

CANADA / JUDGMENT

R. v. Stevenson

2014 BCSC 464

COURT

Supreme Court of British Columbia

DECIDED

20 January 2014

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2014 BCSC 464 R. v. Stevenson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Stevenson, 2014 BCSC 464 Date: 20140120 Docket: X075608-1 Registry: New Westminster Regina v. Malcolm Cameron Boyd Stevenson Before: The Honourable Mr. Justice Bernard Oral Reasons for Sentence Counsel for the Crown: J.R. Neal M.C. Canofari Counsel for the Accused: C.R. Terepocki Place and Date of Hearing: New Westminster, B.C. January 20, 2014 Place and Date of Sentence: New Westminster, B.C. January 20, 2014

- [1] THE COURT: Malcolm Stevenson has entered a guilty plea to Count 1 of a two-count Indictment. The Crown has accepted this plea as a full resolution of the charges and, thus, will enter a stay of proceedings on Count 2 following the imposition of sentence.
- [2] Count 1 reads as follows: Count 1 : Malcolm Cameron Boyd STEVENSON, from the 1st day of January, 2004 to the 31st day of December, 2006, inclusive, at or near the city of Abbotsford, in the Province of British Columbia, and other places, did by deceit, falsehood or other fraudulent means unlawfully defraud Alpar Katona, John Donald Kornelson, Brian Zacharias, Zdislaw "Henrick" Ziolkowski, Stanley Smith, Helmut Wiens, Keith Rajala, Christopher Seggie, Corney Les, Pawel Richtowski, Alexander Krasnov, David Showman, Dennis Hall, Cathy Hall, Phillip Redekop, Harold Redekop, Marian Korec, Dennis Chernoff, Ronald Friesen, Byron Knelson and other members of monies, of a value in excess of five thousand dollars (\$5,000.00), contrary to Section 380(1)(a) of the Criminal Code.
- [3] This Count encapsulates Mr. Stevenson's participation in a Ponzi scheme defrauding the 20 investors named in the Indictment of approximately \$4.56 million, with a subsequent recovery of approximately \$2 million.
- [4] Mr. Stevenson's guilty plea is the result of a negotiated plea agreement. This agreement includes an Agreed Statement of Facts and a joint sentencing submission of five years, eight months imprisonment, with credit for time served in pre-sentence detention on a two-to-one ratio, a DNA Databank order, and no order of restitution or compensation.
- [5] Mr. Stevenson has been in custody on the instant charges for two years and ten months; accordingly, it is understood that if the Court accedes to the joint submission, Mr. Stevenson will have completed serving his sentence upon its imposition.

- [6] The circumstances of the offence are encapsulated in the Agreed Statement of Facts at Tab 1 of Exhibit 1 at sentencing, which reads as follows:
1. International Fiduciary Corporations, SA ("IFC") was a Virginia corporation headquartered in Arlington, Virginia.
 2. United Bank was located at 907 North Quincy Street in Arlington, Virginia.
 3. Preston Pinkett was the President and CEO of IFC since its inception in 2003.
 4. Pinkett was an American citizen that resided in Arlington, Virginia.
 5. Pinkett admitted to conducting a Ponzi scheme to certain government authorities and entered into a plea bargain whereby he pleaded guilty to mail fraud on September 29, 2009 in the Eastern District of Virginia and was sentenced by Judge Liam O'Grady to 3 years' incarceration and 3 years' supervised release.
 6. Pinkett had two prior convictions for securities related matters.
 7. Prior to 2004, IFC appeared to have been a legitimate business that attempted to raise funds for the purposes of foreign investment. However, from 2004-2006, IFC operated what is commonly referred to as a Ponzi scheme.
 8. Stevenson worked on behalf of Pinkett and IFC by pursuing funds that were to be administered in what was presented by IFC attorneys Floyd Anderson and Sherry Wyatt as an existing and ongoing business of financing letters of credit and, additionally, with the intention of using them in future private placements for the purposes of entering into buy/sell contracts for medium-term notes ("MTNs"), with the hope that significant returns would be generated.
 9. Stevenson and Pinkett signed correspondence that included solicitations to potential and existing clients about trading opportunities in "1st tier medium term notes," ("the Comfort Letters") when in fact, they never had access to such trading opportunities.
 10. Stevenson and Pinkett told the clients, in accordance with Floyd Anderson's legal opinion letter and the Comfort Letters, that their funds would be held in sub accounts under IFC, identified by number. The clients understood that there was the possibility that if their funds were used to back letters of credit, that those letters of credit would be called upon in the event of a loss. However, no letters of credit were ever financed and thus none of the money ought ever to have been pooled.
 11. The primary account at United Bank where the clients funds were pooled was United Bank Account 4330-3909 (the "3909 Account"). The two authorized signatories for the 3909 Account were Preston Pinkett and Gary Spencer.

