

 [R. v. Cvetas](#)

Ontario Judgments

Ontario Superior Court of Justice

M.D. Forestell J.

Heard: September 1, 2021; February 7, 2022.

Judgment: March 16, 2022.

Court File No.: CR-19-50000040-0000

[2022] O.J. No. 1269 | 2022 ONSC 1640

Between Her Majesty the Queen, and Nick Cvetas

(60 paras.)

Case Summary

Criminal law — Sentencing, For pardon or record suspension — Criminal Code offences — Offences against rights of property — Theft and offences resembling theft — Theft over \$5,000 — Sentencing of Cvetas on charge of theft over \$5,000, Cvetas sentenced to imprisonment for 12 months followed by two-year period of probation — Cvetas entered guilty plea — Cvetas admitted that he took \$317,000 from bank account of his 81-year-old godmother Cemas — There were significant aggravating factors relating to circumstances of offence — Cvetas stole significant amount of money and motivation for offence was greed — Cvetas entered guilty plea, and this was indicative of remorse but questionable — There was nothing in circumstances and background of Cvetas that justified departure from range of sentence for offence.

Sentencing of Cvetas on charge of theft over \$5,000. Cvetas entered a guilty plea. Cvetas admitted that in 2015 and 2016 he took \$317,000 from the bank account of his 81-year-old godmother Cemas. Cemas added Cvetas as a joint account holder on one of her bank accounts because she was experiencing health problems. The account contained over \$300,000. A few months later, she updated her will and appointed Cvetas to be her Executor and Trustee. Cvetas was employed as an executive at the Bank of Montreal and earned about \$160,000 to \$170,000 a year. Due to some financial crisis Cvetas withdrew \$317,000 from the account of Cemas. The Crown sought a sentence of 12 months imprisonment to be followed by two years of probation with a condition that Cvetas have no contact with Cemas. The Crown also sought an order under s. 380.2 of the Criminal Code limiting Cvetas from employment or volunteer work that involves having authority over the real property, money or valuable security of another person. Counsel for Cvetas submitted that a six-month conditional sentence should be imposed to be followed by one year of probation and 240 hours of community service.

HELD: Cvetas sentenced to imprisonment for 12 months followed by two-year period of probation.

The Court ordered to prohibit him from having any contact with Cemas. Cvetas was 47 years old in 2015 at the time of the first withdrawal. He was 53 years old now. He had no prior criminal record. The Pre-sentence Report indicates that Cvetas had a difficult childhood. Cvetas was treated for depression after his father's death. The character letters filed confirmed Cvetas's prior good character and reputation in his community, the minimization and justification of the offence apparent in many of the letters meant that they had little value in assessing the support in the community for Cvetas in his rehabilitative process. There were significant aggravating factors relating to the circumstances of the offence in the case. Cvetas stole a significant amount of money. The motivation for the offence was greed. There were mitigating factors. Cvetas entered a guilty plea, and this was indicative of remorse. The level of genuine remorse and insight of Cvetas however was questionable. Cvetas had suffered some embarrassment as a result of the charges against him and the media coverage. Cvetas had substantial community support from family, friends and his religious community. He had performed community service. Most important mitigating factor was that Cvetas had made full restitution. The most important objective in sentencing was Cvetas abused a position of trust and were denunciation and general deterrence. There was nothing in the circumstances and background of Cvetas that justified a departure from the range of sentence for this type of offence.

Statutes, Regulations and Rules Cited:

Criminal Code, R.S.C., 1985, c. C-46, s. 380.2, s. 380.2(1), s. 743.21

Counsel

Michael Coristine, for the Crown.

Calvin Barry, for Mr. Cvetas.

REASONS FOR SENTENCING

M.D. FORESTELL J.

Overview

1 Nick Cvetas entered a guilty plea on September 1, 2021 to a charge of theft over \$5,000.00. Mr. Cvetas admitted that in 2015 and 2016 he took \$317,000.00 from the bank account of his 81-year-old godmother, Nevenka Cemas.

