

COURT OF QUÉBEC

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
« Criminal and Penal Division »

N° : 500-73-004519-175

DATE : April 13, 2018

BEFORE THE HONORABLE JUSTICE PATRICIA COMPAGNONE, J.C.Q.

HER MAJESTY THE QUEEN

Prosecutor

c.

DELBERT WILLIAM MEISTER

Accused

SENTENCE

[1] The accused, a 72 year old Quartermaster for the Canadian Coast Guard, accepted money, twice, in exchange for sensitive information accessible through his position, for the purpose of aiding his brother, and others, to import cocaine.

[2] Having pled guilty to a breach of trust in connection with the duties of his office, the accused now has to be sentenced appropriately.

THE ISSUE

[3] The parties agree that the appropriate sentence is of two years less one day imprisonment. The defense submits that this sentence can be served in the community, pursuant to section 742.1 *C.cr.*. The Crown disagrees.

[4] Though both parties agree that the accused poses no risk to the safety of the community, they disagree concerning the consistency of a conditional sentence with the fundamental purpose and principles of sentencing.

[5] Is a conditional sentence appropriate in the case at bar?

CONTEXT

[6] For the purpose of the guilty plea, the parties submitted a joint submission of facts¹.

[7] On July 17, 2014, the accused met his brother, Gary Meister, and an undercover police agent working under the name of «Joe», on the Edward Cornwallis ship at port, in Halifax, Nova Scotia.

[8] Gary Meister and «Joe» told the accused about their plan to import drugs into Canada, via fishing boats.

[9] During that meeting, the accused said he had access to the boat watch list and explained the general procedures for boats to be checked.

[10] «Joe» asked if the accused would be able to get information for him and Gary Meister. The accused agreed he would.

[11] The accused took the sealed envelope, containing 5000\$, given to him by «Joe». He mentioned he could not take money off the boat and then gave the envelope to his brother Gary, with instructions to give it to his wife.

[12] Prior to February 20, 2015, the accused gave a piece of paper to his brother Gary, mentioning their ship, «Hailey's Joy», was on the watch list.

[13] «Hailey's Joy» is an RCMP owned boat used by «Joe» as part of his cover story.

[14] On February 20, 2015, Gary Meister showed the handwritten note, from the accused, to «Joe».

[15] On April 19, 2015, the accused met with Gary Meister, and «Joe», at an A&W restaurant. «Joe» thanked the accused for getting information about their boat. The accused confirmed the information and described how he tried to take a picture of the actual notice on the bridge of the ship. However, the flash of his camera at been activated and someone had noticed it. «Joe» thanked him again and mentioned appreciating that the accused was watching their back so they *«wouldn't do 25 years in jail for a boat filled with coke»*. The accused said *«yes, Coca-cola»*, to which «Joe» replied that it was not Coca-cola.

¹ S-1

[16] The accused told Gary Meister and «Joe», that, as a Quatermaster, he has access to information on 25 boats and 4 planes. He mentioned that he could access this information directly from his office.

[17] Gary Maiser spoke about a new plan to import cocaine from Colombia, via Normand Joseph Pomerleau and Ivan Betancur-Alzate, to the accused. The accused mentioned that he met Pomerleau once.

[18] «Joe» gave 3000\$ to the accused for his help. The accused took it and thanked him.

[19] On April 20, 2015, the accused was arrested, at his residence, by the RCMP. Asked to give back the money he had received the day before, he did, minus 300\$ that was spent at a Canadian Tire.

[20] During his cautioned statement to the RCMP, the accused acknowledged that he had signed confidentiality documents when he joined the Coast Guard, that he took pictures of the boat watch list on the Coast Guard ship, and that he met Gary Meister and «Joe» on July 17, 2014 and April 19, 2015.

[21] Finally, no importation of drugs was ever realized, as this was all a scheme, orchestrated by the RCMP, to investigate drug trafficking and importation into Canada.

ANALYSIS

[22] The fundamental principles of sentencing are codified in sections 718 and following of the *Criminal Code*. The goal of sentencing is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society².

