
CANADA / JUDGMENT

R. v. Singh

2017 BCSC 1277

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1277 R. v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Singh,

2017 BCSC 1277

Date: 20170110

Docket: X079523

Registry: New Westminster

Regina

v.

Gurmeet Singh

Before: The Honourable Mr. Justice Verhoeven

On appeal from: Provincial Court of British Columbia, August 4, 2016

(R. v. Singh, 2016 BCPC 407)

Oral Reasons for Judgment

Counsel for the Crown (Respondent):

G.S. Sair

Counsel for the Accused (Appellant):

D.H. Silverman

Place and Date of Trial/Hearing:

New Westminster, B.C.

December 5, 2016,

January 6, 2017

Place and Date of Judgment:

New Westminster, B.C.

January 10, 2017

[1] THE COURT: This is an appeal of a sentence imposed on August 4, 2016, by the Honourable Judge Arthur-Leung in the Provincial Court of British Columbia at Surrey, British Columbia, following submissions that were made at the sentencing hearing earlier that day.

[2] On July 15, 2016, Mr. Gurmeet Singh, the offender ("Mr. Singh"), pleaded guilty to Count 1 on the information as amended that day. The charge is as follows, incorporating the amendment:

Gurmeet SINGH, on or about December 13, 2014, at or near the City of Surrey, in the Province of British Columbia, contrary to Section 131 of the Immigration and Refugee Protection Act, did knowingly induce, aid or abet or attempt to induce, aid or abet [persons], to wit: Daler SINGH and Nirmal KAUR, to enter Canada without appearing for an examination to determine whether [those persons have] the right to enter Canada or is or may become authorized to enter and remain in Canada, as required by Section 18(1) of the Immigration and Refugee [Protection] Act, and did thereby commit an offence contrary to Section 124(1)(a) of the said Immigration and Refugee Protection Act.

[3] The sentencing judge imposed a conditional sentence of 12 months' duration. The conditions included a curfew, as well as an order for community work service requiring that Mr. Singh complete, to the satisfaction of the probation officer, 40 hours of community work service at a place other than a temple.

[4] The charge relates to the assistance Mr. Singh rendered to Mr. Daler Singh and Ms. Nirmal Kaur to enter Canada illegally on December 13, 2014.

[5] Daler Singh and Nirmal Kaur were driven from Seattle to the Canada-U.S. border at Blaine, Washington, by an unknown individual. As directed, they walked across the unfenced border from Blaine into Surrey, British Columbia. They were picked up on the Canadian side of the border by a female person, whose identity is unknown, who was waiting for them in a red Dodge Avenger vehicle. She transported them to a nearby A&W restaurant where they met Mr. Singh and his spouse, Ms. Manpreet Kaur.

[6] Mr. Singh, Manpreet Kaur, Daler Singh and Nirmal Kaur all left in a BMW vehicle driven by Mr. Singh. The vehicle was stopped by the RCMP. All four persons were arrested.