2 I ordered a Pre-Sentence Report, and the matter was adjourned for sentencing. Submissions were made on February 7, 2022, and I reserved my decision on sentencing until today.

3 The Crown seeks a sentence of 12 months' imprisonment to be followed by two years of probation with a condition that Mr. Cvetas have no contact with Ms. Cemas. The Crown also seeks an order under s. 380.2 of the *Criminal Code*, R.S.C., 1985, c. C-46 limiting Mr. Cvetas from employment or volunteer work that involves having authority over the real property, money

or valuable security of another person. Counsel for Mr. Cvetas submits that a six-month conditional sentence should be imposed, to be followed by one year of probation and 240 hours of community service.

Circumstances of the Offence

4 The circumstances of the offence are set out in detail in the Agreed Statement of Facts.

5 Ms. Nevenka Cemas was 80 years-old in 2014. She was 87 years-old at the time of the guilty plea. Ms. Cemas lost her family members before this offence. She became very close to Mr. Cvetas, her godson, and to his family.

6 In 2014, Ms. Cemas added Mr. Cvetas as a joint account holder on one of her bank accounts. She was experiencing health problems and believed that it would make it easier for Mr. Cvetas to access her funds if she could not take care of herself. The account contained over \$300,000.00. A few months later, she updated her will and appointed Mr. Cvetas to be her Executor and Trustee. She also updated the will to leave to Mr. Cvetas the funds in the joint account on the date of her death and the residue of her estate.

7 In early 2015, Ms. Cemas also appointed Mr. Cvetas as her Power of Attorney for property and for personal care.

8 Mr. Cvetas was employed as an executive at the Bank of Montreal and earned about \$160,000 to \$170,000 a year. His wife was also employed. However, by late 2015 Mr. Cvetas and his wife were in a precarious financial state having reached the limit of their mortgage and line of credit and the limit of Mr. Cvetas's credit card.

9 On December 1, 2015, Mr. Cvetas withdrew \$35,000.00 from Ms. Cemas's credit union account and deposited that money to his own account. He then made a series of transactions including loan payments, mortgage payments, transfers to his RBC account, cash withdrawals and purchases.

10 On February 5, 2016, Mr. Cvetas withdrew \$260,000.00 from Ms. Cemas's account. An employee of the credit union inquired about the large withdrawal and Mr. Cvetas told the employee that he was moving the money to BMO Nesbitt Burns to get a higher interest rate. Mr. Cvetas deposited the money in his own account and then made a series of transactions.

11 On August 11, 2016, Mr. Cvetas withdrew \$15,000.00 from the account and deposited the money to his own account. On October 25, 2016, he withdrew a further \$7,000.00 from the account of Ms. Cemas in the form of a cheque payable to "MGA International Logistics".

12 Altogether, Mr. Cvetas withdrew \$317,000.00 from the account of Ms. Cemas. During the same period, Ms. Cemas made only three withdrawals totaling \$2000.00. She did not notice the reduced account balance when she made those withdrawals. Around November 2016, Ms. Cemas attempted to withdraw money from the account and was told that there were insufficient funds. She became distraught. She returned home and called Mr. Cvetas. Mr. Cvetas told Ms.

Cemas that he had reinvested the money and that the money was safe. He apologized for not telling her and said that he would put the money back in the account.

13 By February 2017, the money had not been returned and Ms. Cemas became concerned. She contacted her lawyer who called Mr. Cvetas. Mr. Cvetas told the lawyer that the money had been invested. He gave the lawyer the name of a financial advisor at BMO Nesbitt Burns who, he said, had invested the money. When the lawyer contacted the person named by Mr. Cvetas, he was advised that Mr. Cvetas had not invested the funds with BMO Nesbitt Burns.

14 The police were contacted and, on October 11, 2017, Mr. Cvetas was arrested and charged after turning himself into the police.

15 A preliminary inquiry was held. In that proceeding Ms. Cemas testified that had Mr. Cvetas asked her for help, she would have given him a large portion of the money in the account.

