COURT OF QUÉBEC

CANADA
PROVINCE OF QUÉBEC
CITY OF MONTRÉAL
"Criminal and penal division"

N° : 500-01-071480-120

DATE : November 7, 2019

BEFORE THE HONOURABLE JUSTICE ROBERT MARCHI, J.C.Q.

THE QUEEN
Prosecutor
v.

RICHARD CHANDROO
Accused

SENTENCE

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[1] On January 23rd, 2019, the Accused Richard Chandroo was found guilty of the two following counts.

[2] In the first count, of having by deceit, falsehood or other fraudulent means defrauded Meir Rabkin (Rabkin), of a sum of money of a value exceeding $5,000, committing thereby the indictable offence provided by Section 380(1)a) of the *Criminal Code* (*Cr.c.*).

[3] In the second count, of having, while knowing or believing that a document is forged, to wit a letter dated August 29th, 2007 apparently signed by Richard Leuthold (Leuthold), used, dealt with or acted as if the document was genuine, committing thereby the indictable offence provided by Section 368(1)a)(1.1)a) of the *Cr.c*.

THE FACTS

[4] The evidence presented both by the Prosecution and by the Accused has been summarized and analyzed in the decision on the merits of the case rendered on the 23rd of January 2019. The evidence then analyzed and the reasons for judgement should be considered as forming part of the present decision. Therefore, the Court does not intend to refer in detail to that evidence nor to those reasons.

[5] Suffice it to refer to the "Context" as included in the decision on the merits:[1]

> [5] The Accused is the grandchild of William Chandroo who signed in Trinidad and Tobago (Trinidad) a will dated September 10th, 1999 (the will), in which he gives his wife Dorothy Chandroo one fourth of the estate, to his son Teddy Chandroo (Teddy) one fourth of the estate and the rest of the estate to be divided between his grandchildren, the Accused and his sister Geetanjali Indira Chandroo-Charles (Geet).
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> [6] In the same will, Dorothy and Teddy are named as the executors of the will. Following the death of Dorothy, Teddy became the sole executor.
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> [7] At the time of William's death, the content of the estate was essentially formed of two pieces of land situated in Trinidad. Those pieces of land were sold in November 2002. Deeds of sale of those pieces of land have been filed into evidence. They contain the signature of the Accused. An affidavit dated October 23rd, 2002 and signed by the Accused was also filed in evidence, in which he agrees to sell his quarter share of the estate of his late grandfather.
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> [8] The evidence also shows that the product of the sale was divided according to the instructions contained in the will and that the Accused was remitted his share of the estate in November 2002 through a cheque in the name of his attorney.
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> [9] The evidence for the Prosecution also shows that from 2007, the Accused would have made some false representations to Rabkin regarding the same estate: that he would be inheriting from an estate in the next few months in order to induce him to lend him sums of money to help him unlock the estate, proceed with the liquidation of the estate and recover his share of it.
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> [10] According to Rabkin, the Accused supported his false representations with various documents, including the will and a letter apparently signed by Richard Leuthold (Leuthold), an attorney in San Diego. Rabkin's testimony is to the effect that it is because of that document that he kept lending money to the Accused in order for him to recover his share of the estate and reimburse him. In his testimony, Leuthold testified that he never wrote or sent that letter and that the signature appearing on the letter is a fraud.

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1 2019 QCCQ 247.

> [11] In defence, the Accused denied having made false representations or having used and showed Leuthold's letter to defraud Rabkin. According to the Accused, he believed that other assets might have been part of his uncle's estate and he therefore honestly believed that he could inherit of other sums of money.

[6] Essentially, in its judgement, after taking into consideration the entirety of the evidence, the Court concluded that it did not believe the version of the Accused, that his version did not raise a reasonable doubt in its mind and that the Prosecution had succeeded in proving the guilt of the Accused beyond a reasonable doubt.

THE POSITION OF THE PARTIES ON SENTENCE

[7] Even though a conditional sentence is available for the Accused,[2] given the dates where the offences were committed, the Prosecution recommends that a 15 month "firm" jail term should be imposed upon the Accused, along with a 2 year probation.

