

CANADA / JUDGMENT

R. v. Jubbal

2021 BCSC 851

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Supreme Court of British Columbia

DECIDED

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2021 BCSC 851 R. v. Jubbal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jubbal,

2021 BCSC 851

Date: 20210401

Docket: 67343-5

Registry: Chilliwack

Regina

v.

Ripy Kaur Jubbal

Karmjit Singh Tiwana

Before: The Honourable Mr. Justice Ball

Oral Reasons for Sentence

(Re Accused Jubbal)

Counsel for the Crown:

L.M. Winn, Q.C.

Counsel for the Accused, Ripy Kaur Jubbal:

A.A. Goldin

Place and Date of Hearing/Trial:

New Westminster, B.C.

September 3, October 13 and

December 4, 2020

Place and Date of Judgment:

New Westminster, B.C.

April 1, 2021

- [1] THE COURT: These are oral reasons for judgment on the sentencing of Ripy Kaur Jubbal. As with any oral reasons, I reserve the right to edit them prior to their reproduction to correct grammatical or misspeaking errors.
- [2] On March 15, 2019, about a month before jury selection, Ms. Jubbal pleaded guilty to six amalgamated counts on which she had been jointly charged with her spouse, whose sentencing took place on June 24, 2020. The six counts involve fraudulent use of credit cards and/or credit card data or information, and were actually distilled from an original indictment which included 22 counts. Mr. Tiwana had no criminal record and was, by agreement with the Crown, sentenced to a conditional sentence order of two years, less a day.

Circumstances of the Offences

- [3] Each of the counts involve, as victims: banks; near banks; credit-granting institutions; private individuals who were customers of those institutions; and other businesses. The Crown is seeking a standalone restitution order with respect to one count in the amount of \$6,712.88, which was sought against both accused, Mr. Tiwana and Ms. Jubbal, for the credit of B.R., a travel agent employee. The travel agent merchant, and employee of that merchant, had sold airline tickets to the accused who was using false information. As a result, the travel agency was, consistent with the agreements for the use of credit cards by such merchants, back-charged for the amount of the tickets. The individual employee who sold those tickets to the accused and who had her employment placed in jeopardy, as a result, was required to pay the ticket back-charge personally. She has borrowed the money to do so at interest and continues to pay that debt, with interest.
- [4] The sentencing position of the Crown is that Ms. Jubbal be sentenced to 30 months in custody, given her extensive related criminal record, which will be discussed further in these reasons. The Crown's position has been consistent in all discussions before the plea and on sentence with these offences, in discussions with the representatives of Ms. Jubbal.
- [5] The Crown and Ms. Jubbal entered into an Agreed Statement of Facts filed as an Exhibit herein, as follows:

1. From September 23rd, 2016 to January 25th, 2017, Ripy JUBBAL and Karmjit TIWANA were responsible for 345 fraudulent credit card purchases or services acquired, both completed and attempted on 12 different credit cards that amount to slightly over \$80,000.00 in fraud.
2. The identities of 19 different victims were used to open fraudulent accounts and or credit card numbers were gathered and used for online purchases.
3. The credit cards were assigned by Financial Institutions to individuals who themselves reported that they have been victimized by identity theft.
4. JUBBAL and TIWANA used the victims' names or personal identification for their own personal financial benefit.
5. The fraudulently obtained credit cards were used at multiple businesses.
6. Consequently, when the fraudulent use was discovered by the Financial Institutions, the businesses incurred chargeback for fraudulent purchases. This consequence arises from the contractual agreement that the financial institutions have with businesses for credit transactions.
7. JUBBAL and TIWANA targeted the same business with different credit cards and account names at times.
8. On January 25th, 2017 Ripy JUBBAL and Karmjit TIWANA were both arrested at their residences located at 112-33545 Rainbow Ave while members of the Abbotsford Police executed search warrants for their residences and storage locker.
9. As a consequence of the search, police found the following:
 - a. the fraudulently purchased property in the residence and storage locker.
 - b. Stolen property from a robbery, a break and enter, theft from auto and mail theft.
 - c. Physical documents, receipts and notebooks containing detailed lists of victims' personal information and credit cards.
 - d. the physical documents included a photocopy of a British Columbia driver's licence that was stolen from an [auto] theft in Abbotsford. The falsified driver's licence was that of an identity fraud victim. The driver's licence was altered with Ripy JUBBAL's face imported into the licence and stamped, signed and notarized with a fraudulent stamp and signature of a Notary Public from Abbotsford.
10. Ripy JUBBAL and Karmjit TIWANA fraudulently used payment card data from the following financial institutions: American Express; CIBC; President's Choice Financial; TD Bank Visa and Walmart.