[23] This goal is met by the imposition of sanctions intended to meet one or more of the following objectives: to denounce unlawful conduct³; to deter the offender and others from committing offences⁴; to separate offenders from society when necessary⁵; to assist in rehabilitating offenders⁶; to provide reparation for harm done to victims or to the community⁷; and to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community⁸.

[24] The Court must be mindful of the principle that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances⁹.

² *Criminal Code*, s. 718

³ *Criminal Code*, s. 718 a)

⁴ *Criminal Code*, s. 718 b)

⁵ *Criminal Code*, s. 718 c)

⁶ *Criminal Code*, s. 718 d)

⁷ *Criminal Code*, s. 718 e)

⁸ *Criminal Code*, s. 718 f)

⁹ *Criminal Code*, s. 718.2 d)

A sentence should also be similar to sentences imposed on similar offenders for similar offences¹⁰.

[25] Also, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender¹¹.

[26] The objective gravity of offences is illustrated by the maximum penalty set out by the legislator. The maximum penalty for breach of trust is five years imprisonment.

[27] With respect to the degree of responsibility of the offender, the Court takes into account the aggravating and mitigating circumstances summarized below.

Aggravating circumstances

[28] The breach of trust committed in the grand scheme of importing cocaine across Canadian borders is an important aggravating factor. All levels of Canadian courts are sensitive to the well-known dangers of this drug and the devastating consequences brought on by addiction as well as the cycle of criminal activity that often plagues its users. The importance of deterrence and denunciation in such matters is often emphasized¹².

[29] The accused also violated the oath he took by reason of his employment in the public service of Canada, preventing him from disclosing any matter that would come to his knowledge, by reason of his employment¹³.

[30] In addition, the accused's actions undermined the integrity of Canadian borders. Cocaine not being indigenous to Canada, criminal organisations who wish to sell it in Canada need to import it. Consequently, to prevent such crime, our borders need to be protected. When the integrity of Canadian agencies assigned to this task are compromised, such as was the Coast Guard in this case, a hole is dug into our homeland security.

[31] The accused did not act impulsively in breaching the trust put in him. It is not a case of an isolated incident. The events spread over nearly a year, from July 17, 2014 to April 19, 2015, and the accused participated to two exchanges of information.

[32] Finally, he accepted money in exchange for the confidential and sensitive information he gave oath not to disclose¹⁴.

¹⁰ *Criminal Code*, s. 718.2 b)

¹¹ *Criminal Code*, s. 718.1

¹² *R. c. Bulgarelli*, 2017 QCCQ 12971, par 25

¹³ S-2

¹⁴ S-1, paragr. 6 and 15.

Mitigating circumstances

[33] The accused asked for a transfer of his case from Halifax to Montreal with the intent to plead guilty, which he did, as soon as possible, following the transfer¹⁵.

[34] This is not surprising since he offered his full collaboration upon his arrest, giving an incriminating statement to the police about his participation to the events that led to his arrest.

[35] He is 72 years old and has always led an active, and humble life, as a seaman. He has no prior convictions and has never been involved in any criminal activity. He was not linked, in any way whatsoever, to the organized crime this operation, by the RCMP, was targeting.

[36] Since his arrest, he lost his job.

[37] The testimony he delivered, on the day of the submissions regarding sentencing, demonstrate that he has genuine remorse, and regret, for his actions.

[38] He has been respecting strict conditions since his arrest on April 20, 2015. No charges of breach of these conditions have been laid since.

[39] Finally, it seems this case has had some publicity in his community and he has been shamed by it. On this particular point, the Court can say, without hesitation, that the accused has been shamed by his actions, even without such publicity. His testimony is clear, convincing and uncontradicted, on this aspect.

Appropriate sentence

[40] Parliament having not excluded breach of trust from the conditional sentencing regime, it is evident that a conditional sentence remains available as a sentencing option if the circumstances are appropriate.

[41] Of course, Parliament could have excluded the offence of breach of trust from the conditional sentencing regime, either entirely or in particular circumstances, as it has already done in respect to certain other offences, especially since the abuse of a position of trust is an aggravating circumstance pursuant to section 718.2(a)(iii) *C.cr.* But, Parliament has opted not to do so.

