

CANADA / JUDGMENT

R. v. Anderson

2023 BCCA 449

COURT

British Columbia Court of Appeal

DECIDED

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2023 BCCA 449 R. v. Anderson

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Anderson,

2023 BCCA 449

Date: 20231018

Docket: CA45152

Between:

Rex

Respondent

And

Debbie Arlene Anderson

Appellant

Before:

The Honourable Mr. Justice Willcock

The Honourable Mr. Justice Butler

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated

March 8, 2018 (sentence) (R. v. Anderson, 2018 BCSC 651,

Vancouver Docket 26322-2).

Oral Reasons for Judgment

The Appellant, appearing in person:

D.A. Anderson

Counsel for the Respondent:

R. Leong

S. Manery

Place and Date of Hearing:

Vancouver, British Columbia

October 18, 2023

Place and Date of Judgment:

Vancouver, British Columbia

October 18, 2023

Summary:

This is an appeal from a sentencing order. The appellant was convicted of four offences: making false statements on tax returns, income tax and GST evasion, and counselling fraud. She was sentenced to 4.5 years in custody, plus fines. A DNA collection order was also issued. The appellant contends, among other things, that the sentence imposed is unfit and disparate from sentences imposed in similar cases, and that the sentencing judge erred in granting the DNA order. She seeks an order reducing her custodial sentence and vacating the DNA order. Held: Appeal dismissed. Each of the appellant's arguments lack merit. The sentencing judge did not impose a sentence that was demonstrably unfit. Nor did his sentence offend the parity principle. Further, the appellant has not established any error in the sentencing judge's decision to grant the DNA order.

WILLCOCK J.A.:

Introduction

[1] On November 3, 2017, the appellant, Debbie Arlene Anderson, was convicted of four offences, for reasons indexed at 2017 BCSC 2585. The four offences were:

Count 1: Making false statements on tax returns, contrary to s. 239(1)(a) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) for the tax years 2005 and 2006.

Count 2: Income tax evasion, contrary to s. 239(1)(d) of the Income Tax Act for the tax years 2005, 2006 and 2007.

Count 3: GST evasion, contrary to s. 327(1)(c) of the Excise Tax Act, R.S.C. 1985, c. E-15.

Count 4: Counselling fraud, contrary to s. 464 of the Criminal Code, R.S.C. 1985, c. C-46 and s. 380 of the Criminal Code, between December 31, 2001, and August 26, 2010.

- [2] On March 8, 2018, Ms. Anderson was sentenced by the judge to a custodial sentence totalling 4.5 years, plus fines amounting to \$35,026.71, and was made subject to a DNA collection order. Reasons for sentence are indexed at 2018 BCSC 651. As a conviction was entered on Count 2, Count 1 was conditionally stayed pursuant to the Kienapple principle. On Count 2, the sentence was 12 months, concurrent to Count 3 and consecutive to Count 4, plus a fine of \$22,689.90 (being 100% of the taxes evaded). On Count 3, the sentence was 12 months, concurrent to Count 2 and consecutive to Count 4, plus a fine of \$12,336.82. On Count 4, the sentence was 3.5 years (42 months), consecutive to Counts 2 and 3.
- [3] Ms. Anderson appeals her custodial sentence, and the sentencing judge's issuance of the DNA collection order.
- [4] Ms. Anderson seeks an order from this Court reducing her sentence to time served, and an order that the DNA order be vacated.
- [5] For the following reasons, we are all of the view that this sentence appeal should be dismissed.

