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(Winnipeg Centre)
Indexed as: R. v. Odine
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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

MICHAEL OSE ODINE,

accused.

) **APPEARANCES:**

)

) Donald Melnyk

) for the Crown

)

) Steven Keesic

) for the accused

)

)

) Judgment delivered:

) June 7, 2017

TOEWS J.

Introduction

[1] The accused has pleaded guilty to 24 different counts related to his participation in an online mass marketing fraud which targeted members of the general public. These charges include charges of fraud over \$5,000, possession of counterfeit driver's licenses, possession of forged passports and money-laundering. Various solicitation methods were used to conduct these frauds and while all of the frauds involved different factual underpinnings, they were all designed to cause unsuspecting members

of the public to transfer their money to the accused through the use of deceit, falsehood or other fraudulent means.

The Facts

[2] While the accused did not communicate directly with the victims of these fraudulent initiatives, his participation in the financial workings of the scheme was integral to its success. To that end, the accused set up fraudulent bank accounts to which victims of the frauds were instructed to send their money. The accused used forged passports and forged driver's licenses as identification to open up these bank accounts.

[3] In other cases the victims wired money to the accused at Western Union and MoneyGram. The accused used false identification to facilitate the receipt of this money. Once the money was received by the accused, he distributed it to unknown co-conspirators all over the world, but also retained a portion of these funds for his personal use. The accused transferred funds from these accounts to other individuals in various countries, including Nigeria, Ukraine, South Africa, the United States, Malaysia and Pakistan.

[4] In total, the accused received approximately \$442,137.84 from victims from all around the world and states that he kept approximately 20% of that sum for his own personal use. However, bank records secured by the police contradict the accused's position as to how much money he kept. These bank records show the accused used a much higher percentage of the proceeds than he admits to having kept and used this

money to enhance his lifestyle by buying designer clothes and to pay for extravagant bills at nightclubs.

[5] The fraudulent activity that the accused was involved in first came to the attention of the Winnipeg City Police on October 29, 2015, when a Vancouver based police officer requested their assistance with respect to a fraud investigation which involved a victim sending money to a bank account that had been opened in Winnipeg. The police investigation that followed confirmed the accused's involvement in this online mass marketing fraud between February 1, 2013 and March 8, 2016. In total, 53 complainants from across Canada, Europe and the United States have provided statements to the police in respect of these frauds.

[6] The accused admits in his statement to the police that he set up the false bank accounts using false names and identification. He states that he was suspicious that the funds he was receiving was from frauds, but stated that he became involved in this activity because his regular job "didn't pay the bills".

Personal Background

[7] Much of the information related to his personal circumstances is found in the pre-sentence report prepared for the court.

[8] Mr. Odine is single and has no children. He has no prior criminal record. It is noted that during much of the time that he was involved in this fraudulent activity he was a student. He is a citizen of Nigeria and came to Canada to study. At the time of his arrest he was in the process of obtaining a business degree from the University of Manitoba. He comes from a middle class home in Nigeria where his father is a

pharmacist and his mother is a nurse. His parents supported him financially. The Crown advises that the accused's income from his employment (not related to the frauds) and support from his parents in 2013 alone amounted to \$39,596.

[9] I have considered the information in the pre-sentence report related to the family, educational and personal background of the accused. In my opinion, there is nothing unusual or disconcerting in that background that would be relevant in terms of mitigation. While it is true that some of his companions were not positive influences in his life and that he used alcohol and experimented with and used a variety of non-prescription drugs, primarily marijuana, overall it appears to me that the choice he made in getting involved in this fraudulent activity was based on the desire to obtain extra money to enhance his social activities and relationships. It had nothing to do with being unable to meet his basic cost of living and educational expenses. As he states in the pre-sentence report: "I let my self-interests get the best of me."

[10] During his time in custody, Mr. Odine has completed the programming available to inmates in the institution and is described by his case manager as being, "... calm, polite, engageable, likeable and helpful to other inmates." He is not an antagonist nor does he create situations where fights ensue. He continues to work on completing his degree, but acknowledges that his degree in finance may not be useful in the future since financial institutions may not hire him as he now has a history of fraud convictions.

Position of the Parties on Sentence

[11] In determining an appropriate sentence in this case, the Crown relies on s. 718 of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "*Code*"), which provides:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[12] The Crown also points out that pursuant to s. 718.1 of the *Code*, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[13] In arguing that a global sentence of five years should be imposed in this case, the Crown argues that the following factors justify the requested sentence:

- a) There is a high degree of moral culpability on the part of the accused;
- b) This is a criminal undertaking that demonstrates a high degree of planning;
- c) False or forged documents were used by the accused in order to facilitate this undertaking;
- d) The accused's involvement in this matter extended over a period of three years and was not simply an occasional lapse;

- e) The magnitude of this undertaking was international in scope and involved in excess of 50 complainants;
- f) The use of the money by the accused is an aggravating factor since it was used primarily for personal pleasure;
- g) The accused had an income from family sources and his own employment, that in 2013 amounted to almost \$40,000; and
- h) The involvement of the accused in this scheme only stopped when he was arrested by the police.