[42] It is not in attributing more weight to a specific crime that Courts can exclude a penological choice that the legislator as chosen not to exclude¹⁶.

¹⁵ For logistics purposes of dealing with many of the accused in this RCMP operation, most cases were dealt with in the Montreal district. It is in this context that the accused asked for his case to be transferred from Halifax to Montreal.

¹⁶ *Harbour c. R.*, 2017 QCCA 204, paragr. 78

[43] Both parties have submitted many authorities regarding sentencing in drug and breach of trust cases¹⁷. None of them are exactly like the case at bar, it why comparative approach has its limits¹⁸.

[44] However, it is clear from all authorities submitted that a fit sentence is one that, while being individualized, will provide sufficient denunciation and deterrence.

[45] It is obvious that the accused was drawn in the importation scheme, set out by the RCMP, by his brother Gary Meister. It had been 11 years since he had seen him when they meet him again in 2014. Almost immediately, Gary Meister asked his brother if he could refer some friends with money to finance his business ventures, which the accused accepted to do. Consequently, some of his friends lent the money to Gary Meister. Unfortunately, Gary Meister was unable to refund his brother's friends. According to the accused, accepting to assist his brother import drugs was a way of helping him reimburse his friends and protecting him from them trying to collect him¹⁹.

[46] Obviously, the nature of the relation between Gary Meister and the accused is at the root of the offence he committed. It seems to be a particular relationship and the accused, being obviously vulnerable to the opinion of others, was most probably validated by the help he was able to offer Gary Meister. For Gary Meister, the accused might have been a «great sales pitch» to the organization he thought he was dealing with. Definitely, it was not greed but the accused's high need for validation, coupled with his acute sense of pride, that led to his demise.

[47] That being said, the commission of the offence was certainly not brought in by any interest by the accused in the importation of drugs. Unfortunately, he ignored the oath he took, and the position of trust he was in, to please his brother and nourish his ego.

[48] The Court is satisfied that there are no aggravating circumstances within the meaning of section 718.2 a), other than the abuse of a position of trust.

¹⁷ *R. c. Proulx*, 2000 CSC 5; *R. v. Ellis*, 2013 ONCA 739 (permission to appeal refused CSC may 1, 2014); *R. v. Greenhalgh*, 2012 BCCA 236; *R. v. Greenhalgh*, 2011 BCSC 511; *R. c. McClelland*, 2017 QCCS 2735; *R. v. Kandola*, 2014 BCCA 443; *Morency c. R.*, 2012 QCCA 1836; *R. c. Morency*, 2012 QCCQ 4556; *R. v. Smith*, 2015 BCSC 1267; *R. c. Francesco*, 1998 QCCA 13079; *R. v. Bannon*, 2012 ONCA 557; *R. v. Glen Bannon*, 2011 ONSC 3000; *R. c. Bélanger*, 2011 QCCQ 2229; *R. c. Thibault*, 2015 QCCQ 8910; *R. c. Duhamel*, 2015 QCCQ 12896; *R. c. Duhamel*, 2017 QCCA 98; *R. c. Borges*, 2000 QCCA 1768; *R. c. Cedeno*, 2010 QCCQ 4050

¹⁸ *Harbour c. R.*, 2017 QCCA 204, paragr. 49

¹⁹ Testimony of the accused

[49] However, let's not forget that this breach of trust is entirely committed by the accused. He alone is responsible for the commission of this offence.

[50] Since the events, the accused has lost his job, his wife to cancer and his home. Unable to continue at his job because of the charges, he was unemployed and taking care of his ailing wife, up until her death, in 2016.

[51] Nonetheless, it is clear the accused benefited from his good reputation and position of trust and profited from his status to commit the crime. He has no one to blame but himself.

[52] The accused is now trying to pick up the pieces of his life, renting a home in Ste-Marguerite's Bay, with a lady friend, and working as a traffic control person²⁰. At 72 years of age, he could be retired from working but, as he has always done his entire life, he is an active member of society. His rehabilitation is most certainly underway.

[53] Of course, a sentence must reflect the rehabilitation of the offender, but it must not be so lenient as to ignore the objectives of general and specific deterrence.

