
CANADA / JUDGMENT

R. v. Almond and Pandher

2006 BCSC 1706

COURT

Supreme Court of British Columbia

DECIDED

8 November 2006

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2006 BCSC 1706 R. v. Almond and Pandher

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Almond and Pandher,

2006 BCSC 1706

Date: 20061108

Docket: 23453

Registry: Vancouver

Regina

v.

Shawn Myaleikke Almond

and

Harjinder Singh Pandher

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Any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way.

Before: The Honourable Madam Justice Loo

Oral Reasons for Sentence

November 8, 2006

Counsel for the Crown

S. Smith

Counsel for the Accused Pandher

S. Andrews, as agent for S.R. Chamberlain, Q.C.

Place of Trial:

Vancouver, B.C.

- [1] THE COURT: The accused, Harjinder Pandher, was acquitted on one count of procuring, but convicted on one count of living off the avails of prostitution contrary to s. 212(1)(j). The co-accused, Shawn Almond, was acquitted on both counts.
- [2] The accused and the complainant dated from the summer of 2002 until October that year. He was her first boyfriend and she was madly in love with him. After she graduated from high school in the summer of 2003, she was having problems at home and tried to commit suicide. She was 18 years old. The suicide attempt was most likely a cry for help. She had problems with her mother and had left home and was living with her aunt and uncle. She had little self-esteem and no circle of friends. Following her suicide attempt, she was in the psychiatric ward for three days. During that time, she telephoned Mr. Pandher and asked for his help in finding a place to stay. He told her she could stay with him if she worked as a prostitute.
- [3] After she was discharged from the hospital, she was told by her uncle that she could no longer stay with them because of her suicide attempt. She called Mr. Pandher and asked him to come and pick her up because her uncle had told her to leave. He and Mr. Almond came by to pick her up and her things. They took her back to an apartment in Burnaby where she met L.M., a prostitute.
- [4] That evening on or about July 12, 2003 the complainant started work as a street prostitute. About a month later, Mr. Pandher encouraged her to try snorting cocaine. She became a cocaine addict. He supplied her with her cocaine each day. The complainant earned an average of \$800 a night working six days a week in Downtown Vancouver from July until on or about September 9, 2003. Throughout this time, despite her complaints, she had only a couch to sleep on in the apartment. Around the second week of September, Mr. Pandher paid to have her stay in a "junky" motel on Kingsway. Around the end of October, he moved her to an unfurnished apartment with only a foamy for her to sleep on, and a few dishes. She then began working as a street prostitute on Kingsway, earning an average of \$700 a night.
- [5] Each night the complainant worked, she had to call Mr. Pandher before a date; after a date telling him how much she had made; and to find out whether she was allowed to return home. Mr. Pandher kept all of her earnings except for \$20 a day. When she wanted to stop prostituting herself, he coerced her into continuing to prostitute herself by getting her to promise she would never leave him. She continued to be madly in love with him. She naively

believed that he was her boyfriend. She naively believed that he was saving the money for their future life together and for the further education she wanted to pursue. That was what he told her he was doing with the money.

- [6] The complainant stopped working for Mr. Pandher in December 2003 or January 2004, when she was shocked to learn that he had a girlfriend and that, according to him, he was not her boyfriend but just her pimp. When she demanded her money back, he told her he had spent it all. By my rough calculation, she gave him in excess of \$50,000.
- [7] The complainant continued working as a prostitute and continued to be a cocaine addict until April 2004.
- [8] I have her victim impact statement. In high school she volunteered with the Delta Police Force as part of her dream of becoming a police officer. She had planned to go to college until she became involved with Mr. Pandher. Her involvement with him destroyed what little self-esteem she had and pushed her into total depression. She now suffers nightmares, and panic and anxiety attacks when she is in certain parts of town. She avoids crowded places and is always looking over her shoulder. She avoids the normal social life of a person her age. She has moved out of the province in an effort to make a new start for herself.
- [9] Mr. Pandher has no prior record. He is 22 years old. He was 19 years old during most of the relevant time. Since June 2003, he has worked as a subcontractor for Rain City Exterior Wall Systems. According to a letter from his uncle, he has been offered a new job as a delivery driver for a new distribution company his uncle has started. He also has plans to help his uncle build a house in Pemberton, a project that will last approximately a year.
- [10] Living off the avails of prostitution is a serious offence and subject to a term of imprisonment for up to 10 years. Crown seeks a prison term in the range of 2 to 3 years. Mr. Pandher seeks a conditional sentence to be served in the community of 2 years less a day.
- [11] Crown relied on 13 cases. I will consider the cases that are similar to the circumstances of this case.
- [12] In *R. v. Foster* (1984), 13 C.C.C. (3d) 435 (Alta.C.A.), the accused was convicted of living off the avails of prostitution. The offence lasted for just two days and he earned something over \$200. The accused had no prior record of any related offences. The Alberta Court of Appeal upheld the sentence of 2 years and 6 months, which it considered as being at the low end of the range of sentences for this type of offence.
- [13] In *R. v. Chizmazia*, [1990] B.C.J. No. 1112 (QL) (C.A.), the complainant was a 16 year old group home runaway and borderline retarded person. The accused, who was a few years older, persuaded her to become a prostitute. She earned \$3,000 or more working for him. The accused had a record, but what it consisted of is not clear. The trial judge imposed a sentence of 3 years. The sentence was reduced on appeal to 2 years less a day and a term of probation for 1 year.

