PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Lazar*, 2019 NSPC 31

Date: 20190514
Docket: 8325610; 8325612
Registry: Dartmouth

Between:

Her Majesty the Queen

v.

Nicolae Lazar

Judge:	The Honourable Judge Theodore Tax,
Heard:	May 7, 2019, in Dartmouth, Nova Scotia
Decision	May 14, 2019
Charge:	125 (b) & 128 of Immigration and Refugee Protection Act
Counsel:	Timothy MacLaughlin, for the Federal Prosecution Service Victor Goldberg, for the Defence Counsel

By the Court:

[1] Mr. Nicolae Lazar is before the Court for a sentencing decision after having pled guilty to 2 offences, the first being contrary to sections 52(1) and 124(1)(a) of the **Immigration and Refugee Protection Act** (hereafter referred to as "**IRPA**") and the second being contrary section 127(a) of the **IRPA**. The offences occurred on or about March 26, 2019 at the Halifax Stanfield International Airport, Halifax County, Nova Scotia. The Crown proceeded by way of summary conviction with respect to both of those charges.

[2] The first offence relates to returning to Canada, after having been previously deported, without obtaining authorization by an officer contrary to section 52(1) of the **IRPA**, thereby committing an offence pursuant to section 124(1)(a) of the **Act**, which is punishable under section 125(b) of the **Act**. The second offence relates to the fact that, while Mr. Lazar was outside of Canada, he directly or indirectly misrepresented or withheld material facts relating to a relevant matter which induced or could have induced an error in the administration of the **IRPA** which, in this case, related to him providing false information on his application for an Electronic Travel Authorization, which is an offence contrary to section 127(a) of the **IRPA** and punishable under section 128 of the **Act**.

[3] The issue on this sentencing hearing is to determine a just and appropriate sentence in all the circumstances of these offences and this offender. The Crown Attorney recommends a sentence of 6 to 9 months in jail, less enhanced presentence custody credits. The Crown Attorney submits that the sentencing decision should emphasize specific deterrence of Mr. Lazar and general deterrence of other like-minded individuals who seek to gain illegal entry into Canada.

[4] On the other hand, Defence Counsel recommends a sentence which would, in effect, be about 2 months in jail taking into account the enhanced presentence custody credits of 1½ days for each day served. Defence Counsel does not take issue with the primary sentencing purposes submitted by the Crown, but submits that the principles of proportionality and restraint should also be considered by the court together with the mitigating circumstances and that Mr. Lazar has served a significant period of time and now wishes to return to Romania with his family.

Circumstances of the Offences:

[5] On April 30, 2018, a Romanian citizen, going by the name of Nicolae Muntean (DOB July 16, 1986) walked across the USA-Canada border at the Pacific Highway Port of Entry, British Columbia and claimed refugee status. A "Departure Order" was issued on May 11, 2018 which included the following notice:

> "Subject to the *Immigration and Refugee Protection Act,* where a Deportation Order is made against a person, the person shall not, after the person is removed from or otherwise leaves Canada, come into Canada without the written consent of the Minister, unless an appeal from the Order has been allowed."

[6] The "Departure Order" which contained the reference to the consequences of a Deportation Order being made were reviewed with Mr. Muntean and the document was signed by Nicolae Muntean.

[7] After an admissibility hearing was held, Mr. Muntean was found to be "inadmissible" to Canada on the grounds of being involved in organized criminality, contrary to section 37(1) **IRPA**. As a result, a Deportation Order was issued on June 20, 2018 and Mr. Muntean was deported from Canada on July 2, 2018. The Crown Attorney noted that it is the practice of the Canada Border Service Agency ("CBSA") to counsel everyone being deported from Canada of the law requiring them to obtain written authorization before attempting to return to Canada.

[8] On October 28, 2018, a Romanian citizen going by the name Nicolae Burcea (DOB July 16, 1986) completed an application for an Electronic Travel Authorization (hereafter referred to as an "ETA"). An ETA is required for all non-Canadian citizens travelling to Canada, except for Americans. The application poses several questions including: (1) Have you ever been refused a visa, denied entry or ordered to leave Canada or any other country? and (2) Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any other country? Mr. Burcea answered "no" to all of those questions and his application was approved.

[9] On November 1, 2018, Mr. Burcea was attempting to board an Air Canada flight from Budapest, Hungary to Toronto, Ontario. A CBSA liaison officer posted in Budapest had been alerted about Mr. Burcea's travel information by Romanian officials and conducted additional checks. It was determined that Mr. Burcea was, in fact, Nicolae Muntean who had been previously deported from Canada. Mr. Burcea was not permitted to board the flight and his ETA was cancelled.

[10] On March 6, 2019, a Romanian citizen going by the name of Nicolae Lazar (DOB July 16, 1986) completed an application for an ETA to Canada. The application contained the same 2 questions relating to prior deportation or criminality in any other country to which Mr. Lazar answered "no." As a result, his application for an ETA was approved by CBSA officials.