- [6] The Agreed Statement of Facts also included the following information. There was a list of 27 victims affected by the fraudulent use of credit card data which was admitted by this accused and provided to the Court by Crown counsel. Losses incurred by financial institutions were also admitted as follows:
1. American Express in relation to the names of three different cardholders in the respective amounts of \$35,592.51, \$11,987.94, and \$3,059;
 2. CIBC Visa, in relation to the names of six individuals were admitted in the amounts of \$2,297.72, \$4,562.45, \$574.19, \$9,398.40, \$2,160.30, and \$55.93;
 3. President's Choice Financial MasterCard in relation to the name of one individual in the amount of \$726.11;
 4. TD Bank in relation to the name of one individual of \$86.61; and
 5. Walmart MasterCard in relation to the name of one individual in the amount of \$4,915.44.
- [7] Ripy Jubbal repeatedly posted on Facebook that she was making purchases of attractive goods such as fashionable women's shoes, which she was advertising for sale to customers. She also posted on Facebook that she was travelling to the island of Fiji, a trip that was paid for with stolen credit card data used to fraudulently purchase tickets for the flight to that island.
- [8] On December 31, 2014, January 30, 2015, and February 4, 2015, the two accused obtained cheques from businesses, which had been the subject of break-ins, and the cheques were located in the residence of these accused.
- [9] On March 22, 2016, Ripy Jubbal posted online a picture of a leased BMW automobile, which she had leased and made payments using fraudulently obtained payment card data from an individual, also referred to in the indictment herein.
- [10] The Agreed Statement of Facts, which I have reviewed, includes details of 345 transactions fraudulently conducted or attempted by the accused over a period of five months, with a value of over \$80,000. During the search of the premises of the accused, pursuant to a search warrant, a large number of items that support the fraudulent use of credit card data, as well as stolen personal information, were located and catalogued by the police. During the course of this sentencing hearing, Crown counsel read in the details of each individual occurrence, including the financial details and the parties involved. None of the facts so presented by Crown counsel were disputed in any way.

Circumstances of the Offender

- [11] The offender, Ripy Jubbal, was 47 years old when the plea was entered in this case. She was born and raised in Kamloops, B.C. and Burnaby, B.C. Her parents followed a strict religious orthodoxy resulting in a carefully watched upbringing, but without abuse. She found she could not participate in many extracurricular activities and her friends were limited. Ms.

Jubbal attended secondary school in Burnaby, and for three years after graduation, she worked at Real Canadian Superstore as a cashier. She obtained a diploma from a private college as a community support worker for youth. She was married at age 24 and moved out of the family home to live with her husband. She reported working for about six years with her father, who operated an auto body business. She gave birth to a son, now 21 years old, who has a budding career as a heavy-duty mechanic. She reported purchasing a Ricky's All Day Grill franchise, which she operated for about two years. She then became the owner/manager of a Knight & Day Restaurant franchise, which she ran for a period of time before selling that business.

