

15/00; [2000] VSC 205

**SUPREME COURT OF VICTORIA**

***R v SNIP***

**Hampel J**

**24 March 2000**

**SENTENCING – SUSPENDED SENTENCE BREACHED – CIRCUMSTANCES OF OFFENDER CHANGED – DELAY SINCE COMMISSION OF BREACHING OFFENCE – BREACHING OFFENCES DIFFERENT FROM THE TYPE OF OFFENCE GIVING RISE TO THE SUSPENDED SENTENCE – WHETHER "EXCEPTIONAL CIRCUMSTANCES" EXISTED TO AVOID THE RESTORATION OF THE SUSPENDED SENTENCE.**

**Where, in relation to proceedings for breach of a suspended sentence—**

**(i) there was a long time since the commission of the breaching offences;**

**(ii) the breaching offences were very different from the type of offence which attracted the suspended sentence; and**

**(iii) the offender's personal circumstances had changed for the better the circumstances were "exceptional" whereby it would be unjust to order the offender to serve the period of the sentence held in suspense.**

**HAMPEL J:**

1. Mrs Crowley, you were given an opportunity by me of avoiding to have to serve a sentence which I imposed on you on 15 September 1997. I suspended your sentence for three years from that date and therefore that sentence doesn't expire until September of this year.

2. The legislation provides that unless there are exceptional circumstances an offence committed by you during that time, which is a breaching offence, requires the sentence which I suspended to be activated. This would mean that you would have to serve the sentence that I imposed. The question is whether I am satisfied that there are exceptional circumstances.

3. Given your background, and given what you have been involved with, I think Mr Mandy's proposition on your behalf that you have done pretty well, having committed only that one offence of theft, is probably right. Nevertheless you were under a clear obligation not to commit offences and you went off on a shoplifting spree, which doesn't seem to have been spontaneous. The explanation you gave was that you were getting married and you needed some things for that. I understand that you were in difficult circumstances, but I think you should have realized that going about shoplifting was going to get you into trouble.

4. A summons was issued and ultimately a warrant was issued in August of 1999. The offences for which you were convicted in the Magistrates' Court on 22 September 1998 occurred on 9 July 1998. The warrant was ultimately executed on you only on 15 March of this year.

5. One of the matters which I think is a very significant one in this case is the delay, which I am assured by both counsel is through no fault of yours. The irony of the situation is that the police were instrumental in helping you to find the very accommodation in which you were and somehow, because of a hitch in the system, the warrant wasn't served on you. Although the police as a body were aware of your whereabouts, there was no suggestion you were trying to avoid being served or made yourself scarce. So it is a long time since the commission of the breaching offence, and apart from some minor matter which was mentioned you have not either breached the suspended sentence of three months which was imposed upon you by the Magistrate, or in any way further breached the suspended sentence which I imposed upon you.

6. You married in the meantime. You have a five year old son to look after, which you do alone, although you do receive some support from the Kilmany Family Care Centre. A letter which I received speaks well of your efforts.

7. I think the last matter that was relied on was the fact that your breaching offences, namely of shoplifting and giving a false name, are very different from the type of offence which was the subject matter of my suspended sentence.

8. Mr Mandy's submission on your behalf, which was I think quite correctly not contradicted by the Crown, is that these matters put together do amount to sufficient exceptional circumstances for me not to reactivate the sentence which I imposed upon you. I think nothing would be served, given that you are getting support, in having the sentence extended. But I must tell you that if you commit another breaching offence between now and the end of September when my sentence expires you will be in a very difficult position because it would be most unusual for a court to consider further exceptional circumstances for a second breach. So, whatever the temptation may be, whatever your difficulties may be, you must always remember you are under a suspended sentence and trust is put in you not to breach that order.

9. I am not going to reactivate the sentence, I simply confirm the sentence of suspension which I earlier imposed and therefore you may now be discharged, I hope, with a very clear understanding of what I said to you.

**APPEARANCES:** For the Crown: Mr P Atkinson, counsel. Office of Public Prosecutions. For the defendant: Mr C Mandy, counsel. Melasecca Zayler, solicitors.

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