- [7] It is conceded that Daler Singh and Nirmal Kaur paid \$2,000 USD to the driver of the red Avenger motor vehicle. It is also conceded that Mr. Singh paid \$1,500 CAD to the individuals, who could be called the smugglers, who assisted in bringing Daler Singh and Nirmal Kaur into Canada illegally.
- [8] More details are as follows. On December 12, 2014, Mr. Singh and his wife, Manpreet Kaur, travelled by car from British Columbia to Seattle, Washington, where they met Mr. Singh's close family friends, Daler Singh and his wife Nirmal Kaur, who had arrived at Sea-Tac International Airport on a flight from India via Minneapolis-St. Paul.
- [9] Mr. Singh, Manpreet Kaur, Daler Singh, and Nirmal Kaur stayed the night in Seattle. Daler Singh and Nirmal Kaur stayed at the Comfort Inn, in a room paid for by Mr. Singh.
- [10] The next day, December 13, 2014, at approximately 12:06 p.m., Mr. Singh and Manpreet Kaur used their Nexus cards to cross into Canada at the Pacific Highway border crossing at Surrey, British Columbia. Mr. Singh then drove to the Royal Bank of Canada branch located at 1793 156th Avenue in Surrey. At 12:22 p.m., he withdrew \$1,500 from a bank machine. Mr. Singh and Manpreet Kaur then went to a nearby A&W restaurant where they awaited Daler Singh and Nirmal Kaur. They arrived shortly afterwards.
- [11] Earlier that day, Daler Singh and Nirmal Kaur had been driven to the U.S. border by an unknown person. At approximately 11:54 a.m., they walked across the border from a location near the Smugglers Inn at Blaine, Washington. On the Canadian side of the border they met with the woman waiting for them in the red Dodge Avenger motor vehicle, which was parked near the 18300 block of Zero Avenue in Surrey. Their entry into Canada was observed by the United States border patrol, who advised the Canada Border Services Agency and the RCMP of their observations.
- [12] Daler Singh and Nirmal Kaur paid the unidentified female driver \$2,000 USD. She drove them to the A&W restaurant. The Dodge Avenger was by that time under surveillance by the RCMP.
- [13] After meeting at the restaurant, the four persons left the restaurant in a BMW X5 SUV driven by Mr. Singh, which was stopped by the RCMP surveillance team a short time later. At 12:45 p.m., all the vehicle occupants were arrested, as I mentioned.
- [14] Among the items seized from Mr. Singh's vehicle were his and his wife's Nexus cards; two Indian passports belonging to Daler Singh and Nirmal Kaur, which contained United States Visas issued on August 11, 2014; two Delta United boarding cards for the flight from Minneapolis-St. Paul to Seattle; a receipt for the Royal Bank withdrawal previously referred to; a receipt from Costco in Bellingham, also dated December 13, 2014; and two iPhones seized from Mr. Singh.

- [15] The \$1,500 withdrawn from the Royal Bank was not found by the RCMP. Mr. Singh later admitted to having sought out and then paid individuals to assist Daler Singh and Nirmal Kaur to come into Canada.
- [16] An inspection of one of Mr. Singh's iPhones established that it had accessed the Wi-Fi network at the Sea-Tac airport on December 12 and 13, 2014, and also the Wi-Fi network at the Comfort Inn in Seattle on December 13, 2014.
- [17] Mr. Singh is not related to Daler Singh and Nirmal Kaur, though he does consider them to be his "uncle" and "aunt". They all come from the same village in India. Daler Singh and Nirmal Kaur assisted Mr. Singh and his family when they lived in India, and later when they returned there.
- [18] During the sentencing hearing it was suggested to the sentencing judge that Daler Singh and Nirmal Kaur could have entered Canada through legal means. No further details were provided to the sentencing judge, however.
- [19] The judge accepted the submissions of counsel for Mr. Singh that Daler Singh and Nirmal Kaur became distraught after their adult son passed away in India in a motor vehicle accident; that Mr. Singh offered them financial support and assistance; and that he decided it would be best if he did so in Canada, rather than by sending money to them in India.

Circumstances of the offender and the offence

- [20] Mr. Singh was 36 years of age at the time of sentencing. He is married and has two children, who were then aged eight and four. He came to Canada from India in 2004. He became a Canadian citizen in 2011. He later sponsored his father to emigrate from India. He worked as a real estate agent and a property developer, although at the time of sentencing his real estate licence was suspended due to the charges against him.
- [21] Mr. Singh is considered to be a well-regarded and successful businessman in the Indo-Canadian community. He has no prior criminal record.
- [22] As is customary on sentencing hearings, the facts were presented to the sentencing judge by way of submissions from the Crown and defence. There was no oral testimony. I have the transcript of the sentencing hearing, which I have reviewed in its entirety. In addition to the submissions of counsel, several letters were presented to the sentencing judge. One was a letter from Mr. Singh himself, in which I understand he expressed regret and remorse for the events described above. There were also two letters from representatives of temples attesting to his character and his commitment to his community. The letters are not before me on this appeal. I am advised that, for some reason, they were perhaps not made exhibits on the sentencing hearing.
- [23] In the main there is no disagreement with respect to the facts I have set out. There is one possible disagreement with respect to an inference available to the sentencing judge from those facts. It is not known exactly when or how Mr. Singh paid the \$1,500 to the persons

associated with the smuggling scheme. The facts are simply that he withdrew the money from the Royal Bank at 12:22 p.m. - as mentioned, within minutes of entering Canada - and that the money was not in his possession upon arrest at 12:45 p.m. However, it is admitted that in some fashion or another he paid this money to the smugglers. This was acknowledged by defence counsel at the sentencing hearing.