[54] On the other hand, it would be a mistake to think that only imprisonment can answer adequately the objectives of denunciation and deterrence, severity of a sentence is not confined to imprisonment²¹.

[55] Here, the proof demonstrates a strong awareness by the accused concerning the illegality and inappropriateness of his actions. Though he is afflicted by the consequences of his actions on his life, he is also aware of the risk to the community caused by his behavior and the tarnishing of his duty as a member of the Canadian Coast Guard.

[56] Moreover, when the criminal process is successful in promoting a sense of responsibility in an offender and is able to profoundly mark him to a point where specific deterrence is achieved, as the Court concludes is the case with the accused, an important part of the individualisation of sentencing is met. It also is reassuring for the protection of society²².

[57] Finally, the Court cannot ignore the public disgrace, loss of status, damage to reputation, stigma of conviction, and loss of employment that has resulted to the accused from this offence. These can certainly count, when coupled with a conditional sentence of two years less one day with house arrest, as denunciation and deterrence²³.

²⁰ S-3

²¹ *Harbour. c. R.*, 2017 QCCA 204, paragr. 81

²² *Id.*, paragr. 60

²³ *R. c. Bunn*, 2000 CSC 9, paragr. 23

[58] In addition, imposing a condition of performing community service will achieve the restorative objective of reparation to the community²⁴.

[59] Consequently, the Court is satisfied that a conditional sentence, and not a jail term in a Provincial Detention Center, is capable of respecting the principles and the objectives of sentencing in this particular case.

[60] The Court finds that a conditional sentence of two years less one day sentence is sufficient to send a message of denunciation and deterrence in relation to the accused's conduct, yet to recognize the mitigating factors of his situation. In order to support and supervise him following his conditional sentence, a probation for period of two years will be also imposed.

CONCLUSION

[61] For these reasons, the Court imposes a conditional sentence of two years less one day with the following conditions to respect :

1. Report within two working days of today, in person, to a supervisor and, thereafter, report to the supervisor when required by the supervisor and in the manner directed by the supervisor;
2. Keep the peace and be of good behaviour;
3. Appear before the Court when required to do so by the Court;
4. Remain within the province of Quebec unless written permission to leave the province is obtained from the Court or the supervisor;
5. Notify the Court or the supervisor, in advance of any change of name or address, and promptly notify the court or supervisor of any change of employment or occupation;
6. Perform **240 hours of community service work within a delay of 18 months** from the beginning of this order.
7. Provide his supervisor with proof of attendance and completion of community service assignments.
8. For **the first 18 months** of this order, be confined to his residence, under house arrest, 24 hours per day, 7 days per week. The only times the accused may be absent from his residence are as follows:

²⁴ *Id.*

- a) reporting to his supervisor;
- b) for employment purposes, in accordance with a detailed schedule and timetable determined in advance with the supervisor on the basis of the work to be done;
- c) for a medical emergency for himself, or a member of his immediate family, or attending necessary medical appointments;
- d) attending to shopping and other essentials during a four-hour period each week on Friday, between 1 pm and 5 pm;
- e) religious purposes;
- f) travelling directly to or from any of these activities;
- g) otherwise only with the prior written permission of his supervisor;
- h) December 24, 25 and 26 and 31, 2018, January 1 and 2, 2019.

9. Have a working residential telephone, at all times. Prohibition to make any call forwarding from this landline. Answer all calls received on this telephone line.

10. For **the following six months** of this order, be at his residence, on all days of the week, from 10 p.m. to 6 a.m., except:

- a) for employment purposes, in accordance with a detailed schedule and timetable determined in advance with the supervisor on the basis of the work to be done;
- b) with written permission from his supervisor;
- c) for a medical emergency for himself or a member of his immediate family.
- d) on December 24, 25 and 26 and 31, 2019
- e) on January 1 and 2, 2020

[62] The Court also imposes, following the conditional sentence, a probation for two years with the following conditions to respect:

1. Notify the Court in advance of any change of name or address, and promptly notify the Court of any change of employment or occupation;
2. Keep the peace and be of good behaviour;
3. Appear before the Court when required to do so by the Court;

PATRICIA COMPAGNONE, J.C.Q.

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Date of hearing : February 16, 2018