16 Just prior to sentencing, Mr. Cvetas made restitution in the amount of \$317,000.00 to Ms. Cemas through his lawyer.

Victim Impact

17 Ms. Cemas provided a video and audio recorded Victim Impact Statement with assistance. In the video statement she confirmed the contents of her written statement as it was read to her. Counsel for Mr. Cvetas objected to some aspects of the Victim Impact Statement. In the video statement, Ms. Cemas expressed concern for her personal safety. She also expressed an opinion about the sentence that should be imposed. I have disregarded those aspects of the statement.

18 However, I have taken into account Ms. Cemas's account of the impact of the offence upon her. She said that she thinks of the offence constantly and it has affected her sleep and her overall health. She said that she trusted and loved Mr. Cvetas and that she now has difficulty trusting people.

Circumstances of Mr. Cvetas

19 Mr. Cvetas was 47 years-old in 2015 at the time of the first withdrawal. He is 53 years-old now. He has no prior criminal record.

20 The Pre-sentence Report indicates that Mr. Cvetas had a difficult childhood. His father had an alcohol addiction and his mother had mental health issues. After the death of his father in 2000, Mr. Cvetas was treated for depression. He has taken anti-depressant medication since that time. He has experienced bouts of depression and anxiety over the years.

21 He met his wife in high school, and they have been married for twenty-eight years. They have a good relationship. In the Pre-sentence Report, the probation officer notes that Mr. Cvetas's wife described Mr. Cvetas as her best friend. They have two adult children, both of whom filed letters in support of their father. Mr. Cvetas has a close relationship with his children.

Most of the 33 character letters filed on his behalf describe him as a man who is devoted to his family. They also speak to his prior good character and his good reputation in his professional and personal life.

22 Mr. Cvetas has a Business Administration Diploma from Humber College and an MBA from Wilfred Laurier University. He worked at the Bank of Montreal from 1988 until 2018. He worked as a mortgage broker after leaving the bank. His counsel advises that he will lose his license as a mortgage broker as a result of the conviction for this offence.

23 Mr. Cvetas has completed over 30 hours of volunteer work at his church and with a charity based in Hamilton.

Character Letters

24 As I indicated above, there were 33 letters filed in support of Mr. Cvetas from friends, colleagues, former colleagues, members of his Church and family members. Many of the letters were of limited value on sentencing because the writers did not appear to be aware of Mr. Cvetas's conviction for the charge of theft.

25 Some of the letters that did advert to the charge minimized the nature of the offence. For example, the letter from Mr. Greg Grimes says, "I am fully aware of Nick's legal issues surrounding the money that was in a joint account with his godmother and I am also aware that he has paid it all back." Mr. Brad Grimes says, "I am aware that Nick used money from a joint account with his godmother and I am also aware that he paid every penny back". The letter from Larry Swiniarski states, "I know that Mr. Cvetas has always been there for his elderly relative Cema since he was a youth, taking her to the hospital and other medical appointments. In fact, Mr. Cvetas was closer to Cema than his own mother and provided her with a great deal of care and generosity over the years."

26 While the character letters filed confirm Mr. Cvetas's prior good character and reputation in his community, the minimization and justification of the offence apparent in many of the letters means that they have little value in assessing the support in the community for Mr. Cvetas in his rehabilitative process.

Psychological Report

27 Counsel for Mr. Cvetas filed a report from a psychologist, Dr. Sam Klarreich. Dr. Klarreich assessed and treated Mr. Cvetas. Mr. Cvetas completed 15 sessions of Cognitive Behaviour Therapy.

28 Dr. Klarreich's ultimate opinion was that he was "convinced that the circumstances which brought [Mr. Cvetas] to [his] attention will not recur."

29 Dr. Klarreich's assessment and treatment were grounded in the account provided to him by Mr. Cvetas of the circumstances of the offence. That account is set out at page 2 of his report as follows:

The patient indicated that about 7-8 years ago, his godmother, whom he was very close to, opened a bank account, "she included my name on the account, named me as power of attorney and a beneficiary in her will." Shortly afterwards, the godmother contacted the patient, "she was upset that I had taken out money and not put it back; her lawyer eventually contacted the police and one year later I was arrested and charged."