[11] On March 23, 2019, Mr. Nicolae Lazar arrived in Punta Cana, Dominican Republic, after having travelled from Romania to Madrid, Spain and then taking a flight from Madrid to Punta Cana.

[12] After spending 3 days in the Dominican Republic, on March 26, 2019 Mr. Lazar took a flight to Halifax, Nova Scotia. As a result a of pre-screening of the passengers bound for Canada on that plane, a "lookout" had been placed on Mr. Lazar. On arrival in Halifax, Mr. Lazar was referred to a CBSA officer who posed several immigration questions. Mr. Lazar had stated that the purpose of his trip to Nova Scotia was to visit the beaches and that he had never been previously arrested or convicted, changed his name or ever been in Canada before.

[13] The CBSA officer was not satisfied that Mr. Lazar's trip to Canada was genuine and refused his entry into Canada. However, it was very late, so the officer adjourned his examination of Mr. Lazar until the next morning. Mr. Lazar had not been detained at the airport and was allowed to leave the CBSA security area in the Halifax airport to go to a hotel. However, he was informed that he would have to return to the airport the next morning for further questioning.

[14] A few hours after Mr. Lazar left the CBSA office at the airport, the CBSA officer learned that Mr. Lazar had several aliases in their database and that he had been previously deported from Canada. The CBSA officer asked the Halifax Regional Police to apprehend Mr. Lazar at the hotel and bring him back to the airport. On March 27, 2019, at approximately 5:10 AM Mr. Lazar was brought back to the CBSA office at the airport and placed under arrest.

[15] On March 27, 2019, a CBSA officer conducted a cautioned interview with Mr. Lazar during which he made several admissions, including, that he had been previously deported from Canada, that he remarried in Romania in early 2019, that he has criminal convictions in the United Kingdom and that there are outstanding charges in the United States and that he claimed that he believed he could travel back to Canada after 6 months from his deportation.

[16] During the interview, Mr. Lazar also told the CBSA officer that he did not know where his ex-wife was currently residing and that his son and daughter are residing in Romania. However, further background checks in the CBSA database confirmed that his ex-wife was still residing in Toronto, Ontario with his son and daughter. The ex-wife is a Romanian citizen and she was currently subject to further immigration processing.

[17] Further international background checks by CBSA officers revealed that Mr. Nicolae Muntean has 8 convictions in the United Kingdom and is wanted in that jurisdiction for 3 pending offences. Similar checks with American authorities have revealed that arrest warrants have been issued for Mr. Muntean in 3 states (Vermont, New York and North Carolina).

Circumstances of the Offender:

[18] Given the fact that the parties wished to proceed with the sentencing hearing very shortly after Mr. Lazar entered guilty pleas to the charges before the court, there was insufficient time to obtain a Pre-Sentence Report prepared by a probation officer. As a result, apart from Mr. Lazar's date of birth, the only other information with respect to the circumstances of the offender which were related to the court, was by Defence Counsel, during his submissions.

[19] Mr. Lazar is now 32 years old. He has been in a common-law relationship with a woman [Lumanita]for over 14 years and she is the mother of their 4 children. The children were all born outside of Canada and are presently 13, 10, 9 and 8 years old. At the present time, his common-law partner and 3 of their children reside in Toronto, but they have consented to a deportation process and will be sent back to Romania within a few weeks. Their 10-year-old child resides with family members in Romania. For those reasons, Defence Counsel noted that Mr. Lazar has no reason to want to stay in Canada. In addition, Mr. Lazar is already subject to a deportation/removal order himself and has signed a waiver to facilitate an early deportation back to Romania to rejoin his family and to work with his father.

[20] Defence Counsel advised the court that while he was in Canada, Mr. Lazar went by the name of Nicolae Muntean. Defence Counsel said that Mr. Lazar had not seen his common-law partner and children for about a year, when he started to take what was described as "desperate" measures to regain entry to Canada to visit with them. He had previously gone by the name Muntean in Canada, however,

when an application for an ETA to travel to Canada was not approved under the name of Nicolae Burcea, then he entered into a marriage of convenience with a long-time friend, Ms. Eva Lazar, who also lives in Cluj, Romania.

[21] Defence Counsel advised the court that in Romania, after a legal marriage, either spouse may adopt the surname of the other and, in this case, his client did so. As a result, the individual formally known as Mr. Nicolae Muntean was permitted to change his name to Nicolae Lazar. He surrendered his previous passport to Romanian authorities and obtained a new passport, which was issued in his legal Romanian name, that is, Mr. Nicolae Lazar. As a result, Defence Counsel pointed out, during his sentencing submissions, that this case is not like other cases where the accused person had used a forged or fraudulently obtained passport to enter Canada. Mr. Lazar was using his own validly issued Romanian passport which included his legal name and his date of birth.