- [14] In *R. v. Brown*, [1991] A.J. No. 361 (QL) (Prov. Ct.), the accused pleaded guilty to compelling a 17 year old to engage in prostitution for about three weeks. His prior record was unrelated, but included violence and theft. He was sentenced to 2 1/2 years imprisonment.
- [15] In *R. v. Glasgow*, [1993] O.J. No. 1502 (QL) (Gen. Div.), an accused was convicted of living off the avails. The time period is referred to as "a relatively short one." The accused had an "unrelated and minimal" criminal record. The sentence imposed was 3 years.
- [16] In *R. v. Krisco*, [1995] A.J. No. 104 (QL) (C.A.), the 19 year old accused with no prior relevant record pleaded guilty to procuring a mature woman to become a prostitute and living off the avails. He was sentenced to 2 years less a day, concurrent on each count. The Alberta Court of Appeal increased the sentence for each offence to 3 years to run concurrently.
- [17] In *R. v. Salmon*, [1998] O.J. No. 3610 (QL) (Gen. Div.), the accused was convicted of living off the avails and exercising control. He had a "short record" of assaults. He was 21 years old at the time of the offence and the complainant was a 16 year old who was "hopelessly in teenage love" with him. He took advantage of her and was her pimp for some four months. The sentence was 2 years and 6 months on each count.
- [18] In *R. v. Badio*, [1998] O.J. No. 3961 (QL) (C.A.), the Ontario Court of Appeal found a 2 year sentence for living off the avails of prostitution a fit sentence.
- [19] In *R. v. Bennett*, [2004] O.J. No. 1146 (QL) (C.A.), there were three complainants. In relation to one of the complainants, the accused was convicted of controlling under s. 212(1)(d) and living off the avails. The complainant was 16 years old and had been a prostitute since she was 11. The accused denied acting as her pimp and living off the avails of her prostitution. He was found to have been her pimp for 18 months. The Ontario Court of Appeal noted that, viewed in isolation, a sentence of 2 1/2 years was appropriate. The global sentence in respect of all three complainants was reduced on appeal from 8 years to 6 1/2 years imprisonment.
- [20] While there is a wide range of sentences for prostitution-related offences, these cases indicate that the range is between 2 and 2 1/2 years. Mr. Chamberlain for Mr. Pandher points out that none of the cases on which Crown relies have considered a conditional sentence under s. 742.1. That is either because the cases were decided prior to September 3, 1996, or the sentence imposed was greater than 2 years.
- [21] The defence relies on two cases that have considered conditional sentences for a similar offence: *R. v. Gosselin*, [1999] N.S.J. No. 136 (QL) (Prov. Ct.) and *R. v. Julson*, [2001] B.C.J. No. 343 (QL) (C.A.).
- [22] In *R. v. Gosselin*, a decision of the Nova Scotia Provincial Court, the accused pleaded guilty to five prostitution offences. He operated escort services that offered prostitution services. He was sentenced to a conditional sentence of 2 years less a day, probation for 3 years, and a \$15,000 fine.