[8] As well, the Prosecution is asking for an order of restitution in the amount of $18,600 to the victim Rabkin, which represents the amount of money that had not been reimbursed at the time of the pre-sentence observations. It also requests the imposition of a fine in lieu of forfeiture in the same amount and that the restitution order shall take priority over payment of the fine in lieu of forfeiture and that the fine in lieu of forfeiture shall be reduced by any amount paid pursuant to the restitution order.[3]

[9] As for Defence, it recommends the imposition of a 9 to 12 months conditional sentence. It does not oppose the restitution order nor the fine in lieu of forfeiture as recommended by the Prosecution.

[10] That is to say that both parties agree that a sentence of imprisonment should be imposed on the Accused. They differ on the modalities of the sentence: firm jail term for the Prosecution versus conditional sentence for the Accused.

THE PURPOSE AND PRINCIPLES OF SENTENCING

[11] The purpose and principles of sentencing are well known and are to be found in Sections 718 and following *Cr.C*. That being said, the basic principle is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In reaching the proportionate sentence, the Court shall take into account the totality of the circumstances, including the aggravating and the mitigating factors.

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2 Since November 20th, 2012, a conditional sentence is no longer available for the offences for which the Accused was found guilty.

3 Taken from the conclusions of Broad J. in *R.* v. *Roberts*, 2017 ONSC 1071, para. 65.

THE OBJECTIVE AND SUBJECTIVE GRAVITY OF THE OFFENCES

[12] The offence of fraud is objectively serious. Since the subject-matter of the offence exceeds $5,000, the Accused is liable to a term of imprisonment not exceeding 14 years.[4] Using a forged document knowing it is forged is punishable by a maximum of 10 years.[5]

[13] The offences are also subjectively serious: the evidence shows lengthy and minute planning and premeditation by the Accused over a period of more than a year, using a number of fraudulent means, the whole solely motivated by greed and cupidity on the part of the Accused. The evidence shows no other motive, only greed and cupidity.

THE ACCUSED

[14] The Accused is 45 years of age. He has a criminal record that has no real significance on the sentence to be imposed here.

[15] The Accused offered no evidence on sentence and no pre-sentence report was prepared in the case. Therefore, the Court has no real information as to the marital status of the Accused, his lifestyle or character.

[16] He has a pending case of false pretences and fraud for which he is awaiting a new trial ordered by the Court of Appeal[6] in a judgement dated September 6th, 2018. The verdict appealed from had been pronounced on February 19th, 2016 in the district of Longueuil.

[17] He has another pending case of fraud and extortion in this district. The alleged offences would have been committed between January 2012 and May 2017.[7]

[18] As to the use that can be made of those pending cases, it is noteworthy to recall that even though Section 725 has no application in this case, they can be taken into consideration by the sentencing judge « à la lumière des enseignements de la Cour suprême dans l'arrêt *Angelillo,* aux fins de « l'évaluation du genre d'individu et de la personnalité » de l'accusé ».[8]

[19] The Court will discuss the relevancy of those pending cases later in its decision.

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4 Section 380(1)a) *Cr.C*.
5 Section 368(1) (1.1)a) *Cr.C.*
6 2018 QCCA 1429.
7 The trial of the Accused commenced on January 23rd 2017 and the finding of guilt was pronounced on January 23rd, 2019.
8 *R.* c. *Vaillancourt*, 2019 QCCA 150, para. 4.