[24] The sentencing judge was told ". . . he paid individuals to assist in the illegal entry of these two individuals into [Surrey]."

[25] Counsel later added:

These two individuals could have entered the country. There was a path to their entry of the country legally but because of some personal circumstances pertaining to both them and to my client, there was urgency and the urgency resulted in my client exercising extremely bad judgment in seeking out assistance from people who were operating this illegal -- this illegal process of bringing people in.

[26] And also:

And so it's in that background that Mr. Singh sought to try to help these people and he did so by trying to get them into Canada so that he could look after them here and be in a better position to look after them.

Now, as I said, I -- this couple could have made application to enter Canada lawfully but there was urgency in -- in the situation and so Mr. Singh, as I had indicated, most unwisely, sought out a third party who was quite unscrupulous and charged money for . . . what occurred.

[27] Therefore, it is accurate to say, as I did earlier, based on those submissions, that Mr. Singh admitted to having sought out the other individuals who were involved in the scheme.

[28] There is no specific information or evidence as to what Mr. Singh's long-term plan was in relation to Daler Singh and Nirmal Kaur, other than the statement that Mr. Singh planned to assist them by bringing them to Canada. The implication is that he would have taken care of them here in Canada on some long-term basis.

[29] As I mentioned earlier, the submission was made that Daler Singh and Nirmal Kaur could have entered the country legally; however, by what process was not made clear, and remains unclear.

[30] A fair inference is that Mr. Singh's plan was to have Daler Singh and Nirmal Kaur reside in Canada illegally on an indefinite or perhaps permanent basis.

[31] There is little information available as to the circumstances of Daler Singh and Nirmal Kaur. For example, their ages are unknown. Mr. Singh was, at the time of sentencing, 36 years of age. The sentencing judge was told that he looked upon Daler Singh and Nirmal Kaur as an aunt and uncle, so it can be inferred that they were senior to him in age. There was also reference to them having lost an adult son. That is all that is known.

- [32] On the appeal, the appellant seeks a conditional discharge in place of the conditional sentence order that was imposed by the sentencing judge. The appellant also seeks the elimination of the restriction requiring that the 40 hours of community work service be performed somewhere other than a temple.
- [33] On the opening of this appeal the Crown sought initially to affirm the sentence that was imposed. However, during the course of the hearing of the appeal, the Crown and the appellant's counsel both realized that under s. 125(b) of the Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA], on a summary conviction proceeding, as this was, the maximum available sentence is a fine of not more than \$10,000 or imprisonment for a term of not more than six months, or both. Therefore, on that basis, the 12-month conditional sentence order exceeded the maximum term of imprisonment, and the sentence must be varied to that extent, at least.
- [34] It appears that the maximum term of imprisonment set out in s. 125(b) was not drawn to the attention of the sentencing judge.
- [35] The Crown therefore seeks to affirm the decision of the sentencing judge, with a variation to reduce the term of the conditional sentence order to six months. The Crown seeks to sustain the requirement for 40 hours of community work service at a place other than a temple.