Background

- [6] Ms. Anderson's charges arose from her involvement as an "educator" with the Paradigm Education Group ("Paradigm") over a considerable period of time. Paradigm promulgated tax theories which asserted that it is possible to structure one's affairs so as to avoid taxpaying obligations completely.
- [7] Ms. Anderson was involved with Paradigm or was teaching Paradigm-related tax evasion theories from 2001–2010. She created promotional materials for Paradigm, sold Paradigm's educational materials, and provided instruction to individuals and businesses. Ms. Anderson signed "contracts for hire" with approximately 100 Paradigm students, who paid her for her services.
- [8] In the 2005–2007 taxation years, Ms. Anderson failed to report a net income of at least \$165,731.45, and failed to remit GST on the services she provided. She evaded federal income tax in the amount of \$22,699.90, and GST payable in the amount of \$12,336.82.
- [9] Ms. Anderson appealed her conviction. Her conviction appeal was dismissed by this Court on April 17, 2019, for want of prosecution. Her application to reinstate her conviction appeal was also dismissed by this Court, with reasons for judgment indexed at 2021 BCCA 101.
- [10] At trial, the Crown sought an overall custodial sentence of 54 months, consisting of one-year concurrent sentences for the income tax and GST evasion offences, and a 3.5-year sentence for the counselling fraud offence, to be served consecutive to the sentences for the tax evasion offences. The Crown also sought mandatory fines equal to 100% of the taxes evaded.

- [11] Ms. Anderson did not submit a sentencing position. Her sentencing submissions focussed on the form and validity of various documents, which she argued had no authority over her. She opposed the DNA order.

Reasons of the Sentencing Judge

- [12] The sentencing judge found the appellant to have occupied a senior role in the Paradigm organization, and to have been committed to its tax evasion strategy:
- [23] Evidence called by Crown at trial irrefutably established Ms. Anderson had contracts with Paradigm to provide services as an educator and in that capacity, promoted and sold its theories, documents and services; and from these activities, generated considerable profits from her activities.
- [24] The Crown's evidence proved Ms. Anderson's profits were taxable income and that GST was payable on the products and services she sold as a Paradigm educator.
- [25] What perhaps was most striking in this case was the level of commitment that Ms. Anderson's had to Paradigm theories, even in the face of her admitted awareness at material times that they had been repeatedly rejected by courts across Canada.
- [13] He found Ms. Anderson's offences were planned, deliberate, and profit driven, and that at all material times, Ms. Anderson was aware that the tax theories she was promoting were wrong in law.
- [14] In the sentencing judge's view, specific and general deterrence and denunciation were important given the planned and deliberate nature of the offences and her lack of remorse. He also found denunciation to be important given the fact that Ms. Anderson's offences were part of an "organized pseudo-legal commercial theory" ("OPCA"), as described in *Meads v. Meads*, 2012 ABQB 571.
- [15] With respect to mitigating circumstances, the sentencing judge noted that Ms. Anderson did not have a criminal record, but he accorded that factor less weight than it might otherwise have, considering the lengthy period over which Ms. Anderson committed her offences. The sentencing judge also stated that Ms. Anderson's employment history and community contributions could be a relevant consideration, but noted that Ms. Anderson had not reported any income since 2006.
- [16] On several occasions, the sentencing judge noted that Ms. Anderson had not expressed any remorse or acknowledged the harm that her offences caused the community and her students, nor had she indicated that she would have no further part in promulgating tax-avoidance theories. He explicitly stated that a guilty plea and genuine remorse could be mitigating factors, but the lack of remorse or a guilty plea were not aggravating factors.
- [17] Several aggravating factors were submitted by the Crown and accepted by the sentencing judge:

- [97] The Crown submitted the following should be considered aggravating factors, which I find acceptably proven, through accepted evidence at trial or logically inferable from the evidence:
1. The planned and deliberate nature of the offences.
 2. Their having occurred over an extended period and in multiple tax years.
 3. The offences being based on an organized pseudo-legal commercial argument, targeting the trust relationship on which the taxation system is built between the government and the Canadian citizens.
 4. The prominent and essential part she played in a large organization, organized to promote and teach a fraud on the Canadian government.
 5. Continuing to commit offences, in spite of her knowing Paradigm followers were being pursued both civilly and criminally in court.
 6. Her continuing throughout these proceedings to implement and advance Paradigm OPCA theories and variations of them, such as her OPCA officer theory. I note this despite my cautions from early on in the proceedings, that her Paradigm OPCA theories do not raise for her a tenable line of defence and that it has been rejected by multiple courts, including me, at an early stage of the proceedings; and continuing to do so even when the only issue was the determining of a fit sentence.
 7. Her disrespect at times during proceedings. The offences having put large amounts of public funds at risk and giving rise to significant enforcement expenses.
- [98] Considering the proven facts and history of the case, I found those tenable aggravating factors.
- [18] At the time of Ms. Anderson's sentencing, ten other Paradigm educators had been convicted and sentenced. The sentencing judge considered the sentences imposed in the following cases, some of which are not published: *R. v. Porisky*, 2016 BCSC 1757 [Porisky #2]; *R. v. Kovaluk and Williams*, (22 November 2012), Ottawa 11-30468 (Ont. S.C.J.); *R. v. Blerot*, (10 March 2014), Yorkton Crim. No. 2136 (Sask. Q.B.), aff'd 2015 SKCA 69; *R. v. Siggelkow*, (1 October 2014), Grand Prairie 131117566P1 (Alta. Q.B.); *R. v. Millar*, 2017 BCSC 402; *R. v. Lawson*, 2016 BCSC 2446, aff'd 2019 BCCA 290; *R. v. Eddy*, (4 February 2016) Edmonton 120435839 (Alta. Q.B.); *R. v. Stanchfield*, (23 November 2015), Vancouver 886-1 (B.C.P.C.); *R. v. Lewry*, (26 October 2015), Moosejaw (Sask. Q.B.); and *R. v. Baudais*, 2014 BCSC 2161.