ANALYSIS

[20] In *Lévesque*,[9] the Court of Appeal has listed various factors that enable the Court to assess the intrinsic responsibility of the Accused in cases of fraud. In *Savard*[10], the Court of Appeal reiterated them as follows:

> The factors which permit one to measure liability of an accused on sentencing, in matters of fraud, were well set out in the decision of our court in *R. v. Levesque* […]. These facts can be summarized as follows: (1) the nature and extent of the loss, (2) the degree of premeditation found, notably, in the planning and application of a system of fraud, (3) the accused's actions after the commission of the offence, (4) the accused's previous convictions, (5) the personal benefits generated by the commission of the offenses, (6) the authority and trust existing in the relationship between the accused and the victim, as well as (7) the motivation underlying the commission of the offenses.
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> (References omitted)

[21] In *Savard*, the Court then wrote:

> Where these factors point to fraudulent wrongdoing with no indication of mitigating circumstances, the courts give preference to incarceration as the preferred means of protecting society and of general deterrence, and expressly reject consideration of rehabilitation.

[22] The Court will now list and comment those factors, as they apply to this case:

- the nature and extent of the loss ($43,600) – the "original" loss before reimbursement by the Accused: given the loss, the fraud can be qualified as a "fraude d'importance modérée" according to authors Parent & Desrosiers;[11]

- the degree of premeditation found, notably, in the planning and application of a system of fraud: as already alluded to, the evidence shows lengthy and minute planning and premeditation by the Accused over a period of more than a year, using a number of fraudulent means, namely:

    - use of a will (*un acte authentique*) the Accused knew to be purporting to an already liquidated estate from which he had already benifited;

    - use of a fabricated letter allegedly prepared and signed by an attorney in California which, according to Rabkin, contributed to reassure him;

    - use of fake phone calls to Rabkin;

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9 1993 CanLII 4232.
10 1996 CanLII 5703.
11 *Traité de droit criminel*, tome 3, p. 624.

- “use” of various professionals to make his “story” more credible and believable;

- the accused’s actions after the commission of the offence: the Accused reimbursed part of the loss suffered by Rabkin, $25,000 out of $43,600;

- the accused’s previous convictions: as already stated, the Accused has no significant criminal record;

- the personal benefits generated by the commission of the offences: the Accused is the sole beneficiary of the fraud. During the whole period of the fraud, he benefited from the entirety of the fraudulent scheme he put in place;

- the authority and trust existing in the relationship between the accused and the victim: the Court finds no status of authority or trust between the Accused and Rabkin, except the usual trust between the fraudster and the victim;

- the motivation underlying the commission of the offences: as already mentioned, the motivation of the Accused was solely greed and cupidity. The evidence shows no other motivation on the part of the Accused nor no other factors that could otherwise explain (not justifiy) his actions (for example, gaming or drug problems).

[23] Given all those circumstances, the Court imposes upon the Accused a period of imprisonment of 15 months on the count of fraud and 10 months on the count of using a forged document, both sentences to be served concurrently.

[24] As to the “modality” of the sentence, the Court is of the opinion that a firm jail term is warranted in the circumstances.

[25] In *Proulx*,[12] Chief Justice Lamer listed the four criteria a court must consider before imposing a conditional sentence:

> (1) the offender must be convicted of an offence that is not punishable by a minimum term of imprisonment;
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> (2) the court must impose a term of imprisonment of less than two years;
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> (3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
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> (4) a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[12] 2000 SCC 5, para. 46.

[26] The first two criteria pose no problem: there is no minimal sentence and the Court has decided to impose a jail term of less than two years. Those two criteria are straightforward.

[27] As to the third factor, the safety of the community, Chief Justice Lamer writes the following:[13]

> As a prerequisite to any conditional sentence, the sentencing judge must be satisfied that having the offender serve the sentence in the community would not endanger its safety: … If the sentencing judge is not satisfied that the safety of the community can be preserved, a conditional sentence must never be imposed.
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> (Original emphasis)

[28] Moreover, the safety of the community must be evaluated in light of the two following factors:[14]

> 69. In my opinion, to assess the danger to the community posed by the offender while serving his or her sentence in the community, two factors must be taken into account: (1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence.