[14] In addition to the custodial sentence, the Crown submits that the court order restitution in the amount of \$394,941.84 as this is the amount of money which Mr. Odine actually received from the various victims of this fraud, even though he passed most of that money on to other unidentified individuals. The Crown argues that he received that amount of money and even if he did not keep all of it for himself, he should be responsible for reimbursing the victims for the full amount that he received.

[15] Counsel for Mr. Odine submits that a custodial sentence of three and one-half years is appropriate in this case. He points out that Mr. Odine has no prior criminal record, he is an intelligent individual and he is remorseful for his actions. He points out that Mr. Odine has taken responsibility for these crimes by pleading guilty. His pre-sentence report points out that he is well-behaved, smart and hardworking.

[16] I would note that Mr. Odine made a full apology to the court and to the victims. He states he is deeply embarrassed over his involvement in these crimes and states that he is willing to make restitution.

Sentence

[17] In coming to the conclusion that Mr. Odine should receive a global sentence of 54 months in respect of these charges, I have considered both the submissions of the Crown and counsel for Mr. Odine. In particular, I have considered the principles of sentencing set out in ss. 718 and 718.1 of the **Code**. Notwithstanding the fact that Mr. Odine is well-behaved, smart and hardworking as demonstrated by his educational studies and exhibited during the time he has spent in pre-trial custody, I agree with the Crown that his moral culpability in this case is high. Even though he did not deal directly with the victims, his role in setting up the bank accounts and the handling of the money obtained from the victims was integral to the success of this fraudulent enterprise.

[18] There was a high degree of involvement on his part in the execution of this scheme. This included the use of forged passports under a number of names, as well as the use of forged driver's licences from various provinces and other false documents in order to open bank accounts and receive cash payments from money transfer companies. He participated in this enterprise for a period of three years and his involvement only ended when he was arrested.

[19] I would also note that the use of the money is an aggravating factor here, given that it was spent largely on entertainment, clothing, and bar bills. This is in sharp contrast to the problems that his victims faced as a result of the loss of their money. I have reviewed the victim impact statements submitted by the Crown and for the most part, it is very apparent that the victims could ill afford to lose the money that found its

way into Mr. Odine's hands. The impact on those victims was in many cases not only a loss of much needed finances, but it also had a significant adverse impact on their mental and psychological well-being.

[20] Given the nature of these crimes, along with the difficulty associated in prosecuting them to a successful conclusion, it is important that deterrence and denunciation is an important consideration in determining an appropriate sentence.

[21] Crown counsel provided me with the decision of the Alberta Provincial Court in ***R. v. Chukwu***, 2015 ABPC 112, 617 A.R. 231, which I have reviewed and which I have considered in coming to the conclusion that a global sentence of 54 months is appropriate in this case. Each of these kinds of cases, including the cases referenced by the court in ***Chukwu***, demonstrate that while the particular involvement of each accused varies, "... These frauds are a criminal business venture with the participants weighing the prospect of significant financial gain against the risk." (see ***Chukwu*** at para. 17). The aggravating factors set out in the ***Chukwu*** case are equally applicable to this case and as the court stated: "... the only effective way to achieve the objective of general deterrence is to impose a significant custodial penalty." (at para. 17).

[22] I have arrived at the conclusion that a fit and appropriate sentence is one of 54 months on the following basis:

- a) On the ten counts of fraud over \$5,000, there will be a sentence of three months incarceration on each count consecutive for a total of 30 months;
- b) In respect of the counts involving the use or possession of forged or counterfeit documents, there will be a sentence of 14 months incarceration on each count

concurrent to each other, but consecutive to the 30 months incarceration on the ten counts of fraud over \$5,000;

- c) In respect of count 30 on the indictment with respect to laundering the proceeds of crime, and subject to my comments below regarding the totality principle, there will be a sentence of 14 months incarceration consecutive to the sentences imposed in a) and b) above;
- d) In respect of count 28 with respect to the unauthorized possession of brass knuckles, there will be a sentence of two months incarceration consecutive to the sentences imposed in a), b) and c) above.

[23] As stated by the Manitoba Court of Appeal in ***R. v. James***, 2013 MBCA 14, 288 Man.R. (2d) 269, where it held at para. 61: "... the principle of totality is considered where consecutive sentences are imposed and where, before the sentence is finally determined, a "last look" is taken to determine that the cumulative or aggregate sentence which would otherwise be imposed does not exceed the overall culpability of the offender." While the total sentence in respect of a), b), c) and d) above amounts to 60 months, I have reduced the total sentence to 54 months on the basis of the totality principle. Accordingly, in order to reduce the total sentence by six months from 60 months, the sentence in respect of count 30 will be altered to eight months from 14 months.

[24] In respect of the pre-trial custody, Mr. Odine will receive a credit of 1.5 days for every day in custody from the date of his arrest until today's date.

[25] I make the following ancillary orders:

- a) I authorize the taking of samples of bodily substances from the offender that is reasonably required for the purpose of forensic DNA analysis and direct those samples be taken forthwith;
- b) There will be a 10 year weapons prohibition;
- c) Restitution shall be made to each of the victims in an amount of 25% of their loss which amounts to a total payment of \$98,970.92. Mr. Odine shall have five years to pay this amount from the date of his release from custody;
- d) There will be a victim surcharge fee of \$200 for each count, payable within two years of his release from custody.

_____ J.