The Reasons for Sentence of the Provincial Court Judge

- [36] The sentencing judge referred to the circumstances of the offender. She said at paras. 19 and 20 the decision, rendered orally:
- [19] Mr. Singh appears before me with no criminal record. He is a realtor who has possessed his licence from 2013 and the renewal of such is currently pending a determination. I have been told that he is a developer. I have been provided with a letter of apology from Mr. Singh, a letter from a long-time friend, and two letters from two temples indicating Mr. Singh's participation in those temples at events.
- [20] I have also carefully listened and considered that in the matter before me Mr. Singh has personally stood and apologized and expressed remorse for his actions to this court in person.
- [37] The sentencing judge relied on *R. v. Alvarez*, (3 April 2014), Abbotsford 78315-2C (B.C.P.C.) [Alvarez]. In that respect, the sentencing judge said:
- [14] Crown counsel seeks to rely upon the British Columbia Provincial Court decision of *R. v. Alvarez* dated April 3, 2014, Abbotsford Registry, from the Honourable Judge Raven, wherein she imposed a conditional sentence order for a term of 15 months.
- [15] Defence counsel seeks to distinguish the Alvarez matter by illustrating that the two foreign nationals being brought in from Mexico by Mr. Alvarez also carried a black bag with a pistol grip of a handgun that was fully loaded with a magazine and a significant amount of cash.

[16] I, however, rely upon paragraph 8 of the Alvarez decision where in [sic] Judge Raven succinctly states, and I quote:

The principles of sentencing, as set out by the Crown, are denunciation and deterrence because this type of offence is a threat to the public safety of Canadians, as it compromises the integrity of our borders. Because Mr. Alvarez has not been involved in either this type of offence or any other related offence and appears to be otherwise a contributing citizen to our society, I agree with what is being presented essentially as a joint submission, as follows:

The suggested disposition is that Mr. Alvarez should receive a 15-month jail sentence which he would be allowed to serve in the community by way of a conditional sentence order. These orders can be considered by the court where a person who would otherwise go to jail can be safely ordered to serve the jail sentence in the community on strict conditions. Because of Mr. Alvarez's otherwise clean record, his employment and a lack of other criminogenic factors, I agree that this is a sentence that he should be able to serve in the community.

[38] The sentencing judge rejected the defence submission that Mr. Singh was himself exploited in some fashion by the smugglers he paid. In that respect, she said:

[22] Defence counsel seeks to convince this court that Mr. Singh was exploited. I respectfully disagree. As a person who undertook his own immigration process to become a Canadian citizen, as a real estate agent, as a businessman, he is aware of the importance to follow not only the laws of Canada but the general adherence to the values of society as a whole in being a productive citizen. He, himself, would expect no less from his own employees and work colleagues to uphold the law.

[23] I disagree and do not find that Mr. Singh was exploited. His counsel submitted for consideration that Mr. Singh is traditionally a very philanthropic person, sending sums of money back to India to assist persons in his home country.

[24] Defence counsel submits that the two persons who entered Canada illegally are considered family members to Mr. Singh, that their own son had died and that they were financially destitute and that he sought this as a way to bring them into Canada and to provide them with security. However, Mr. Singh, being a realtor, a businessman and a Canadian citizen himself, is knowledgeable to wire or transfer funds back to India and, therefore, there was no plausible reason to prohibit him from doing so in this instance and thereafter to follow the legal procedures to bring these two persons into Canada.

[25] The Canadian immigration process is a familiar process to Mr. Singh, having undertaken it for himself to immigrate to Canada, thereafter to become a Canadian citizen in 2011 and to bring over his own parent. Mr. Singh was not exploited. There was no urgency to this that would justify Mr. Singh to undertake to plan this illegal activity.

[39] Later in her reasons, the sentencing judge emphasized the need for denunciation and deterrence. She said:

- [27] Mr. Singh put time into his participation in this event by actively seeking out a person to assist him in bringing these two persons illegally. He entered with the intent to participate in an illegal activity. He planned his participation; he utilized his access to monies to pay someone to facilitate this illegal activity. As a Canadian citizen and as someone who was designated by the Canadian government as what is known as a trusted traveller through the Nexus program, there is an expectation on Mr. Singh and all those in Canada to respect the integrity and safety of our borders and those who traverse it. There must be the need for general deterrence in the sentence to be imposed. Mr. Singh's conduct must be denounced, as he wilfully ignored his legal obligations, none of which were unfamiliar to Mr. Singh.
- [40] In summary, the sentencing judge found that Mr. Singh's conduct was wilful, deliberate, planned, and intended to undermine the objectives of Canadian immigration law.
- [41] The sentencing judge took into account Mr. Singh's expressions of remorse, lack of a criminal record, and other considerations, saying:
- [28] I am mindful that Mr. Singh has expressed remorse, both in writing and in person today, that he is engaged in his faith within two temples, that he is a local businessperson in the community and that he appears before me with no criminal record.
- [42] She determined that a conditional discharge or, as was perhaps submitted in the alternative, a suspended sentence or fine would be inappropriate, as it would not address the relevant sentencing principles. She said:
- [33] I do not believe that a conditional discharge or suspended sentence would fairly and adequately address the concerns set out herein and, therefore, Mr. Singh, if you will please stand.
- [34] I will impose a 12-month conditional sentence order with the following terms and conditions.
- [43] She then referred to the terms and conditions.
- [44] The sentencing judge referred to a leading decision with respect to the imposition of a conditional discharge, *R. v. Fallofield*, [1973] B.C.J. No. 559 (C.A.). She also referred to relevant sections of the Criminal Code, that is s. 718.1 and s. 718.2, as well as s. 730, in connection with the question of whether to impose a conditional or absolute discharge.
- [45] She said:
- [13] In *R. v. Fallofield* (1973), 13 C.C.C. [(2d)] 450 (B.C.C.A.), the 1973 decision of the British Columbia Court of Appeal, the court must consider that the granting of a discharge is not contrary to the public interest, that the person is of good character and without previous conviction and that the entry of a conviction would not be a necessity to deter that person from future offences.

[46] The sentencing judge referred to Mr. Singh's participation in charitable or community work service at temples. In relation to the community work service aspect of the sentence, she said:

[40] Within the first six months of this order, you are to complete to the satisfaction of your probation officer, 40 hours of community work service hours that are not to be undertaken at a temple. I pause, Mr. Singh, to say that because, as a whole, I would like you to give back and participate in the general community as a whole. Separate and above, I will note and acknowledge your participation in temples but my order specifically is to provide community work service hours to the general community as a whole.

[47] As noted, the letters that were placed before the sentencing judge are not available to me.

[48] In terms of the temple activities, the submission made by defence counsel was quite brief. That submission was as follows:

His -- he and his family are members of a temple here in Surrey and, as is customary in these -- in the temple, Mr. Singh and his family have donated significantly to a variety of charitable activities that the temple has undertaken.

[49] Also as noted, the appellant contends that it was not appropriate to limit or restrict the community work service to a place other than a temple.

Analysis

[50] The standard of review on an appeal of this nature is not in dispute. It was succinctly summarized very recently in a decision of our Court of Appeal, *R. v. Marks*, 2016 BCCA 480, where Stromberg-Stein J.A. stated at para. 7:

Deference is accorded to the sentencing judge who is uniquely situated to determine the appropriate sentence. Appellate intervention may be warranted where the sentencing judge made an error in principle, failed to consider a relevant factor, or overemphasized an appropriate factor: *R. v. C.A.M.*, [1996] 1 S.C.R. 500 at 565. Such an error of law or principle warrants appellate intervention only where the error had an impact on the sentence: *R. v. Lacasse*, 2015 SCC 64 at paras. 43-44. Otherwise an appellate court may not vary the sentence unless it is demonstrably unfit: *Lacasse* at para. 11; *R. v. Lloyd*, 2016 SCC 13 at para. 52.

[51] The requisite standard of review was also dealt with in *R. v. Fargo*, 2015 BCCA 187, where at para. 12 Willcock J.A. referred to *R. v. Sangha*, 2014 BCCA 379, quoting from that decision at paras. 26-28.

[52] The appellant's counsel submits that there is no range of sentence in this case, and that if the sentence is to be disturbed, then this Court is free to impose a sentence that it determines is fit in the circumstances.

