



In the Supreme Court of Bermuda

CRIMINAL JURISDICTION

2019: No. 3 &17

B E T W E E N:

THE QUEEN

- v -

JONATHAN RATTERAY

Before: Justice Charles-Etta Simmons

Appearances: Elizabeth Christopher, Christopher's, for the Defendant;
Larissa Burgess and Javon Rogers, Office of the Director of Public
Prosecutions, for the Crown

Date of Hearing: 12 & 13 August 2019

Date of Sentence: 14 August 2019

SENTENCE

Loss of Financial Investment – Whether Restitution under Section 70H or Reparation under Section 70I of the Criminal Code is applicable – Newton Hearing decision going against Defendant – Loss of discount for Guilty plea.

SIMMONS J:

1. Mr. Ratteray, you are before the court on two indictments - No. 3 and No. 17 of 2019 each containing one charge of Fraudulent Inducement to Invest contrary to section 404(a) of the Criminal Code Act 1907. The victims in both cases knew and trusted you.

2. In respect to the victim of indictment 3/2019 you sent Mr. Shephard a video of you holding a large stack of \$100 dollar bills. You piqued his interest by informing him that you had invested with an underwriter and gained \$70,000 in return in your investment. You promoted this as a no risk investment in what is currently trending “bit coin” as a further inducement. This no doubt induced Mr. and Mrs. Shephard to hand over money to you over a period of time in various amounts totalling \$26,000. Mr. Sheppard had been your former colleague and both he and his wife considered you to be a friend. That made them an easy target for you. You led them to believe that their jobs would be on the line if they did not continue with their payments.
3. Your course of conduct of obtaining money from them lasted over a year. You therefore had ample time to stop your scheming, and to reflect on the fact that such conduct had resulted in imprisonment for you in the past. You could have spared the Shephard’s of continual loss. However you were relentless in pursuing them for money.
4. In so far as indictment 17/2019 is concerned you induced a Mr Powell to hand over \$6,650 to you falsely stating that the money would be invested in the purchase of foreign currency. Again you had ample opportunity to reflect on you behaviour before continuing to induce Mr Powell to hand over more of his money. You went so far as to set up a scheme whereby Mr Powell was actually told where to come for his pay out, only for him to find that he had been duped. Again you used a friend; in this case one of some ten years. Mr Powell knew of your past criminal history but as a friend he was willing to trust you.
5. All of your victims have supplied impact statements that are redolent with regret. The money that you swindled once lost caused great hardship to the victims and to their family members who relied on them for financial support. The loss coming as it did near the Christmas holiday had a knock on effect wherein children were disappointed, yet you were seen to be enjoying your life and the fruits of you criminality from the view of one of the victims.
6. In sentencing you the court is required by sections 53 to 55 to take several matters into consideration:

- a. The seriousness of the offence. The offence is not the most serious on the criminal statute but involves breaching the trust of the victims and leaving them in a financially precarious state.
 - b. Your culpability. You are the only one to blame for each offence. You used varying degrees of coercion and intimidation and your scam extended over a long period of time as opposed to a one off event.
 - c. The need for the community to be protected. The sums of money lost by the Sheppard's and Mr Powell are not deminimus. It caused them considerable harm. You have three previous convictions for this type of offence. That goes against you in two ways. You could have come to your senses and stopped your criminality at an early point in the scheme based on your previous convictions but you chose not to. Secondly you took nothing positive away from your previous convictions and sentences. Clearly this sentence must attract a higher aim toward community protection since you fail or refuse to be guided by your past experiences before the court and the time that you have spent in custody. Indeed by your conduct before the court you sought to blame the victims.
7. Deterrence. The consideration here is for the court to demonstrate that preying on unsuspecting if naïve members of the public is to be discouraged generally. In your case it is a specific aim of sentencing.
8. Based on the above considerations, and bearing in mind the Court of Appeal guidance in the case of *R-v-Dana Martin* [2004] Bda L.R. 25 and the two previous cases of your own, *R-v-Jonathan Ratteray* No. 46 of 2006 and No.13CR00514 as well as the submissions made by both your counsel and the crown counsel the court finds that the appropriate range of sentencing is 18 months-3years.
9. The court must consider the factors that call for a sentence toward the higher end of the range. The most obvious aggravating factor is the fact that you were on bail in respect to the complaint of the Sheppards in No. 3 of 2019 when you committed the offence in respect to Mr Powell's complaint in No 17 of 2019. Secondly there are your previous convictions for similar offences. The resulting up lift from the minimum sentence on the range is a sentence of 3 years

imprisonment. The court rejects your counsel's submission that 18 months imprisonment is appropriate.

10. The court is required to consider matters that mitigate against the seriousness of the offence in each case as well as matters relating to you personally that ought to be taken into account in reducing a sentence. As to factors that reduce seriousness, the court determines that there are none. You are not of good character and have previous convictions for which sentences of imprisonment were meted out. The court considers your comments on the allocutus and sees no reason to mitigate sentence. The court was in receipt of both a social inquiry report and a psychological assessment were ordered and received.
11. The social inquiry report was of no specific assistance to the sentencing process ultimately. As for the psychological assessment, although it indicated that you exhibit a range of psychiatric symptoms associated with unfortunate occurrences in your childhood, it does not present any matter that may be taken as sufficient to mitigate an appropriate sentence. A further assessment is called for the court finds it ought to be carried out. It will benefit you in two ways – if a probation order is made and if you volunteer to attend prison programs. In fact it may be a prison program designed just for you. The court has no way to know this at this stage.
12. You posed a factual scenario so different from the fact that the Crown relied on that a Newton Hearing was necessary unless you withdrew your version of events proffered by your counsel. You chose the Newton Hearing. We spent most of the day dealing with that. The court having conducted that enquiry found the Crown witnesses to be credible and accepted their version of the facts as enunciated in a ruling at the end of that procedure. The practical effect of the ruling is that to the extent that you may have been entitled to a discount for your guilty pleas, you have now forfeited that discount.
13. Your counsel also submitted that the court ought not to make a Reparation order pursuant to section 70I. Having reviewed that section and the facts the court determines that it is an appropriate order to make.

14. In all circumstances the sentence in respect of each offence is 3 years to run concurrently and probation for a period of two years. The conditions have been read to you and you indicated you would abide by them. Time spent in custody is to be taken into account.

15. Reparations – Pursuant to Section 70I to commence 6 months into your probation period. The court orders that an assessment of your assets and/or earnings be made at that time with a view to making an Attachment of Earnings Order. This is to be included in the Probation Order that I have already explained to you.

SIMMONS J