[29] As to the risk of the offender re-offending, Chief Justice Lamer writes that "the risk that a particular offender poses to the community must be assessed in each case, on its own facts."[15]

[30] As to the gravity of the damage that could ensue in the event of re-offence, the sentencing judge should consider the gravity of the potential damage in case of re-offence.[16]

[31] Furthermore, the phrase "would not endanger the safety of the community" should be construed broadly, and include the risk of any criminal activity. Such a broad interpretation also includes the risk of economic harm.[17]

[32] In *Vaillancourt*, the Court of Appeal recalled that « les causes pendantes peuvent être prises en considération, à la lumière des enseignements de la Cour suprême dans l'arrêt *Angelillo,* aux fins de « l'évaluation du genre d'individu et de la personnalité » de l'accusé ».[18]

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13 *Id*., para. 63.
14 *Id*., para. 69.
15 *Id*., para. 70.
16 *Id*., para. 74.
17 *Id*., para. 76.
18 *Supra*, note 8, para. 4. See also *Aprile* v. *R*., 2007 QCCA 1040, para. 11.

[33] Obviously, the Court cannot punish the Accused for his two pending cases. But those two pending cases can be adduced to shed light on the offender's background and character:[19]

> […] evidence of such acts cannot be adduced for the purpose of obtaining a disproportionate sentence against the offender for the offence in question or of punishing the offender for an offence of which he or she has not been convicted, but that such evidence can be adduced to shed light on the offender's background and character".

[34] The Court is mindful of the "relative" nature of the criminal record of the Accused and of the fact that he has reimbursed part of the amount defrauded.

[35] Taking into account all the circumstances, including the two pending cases of the Accused, given their nature, both cases of fraud, the Court is of the opinion that a firm jail term should be imposed upon the Accused. There is a substantial risk that the Accused will reoffend should he benefit of a conditional sentence. The economic "damage to society" cannot be considered as minimal in the circumstances.

[36] Accordingly, allowing the Accused to serve his sentence in the community would not be consistent with the principles of sentencing, namely, general deterrence and more specifically in this case, individual deterrence for the Accused. The Court is of the opinion that in this case, the principle of individual deterrence should prevail and that serving his sentence in jail is the only way to deter the Accused from re-offending.

[37] Finally, the Accused submits that the Court should take into account the passage of time in deciding whether or not he should serve his sentence in the community. It is true that in certain circumstances, « […] le passage du temps permet parfois de « constater que l'appelant ne présente absolument plus le même profil que lors des infractions » » […].[20] This is not the case here. There is no such evidence in this case.

[38] Furthermore, it would be highly inappropriate for the Accused to benefit from the passage of time when he has been, from the beginning of the trial, the main reason for the delay.[21]

[39] **FOR THOSE REASONS, THE COURT**:

> **IMPOSES**, on count one, a sentence of 15 months in custody;
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> **IMPOSES**, on count two, a sentence of 10 months in custody, to be served concurrently with the 15 months sentence imposed on count one;

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19 *R.* v. *Angelillo*, 2006 SCC 55, para. 17.
20 *R.* v. *Charest*, 2019 QCCA, 1401, para. 212.
21 See notably the Court's decision in *R.* v. *Chandroo*, 2017 QCCQ 8155.

IMPOSES a probation order for a period of two years at the usual conditions, keep the peace, be of good behavior and be present in Court whenever required and the following additional conditions:

- prohibition to communicate directly or indirectly with Meir Rabkin, except with his consent or except to fulfill the order of restitution imposed hereafter;

- prohibition to be in the physical presence of Meir Rabkin, except with his consent or except to fulfill the order of restitution imposed hereafter;

- prohibition to be in a radius of 300 meters from the residence, place of work and place of study of Meir Rabkin, except with his consent or except to fulfill the order of restitution imposed hereafter;

ISSUES an order of restitution to the victim Meir Rabkin in the amount of $18,600 to be paid through the Clerk's Office of the Court of Quebec in Montreal in a delay of 24 months;

IMPOSES a fine in lieu of forfeiture in the sum of $18, 600, the restitution order shall take priority over payment of the fine in lieu of forfeiture and the fine in lieu of forfeiture shall be reduced by any amount paid pursuant to the restitution order. The same delay of 24 months will apply.

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ROBERT MARCHI, J.C.Q.

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Date of hearing: June 28th, 2019