- [53] As the authorities make clear, deference must be afforded to the sentencing judge on a sentence appeal. The general principle to be applied is that the appellate court should not interfere with the result for the reason only that the appellate court would weigh the relevant factors differently.
- [54] In more detail, the appellant submits that the sentencing judge made errors in five categories, not including the conceded issue of the excessive term of the conditional sentence. The alleged errors as set out in the appellant's factum are:
- 1) failing to consider the mitigating circumstances which favoured the appellant receiving a conditional discharge;
 - 2) over-emphasizing the need for general deterrence;
 - 3) relying on facts not present in the circumstances of the offence to support the conclusion that the appellant's conduct was more aggravated than could be proved;
 - 4) refusing to follow an appellate decision on the erroneous basis that the court in that case was sentencing for a different offence than that of the appellant; and
 - 5) imposing a sentence that is contrary to public policy and which, in the circumstances, was unduly harsh and inappropriate for a judicial officer.
- [55] With respect to the first point about failing to consider mitigating circumstances, the alleged errors fall into two categories: (1) failing to give sufficient weight to Mr. Singh's guilty plea; and (2) failing to give weight or sufficient weight to an offer of assistance to the authorities that defence counsel referred to during the course of submissions.
- [56] With respect to the matter of the guilty plea, the sentencing judge did not expressly refer to this as a mitigating circumstance while delivering the reasons for sentence. In the circumstances, this was an insignificant oversight in the oral reasons, and not an error in principle. It is important to recognize that the judge did not fail to take into account the offender's attitude towards the offence and his expressions of remorse. She expressly referred to that in para. 28 of her decision, quoted previously.
- [57] However, it is clear that she considered other factors to be of substantial weight in considering the appropriate sentence, in particular with respect to the issue of whether she should impose a conditional discharge, which was the primary submission made by counsel.
- [58] Of course the Crown had advised the sentencing judge of the guilty plea. The judge referred to it in para. 1 of her reasons for sentence, so that fact was certainly not lost on her.
- [59] I observe, as well, that at the Provincial Court level the Crown was seeking a conditional sentence order, and that this position would likely have already taken the guilty plea into account.

- [60] I am not persuaded that the sentencing judge erred in principle in failing to consider or to place sufficient weight on the guilty plea as a mitigating factor.
- [61] The sentencing judge did not refer to the offer of assistance to the authorities as a mitigating factor. It is a reasonable inference that the sentencing judge placed little or no weight on it in coming to her decision. In my view, that, too, was not an error in principle.
- [62] There was little detail given in the submissions as to the offer of assistance.
- [63] The submission was:
- I can advise the court that, as Mr. Singh realized his predicament, he instructed me that he wished to assist the authorities in every way that he could in providing names and whatever information might be helpful to the authorities in finding the people who he had paid and, ultimately, who exploited him as well.
- [64] However, counsel noted that the offer of cooperation was not accepted by the Canadian authorities and, as a result, nothing had been fulfilled in that respect.
- [65] During the course of submissions, when the fact of the offer of assistance was again referred to, the sentencing judge commented to the effect that the offer was made after the offender was caught and was not taken up, and she suggested that there was perhaps self-serving motivation to the offer. She was correct in concluding that there was no actual cooperation given.
- [66] I observe that the circumstances of the offer of assistance suggest that Mr. Singh had information to give, and thus that he knew something about the smugglers. This may further suggest something about his level of involvement, although the details, as I have said earlier, are not clear.
- [67] In my view, it was open to the sentencing judge to put little or no weight on the offer of assistance as a mitigating circumstance in this case. Therefore, once again I conclude that there was not an error in principle on her part in that respect.
- [68] The second argument made is that the sentencing judge over-emphasized the need for general deterrence. On the appeal there was no specific submission made on that point. It was not argued, for example, that it was an error in principle to emphasize the need for denunciation and deterrence in the circumstances of this case. I am not satisfied that there was an error in that respect and, in fact, the authorities are quite clear that the principles of denunciation and general deterrence are important sentencing principles in a case like this.