- [19] He concluded that Ms. Anderson's circumstances were more analogous to the offenders who were sentenced at the upper end of the range, such as Mr. Porisky, who was the founder of Paradigm. In 2012, he was sentenced to 4.5 years for counselling fraud and tax evasion, of which 3 years were for counselling fraud. But following an appeal and retrial in 2016, his sentence was quashed and a 5.5-year sentence was imposed consisting of four years for counselling fraud and 18 months for tax evasion offences: Porisky #2.
- [20] The sentencing judge also noted that Ms. Anderson's circumstances were distinguishable from several Paradigm educators who received lesser sentences. He distinguished Ms. Anderson's circumstances from those of Mr. Blerot, because Ms. Anderson had more students and had risen to the level of instructing other Paradigm educators. He found that Ms. Anderson's circumstances were also distinguishable from those of Mr. Lawson and Mr. Baudais. Mr. Lawson was a stay-at-home father with significant health problems and childcare responsibilities. Mr. Baudais's wife was ill and required significant assistance, and Mr. Baudais expressed genuine remorse for his actions.
- [21] The sentencing judge accepted the Crown's proposed sentence, stating:
- [166] Considering all of the evidence adduced in the trial, the dearth of mitigating factors, the significant proven aggravating factors, the persistent pursuit of tax evasion theories which I find motivated by money not by an altruistic impulse, considering the gravity of the offences and Ms. Anderson's responsibility as a key promoter of Paradigm tax evasion theory, and considering the deliberation and planning her activities demanded, the need for strong denunciation and both general and specific deterrence, there is no question that a significant jail sentence is required.
- [167] Considering also sentence parity, I find the sentence proposed by the Crown falls well and justly within the appropriate range, and considering the totality of the facts and circumstances, a fit one, and appropriately less than the sentence imposed on Russell Porisky.

DNA Order

- [22] The sentencing judge granted the DNA order sought by the Crown, providing the following reasons:
- [140] Ms. Anderson has never acknowledged any wrongdoing or expressed any remorse. She continued to give false counsel, even when the law had spoken on the illegality and criminal nature of her activities, the harmful consequences for her students and the community as a whole. Such defiance and disrespect for the law cause some concern that Ms. Anderson may on a release re-engage in similar behaviour.

- [141] Ms. Anderson has no criminal record before the court now, which argues to some extent against her doing so, but considering the unintrusive nature of the sampling and the value of the DNA databank overall for law enforcement, and for the community as a whole, I find it is in the best interests of the community that the DNA order be granted, with a sample to be provided before Ms. Anderson's release.
- [143] Ms. Anderson argued her privacy interest. Of course Ms. Anderson is not a threat to society in the usual sense, for example, where a person is convicted of physical-harm offences where DNA may be deposited around a crime scene. The privacy aspect should be kept in balance and proportion, in so far as privacy is concerned. A person's DNA of course is central to their being, but the samples are taken for the purposes of future crime investigation and identification, and are not broadly disseminated. The samples form part of a secure data base accessible by police investigators when authorized. The test itself is not intrusive. I find my reliance on Awasis apt and my reasoning conforms with the law as it now is.