Ultimately, the patient returned all of the money.

In recalling this very upsetting event, the patient realized that he had used improper judgement in its handling, "I should have notified her and then discussed the matter to determine if she was comfortable with it." The patient failed to communicate with his godmother, a very important courtesy.

The motivation for such unlawful behaviour was examined. It seemed that the patient at first wanted to win his spouse's affection, "I had an affair about 18 years ago; I was ashamed and embarrassed then and still am to this day, so I wanted to buy her love, to prove myself to her." So, the patient took the money for renovations to the house that his spouse had wanted. But the patient realized that it was a terrible mistake, "my wife was indifferent, it didn't change our relationship."

Second, it seemed the patient operated on a false assumption, "at the age of 12 years, I looked after a schizophrenic mother and an alcoholic father and later cared for my godmother as well." So, because his godmother in the past had given him money for small repairs, the patient took it upon himself to withdraw a larger sum of his godmother's money, "but I realized too late that our relationship was over after what I did; I will never have the opportunity again to reconnect with her."

30 The value of the opinion of Dr. Klarreich is diminished by his reliance on an inaccurate account of the offence that minimized and rationalized Mr. Cvetas's conduct. The offence is characterized as a failure of communication and courtesy rather than a deliberate theft perpetrated over a period of months and concealed by repeated lies.

Analysis

31 In considering the appropriate sentence to be imposed on Mr. Cvetas I have considered the general purposes, principles and objectives of sentencing as set out in the *Criminal Code*, R.S.C., 1985, c. C-46. The fundamental principle of sentencing set out in s. 718.1 of the *Code* is that the sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender.

32 Related to that principle is the principle that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

33 There are significant aggravating factors relating to the circumstances of the offence in this case. Mr. Cvetas stole a significant amount of money. This was not an isolated or impulsive act. The money was taken over a period of 10 months and with four separate withdrawals. Mr. Cvetas lied to the employee who questioned him about the withdrawal, to Ms. Cemas when she

learned that the money was missing and to Ms. Cemas's lawyer. His dishonest conduct was repeated, planned and deliberate. He abused the trust of a vulnerable person. The theft constituted a breach of trust because Mr. Cvetas held a Power of Attorney and also because of the relationship of trust between him and his godmother. The motivation for the offence was greed. Mr. Cvetas had a substantial income and an enviable lifestyle but took the money of Ms. Cemas to renovate his house, according to his account to Dr. Klarreich.

34 There are also mitigating factors. Mr. Cvetas entered a guilty plea, and this is indicative of remorse. The level of genuine remorse and insight of Mr. Cvetas however is questionable. I am troubled by his account of the offence to Dr. Klarreich in which he minimizes and rationalizes his actions. It is characterized as a failure to communicate rather than a dishonest and criminal act.

35 The character references filed establish that Mr. Cvetas is a person of prior good character. This is also a mitigating factor. The Court of Appeal has warned however that previous good character, while relevant, should not be given undue weight in sentencing those who perpetrate frauds. In *R. v. Drabinsky*,¹ the Court observed, "The offender's prior good character and standing in the community are to some extent the tools by which they commit and sustain frauds over lengthy time periods."

36 Counsel for Mr. Cvetas also points to the hardship suffered by Mr. Cvetas as a result of the media coverage of the charges against him as a mitigating factor. I acknowledge that Mr. Cvetas has suffered some embarrassment as a result of the charges against him and the media coverage. This has little impact on the sentencing calculus. As the Court of Appeal observed in *R. v. Drabinsky*, "considerable personal hardship, if not ruin, is virtually inevitable upon exposure of one's involvement in these kinds of frauds. It cannot be regarded as the kind of unusual circumstance meriting departure from the range."²

37 Mr. Cvetas has substantial community support from family, friends and his religious community. He has performed community service. These are mitigating factors.