- [69] The third ground of appeal is the contention that the sentencing judge relied on facts that were not proven in coming to her decision. It is argued that the record does not contain evidence of the appellant "seeking out a person to assist him in bringing these two persons illegally." It is argued that the court was informed by counsel that it was Daler Singh and Nirmal Kaur who had contracted with the individuals who promised their illegal entry into Canada.
- [70] I referred earlier to the submissions that were made on that point. I am satisfied that the sentencing judge made no error in expressing herself as to Mr. Singh's involvement and, in particular, that on the submissions made, he sought out the persons who orchestrated the smuggling effort.
- [71] In any event, and notwithstanding that, I am not persuaded that this factual issue is material to the sentence. What is clear, in any event, is that Mr. Singh was an active, knowing, and wilful participant in the scheme, and that he had some kind of direct dealings with the smugglers, inasmuch as he admitted that he paid them the \$1,500. So there is no error in this respect and, in any event, no impact, in my view, on the sentence.
- [72] The next matter is the reference to appellate authority. That refers to a decision relied upon by counsel at the sentencing hearing, which was *R. v. Choi*, 2013 MBCA 75 [Choi]. In that case there was a guilty plea under s. 124(1)(c) of IRPA, rather than s. 124(1)(a), as in this case. Under s. 124(1)(c), it is an offence to "[employ] a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed." That was the charge in Choi. The charge related to the offender's illegal employment of six foreign nationals in Canada. The Provincial Court imposed a conditional discharge, as well as probation for 18 months, and ordered that the offender make two charitable donations of \$6,000, so a total of \$12,000, as a condition of the probation order. It was the latter point that formed the legal issue that resulted in the appeal being heard by a five-person bench of the Manitoba Court of Appeal. The court held that the sentence was improper, in that the sentencing judge could not impose the requirement for charitable donations as a condition of the probation order. Therefore, the Manitoba Court of Appeal decided that the sentence was unfit and reconsidered it.
- [73] The Crown in Choi sought a conviction rather than a discharge and a fine. The court held that the conditional discharge was not appropriate, as it would give insufficient effect to the need for denunciation and general deterrence. I refer specifically to paragraphs 60 and 63 of the decision. The court imposed a conviction and a fine of \$15,000.
- [74] The appellant argues that the sentencing judge erred by distinguishing Choi on a wrong basis. The judge said:

- [181] Defence counsel is seeking to rely upon the Manitoba Court of Appeal decision of *R. v. Choi* (J.W.), 2013 MBCA 75, however, in the Choi matter, it can be distinguished as the offence occurred regarding temporary foreign workers and involved the Immigration and Refugee Protection Regulations.
- [75] It is true that Choi involved a breach of IRPA itself and not the Immigration and Refugee Protection Regulations, SOR/2002-227. However, that is an immaterial error. The sentencing judge was correct that Choi involved different facts and offences, inasmuch as that decision involved the illegal employment of foreign nationals. It was, in fact, the same enforcement provision of IRPA as in this case, s. 124(1), but the subsections and the offences were different. Here the underlying offence was committed by Daler Singh and Nirmal Kaur, which was their failure under s. 18(1) of the IRPA to appear for examination at the border.
- [76] Of course, the sentencing judge was not bound in any event to follow an appellate decision from another province, even if it was on all fours, which it was not. I think more importantly, however, Choi can be taken as authority for the proposition that where the offence involves a deliberate and wilful breach of the IRPA, the principles of denunciation and general deterrence are paramount, and a conditional discharge may be inappropriate. So in more overall terms, Choi is not helpful to the appellant.
- [77] There was some lack of clarity in the submissions made by defence counsel at the sentencing hearing as to the alternative sentence sought other than the conditional discharge. There was a reference to the possibility of a suspended sentence. There was some emphasis that in Choi a fine was imposed. However, the primary submission clearly made at the Provincial Court level and at this level was for a conditional discharge.
- [78] In respect of the Choi decision then, in my view it was not an error in principle not to impose the same sentence as in that case. The sentencing judge was correct that Choi is distinguishable, and in any event she was not bound to follow it.
- [79] As I mentioned earlier, the judge relied upon Alvarez. In that case, Her Honour Judge Raven imposed a 15-month conditional sentence order and 30 hours' community work service. The offence charged in Alvarez was the same offence as charged here. The role of Mr. Alvarez in that decision, in committing the offence or aiding or abetting the offence, is not very clear. The decision is very brief.
- [80] Mr. Alvarez stated that he did not know anything about the two individuals that he agreed to pick up and drive in that case. That fact seems to have been accepted. It is possible therefore that the culpability of Mr. Alvarez was less than that of Mr. Singh. What is important is that in Alvarez Judge Raven emphasized the need for denunciation and general deterrence.
- [81] The sentencing judge was not wrong to rely on Alvarez rather than Choi.
- [82] The sentencing judge also referred to *R. v. Ng*, 2008 BCCA 535, and she was not incorrect in doing so.

