R. v. Ebrahimi

Ontario Judgments

Ontario Court of Justice

Ottawa, Ontario

J. Legault J.

Heard: May 17, 2023.

Judgment: May 17, 2023.

Information Nos. 20-12681, 10155, 10284,

8850, 9902, 9960, 21-10329, 1095,

23-11400471, 11400472

[2023] O.J. No. 2752

Between His Majesty the King, and Sohrab Ebrahimi

(70 paras.)

Case Summary

Criminal law — Sentencing — Sentencing considerations — Deterrence — General deterrence — Specific deterrence — Sentencing of Ebrahimi for fraud and theft offences and breach of court orders, Ebrahimi ordered 12 months imprisonment followed by two years' probation — Defence was seeking sentence of time served, which was equivalent of eight months and probation for two years — Crown sought 12-month global sentence and probation for two years — Length of sentence imposed respected principles of general and specific deterrence, principle of how to deal with first-time offender with respect to rehabilitation, and addressed principle of totality.

Sentencing of Ebrahimi for fraud and theft offences and breach of court orders. Ebrahimi pleaded guilty to two separate occasions of a series of property offences, four specific events involving uttering a forged document, fraud, possession of credit cards, possession of identification that was not his, theft of a motor vehicle, impersonation and possession of identification, and breach of court orders. The Defence was seeking a sentence of time served, which was the equivalent of eight months and probation for two years. The Crown sought a 12-month global sentence and probation for two years, and an order pursuant to s. 447 of Criminal Code.
HELD: Ebrahimi ordered 12 months imprisonment followed by two years' probation.

The length of sentence respected the principles of general and specific deterrence, the principle of how to deal with a first-time offender with respect to rehabilitation, and addressed the principle of totality. Ebrahimi had a severe drug addiction, cocaine and opiates. His risk factors, according to the mental health assessment, were substance abuse, employment and history. Ebrahimi had little employment history to speak of, which often reduced the risk to the community. A mixture of jail, a conditional sentence, and was ordered.

Statutes, Regulations and Rules Cited:

Criminal Code, *R.S.C. 1985, c. C-46, s. 21*, s. 447

Counsel

Katie Mbakulo

J. Witten, Counsel for the Crown.

J. Gilbert, Counsel for Mr. Ebrahimi.

SENTENCING

J. LEGAULT J.

1 Mr. Sohrab Ebrahimi pleaded guilty before me on two separate occasions to a series of property offences; four specific events involving Uttering A Forged Document, Fraud, Possession Of Credit Cards, Possession Of Identification that was not his, Theft Of A Motor Vehicle, Impersonation And Possession Of Identification. He is also being sentenced today as a result of guilty pleas to five different incidents of breach of court orders. Twice he was found breaching a condition that he not possess identification not in his name. He Failed to Report to the John Howard Society, and two counts relating to his Failure to Reside, as per the conditions, at Harvest House.

2 He was given the opportunity to seek residential treatment awaiting sentence, and he left Harvest House, which is a long-term residential facility in this jurisdiction, the day of his arrival.

3 Separate and apart from those property-related offences is the offence of wilfully permitting pain and suffering to his cat. Pictures were filed of the injuries of the cat that are, I must say, difficult to look at. He attempted to treat his caton his own, not having money to pay for vet services. He had no money because of his drug addictions, and the cat suffered, from the evidence I've heard, for approximately two to three weeks unnecessarily, and the injuries were to the extent that the cat had to be euthanized.

4 With respect to the offence of cruelty to an animal, general and specific deterrence, in my view, are the primary objectives of sentencing. In looking at the decision of *R. v. Chen*, *[2021] A.J. No. 1569*, the Alberta Court of Appeal at paragraph 40, the Court indicates as follows:

> While deterrence and denunciation are the primary sentencing principles, other sentencing principles are also engaged. The amendments to the animal cruelty provisions in the Criminal Code do not speak only of punishment, but also protection for the animal victim. The intervenor, Animal Justice, urges a nuanced approach to sentencing, with consideration of specific deterrence including conditions that will reduce the potential for repeat offending and ensure the offender is not in a position to harm animals, rehabilitation to help the offender understand the impact of his or her actions, and reparations to acknowledge harm and ensure care is available for the animal victim. These will all be relevant considerations in sentencing for animal cruelty offences, depending on the circumstances. For example, greater consideration should be paid to prohibition orders to ensure the offender is no longer in a position to harm animals, and reparations to ensure provision of short and long-term veterinary care for the animal. Section 447.1(1) (a) permits an order prohibiting the offender from owning or residing with an animal. In circumstances where there is a reasonable risk of future harm to the animal, or any animal, an appropriate order should be made to prevent such harm."