38 A very significant mitigating factor is that Mr. Cvetas has made full restitution. This factor is somewhat attenuated by the delay in repaying the money. Mr. Cvetas had the use of Ms. Cemas's money for about six years. Counsel for Mr. Cvetas filed the Agreement of Purchase and Sale of Mr. Cvetas's house as an exhibit on sentencing. It appears that the house was sold just prior to sentencing in order to make restitution. There is no explanation for the delay in repayment.

39 In determining a fit sentence I have also considered the fundamental purpose of sentencing which is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing sentences that have certain enumerated objectives, including denouncing unlawful conduct, deterring the offender and others from committing crimes, separating offenders from society where necessary, assisting in the rehabilitation of the offender, providing reparations for harm done to the community and promoting a sense of responsibility in the offender.

40 The most important objectives in sentencing an offender who has abused a position of trust

are denunciation and general deterrence. As our Court of Appeal stated in *R. v. Bogart*,³ in such cases, "mitigating factors and even rehabilitation become secondary".

41 The principle of parity demands that the sentence I impose should be similar to sentences imposed on similar offenders for similar offences in similar circumstances.

42 In this case, as in the cases of *R. v. Klimitz*,⁴ *R. v. Taylor*⁵ and *R. v. Hooyer*,⁶ a substantial amount of money was taken from an elderly and vulnerable victim.

43 In *Klimitz*, the offender was the son of the victim. He managed his mother's finances and over two years stole \$200,000. He did not plead guilty but at the time of sentencing he had made partial restitution. Nevertheless, a sentence of three years was imposed and upheld by the Court of Appeal.

44 In *Taylor*, the offender was the caregiver to the victim. She stole \$126,000 and had not made any restitution. There was no guilty plea. The offender was coping with an abusive relationship and was unemployed and destitute. A sentence of 21 months' imprisonment was imposed, and a restitution order made.

45 In *Hooyer*, the offender was a family friend who was the residual beneficiary under the victim's will and who held the Power of Attorney. He used the Power of Attorney to dissipate the assets of the victim. Approximately \$378,552.00 was taken from the victim over an 11-year period. No restitution was made and there was no guilty plea. A sentence of two years less a day was imposed.

46 Had Mr. Cvetas not made restitution before sentencing in this case a sentence in the upper reformatory or low penitentiary range would have been appropriate. Because of the mitigating factors and particularly the restitution, a sentence of under two years is appropriate.

47 Counsel for Mr. Cvetas argues that a conditional sentence should be imposed. In order to impose a conditional sentence, there are four statutory preconditions that must be satisfied. The first three are satisfied in this case: (i) there is no minimum sentence; (ii) a sentence of less than two years' imprisonment is appropriate; and (iii) a conditional sentence would not endanger the public. The last precondition is that a conditional sentence must be consistent with the fundamental purpose and principles of sentencing.

48 I acknowledge that there are circumstances which can justify a non-custodial sentence or a conditional sentence in a large-scale theft involving a breach of trust. However, I do not find that such a sentence can be justified in the circumstances of this offence and this offender.

49 In *R. v. Dobis*,⁷ a case involving the theft and misappropriation of over \$2,000,000.00 from an employer, MacPherson J.A. wrote,

This court has said repeatedly that general deterrence is central to the sentencing process in cases involving large scale frauds with serious consequences for the victims: see: *McEachern, Bertram and Wood, Gray and Holden*, [\[2000\] O.J. No. 3481](#), *supra*. Importantly, the court has said the same thing since the introduction of the conditional

sentencing regime. Conditional sentences have been rejected in large scale fraud cases such as *Pierce, supra*, and *Ruhland, [1998] O.J. No. 781, supra*, and commented on adversely in the leading Ontario case dealing with conditional sentences, *R. v. Wismayer (1997), 115 C.C.C. (3d) 18* (Ont. C.A.).

50 In *R. v. Pierce*,⁸ a case involving an offender who defrauded her employer of \$270,000.00, Finlayson J.A. wrote:

I would . . . refuse the application to permit the appellant to serve the sentence in the community. The abuse of a position of trust or authority in relation to a victim is an express aggravating circumstance set out in the sentencing guidelines under s. 718.2. This factor has traditionally drawn a severe custodial term even with first offenders.