Issues

- [23] In her statement on sentence, and at the outset of the hearing, the appellant continued to seek to challenge her conviction. It is not open for us to revisit the conviction. In relation to the sentence, the appellant has identified issues in her statement and expanded upon them in submissions. She says:
- 1) there was no evidence before the trial judge to support the conclusion she played a prominent role in the Paradigm organization, in her words, that she was "second in command" of Paradigm;
 - 2) what she was proven to have done was "not even close to what others who received shorter sentences did";
 - 3) a DNA order should not have been made because such orders are not appropriate for the type of offence she committed;
 - 4) there was no proof of the volume of tax dollars lost to the government, a factor weighed in her sentencing;
 - 5) there was inadequate consideration of the mens rea or mental element of the offence; and
 - 6) the reasons for sentencing do not contain a sufficient factual foundation for the sentence.
- [24] In her statement, she also takes issue with the fitness of her sentence generally, and the sentencing judge's references to her lack of remorse.

Analysis

Second in Command

- [25] There is no merit in the argument that the evidence did not support the sentencing judge's description of the appellant's role in the Paradigm organization. He clearly described the evidence upon which he relied in coming to the conclusion that the appellant was a "senior person". For example:
- [43] I was left with an overall impression, a strong one, of a quite senior person in the organization who was giving instructions and encouragement to less experienced educators on how to improve sales and profitability.
- [52] Striking in the evidence was how well organized the Paradigm business and Ms. Anderson's part of it was. You certainly could not say it was disorganized. It was indeed highly organized. Financial records, invoices, receipts, etc., were kept. Everything was organized. Ms. Anderson's part in the Paradigm organization was well documented, her signature, invoicing, the documenting of Paradigm's share of her billings populating much of the documentation. Also documented was Ms. Anderson's interest in improving the marketing of the system.

Parity and Fitness

- [26] Ms. Anderson alleges that her sentence "falls outside the range of sentences imposed on other men and women who have been convicted of the same charges". In her statement, Ms. Anderson submits that her sentence was "74.2% higher than the average" sentence imposed, and "[t]here was no valid evidence supported [sic] aggravating factors to justify this discrepancy."
- [27] In our view, the difference between Ms. Anderson's sentence and the sentences imposed on other Paradigm educators is explained by important differences in the offenders and the nature of their offences. Ms. Anderson's reliance on a mathematically determined average sentence ignores the well-known principle that sentencing is an individualized process which makes some amount of disparity inevitable: *R. v. Payne*, 2007 BCCA 541 at para. 25; *R. v. Lacasse*, 2015 SCC 64.
- [28] There was evidence to support the sentencing judge's conclusion that Ms. Anderson's personal involvement was more analogous to offenders at the upper end of the sentencing range in the sentencing cases to which he referred at length, including the decision in *Porisky #2*. Ms. Anderson signed contracts with over 100 Paradigm students, took on a key and essential role in the Paradigm organization, and did not benefit from any mitigating factors capable of justifying a lesser sentence that are referred to in some of the other cases that were before the sentencing judge.

[29] The sentencing judge assessed the gravity of Ms. Anderson's offences as serious and her degree of responsibility as high. He reviewed the statutory provisions that govern sentencing, and determined that a significant custodial sentence was necessary to give effect to the sentencing principles of deterrence and denunciation. We are of the view that the judge did not impose a sentence that was demonstrably unfit. Nor did his sentence offend the parity principle.

The DNA Order

[30] Ms. Anderson argues the sentencing judge erred by granting the Crown's request for a DNA order. She asserts her privacy interest, and disputes that such an order was appropriate in her case.

[31] Counselling fraud is, in the circumstances of this case, a secondary designated offence under s. 487.04 of the Criminal Code. When prosecuted by indictment, s. 487.051 applies. It provides in part:

- (3) The court may, on application by the prosecutor and if it is satisfied that it is in the best interests of the administration of justice to do so, make such an order in Form 5.04 in relation to
 - (b) a person who is convicted, discharged under section 730 or found guilty under the Youth Criminal Justice Act or the Young Offenders Act, of an offence committed at any time, including before June 30, 2000, if that offence is a secondary designated offence when the person is sentenced or discharged.