5 At paragraph 36, the Court also indicates, and I quote:

> "I add that, even where violence is not involved, it does not follow that a CSO will be the appropriate disposition for a youthful offender...where a period of incarceration was imposed on a youthful offender convicted of dangerous driving causing bodily harm. The offence of animal cruelty does not encompass only physical violence. Its focus is on the pain or suffering experienced by the animal. Not every contravention of the animal cruelty provisions will be a crime of physical violence; crimes of neglect, depending on the circumstances, can be equally serious and sufficiently grievous to diminish, or eliminate, the likelihood of a [Conditional Sentence Order]."

6 Mr. Ebrahimi has only one conviction on his record, for a drinking and driving offence, so I cannot lose sight of the Court's obligation to attempt rehabilitation in light of that fact.

7 The Defence is seeking a sentence of time served, which is the equivalent of eight months and probation for two years. The Crown is of the view that a 12-month global sentence and probation for two years, and an order pursuant to s.447 is appropriate.

8 I have had the benefit of a report from Dr. Wood, I believe, from the Royal Ottawa Hospital, a s.21 mental health assessment.

9 In looking at all the factors, I am of the view that the Crown's position is the appropriate one in the circumstances. A sentence of 12 months is the appropriate sentence. In my view, given all the offences and mindful that I am dealing in large part with property offences, that length of sentence in totality respects the principles of general and specific deterrence, respects the principle of how to deal with a first-time offender with respect to rehabilitation, and as I have said, addresses the principle of totality.

10 Is a conditional sentence appropriate for the balance of this time in custody, an additional four months? I am mindful that Mr. Ebrahimi has a severe drug addiction, cocaine and opiates. I am also mindful that he breached his Harvest House conditions. That calls into question his willingness to pursue treatment, and I am mindful that his risk factors, according to the mental health assessment, are substance abuse, employment and history. Mr. Ebrahimi has little employment history to speak of, which often reduces the risk to the community.

11 I am of the view that a progressive release from custody is the appropriate form of sentence, which will both encourage Mr. Ebrahimi to pursue treatment with his drug addiction is at the core of his property offences before the Court, and also a factor I can conclude, financially, with respect to the choices he made with respect to the care for his cat.

12 He is, as I have noted, essentially a first-time offender, where I must address the prospect of rehabilitation. The road to recovery, sir, is a long one. I have been a judge in these courts for almost 15 years. It is rare that someone kicks their habits after one attempt at treatment. You have attempted it in the past. You completely ignored the Harvest House facility, but I must be mindful that I am dealing with essentially a drug addict here before me.

13 A mixture of jail, a conditional sentence, and probation will hopefu1ly encourage you, sir, to pursue this road to your recovery.

14 With respect to the offence of animal cruelty, I would have sentenced you to four months in jail. In light of the caselaw that I have reviewed, presented by the Crown, the nature of the injuries, the time of the suffering for the cat, the injuries leading to the cat being unable to overcome them and being euthanised, when an easy solution was apparent or available - the SPCA - I am of the view that a general deterrent sentence of four months is appropriate.

15 I will attribute two months of pre-trial custody to that sentence, which is the equivalent of three months. I am therefore sentencing you to a further 30 days in jail on that count, and two years of probation.

16 With respect to the count of Uttering A Forged Document, sir, which was your attempt to obtain drugs by uttering a forged prescription; your two Breaches Of Release conditions by not attending Harvest House as directed; and your first breach of having identification on May 10th of 2020, I am sentencing you to a consecutive sentence, but this one will be of three months, and it will be a conditional sentence in the community.

17 With respect to all other counts per information, I understand there are f ive further informations, the total sentence with respect to all offences on each information, concurrent to each other, I would have sentenced you to

30 days in jail. I am attributing 20 days for each series of informations for time served, therefore, and I am placing you on probation for a period of two years.

