

CANADA / JUDGMENT

R. v. Rahimi

2017 BCCA 223

COURT

British Columbia Court of Appeal

DECIDED

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2017 BCCA 223 R. v. Rahimi COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Rahimi, 2017 BCCA 223 Date: 20170601 Docket: CA43407 Between: Regina Respondent And Amir Rahimi Appellant Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4(1) of the Criminal Code restricting the publication, broadcast or transmission in any way of evidence that could identify the complainant. This publication ban applies indefinitely unless otherwise ordered. Before: The Honourable Mr. Justice Frankel The Honourable Madam Justice Bennett The Honourable Mr. Justice Willcock On appeal from: An order of the Provincial Court of British Columbia, dated July 30, 2015 (conviction) and January 15, 2016 (sentence) (R. v. Rahimi, Vancouver Docket No. 230968) Oral Reasons for Judgment Counsel for the Appellant: L. Rudovica Counsel for the Respondent: J. Caldwell Place and Date of Hearing: Vancouver, British Columbia May 31, 2017 Place and Date of Judgment: Vancouver, British Columbia June 1, 2017 Summary: Mr. Rahimi appeals his sentence of six months' imprisonment and two years' probation for convictions of attempted procuring, extortion, and uttering threats to cause death or bodily harm. He appeals on the basis that the sentencing judge failed to place sufficient emphasis on his lack of criminal record and the fact that the complainant suffered no serious consequences. He argues that the judge overemphasized the principles of deterrence and denunciation and overstated the seriousness of the offences. Held: Appeal dismissed. The judge properly assessed Mr. Rahimi's circumstances, the case law, and the seriousness of the offences. Mr. Rahimi's attempts to procure a young, vulnerable girl under 18 years into prostitution were accompanied by egregious threats of violence and extortion. The judge made no error and the sentence is not demonstrably unfit.

- [1] BENNETT J.A.: Amir Rahimi was convicted after a trial of attempting to procure the complainant to become a prostitute, extortion, and uttering a threat to cause death or bodily harm. The last offence was stayed on the basis of R. v. Kienapple, [1975] 1 S.C.R. 729. He was sentenced to six months on each of the remaining counts, to be served concurrently, followed by two years' probation. He appeals this sentence.
- [2] The appeal was dismissed at the conclusion of the hearing, with reasons to follow.

- [3] The trial judge found that Mr. Rahimi was involved in an intimate relationship with the complainant. The complainant was described by the judge as "a drug-addicted, vulnerable and troubled 16 or 17-year-old girl". After the relationship broke up, and over a period of one day, Mr. Rahimi repeatedly sent text messages to the complainant demanding that she pay him \$7,000 that he claimed he spent on her during their relationship. If she did not have the money, he expected her to work as a prostitute to pay him back, or he would turn her over to a person she believed was a Triad gangster who would treat her badly, or Mr. Rahimi would harm her.
- [4] The texts are vile and threatening. I repeat some below in order to give a sense of the nature of the communication from Mr. Rahimi: Fukin cunt im gona get u jus watch Don be scard unles u gona violate our contract. And u can control the other girls u can be their boss and they wil all respect u. Im a huster [sic] ive never hurt my workers when they do what they supposed to do. don worry [complainant's name] jus do what u said in the contract n ul be ok. I swear to god [complainant's name] you better get that money ur jus all lies ur fukin bulshit i swear i want my fukin money or im gona do somthin Ur a fukin gona work for me thats until u pay bak every fukin dollar or u n ur mom n every1 that wants to be involvd is gona get it. I want my fukin money cunt I want my my god damn money or il go fukin crazy like u nevr seen before so when u read these tomorrow reply n say u gona work or pay up plz do the fukin right thing I realy dont wana hurt u [complainant's name] jus fukin work it off I dont wanna fukin have to do somthin to some1 I always helpd
- [5] The complainant was living in a group home, and reported the threats to the staff there. A staff member overheard one of the telephone calls Mr. Rahimi made to the complainant.
- [6] The content of the text messages and telephone calls are threatening, and succeeded in intimidating the complainant. She testified that Mr. Rahimi was "talking about how I owed him seven grand. He wanted to pimp me out and make me a prostitute. He was going to hurt me if I didn't do anything."
- [7] The complainant was extremely vulnerable, having been in and out of group homes since she was 13 years old. She took the threats seriously and was intimidated by Mr. Rahimi. Because she reported the events immediately, the calls and texts all occurred on one day, the day before Mr. Rahimi was arrested. The trial judge could not conclude whether the gangster was real, or whether he was a fictional person invented by Mr. Rahimi to intimidate the complainant. There had been no prior history of violence in their relationship, and the judge concluded that Mr. Rahimi was primarily trying to intimidate the complainant.
- [8] It is also clear that the only way the complainant could raise the money he demanded was through prostitution.
- [9] The judge found that the threats by Mr. Rahimi did intimidate the complainant; however, he also found that she did not suffer any lasting effects from the offences.