In deciding whether to make the order, the court shall consider the person's criminal record, whether they were previously found not criminally responsible on account of mental disorder for a designated offence, the nature of the offence, the circumstances surrounding its commission and the impact such an order would have on the person's privacy and security of the person and shall give reasons for its decision.

[32] In *R. v. Lawson*, 2019 BCCA 290, this Court canvassed the purpose and effect of a DNA order in the case of another Paradigm educator. The Court held that the offender's heightened interest in informational privacy, and their corresponding aversion to a DNA order, could not be used as a basis on which to grant the order: *Lawson* at paras. 31-38. The offender's heightened interest in privacy may properly be weighed as a factor weighing against the granting of a DNA order, but only where there is something in the circumstances of the case that take it out of the ordinary. In *Lawson*, the offender's particular preference for "keeping the state at arm's length" was not sufficient: *Lawson* at paras. 39-40.

- [33] The appellant's argument that DNA evidence has no relevance to her case because her offences were "a paperwork process merely an opinion and an interpretation of income act definitions of taxable income versus non-taxable income on documents" has been rejected by this Court: *Lawson*. Similar arguments with respect to the use and effect of DNA and in relation to secondary designated offences were rejected in *R. v. Awasis*, 2009 BCCA 134.
- [34] Ms. Anderson also submits that a DNA order was not in the best interests of the administration of justice because she did not have a prior criminal record, and, therefore, there was "no suggestion that she would commit future offences". The sentencing judge directly addressed this argument in his reasons, where he stated that "Ms. Anderson has no criminal record before the court now, which argues to some extent against her [re-engaging in criminal behavior]". Despite Ms. Anderson's lack of a criminal record, the sentencing judge found that her lack of remorse and general defiance and disrespect for the law raised concerns about whether she may re-engage in similar behaviour.
- [35] We are all of the view that Ms. Anderson has not established any error in the sentencing judge's decision to grant the DNA order.

Tax Losses

- [36] In our view, there is no merit to the argument that the sentencing judge's findings with respect to tax losses caused by the Paradigm scheme or Ms. Anderson's personal involvement in the scheme were unsupported by evidence.
- [37] The evidence is canvassed at paras. 56-59 of the sentencing reasons and again at paras. 82-84. There is no basis to challenge the judge's conclusion, at para. 59, that the evidence in support of the Crown's calculation of lost federal income tax and GST in this case was "well established" on the evidence at trial.

Mens Rea

- [38] Nor are we of the view that there is any merit in the contention that the sentencing judge erred in failing to address the appellant's knowledge that she was counselling the commission of an offence. That question primarily relates to the grounds for conviction. To the extent that knowledge of the wrongfulness of the acts which constitute the offence may be weighed in addressing moral culpability, the appellant's knowledge was weighed by the sentencing judge. The sentencing judge expressly concluded:
- [91] Ms. Anderson does not have a criminal record. This is her first conviction. The weight to be given to that is diminished, however, by the lengthy period over which she committed the index offences, while knowing the illegality of her actions.

[Emphasis added.]

Lack of Remorse

[39] In her statement, the appellant further takes issue with the sentencing judge's consideration of her lack of remorse. She is correct that it is an error to treat a lack of remorse as an aggravating factor in sentencing, as this Court has previously held: *R. v. Zeek*, 2004 BCCA 42 at para. 24; *R. v. Fraser*, 2009 BCCA 179 at para. 18. The sentencing judge appreciated that fact, and expressly considered the lack of remorse in assessing Ms. Anderson's risk of reoffending and in determining the weight that should be given to the sentencing objectives of deterrence and rehabilitation. It is not an error of law to do so: *R. v. Smith*, 2022 BCCA 405 at paras. 34-35.

Findings of Fact

[40] Finally, we are of the view the appellant has not demonstrated any error or omission in the reasons for judgment that would justify appellate intervention.

Disposition

[41] For these reasons, we dismiss the appeal.

"The Honourable Mr. Justice Willcock"

"The Honourable Mr. Justice Butler"

"The Honourable Mr. Justice Abrioux"

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