- [12] Her first marriage broke down after about eight years. Then, she began a relationship with S.B., and they resided in a townhouse in Surrey, B.C. In 2008, another male person, referred to as "the stalker," then came to the offender's home and murdered S.B. with a handgun in the foyer of the home. Ms. Jubbal was present and witnessed this event. To escape harm, she fled the home by jumping out of a second-storey window.
- [13] Ms. Jubbal has been a long-term user of crystal methamphetamine since 2007 and she was a daily user of that substance at the time these offences were committed. Her counsel reported that she had not used methamphetamine since she entered the Night and Day Recovery Centre in 2018. Ms. Jubbal also had surgery on her left foot to correct a deformity, and healing has not been a complete process. After completion of the custodial sentences, which will be referred to below, when charged with breaches, Ms. Jubbal put forward a bail release plan which included residence at the Night and Day Recovery Centre. She performed well at that setting for some time and there are letters in the sentencing materials which demonstrate that accomplishment. She was allowed access to the house computer for administrative use only. That proved to be a poor decision and she left the facility involuntarily.

Forensic and Pre-Sentence Report

- [14] A forensic psychological report, dated December 19, was prepared by Dr. Wiebe for the purposes of providing the Court with an opinion to confirm whether there was a diagnosable mental disorder existent and whether there was any posttraumatic stress disorder underlying Ms. Jubbal's history of narcotics addiction. Unfortunately, Ms. Jubbal refused to provide contact information for potential collateral sources to Dr. Wiebe. Ms. Jubbal told the doctor that the fraudulent transactions totalled \$20,000 altogether and the transactions were committed over two months. As admitted above and based on the evidence recited by the Crown, the amount involved in this case exceeded \$80,000 and spanned a period from September 2016 to January 2017, at least five months.
- [15] Ms. Jubbal reported that involvement with her family was positive. Her family described her as involved in uncommunicative behaviour, and when asked by her family members what she was doing or where she was going, her response was it was none of their business. Among other things, Dr. Wiebe made a detailed analysis of statements by Ms. Jubbal to other

report writers and compared those statements the statements she made to the doctor. The result of this analysis was not positive in relation to Ms. Jubbal, as Dr. Wiebe described Ms. Jubbal as a person who cannot be relied upon without objective corroboration of what she said, a person skilled in deceit, and that she shows no genuine remorse for her fraudulent behaviour and the effect that repeated behaviour had on her victims. Dr. Wiebe concluded at p. 10 of his report that the factors which underscore the current offences were:

- a) antisocial personality features - especially antisocial beliefs/attitudes, a tendency towards deception and manipulation, egocentricity and entitlement, exploitation of others, lack of remorse, and limited victim empathy;
- b) cognitive distortions related to personality features [such] as justification, rationalization, minimization and,
- c) association with individuals involved in criminal activities - including her current fiancé.

[16] At p. 12, Dr. Wiebe stated:

In the current interview, as noted earlier, Ms. Jubbal made several statements in relation to the offences, regret and remorse, and impact on the victims. She also spent much of the discussion of the offences in tears. However, Ms. Jubbal's statements tend to be vague and rather superficial, and there is little evidence of genuine remorse or victim sympathy. (It is also very important to remember that she has previously expressed regret and remorse for [victims of] past offences, and then gone on to perpetrate many more fraud offences on [numerous] occasions.

[17] Dr. Wiebe considered that Ms. Jubbal was at a high risk to reoffend.

Criminal Record of the Offender

[18] In 2004, Ms. Jubbal was convicted of fraud and after an appeal she was sentenced to a conditional sentence order of four months, followed by probation for a period of two years, accompanied by a restitution order that she pay a victim \$17,000. At that time, she was a first offender with a young child and no apparent health issues. That case is cited as *R. v. Jubbal*, 2004 BCCA 429.

[19] In 2008, she was again convicted of fraud, possession of stolen property, and breach of a recognizance. The sentence given was again a conditional sentence order, this time for three months, and a three-year probation order followed on each count.

[20] In 2009, Ms. Jubbal was convicted of fraud under s. 380(1) of the Criminal Code. A jail sentence of nine months was determined to be a fit and proper sentence for that offence, with credit for five months of dead time. This was a third serious offence.

- [21] In 2011, Ms. Jubbal was again convicted of fraud, together with credit card and stolen identity offences. She received a federal sentence of 30 months. She was given 50 days' credit for pre-sentence custody. That sentence expired in 2013. It should be noted that the beginning date for the offences of financial predation in this sentencing is approximately three years later.