51 More recently in *R. v. Taylor*, the Court of Appeal wrote:

[T]his was a serious offence. The appellant voluntarily placed herself in a position of trust in relation to the complainant. She became her attorney and the executor of her estate. The frail, elderly complainant was completely reliant on the appellant. This was not a one-time act but a planned and deliberate fraud committed over many months by someone whom the complainant looked upon as a friend. The appellant stole and then spent over \$126,000, almost the complainant's entire life savings. In such a case, the paramount objectives of sentencing must be deterrence and denunciation, and they cannot be adequately met by a conditional sentence.

52 I have considered that Mr. Cvetas has pleaded guilty and made full restitution to Ms. Cemas. Even with this mitigation, the objectives of deterrence and denunciation cannot be met by a conditional sentence. The planned and deliberate breach of the trust of a vulnerable victim requires a denunciatory sentence. There is nothing in the circumstances and background of Mr. Cvetas that justifies a departure from the range of sentence for this type of offence.

53 The sentence sought by the Crown in this case is a lenient sentence. A sentence of 12 months' imprisonment takes into account the mitigating circumstances. Any lower sentence would fail to serve the objectives of deterrence and denunciation. A conditional sentence would fail to serve those objectives. I will therefore sentence Mr. Cvetas to a term of imprisonment of 12 months.

54 I also find that the proposed two-year period of probation following the period of imprisonment is appropriate.

Conclusion

55 I therefore sentence Mr. Cvetas to imprisonment for 12 months to be followed by a two-year period of probation with the statutory conditions and with a condition prohibiting him from having any contact with Nevenka Cemas.

56 I further order, under s. 743.21, that Mr. Cvetas have no contact with Ms. Cemas during the period of imprisonment.

57 Theft over \$5,000.00 is a secondary designated offence and the Crown does not seek a DNA order. I agree that no DNA order is required.

58 The Crown has also sought an order under s. 380.2(1) of the *Criminal Code* limiting the ability of Mr. Cvetas to be employed or volunteer in a position where he would have authority over the money or property of other people.

59 A s. 380.2 prohibition order excludes an offender from "participating in a wide variety of otherwise lawful activities", including many forms of employment.⁹ The imposition of a s. 380.2 prohibition order can result in "significant restrictions" on an offender's liberty and security of the person.¹⁰

60 Mr. Cvetas has worked for all of his adult life in the financial industry. His ability to support himself and to rehabilitate himself would be profoundly impacted by an order prohibiting all employment and volunteer work that involves any authority over other people's money. Section 380.2 permits such an order to be made subject to conditions and exemptions. The objective of the section is the protection of the public. I am satisfied that because of the nature of this offence and the breach of trust an order is required to protect the public. I am also satisfied, however, that the protection of the public can be achieved by an order that limits Mr. Cvetas from having authority over real property, money, or valuable security, but does not entirely prohibit him from doing so. I therefore impose an order that prohibits Mr. Cvetas from having authority over the real property, money or valuable security of another person except in the capacity of an employee or volunteer under the supervision of another adult, or for an immediate family member, for a period of five years.

M.D. FORESTELL J.

1 [2011 ONCA 582](#) at para. 167 (Ont. C.A.)

2 *Drabinsky, supra*, at para. 167

3 *R. v. Bogart* (2002), 61 O.R. (3d) 75, 167 C.C.C. (3d) 390, leave to appeal dismissed [2002] S.C.C.A. No. 398, at para. 30

4 [2018 ONCA 553](#)

5 [2012 ONCA 809](#)

6 [2016 ONCA 44](#)

7 (2002), 58 O.R. (3d) 536 at para. 51

8 (1997), 32 O.R. (3d) 321 at p. 337, 114 C.C.C. (3d) 23 at p. 40

9 *R. v. Hooyer*, [2016 ONCA 44](#) (Ont. C.A.), at para. 47

10 *Hooyer*, at para. 46