- [23] *R. v. Julson* is a decision of the B.C. Court of Appeal. Mr. Justice Hutchison of this court convicted the 19 year old accused of living off the avails of prostitution and exercising control in order to compel a person to engage in prostitution. He had a youth record. On July 25, 2000 he was given a conditional sentence of 18 months. The Crown appealed. Based on the accused's youth record and breach of a term of his conditional sentence, the Court of Appeal varied the sentence, gave him credit for the time served on his conditional sentence, which I calculate to have been 6 months, and imposed a sentence of incarceration for 9 months followed by 1 year probation.
- [24] There are a few reported superior or appellate court cases that discuss the appropriateness of a conditional sentence for prostitution offences under s. 212.
- [25] In *R. v. Barrow* (2001), 54 O.R. (3d) 417, the Ontario Court of Appeal found that the accused had been properly convicted of living off the avails of prostitution. The accused operated an escort agency which she advertised in a newspaper and on her website. She knew that on occasion the escorts would engage in sexual activity with the clients. However, she believed that she was acting legally. She did not coerce or pressure the escorts to engage in sexual activity, but counselled them and was supportive of them. The accused served about 5 days of a 10 month prison sentence and had been on bail for some 2 1/2 years pending appeal. Mr. Justice Rosenberg for the Ontario Court of Appeal, indicated that a conditional sentence could be appropriate, but decided that a fine of \$2,000 on each of five counts was appropriate in the circumstances.
- [26] In *R. v. Lukacko* (2002), 59 O.R. (3d) 58 (C.A.), the accused operated an escort agency for several years. The escorts engaged in acts of prostitution. The escorts joined the agency of their own free will. The accused used no violence or intimidation. He was convicted of living off the avails and exercising direction for the purpose of aiding prostitution. He was sentenced to imprisonment for 2 years less a day. Mr. Justice Rosenberg for the Ontario Court of Appeal stated (at ¶ 57, 58 and 60):
- [57] In seeking a conditional sentence, the appellant relies upon this court's recent decision in *R. v. Barrow* (2001), 54 O.R. (3d) 417, 155 C.C.C. (3d) 362 (C.A.). In *Barrow*, this court indicated that a conditional sentence could be appropriate in living off the avails offences in the escort agency context where there was no evidence of coercion and violence.
- [58] There are important differences between *Barrow* and this case. The time frame of the offences in *Barrow* was only a few months and the court found that the accused believed that she was acting legally. In contrast, the appellant's conduct extended over many years and the evidence showed that the appellant knew his conduct was illegal. He took elaborate steps to try and shield himself from liability for the acts of prostitution that he knew his employees were performing.
- [60] The length of time that the appellant operated his illegal enterprise and the scale of the operation justified a substantial sentence of imprisonment notwithstanding that the appellant had no prior criminal record. The trial judge could also properly refuse to impose

a conditional sentence because of the serious aggravating factors that did not exist in the Barrow case. Having regard to the fresh evidence and the lengthy period of time that the appellant has spent on bail pending trial and pending appeal, I would reduce the sentence to 12 months' imprisonment.

- [27] In Mr. Pandher's case, there are a number of factors that militate both for and against a conditional sentence. This is his first offence and he is gainfully employed. On the other hand, the aggravating factors are these: the offence took place over a period of around five months; he took advantage of the complainant and exploited her knowing that she was troubled and vulnerable; he caused and contributed to her becoming a cocaine addict and dependent on him for drugs; he selfishly deceived her into believing that the money she earned from prostituting herself would be for their future and her education; when she wanted to stop being a prostitute, he coerced her at least two or three times to continue working the streets; there appears to be no acknowledgement of responsibility on Mr. Pandher's part. I found his evidence lacked credibility. His statement that he is guilty of taking advantage of her and using her for sex is an understatement. He has almost ruined, if not, ruined a life.
- [28] In *R. v. Bracey*, [1996] B.C.J. No. 367 (QL) (C.A.), the British Columbia Court of Appeal said that for this kind of offence, the principle of rehabilitation will "not loom large." That suggests that the primary objectives of sentencing for living off the avails of prostitution, commonly called pimping, are denunciation and deterrence.
- [29] Society abhors and condemns pimps. In *Bracey*, the Court of Appeal referred to the activities of a pimp as "among the lowest that a man can commit". "Parasitic" is another word that is frequently used, along with abusive, degrading, and exploitative.
- [30] I can do no better than repeat the statement of Mr. Justice Locke of the Ontario Court of Justice in an unreported January 15, 1986 decision, *R. v. Willis*, that is quoted in *R. v. Salmon* (at ¶ 5) and *R. v. Glasgow* (at ¶ 3):

Pimps are not harmless. They should never be perceived by the naive as being harmless. They provide no beneficial service whatever. For money, pimps can enslave prostitutes. They control and dominate prostitutes both in their professional and in their personal lives. They enslave the females upon whose earnings they prey. They do that by exploiting the survival needs of the homeless and the unloved.

Those who live on the avails of prostitution are the lepers of both the underworld and the decent world. The money they leach from others attracts no tax. Pimps directly contribute to human degradation, that is why they are perceived by those who know both in the criminal society as well as in the decent world as being on a level with child molesters.

[31] Mr. Pandher seeks a conditional sentence of 2 years less a day that would enable him to work. He would to that extent have his liberty, which is more than what he allowed the complainant. I have considered s. 742.1 and conclude that a conditional sentence, in the circumstances of this case, will not meet the objectives of denunciation and deterrence.

[32] Accordingly, I sentence Mr. Pandher to a term of imprisonment for 12 months.

"L.A. Loo, J."

The Honourable Madam Justice L.A. Loo

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