Principles of Sentencing

- [22] Section 718.1 and following sections provide the fundamental purposes for sentencing to be to: protect society; promote respect for the law; maintain a just, peaceful, and safe society by imposing just sanctions to fulfill these objectives; denouncing unlawful conduct and harm done to victims; deter offenders and like-minded persons from committing offences; and separate offenders from society where necessary. The sanctions are also designed to assist in the rehabilitation of offenders, provide reparations for harm done to victims or the community, and promote a sense of responsibility in offenders for that harm.
- [23] In the case at bar, the financial credit system has become a mainstay of the economic life of our business communities. The repeated conduct of the offender in fraudulently using credit cards and stolen personal information not only harms individuals, but the community as a whole, in a profound way that damages personal and corporate finance in the community.
- [24] A sentence must be proportionate to the gravity of the offence and the responsibility of the offender, taking into account the aggravating and mitigating circumstances relating to the offence and the offender. Aggravating circumstances in this case include a very organized and methodical theft of financial information of victims which deliberately damaged those victims and their community over a long period of time, specifically, five months and 345 transactions. Detailed journals were prepared by the offender to record the transactions, banking information, and unlawfully-obtained inventory. These offences were similar to past offences of similar ilk, which led to incarceration at progressively higher levels and eventually to a federal sentence of 30 months. The offences had a profit motive in part and allowed this offender to live an unearned lifestyle, while depriving victims of their hard-earned cash and credit.
- [25] The main mitigating factor in this case is a guilty plea. Although, in this case, it was not an early guilty plea, but court time was not wasted and witness inconvenience was minimized. Crown counsel had a very strong case here. Ms. Jubbal has made some efforts towards rehabilitation and has taken some counselling. She has been under house arrest on electronic monitoring after leaving the Night and Day Recovery Program in 2019.

- [26] Support letters were filed and read by the Court. Also, three letters from medical doctors were placed in evidence to describe post-surgical issues in March 2020, following surgery on her left foot. Dr. Calvert described a left foot which is slow to heal and the requirement that the accused should, in 2020, wear a boot and use a cane. Curiously, the second and third medical letters after the first sentence or two contained absolutely identical text.
- [27] A principle of parity must also be applied when determining a fit and proper sentence, and sentences must not be unduly harsh. Restraint must be applied as prescribed in ss. 718.2(d) and (e) of the Criminal Code. Crown counsel submitted that the appropriate range of sentence for these offences was two to four years of jail, relying on a number of case authorities in support of that proposition, which are listed below. Defence counsel, in a thorough submission, submitted that the Court should impose a conditional sentence that is not more than two years, pursuant to s. 742.1 of the Code discussed in the well-known case of *R. v. Proulx*, 2000 SCC 5, which made it clear that a conditional sentence may address both punitive and restorative objectives.
- [28] Proulx encourages the use of conditional sentence orders as an alternative to incarceration, where certain prerequisites are present. Those prerequisites are as follows:
- (a) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment, and that is the case in the case at bar;
 - (b) the court must impose a prison sentence of less than two years; and
 - (c) important in the case at bar, that the safety of the community would not be endangered by the offender serving the sentence in the community.
- [29] Following the outline of those prerequisites, the Court in Proulx further discussed factors relating to the appropriateness of the imposition of a conditional sentence, including listing six sentencing objectives at para. 101, including the well-known objectives of deterrence, denunciation, and rehabilitation.
- [30] In assessing the danger to the community posed by an offender under prerequisite (c) above, the court must consider:
- 1. the risk of the offender re-offending; and
 - 2. the gravity of the damage that would ensue in the event of a further offence. If the court considers there is a real risk of reoffending, incarceration should be imposed: Proulx at para. 69. The factors relevant to this assessment set out in paras. 70-73 of Proulx, and include the offender's criminal record and the level of supervision available in the community, among other factors. Most importantly in Proulx, the Court at para. 75 identifies that economic harm to the community constitutes danger to that community.

