

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>D. W. Walker</i>
)	<i>for the Appellant</i>
<i>Respondent</i>)	
)	<i>C. R. Savage</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
<i>ROSALIE RUTH GURSKE</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>)	<i>May 3, 2017</i>

On appeal from 2016 MBPC 76

BURNETT JA (for the Court):

[1] The accused appeals a custodial sentence of 42 months for one count of theft over \$5,000 contrary to section 334(a) of the *Criminal Code*. Leave to appeal was previously granted.

[2] The accused was the supervisor of a credit union. A forensic audit revealed that between 2007 and 2013 the accused stole \$917,750 from the credit union. The sentencing judge found that the accused abused her position of trust “by systematically and regularly stealing money” from her employer. The accused falsified transactions in the credit union’s accounts to cover her theft. The sentencing judge also found that all of the stolen funds were lost to gambling.

[3] The accused argues that the sentence was harsh and excessive

given the circumstances of the offence and the unique circumstances of the offender. In particular, the accused submits that the offences resulted from an undiagnosed mental illness and a gambling addiction, not from greed; that there were significant additional mitigating factors, including the absence of a prior criminal record, a guilty plea with an indication of remorse, and restitution of \$315,000; and that there should have been a finding of exceptional circumstances. It is the accused's submission today that time served to date (five months and four days) would be a fit and proper sentence.

[4] The Crown points out that between the time of her arrest (February 19, 2014) and the date of sentencing (November 29, 2016), the accused had not been diagnosed or treated, yet she was able to refrain from further gambling.

[5] According to the pre-sentence report, the accused identified herself as a victim of her crime, and she did not acknowledge the serious breach of trust inherent in her actions. The accused had apparently taken no steps to deal with her gambling addiction, as she believed she would not benefit from any treatment to address past gambling behaviour.

[6] In the pre-sentence report, the accused was assessed as a medium risk to reoffend, and the author felt that there would be a benefit from a structured long-term environment to assist the accused in addressing "deep rooted Criminal Thinking errors" regarding her offence. In a separate psychiatric assessment, the psychiatrist said that he believes "that eventually [the accused] will relapse and that she requires more longer term focused interventions to address her gambling."

[7] The sentencing judge declined to find that there were exceptional circumstances which would warrant a suspended sentence.

[8] In our view, the sentencing judge did not err. We agree with the Crown's submission that the facts do not support an inference that a mental disorder (not diagnosed until after the accused's arrest) was the reason for the accused's criminal conduct. While the sentencing judge accepted the diagnosis of two psychiatrists that the accused is a pathological gambler, it was open to him to find that this played a limited role in the overall assessment of the sentence. The sentencing judge gave appropriate consideration to the accused's mental health issues, and the sentence imposed was within the range for large-scale financial crimes involving a breach of trust.

[9] The appeal is therefore dismissed.

Burnett JA

Monnin JA

leMaistre JA
