5 years in total. Further, defence submits that I should consider, in deciding my sentence, that almost all of Mr. Bernard's jail time to date has been served in a Provincial institution. In the Provincial system, Mr. Bernard does not receive any of the benefits of being in the Federal penitentiary such as life planning, counselling and courses, as examples. Defence counsel also submitted that I had to consider the issue of parity with the sentences the other persons involved in this scheme received such as Mr. Andre Reid, Phillip Reid, Ms. Palin and Mr. Ramanathan. Defence counsel, in dealing with the impact of counterfeiting on society, stressed that, as with all crimes, counterfeiting costs society in many ways, however the cost the Bank of Canada is incurring for education and security costs is a sign of good governance and good banking and cannot all be laid at Mr. Bernard's feet. Counsel stressed that based on the graphs in the affidavit, there is a downturn in the circulation of counterfeit money and, when it was at its height, it had nothing to do with Mr. Bernard's scheme; further that we have no idea

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5 what percentage of the project money that was
seized can be attributed to Mr. Bernard's scheme.
Defence counsel submitted that I should consider
that Mr. Bernard did not cause a loss to
10 vulnerable or actual people, but to large scale
box stores. In considering Mr. Bernard's record,
defence counsel submitted that I should put some
perspective to the record in that there were no
15 frauds or history of this kind of crime I am
sentencing him for and also that several of the
entries are from when Mr. Bernard was a youth.
Defence counsel stressed that if I sentence Mr.
Bernard to four years on top of the seven and a
20 half years that he is currently serving, it would
"crush" Mr. Bernard. Defence counsel submitted
that, based on the letters filed as exhibits, Mr.
Bernard has learned from the time he has been in
25 custody, that he is anxious to come out and do
something with his life, he has a supportive
mother and that there is potential for Mr.
Bernard, who is still young, to do something with
30 his life. In reviewing the case law she filed,
defence counsel stressed that Mr. Bernard, who
the evidence shows was a distributor, not a

5 printer, of counterfeit money, is treated
differently by the Courts and that four years is
outside of the range for a distributor of
counterfeit money.

10 Analysis

It is helpful to remind myself of the governing
principles of sentencing set out in s. 718 of the
15 Criminal Code which lists the objectives a judge
should try to achieve in fashioning any sentence.
S. 718.1 sets out that it is a fundamental
principle of sentencing that any sentence imposed
be proportionate to the gravity of the sentence
20 and the degree of responsibility of the offender
before me. S. 718.2(b) sets out the principle of
parity of sentences to similar offenders for
similar offenses and s. 718(2)(c) sets out that,
25 where consecutive sentences are imposed, the
combined sentence should not be unduly long or
harsh. A Court must also always consider the
rehabilitative prospects of the offender before
30 them.

5 In this case I am satisfied that the sentencing objectives that dominate are:

- 10 (1) General deterrence with respect to the crime of passing counterfeit money, given the impact of such a fraud on society;
- (2) Specific deterrence to Mr. Bernard tempered by a sentence which must assist in the rehabilitation of a relatively youthful offender.

15 Circumstances of Mr. Bernard

Mr. Bernard was born February 11, 1983. He had just turned 23 when he was arrested March 13, 2006. He has been in custody since that date. Mr. Bernard is now 27 years old. Mr. Bernard was born in Canada. He was raised in Toronto and then moved to Brampton. He was raised by his mother and father. His father died of a heart attack when Mr. Bernard was 20. He has one brother named Chris. Mr. Bernard completed his grade 11 credits while in custody so far. According to the letter written to me by Mr. Bernard's mother, she spoke candidly of troubles Mr. Bernard had as a teenager and then particularly after his father died. Mr. Bernard

5 was also the victim of a life-threatening
stabbing five months after his father's death.
Both of these events set Mr. Bernard back and he
went down the wrong path. Mr. Bernard has a
10 young son, Nashawan, who is five years old. He
has been in custody for most of his son's life,
but to the extent he has been able, he tries to
be in touch with his son and have a role in his
life. According to defence counsel, this son is
15 a driving force in Mr. Bernard's life and one of
the reasons he wants to get his life in order.
Mr. Bernard's letter to the Court was forthright
in his desire to have another chance. Mr.
20 Bernard says he has changed and he wants to get
out of custody to make amends to his father's
memory, his mother and, most importantly, his
son.