18 So I have, in essence, used the three months of the pre-sentence custody of eight months for the sentence of Animal Cruelty, and with respect to all other offences, the five other informations, I am attributing one month of that pre=trial custody, for a total of eight months.

19 Please stand up, sir. You understand, you have 30 days in jail to serve on the animal cruelty count, and then you're on probation, sir, for an additional three months. I will give you those conditions. You are going to be on probation for two years, and I am imposing an order that you not possess, care for, or live with an animal for a period of time; do you understand that?

20 MR. GILBERT: I think, Your Honour, you meant conditional sentence for three months.

21 THE COURT: Did I not say that? Conditional sentence, yes, for three months, probation for two years.

22 With respect to the conditional sentence conditions, sir, they will mirror the conditions of probation that are recommended today. Sir, you are to report within two working day s of your release from custody to a supervisor, and thereafter as directed by your supervisor. You are to cooperate with your supervisor and sign any releases of information that supervisor requires for the purpose of monitoring the sentence.

23 There will be a house arrest component for the first two months of that sentence; that you must remain in your residence at all times, except one morning or afternoon a week to obtain the necessities of life. Is there a day of the week that is better for you to run and get your groceries and banking?

24 THE ACCUSED: Wednesday.

25 THE COURT: Wednesday morning or afternoon?

26 THE ACCUSED: Afternoon.

27 THE COURT: Afternoon? So from noon to 4:00 p.m. on Wednesdays, you can leave your residence to obtain the necessities of life, and for any medical emergencies for you or members of your immediate family, for any reason in order to respect the conditions of this conditional sentence order, made in writing and approved by your supervisor in advance.

28 And for the one month of the conditional sentence that remains, I will permit the supervisor to impose a curfew as she or he deems fit for that last portion.

29 While you're serving this conditional sentence, you must report and answer the door at any time when your supervisor or a P eace Officer attends in order to ensure your compliance with the sentence.

30 You are not to contact or communicate in any way, either directly or indirectly, by any physical, electronic or other means, with Andrew Winchester, Andrew Robinson, Stefan Druin (ph), Yaroo Gupta (ph) and Darius Ebrahimi (ph). You are not to be within 250 metres of any place you know these people to live, work, go to school, frequent, or any place you know them to be, except for required court attendances. You are not to attend at Bell Pharmacy, Massine's Independent Grocer, 417 Infiniti Nissan, Hertz Rentals, Ultramar Gas Station, 1070 King Edward Avenue, Montreal Road Medical Clinic. The addresses are indicated in the order.

31 You are to attend and actively participate in all assessment, counselling, or rehabilitative programmes as directed by your probation officer, and complete them to the satisfaction of your probation officer.

32 You are not to possess any identification card with data strip, or security chip credit card or debit card, credit or debit card, data blank card with a magnetic strip, cheque, negotiable instrument or banking document, unless it has been lawfully issued in your name.

33 You are not to be in the driver's seat of any vehicle not lawfully in your possession, and you're not to own, care for, have control, or reside with any animal.

34 Do you understand the conditions?

35 THE ACCUSED: Yes, sir.

36 THE COURT: Subject to any further exceptions which Mr. Gilbert may raise, if you breach this order, sir, you will be arrested and you will have to reappear before me and convince me why you should be released and not serve the balance of your sentence in jail. So there is a motivation for you to respect the conditions. If not, you will find yourself back in custody.

37 The two-year period of probation will have the same conditions. You are to report in person to a probation officer within two working days of your release from custody, and after that at all times and places as directed by your probation officer, or any person authorised by your probation officer to assist in your supervision.

38 The non-communication condition will be the same. The non-attendance condition will be the same. The locations where you cannot attend will be the same. Your counselling condition will be the same. It should also include a condition that you sign any releases are required by your probation officer to ensure your compliance with any assessment, counselling or rehabilitative programmes as directed.

39 You are not to possess any identification card or data strip, that condition is the same. The one about being in the driver's seat and not to own, care, or have control or reside with any animal is the same as well.

40 Now, if you breach your probation order, sir, with the record you have, you are going to face another jail sentence; do you understand that?