12. Stevenson, based on IFC attorney Floyd Anderson's legal overview letter and the "trading agreement" dated September 20th, 2003, signed between Gary Spencer, Edward Manlella, and Preston Pinkett, did represent, on a best efforts basis, that clients could receive a return in profits of 4%-6% each month from the activities IFC was conducting in financing letters of credit and/or in the buy/sell contracts of first-tier MTNs, when in fact no such trading ever took place.
13. In order to maintain the scheme, Pinkett used Stevenson to raise funds and from the incoming clients' funds issued "profit" payments to clients that preceded them; thus Stevenson participated in and supported the IFC scheme/fraud.
14. Specifically, Pinkett, as authorized signatory, caused "profit payments" of 4%-6% to be wired to clients from the 3909 Account, when Stevenson, Abraham (IFC's accountant), Anderson and Wyatt (IFC's attorneys) knew the only source of the deposits for the 3909 Account was incoming client funds.
15. Stevenson, through a company that he controlled called "World-Wide Projects Plus Limited Partnership", received \$4,460,000.00 for the role he played with IFC.
- [7] Mr. Stevenson is a 58-year-old married man with two adult offspring. He has no prior criminal convictions. Mr. Stevenson said he is embarrassed for his actions and remorseful for the harm he has caused. Mr. Stevenson characterized himself as the middleman in the fraudulent scheme rather than the brains behind it; nonetheless, he accepts that he was a critical party to the fraud.
- [8] Three victim impact statements were tendered.
- [9] Victim Keith Rajala and his wife lost \$65,000 at a time when they were preparing for their retirement years and hoping to help their son purchase his first home. The stress from this loss has had negative health and trust repercussions for them.
- [10] Victim Phillip Redekop invested all his hard-earned money with Mr. Stevenson. He lost over \$200,000. He described the impact on him as "huge" and said it has affected his relationships, health, lifestyle and zest for life.
- [11] Roy Terry was appointed as a receiver over IFC. He described the difficulties he has faced in attempting to collect on the receivership's judgment against Mr. Stevenson. He characterized most of the investors as unsophisticated people who drew from their life savings or equity in their homes for their investment, and who suffered greatly as a result of Mr. Stevenson's fraud.
- [12] The Crown considered the following as aggravating and mitigating factors in formulating its sentencing position.
- [13] In aggravation are:
 1. the dollar value of the fraud (\$4.56 million);

2. the duration of the fraudulent scheme (three years);
3. the sophistication of the scheme ("moderate");
4. the number of victims ("many"); and
5. the absence of disgorgement ("money has disappeared").

[14] In mitigation is Mr. Stevenson's guilty plea prior to an estimated four-month jury trial.

[15] The defence has not taken issue with these factors as identified by the Crown.

[16] In support of the parties' collective position that a five year, eight month jail sentence is within the range of fit sentences, the following cases involving analogous fraudulent schemes have been cited:

1. U.S.A. v. Preston Pinkett, Case No. 108CR437, September 29th, 2009, United States District Court, Eastern District of Virginia, Alexandria Division;
2. R. v. Carter, [1991] O.J. No. 1801 (C.A.);
3. R. v. Drabinsky, 2011 ONCA 582;
4. R. v. Paterson, 2013 BCPC 5;
5. R. v. Thow, 2010 BCPC 378;
6. R. v. Cunsolo, 2012 ONSC 114; and,
7. R. v. Mazzucco, 2012 ONCJ 333.

[17] In these cases, Mr. Pinkett received a jail sentence of three years, Mr. Carter received five and a half years, Mr. Drabinsky received five years, Mr. Gottlieb (the co-accused in Drabinsky) received four years, Mr. Paterson received six years, Mr. Thow received nine years, Mr. Cunsolo received 18 months (plus restitution of \$250,000), and Mr. Mazzucco received six years.

[18] In imposing the aforementioned sentences the courts recognized the paramountcy of denunciation and general deterrence as sentencing objectives for large-scale frauds, which leave much personal suffering and devastation in their wakes.

[19] It is well-established in our jurisprudence that considerable judicial deference is to be shown for negotiated plea agreements so long as the proposed sentence falls within the acceptable sentencing range for similar crimes committed by similar offenders, and the plea is warranted by the admitted facts: R. v. Verdi-Douglas (2002), 162 C.C.C. (3d) 37 (Que. C.A.) as cited in R. v. Melvin, 2009 NSSC 152.

- [20] Applying the aforementioned sentencing principles to the instant case, I am satisfied that the cases cited by counsel amply demonstrate that the proposed five year, eight month sentence is well within the range of fit sentences. The plea is unquestionably warranted by the admitted facts.
- [21] Having regard to all the foregoing, I am satisfied that it is appropriate to accede to the joint submission. In so doing, I note that the proposed sentence does not represent a considerable compromise, yet it eliminates the vagaries and considerable draw on resources of a lengthy jury trial. I commend counsel and Mr. Stevenson for their collective ability to resolve the case in this manner.
- [22] Mr. Stevenson, please stand.
- [23] On Count 1, you are sentenced to five years, eight months' imprisonment. For the two years, ten months you have been held in pre-trial detention your sentence will be reduced by five years, eight months less one day, on the two-to-one ratio as agreed upon by counsel. This reduces the sentence left to be served to one day in jail.
- [24] By consent, there will be a DNA Databank order pursuant to s. 487.051(4) of the Criminal Code, R.S.C. 1985, c. C-46.
- [25] No other ancillary orders are sought.
- [26] MR. NEAL: I direct Madam Registrar to enter a stay of proceedings with respect to the theft count, Count 2. "Bernard J."

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