- [31] A number of courts have found that repeated credit card fraud and identity theft pose a significant danger to the public sufficient to justify declining a conditional sentence order. Such cases include *R. v. Auckbaraullee*, 2019 ONSC 2498, where at para. 63, the Court noted:

Although a conditional sentence is not excluded from breach of trust fraud cases, the authorities make it clear that conditional sentences for large-scale frauds should be rare, and reserved for cases with particularly compelling circumstances. In determining whether this is such a case, I have considered the case law referred to by counsel, the aggravating and mitigating factors, and the principles of sentencing set out in ss. 718, 718.1, and 718.2 of the Criminal Code. I have also considered s. 380.1, although a number of amendments to that section were not in force at the time that Ms. Auckbaraullee committed this offence.

- [32] Further, conditional sentence orders are usually inappropriate where general deterrence is a paramount sentencing principle: *R. v. Foianesi*, 2011 MBCA 33. In the case of *R. v. Gonzales*, 2016 BCCA 436, the Court held at paras. 10-12 that general and specific deterrence weigh heavily for offences of identity theft and fraud involving credit cards and banks as they are "crimes that 'pose a serious risk to the community'".
- [33] Similar cases include *R. v. Macdonald*, 2018 BCCA 102, where the accused was given a jail sentence for committing thefts of personal information and credit card frauds. The offences charged in that case were more numerous and serious than those in the case at bar, involving violence, but comments by the Court of Appeal made it clear that, notwithstanding drug addiction and mental health issues, a "further chance" was not appropriate given the danger to the public.
- [34] In the case of *R. v. Subhag*, 2012 BCCA 246, the accused pleaded guilty and was given a jail sentence for falsifying identification cards and committing banking fraud. The accused had a record of unrelated offences, but had previously served a conditional sentence order. In reviewing sentencing considerations by the trial judge, the Court of Appeal noted at para. 29:

The judge emphasized that identity theft constitutes "a very serious threat to the public", given the highly impersonal nature of modern banking transactions and the vulnerability of electronic security systems to identity theft. These concerns echo the comments of this Court in *R. v. McNeil*, 2006 BCCA 375, 229 B.C.A.C. 297 at paras. 8, 11 and 12; *R. v. Ireland*, 2007 BCCA 387, 244 B.C.A.C. 317 at para. 10, and *R. v. Mahoney*, 2011 BCCA 132, 302 B.C.A.C. 69 at para. 24.

- [35] In *Subhag* at paras. 35-39, the Court reviewed the refusal of the trial judge to grant a conditional sentence order in circumstances of identity theft and bank fraud because of danger caused to the public. At para. 40, the following definitive statement appears:

There is no question the courts must respond severely to address crimes of identity theft. In committing these offences, perpetrators prey on innocent victims who rely on the convenience of multi-branch banking, ATMs and online banking as a routine aspect of daily life. An individual's sense of personal security is profoundly threatened by such crimes, and the public's

confidence in our banking institutions, credit and debit cards, and ubiquitous documents such as drivers' licences is put at risk. As noted above, this Court has emphasized the seriousness of identity theft crimes in cases such as *McNeil*, *Ireland*, and *Mahoney*.

[36] In *R. v. Hardiman*, 2014 ONSC 968, the 50-year-old accused had prior convictions relating to theft, forgery, and fraud, although parts of his record were quite dated. The Court stated at para. 29:

The credit card and forgery related offences also call for a stiff sentence in order to deter future fraudsters. These offences are quintessentially ones of greed. They require sophistication, capital investment, and significant technical knowledge. People who commit these offences obviously have skills that could otherwise be used productively, rather than for criminal purposes.