- [83] The Crown notes that there are other decisions emphasizing the need for denunciation and general deterrence where wilful breaches of the IRPA are involved. Those decisions are *R. v. Orr*, 2016 BCSC 2064, a decision of Duncan J. involving the illegal employment of a live-in caregiver, as well as a case referred to in that decision, *R. v. Large*, 2015 BCSC 1238 [Large], a decision I made. In *Large* I imposed a 15-month conditional sentence order for offences that are more serious than those in the case at bar.
- [84] In my view, it cannot be said that in refusing to grant a conditional discharge, the sentencing judge erred in principle or rendered an unfit sentence.
- [85] The fifth ground of appeal is the contention that it was inappropriate for the sentencing judge to limit or restrict the community work service to a place other than a temple. Her comments in that respect were very brief.
- [86] The sentencing judge had evidence that Mr. Singh was already supporting charitably or providing volunteer work service (it is not clear which) at his own temple, or perhaps two temples. There was more than one letter in evidence. In such circumstances, it would not be a meaningful sanction to impose a requirement that Mr. Singh provide community work service by continuing to do what he was already doing, and would do in any event.
- [87] Mr. Singh cannot be permitted to specify the manner in which he would like to fulfil the obligation imposed on him, if that is the effect of the submission.
- [88] I am not persuaded that the sentencing judge erred in principle by very minimally restricting the manner of community work service. The restriction permits Mr. Singh broad latitude in fulfilling the condition, in that it only prevents him from fulfilling the condition at a temple. I am not persuaded that the condition was intended or had the effect of being discriminatory.
- [89] Turning to the question of the overall fitness of the sentence, as I said, the essential question was whether a conditional sentence order or a conditional discharge or perhaps a suspended sentence or a fine ought to be imposed. I agree with the sentencing judge that a conditional discharge was inappropriate for the reasons that she gave, particularly the strong need for denunciation and general deterrence in a case of this nature. She obviously viewed this offence as a serious one. I agree with that.
- [90] It cannot be said that she was not mindful of the guilty plea or of Mr. Singh's expressions of remorse, and I am also mindful of those circumstances. However, the facts that must be remembered are that Mr. Singh's involvement was planned, deliberate, and intended to facilitate the illegal entry of persons into Canada, and that he was involved actively in the scheme to effect that purpose.
- [91] As I mentioned earlier, however, clearly the sentence must be reduced because it exceeds the maximum term set out in the statute.

Conclusion

- [92] Mr. Singh, as a result, the sentence I impose is a six-month conditional sentence order. The condition for community work service will be the same as that imposed by the sentencing judge; that is, to the satisfaction of the probation officer, 40 hours, at any place in the community other than a temple.
- [93] Given the reduction in the length of the conditional sentence order, the community work service should be completed within four months.
- [94] With respect to curfew, the order of the sentencing judge was that the curfew would be from 10:00 p.m. to 6:00 a.m. for the entire 12 months of the conditional sentence order. I am satisfied that the objectives of sentencing applicable here can be served with a lesser curfew that will involve less restriction on liberty, so the curfew will be limited to the first three months of the conditional sentence order. During those three months, Mr. Singh will be required to remain within his residence from the hours of 10:00 p.m. to 6:00 a.m. daily.
- [95] The other conditions as imposed by the sentencing judge remain. Those are to keep the peace and be of good behaviour; to appear before this court when required to do so; to report to the probation officer promptly (the details of that will be sorted out in a moment); and to provide your probation officer at first reporting with all residential and business telephone numbers, addresses, and communication numbers, and not to change that address and those telephone numbers without prior written consent of the probation officer.

[DISCUSSION]

- [96] THE COURT: All right, so the order is that Mr. Singh will continue to report to the probation office at 102 - 14245 56th Avenue, Surrey, British Columbia, as and when directed by the probation officer, and thereafter as directed.

"Verhoeven J."

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