

JCW(s)9

Avey, Lisel

From: Whalley, Justin
Sent: Monday, 8 August 2011 6:58 PM
To: CDW
Cc: Avey, Lisel
Subject: RE: Thank you

CDW

the structure of the sentence was designed to give effect to what is called the 'totality principle' which is essentially a requirement that the total effective sentence is appropriate to the overall criminality involved in the offending. Basically the Judge decides what the appropriate overall sentence should be then makes the counts cumulative or concurrent so as to achieve that sentence. This sometimes requires that sentences imposed in relation to offending against complainant 'A' are made concurrent with those involving complainant 'B' and that's what happened in this case. As Justice Mazza noted today there was a minor error in Mr CDW's sentencing in that the way the Judge structured the sentences led to a sentence of 5 years 3 months and not the 5 years that he was intending to achieve but he undoubtedly intended to impose a 5 year sentence and this error was really a technicality.

If counts 1 - 6 go to retrial CDW will need to be resentedenced on Counts 7-10 and 11 - 13 and the Court of Appeal will simply impose whatever sentence they think is appropriate for those counts which may be the original total effective sentence of 2 years 7 months (which is what we submitted it should be) or they may reduce it so that he could be released immediately if granted parole. It's important to remember however that if Mr CDV continues to deny his guilt in relation to these offences that will significantly reduce his chances of release on parole. That will all be a matter for the Prisoner Review Board.

As for your final points, you can be reassured that given that the Court didn't want to hear from us in relation to the grounds to which the information about the Judge's criticism of Counsel, the T shirt and CDX's brother related they are not going to uphold those grounds so there's really no need to worry about it, it will not impact on the chances of the appeal being successful. For what it's worth however I can confirm from my review of the transcript that the Judge's response to Mr PERCY's comment about 'doing it for 30 years' was in fact made in the presence of the jury.

I hope that answers the questions raised in your email. We will of course advise you when the Court is due to hand down its decision.

Regards,

Justin WHALLEY
 Senior State Prosecutor

From: CDW [REDACTED]
Sent: Monday, August 08, 2011 6:28 PM
To: Whalley, Justin; Avey, Lisel
Subject: Thank you

Dear Justin and Lisel

Thank you for your work toward and at today's appeal.

I am a little confused about the sentencing accorded to the different counts and as they are outlined in the sentencing remarks... would you mind explaining to us, if it doesn't take up too much of your time, how it works ...

Count Sentence Complainant

1	1y 6m	CGY	served concurrently with count 2
2	1y 3m	CGY	
3	1y 6m	CDX	served concurrently with counts 4 and 5
4	1y 6m	CDX	
5	2y 6m	CDX	
6	1y 4m	CGZ	served concurrently with count 5
7	1y 2m	CHA	served concurrently with count 5
8	1y 2m	CHA	" " " " 5
9	1y 4m	CHA	" " " " 5
10	1y 3m	CHA	" " " " 5
11	1y	CHB	served concurrently with counts 12 and 13
12	1y 3m	CHB	
13	1y 3m	CHB	

We can see why counts 1 and 2 are served concurrently as they pertain to the one complainant, CGY as do counts 3, 4 and 5, CDX and counts 11,12 and 13 CHB but we don't understand is why count 6 from CGZ and then counts 7, 8, 9 and 10 from CHA are all served concurrently with count 5. Is that just the way they do things? How do they come up with a total sentence of five years?

If counts 1 to 6 end up going to a re-trial, how is that likely to effect the concurrent sentence of counts 7,8,9 and 10?

I am positive that the comment from the judge about Tom Percy and 30 years ... was made out of Mr Percy's request to have the judge direct the jury not to take his behaviour out on his client before the jury re-entered the court room.

Our family calls Polo shirts T shirts ... why is Mr Percy so intent on undermining CDX's evidence in particular?

Also, CDX's younger brother never went into CDV's class, a request was made for him not to.... we have said that on several occasions.

Kind regards

CDW [REDACTED] and CDX [REDACTED]