[37] The Court further states at para. 37:

It must be emphasized that the offences in relation to falsified or forged credits cards are not victimless crimes. It is true that the banks, which are large institutions, will reimburse customers for losses as a result of the actions of fraudsters like Mr. Hardiman. That, however, is not the point. As financial intermediaries, banks occupy a critical position in the economy. One does not need expert evidence to know that credit card fraud is insidious and harmful. It is tempting to think that the only people harmed are plutocrats who run the banks, but the truth is that we all pay when this crime is committed. Everyone in the economy has to use the financial system. The people who really pay are bus drivers, nurses, teachers, and factory workers. In other words, regular people who make their livings honestly are victimized through higher bank fees, insurance premiums, and taxes. Economic criminals, who are prepared to wreak havoc on the lives of individuals and on the general economy purely for the sake of their own greed, and have the skills to use their powers for good rather than ill, should not be treated gently.

[38] A number of cases involving credit card and identity theft, where custodial sentences were imposed include: *R. v. Thobani*, 2013 BCPC 372, where the Court held that deterrence and denunciation were paramount, a decision of the Honourable Judge Hicks, as he then was; *R. v. McNeil*, 2006 BCPC 32, involving the persistent nature of the offences; *R. v. Edugie*, 2019 QCCQ 6125, where it was held a conditional sentence order would not sufficiently protect society or sufficiently deter the accused; and *R. v. Lyons*, December 16, 2005, New Westminster Registry X066788, where repeated frauds demonstrated that a conditional sentence order would not adequately deter the accused.

[39] Crown counsel also cited a number of similar cases in support of the sentence and range of sentence sought including: *R. v. Bradley*, 2004 ABCA 362, a case involving stolen credit cards and identity theft where there were guilty pleas to 15 counts, and the jail sentence imposed was four-and-a-half-years, where the facts were that that the fraud committed was a substantial, organized, and sophisticated operation and the accused had a related record; *R. v. Rowe*, 2008 BCPC 392, a decision of the Honourable Judge Spence, as he then was, involving a three-year jail sentence for similar offences of fraud using forged documents and false credit cards; and, an interesting case cited for sentencing in an identity theft case, *R. v.*

Adebayo, 2007 BCPC 433, a decision of the Honourable Judge Dohm, where a five-year sentence was imposed including time served on an accused, with a record not dissimilar to Ms. Jubbal, which decision was actually, according to Crown counsel, a case that was cited in a previous sentencing of this accused.

Defence Submissions

- [40] Defence counsel placed before the Court a number of case authorities in support of the submission that the sentence here should be a conditional sentence order, but each of the cases cited related to an offender who was being cited for a first offence or a much less significant offence.
- [41] The defence submissions included *R. v. Bunn*, 2000 SCC 9, a case where a lawyer was convicted of six counts of breach of trust and six counts of theft of money held in trust. Only one-half of those counts proceeded because of the effect of the double jeopardy rule. The lawyer was suspended from practice following a spot audit by the Law Society and later disbarred. He was sentenced to two years in jail and appealed that sentence. Before the appeal was heard, the law changed and a conditional sentence order came into being for the first time.
- [42] The Manitoba Court of Appeal confirmed the conviction appeal, but using the new legislation, varied the sentence to a conditional sentence order for two years less a day plus 200 hours of community work service. In the unique circumstances of that case, the appellant was the sole caregiver of his wife who had multiple sclerosis and was wheelchair-bound. He was also the sole supporter for his teenaged daughter. The Supreme Court of Canada, in a six to three judgment, upheld the conditional sentence order on the basis that denunciation and deterrence were satisfied by the loss of professional status, financial ruin, public embarrassment, and the need for the appellant to provide care for his wife and daughter.
- [43] With respect, *Bunn* provides little useful insight into sentencing of this accused in the case at bar, as the accused in *Bunn* had no prior record and was unlikely to re-offend in what has been described as "extreme personal mitigating circumstances", not present in the case at bar. Also not present in the case at bar was the loss of professional status, evidence of financial ruin, or public embarrassment.
- [44] In the case of *R. v. Burkart*, 2006 BCCA 446, a gambling problem experienced by the accused led to theft from his employer over the course of a year. Again, unlike the case at bar, *Burkart* involves a first offence. The trial found that because there were no unusual circumstances, a conditional sentence order should not be granted. The Court of Appeal granted the appeal of sentence on the basis that the "unusual circumstances" test was not the basis for the denial of a conditional sentence order. The trial sentence and probation order were set aside and a conditional sentence order of 18 months was substituted in its place. Unlike the case at bar, Mr. *Burkart* did not have a criminal record and the

consideration of sentencing principles was therefore different and distinguishable from the case before this Court.