41 THE ACCUSED: Yes, sir.

42 THE COURT: Alright. With respect to the order under s.447, Mr. Gilbert, it is a statutory order, so I am prohibiting you from owning or having the custody or control of or residing in the same premises as an animal or a bird. Given that this is your first offence, your risk of reoffending appears low with respect to this type of offence, as per the psychiatric report, I am imposing the period of seven years rather than ten years with respect to that order.

43 I will waive all victim fine surcharges. You are impecunious and you are just getting out of jail, so you won't have to pay the victim fine surcharges. Any comment, Mr. Gilbert?

44 MR. GILBERT: The only questions that I had, I take it as far as the probation, that the - I know that the conditions largely were to mirror the conditional sentence, but I take it that the house arrest and the curfew conditions that are part of the conditional sentence, wouldn't be applicable to the probation?

45 THE COURT: No, no.

46 MR. GILBERT: Thank you. And I know Your Honour mentioned the Montreal Road Medical Clinic, I take it because of his - a location where some of the offences occurred. That's not normally where you would be getting your Suboxone and your prescriptions, you can deal with another pharmacy?

47 THE ACCUSED: Is it 265 Montreal Road or...

48 THE COURT: I have 398 Montreal Road.

49 THE ACCUSED: 398 Montreal Road? No, it wouldn't be, because OATC Vanier is right - it's 265 where I get my Suboxone.

50 THE COURT: Alright.

51 MR. GILBERT: Thank you.

52 THE COURT: Any comments?

53 MR. WITTEN: There's just one thing, if I can confirm with my friend here, Your Honour, or - who is Darius Ebrahimi? I'm cognisant, and the terms I sent to Madam Clerk, I was a bit hesitant on this name here. I suspect it's a family member. Will it be too onerous to have no contact?

54 THE ACCUSED: It's my older brother.

55 MR. WITTEN: I'm content, Your Honour, to not - to strike that name from the no-contact order, as long as my friend doesn't take any exception to it, and breach of undertaking is a secondary designated offence, so I'll leave that with Your Honour but - for a DNA order, but ...

56 THE COURT: Comments?

57 MR. GILBERT: Well, with respect to the removal of his brother's name for the conditions, I have no comments. I appreciate my friend raising that. With respect to the request for DNA, I'm mindful of the number of offences before the Court, but all I'll say is that, given that he is more or less being regarded as a first-time offender, and I guess if it's the breach charges that the Crown is suggesting the DNA be applicable to in this case, or is applicable to in this case, I just question whether it's really necessary to make an order in this case. If there were more compelling offences, perhaps, that were DNA eligible, I might have had different things to say, but if it's really in respect of 145s, then I don't know, as a first-time offender, if it's a necessary order, but Your Honour obviously has the discretion.

58 THE COURT: I see, in the circumstances of Mr. Ebrahimi, the DNA being a deterrent aspect of the sentence. Given the number and frequency of property offences, they're often resolved or concluded on the basis of DNA left at the scene of thefts and crimes and break-and-enters, so in these circumstances, with respect to the breach findings, I will order you to provide a sample of your DNA, sir. It's in my view in the interest of the administration of justice to do so. Thank you. Good luck, sir, thank you.

59 COURT CLERK: Sorry, two things, Your Honour, which breach charge would you like the DNA to go under?

60 THE COURT: Just give me a moment.

61 MR. WITTEN: And just while Your Honour's looking that up, the remaining counts, if there are any, or informations marked withdrawn at the request of the Crown, please.

62 THE COURT: With respe ct to the two breaches at Harvest House, Madam Clerk.

63 COURT CLERK: Is that August 10th?

64 THE COURT: Yes, it would have been August 10th, yes, thank you.

65 COURT CLERK: And for the three-month CSO, it was for the forged document, the breach from the 10th of May, and was there another...

66 THE COURT: There are two breaches from Harvest House on August 10th.

67 COURT CLERK: Yes, okay, the August 10th one, okay, that's what I thought, thank you.

68 THE COURT: I view those as related to his drug addiction more specifically, thank you.

69 COURT CLERK: Okay, thank you, Your Honour.

70 MR. GILBERT: Thank you.

...COURT ADJOURNED

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