- [10] Mr. Rahimi is now 26 years old. He has no other criminal record. He grew up in extremely difficult circumstances. He was born in Iran. His mother left the country; however, his father, who was addicted to heroin, would not permit him to leave. He was raised by his grandparents until he arrived in Canada in 2002. He became a Canadian citizen in 2007 or 2008.
- [11] The sentencing judge was alive to the applicable principles of sentencing. He accepted the primary principles of deterrence and denunciation; however, he specifically acknowledged that Mr. Rahimi's prior good character had to be taken into account in the mitigation of sentence.
- [12] Mr. Rahimi continued, including to the time of sentencing, to deny the offence. The trial judge correctly identified this fact as neither an aggravating nor mitigating factor. The judge was given a large number of cases to review (as has this Court). He discussed a number of the decisions, and pointed out that in his view, the range of sentence is broad, from a three-year suspended sentence to five years' imprisonment.
- [13] The Crown sought a sentence of 12 months and Mr. Rahimi sought a sentence of probation.
- [14] The judge concluded that a sentence of imprisonment was needed to address the principles of denunciation and deterrence; however, he did not accede to the Crown's request of 12 months. He stated that the sentence must be tempered to address rehabilitation, particularly in light of the fact that Mr. Rahimi is a first time offender.
- [15] A sentence imposed by a trial judge is to be given "considerable deference" by the appellate court (*R. v. Nasogaluak*, 2010 SCC 6 at para. 46). In *R. v. M.* (C.A.), [1996] 1 S.C.R. 500, Chief Justice Lamer cautioned that a sentence could only be interfered with if it was "demonstrably unfit" or if it reflected an error in principle, the failure to consider a relevant factor, or the overemphasis of a relevant factor (at para. 90). See also *R. v. Lacasse*, 2015 SCC 64 at paras. 48-49.
- [16] The thrust of Mr. Rahimi's argument is that the judge failed to place sufficient emphasis on his lack of criminal record, and the fact that there were no serious consequences to the complainant as a result of his threats and extortion attempts. Furthermore, he argues that the judge overemphasized the principles of deterrence and denunciation.
- [17] Mr. Rahimi submits that there is no evidence that he would have carried out his threats, and that his offence should therefore be considered less serious than offences where the victim was in fact launched into prostitution. However, much higher sentences have been imposed when the victim was in fact propelled into prostitution. See for example *R. v. Hayes* (1998), 189 W.A.C. 22 (B.C.C.A.); *R. v. Chizmazia* (1990), 10 W.C.B. (2d) 58 (B.C.C.A.); *R. v. Julson*, 2001 BCCA 106.

- [18] The judge had all of the evidence before him. He heard testimony of the witnesses at trial, and listened to the submissions. He carefully considered the case law cited to him. He was aware that he was sentencing a first time offender. However, the circumstances of this offence are serious. The effort to procure a young vulnerable woman, under the age of 18 years, into prostitution was accompanied by threats of violence of a most egregious nature and extortion.
- [19] Mr. Rahimi has not shown that the judge erred in principle, failed to consider a relevant factor, or overemphasized a relevant factor. Nor has he shown that the sentence is demonstrably unfit. I would not interfere with the sentence.
- [20] FRANKEL J.A.: I agree.
- [21] WILLCOCK J.A.: I agree. "The Honourable Madam Justice Bennett"

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