- [45] The case of *R. v. Penttila*, 2020 BCCA 63, involves an appeal of a two-year sentence for theft of a large sum of money from the accused's employer. The theft was accomplished by fraudulent means and the proceeds of the theft were lost in gambling. The behaviour of the accused was characterized as a "gross breach of trust." The Crown sought a jail sentence and defence counsel sought a conditional sentence order followed by three years of probation. The trial judge rejected a conditional sentence order and imposed a two-year jail sentence coupled with a full restitution order. On appeal, the Court of Appeal found the trial judge erred in the concluding that a psychiatric gambling disorder could never be considered a mitigating factor in sentencing. The Court of Appeal determined that, as sentencing is an individual process, a more nuanced approach to deciding if a psychiatric condition could be a mitigating factor was required. The gambling problem was determined to be a mitigating factor. The sentence of two years in custody was, despite finding an error by the trial judge, upheld by the Court of Appeal. Again, *Penttila* is a case where the accused was a first-time offender and that is a distinguishing factor from the case at bar. If anything, however, this case would support a significant jail sentence as an appropriate disposition in the case at bar.
- [46] The case of *R. v. Kratky*, [1997] B.C.J. No. 3167 involved a theft of a large sum from an employer, a dental practice, over a period of years by the use of fraudulent banking procedures adopted by the accused in her capacity as the manager of three dental practices. When charged with these offences, the accused promptly waived the preliminary inquiry and pleaded guilty. The Crown at the sentence hearing acknowledged that the range of sentence would permit the imposition of a conditional sentence order. The Crown took no position against granting a conditional sentence order. While the accused had a record for theft, it was a theft under \$200 and had occurred 19 years earlier. The accused, together with her husband, had repaid all of the money stolen together with court costs and interest at bank rates. This was certainly a mitigating feature which makes this sentencing different from sentencing now before the Court. The sentence imposed in *Kratky* was an 18-month conditional sentence order.
- [47] Defence counsel also cited a number of other cases including *R. v. Wilson*, 2003 BCSC 414, *R. v. Eby*, 2005 YKSC 56, *R. v. Gonzalez-Urena*, 2011 BCSC 406, *R. v. Bigcharles*, 2015 BCSC 1212, *R. v. Reynolds*, 2020 BCSC 732 and *R. v. Hammond*, 2004 BCPC 320, all of which involved first-time offenders or persons without criminal convictions or with unrelated criminal convictions.

Conclusion and Sentence

- [48] While there is no requirement that a conditional sentence order can only be given to a first-time offender, where an accused had a significant record of offences which include dispositions of conditional sentence orders escalating to periods of provincial incarceration

or less than two years and thereafter a sentence of incarceration at the federal level, it is difficult to appreciate how, in the face of further identity theft offences with significant numbers of victims and considerable money stolen, a sentence of two years or less within the provincial range would be considered consistent with the fundamental purposes and principles of sentencing.

- [49] I find that a conditional sentence order would not, in the case at bar, be a fit and proper sentence given the circumstances of the offences and the offender, and the particular adverse consequences of the offences, which are similar to offences for which this accused has served a prior federal sentence of incarceration.
- [50] In this case, taking into account the plea of the accused, the submissions of counsel, and all of the cases cited herein, which have been reviewed with care, as well as the circumstances of the offences and the offender, together with the mitigating and aggravating circumstances related to the above, this Court concludes that a fit and proper sentence in this case is a sentence of incarceration for 30 months. Ms. Jubbal will receive six and a half months credit for time served, as agreed by counsel, and she will therefore serve twenty-three and one-half (23.5) months in custody beginning today. There will also be the stand-alone restitution order, as noted in para. 3 above, which will be detailed in the final order with the proper name of the party concerned.

"Ball J."

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