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Aggravating Factors

The aggravating factors in this matter are:

- 30 (1) This was a planned and well-organized
scheme to defraud the public which extended
over a considerable period of time and over
a large geographic area;

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(2) There were victims of the crime, namely the large stores;

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(3) Mr. Bernard played a principal role in the scheme and how it was organized and carried out;

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(4) Mr. Bernard recruited young women, some he picked up from high school, and put them at risk of getting criminal records. Some did get criminal records for their involvement;

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(5) The motivation for the scheme was greed. Although it is not clear how much money Mr. Bernard made from the scheme, it is clear that, at its height in the fall/winter of 2005, there was a considerable amount of money made from the scheme;

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(6) Mr. Bernard does have a significant criminal record. In addition to his record filed as exhibit three, on June 14, 2007, Mr. Bernard was convicted of three counts of robbery, for which he received in August a sentence of six and a half years and two counts of using an imitation firearm for which he received one year for one count to run consecutively to the robbery sentence and one year consecutive but concurrent to the other use imitation firearm for a total of seven and a half years that, as I have said, he is currently serving;

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(7) Mr. Bernard's record goes back to 1997 when he was a youth up to 2004 and includes offenses of violence, theft and robbery, along with failures to comply.

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Mitigating Factors

The primary mitigating factors are as follows:

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- (1) The relative youth of Mr. Bernard at the time of the offenses;
 - (2) Mr. Bernard has expressed remorse in his letter to me and I accept that expression as genuine, notwithstanding the timing of it;
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 - (3) Mr. Bernard has had some difficulties in the past as expressed by his mother and himself. He appears to have some insight into how those difficulties affected his choices and appears to take responsibility for his choices;
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 - (4) I noted that there was no specific evidence presented at this hearing that Mr. Bernard was kept in the Provincial system unwillingly. I have no evidence that he consistently requested to go to a Federal institution to serve his sentence while awaiting trial on the other charges including the charges before me. The fact that Mr. Bernard has primarily been at a Provincial institution since his arrest in 2006, although considered by me, has not therefore had a great impact on my sentence.
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Range of Sentence/Parity/Totality

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The cases filed by both counsel are helpful, but, as always, it is clear that sentencing is unique to the facts of the case before me and the offender before the Court. It is a principle that arises from those cases that distributors of counterfeit money generally receive lesser sentences than the printers of counterfeit money.

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The issue of parity is a bit difficult to deal with in this case on a pure numbers of years sentenced analysis. The other persons involved in the conspiracy, who all pleaded guilty, all received various sentences from three years for Andre Reid to a conditional sentence for Ms. Palin, but there are so many factors that went into those final sentences, including other offenses, forming part of the whole package-- guilty pleas, cooperation with the police and testifying at trial--that it was not all that helpful to me.

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With respect to the issue of totality, as I understand the facts, on August 21, 2007 Mr.

5 Bernard was sentenced to seven and a half years
in custody for various offenses. He received
pre-trial credit of 35 months. Therefore, on
10 June 14, 2007, his actual sentence to be served
was 55 months or four years and seven months.
That is his sentence to be served that day, not
seven and a half years. By my rough calculation,
as of today he has served 32 months of that
15 sentence and there remains, not considering
mandatory release issues, a remaining sentence of
approximately 23 months. My understanding of the
case law (see R. v. Forst) is that I consider the
total sentence to which Mr. Bernard was subject
20 that remains unexpired at the time that I impose
my sentence when considering the totality issue.

Disposition

25 I have considered all of the above including the
fact that I think there is still good reason to
be hopeful for Mr. Bernard. I do not give up on
Mr. Bernard and I hope he is genuine in his own
30 hope to make a productive life for himself and
his family when he leaves custody. Mr. Bernard
does have family support which will be very

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important for him in the future. I have
therefore considered the rehabilitation prospects
of Mr. Bernard as positive in fashioning my
sentence. I have also considered the seriousness
10 of the offence of the conspiracy to defraud the
public, the elaborate scheme involved, Mr.
Bernard's role and Mr. Bernard's criminal record.
Lastly I have considered the issues of the issues
of parity and the principle of totality to ensure
15 that Mr. Bernard's sentence is appropriate and
not excessive, given the remainder of the
sentence he has left to serve.

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Considering all of the factors and the principles
of sentencing, I find a fit and just sentence in
all of these circumstances would be as follows:

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(1) 30 months in the penitentiary on count one
to run consecutively to the sentence Mr.
Bernard is currently serving;
- (2) A 30 day sentence on count four to run
concurrently with the sentence imposed on
30 count one and consecutively to the sentence
Mr. Bernard is currently serving.

I hereby certify the foregoing to be a true and accurate transcription of my verbatim reporting of the proceedings to the best of my skill and ability.

Catherine A. Champagne

Catherine A. Champagne
Certified Verbatim Reporter (CVR).