[22] Finally, Defence Counsel noted that Mr. Lazar has been held in custody since March 27, 2019 and as of May 7, 2019, he had been remanded and held in custody for the last 41 days. With enhanced credit of 1½ days for each day served, Defence Counsel notes that Mr. Lazar has already served the equivalent of 62 days, which is roughly equal to 2 months in jail. Defence Counsel advised the court that while being held on remand, there have been several days when Mr. Lazar was subject to a complete lockdown of the Correctional Centre and, on other days, he has only had 4 hours of free time outside of his cell.

[23] Mr. Lazar will have earned an additional 7 days of actual custody when the court renders its decision on May 14, 2019 and at that time, he will have been in custody for 48 days which translates into a total of 72 days with enhanced presentence custody credits.

Analysis:

[24] The provisions of sections 718 to 718.2 of the **Criminal Code** which set out the fundamental purpose and principles of sentencing apply to offences punishable on summary conviction pursuant to the provisions of section 7(1) of the *Summary Proceedings Act* of Nova Scotia.

[25] During their sentencing submissions, the Crown Attorney and Defence Counsel referred to those fundamental purposes and principles of sentencing. Section 718 of the **Code** states that 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 purposes: denunciation of the unlawful conduct, specific and general deterrence, separation of offenders from society where necessary, assisting in rehabilitation, providing reparations to the victims or to the community and promoting a sense of responsibility in offenders.

[26] As I mentioned previously, the Crown Attorney submits that given the nature of this case, specific and general deterrence as well as denunciation of the unlawful conduct should be emphasized to ensure that legal processes for gaining entry into Canada are followed and that foreign citizens will understand there are significant consequences for failing to be honest and forthright in completing their applications to enter or to remain in Canada.

[27] Defence Counsel does not dispute the Crown Attorney's contention with respect to the primary sentencing purposes in this case, but he submits that it is not necessary to order that Mr. Lazar continue to be separated from society, given the fact that Mr. Lazar has agreed to be deported back to Romania at an early opportunity to rejoin his family. Furthermore, Defence Counsel submits that the fundamental principle of proportionality in sentencing, mitigating factors and the principle of restraint all militate in favour of a sentence being effectively served by Mr. Lazar's presentence custody credits.

[28] At the outset, I note that none of the statutorily "deemed" aggravating factors listed in section 718.2(a) of the **Criminal Code** are present in this case. Furthermore, I also note that section 123(2) of the **IRPA** also contains "deemed" aggravating factors, but I find that neither one of those aggravating factors are present in this case. I find that the circumstances of the offences established that Mr. Lazar did not commit these offences for profit, nor was there any association with or involvement of any criminal organization.

[29] Section 718.1 of the **Criminal Code** sets out the fundamental principle of proportionality in sentencing. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In other words, the severity of a sanction for a crime should reflect the seriousness of the criminal conduct. A disproportionate sanction can never be a just sanction.

[30] The Supreme Court of Canada has repeatedly stated that, in all sentencing decisions, determining a fit and proper sentence is highly contextual and is necessarily an individualized process which depends upon the circumstances of the offence and the particular circumstances of the specific offender. In **R v. M (CA),**

[1996] 1 SCR 500 at para. 91 and 92, the Supreme Court of Canada stated that the determination of a just and appropriate sanction requires the trial judge to do a careful balancing of the societal goals of sentencing against the moral blameworthiness of the offender and the gravity of the offence while, at the same time, taking into account the victim or victims and the needs of and current conditions in the community.

[31] Pursuant to section 718.2 of the **Criminal Code**, a court that imposes a sentence, is required to consider several other sentencing principles in determining the just and appropriate sanction. Section 718.2(a) of the **Code** requires the court to consider the aggravating and mitigating circumstances which may either increase or reduce the appropriate sentence.

[32] The parity principle is found in section 718.2(b) of the **Code** and it requires the court to consider that the sentence imposed should be similar to sentences imposed on similar offenders, for similar offences committed in similar circumstances. Section 718.2(d) of the **Code** is, in reality, a principle of restraint which requires the court to consider that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.

Aggravating and Mitigating Circumstances:

[33] As I mentioned earlier, section 718.2(a) of the **Criminal Code** requires the court to consider the aggravating and mitigating circumstances which may increase or reduce the sentence imposed by the Court.

[34] I find that the Aggravating Circumstance is as follows:

- Mr. Lazar's attempts to illegally gain access into Canada, took place over several months after being deported from Canada, were all planned and required significant deliberation and dishonesty in order to deceive Canadian immigration authorities;

[35] I find that the Mitigating Circumstances are as follows:

- Mr. Lazar has entered an early guilty plea, saving court time and public expense;
- Mr. Lazar has no record of criminality in Canada;

- Mr. Lazar has consented to his immediate removal from Canada in order to rejoin his family in Romania.

[36] With respect to the fundamental principle of proportionality in sentencing as set out in section 718.1 of the **Criminal Code**, I find that Mr. Lazar's degree of responsibility for these offences is very high. While Mr. Lazar has stated that he was "desperate" to get back into Canada for the purpose of reuniting with his family, even on a temporary basis, he intentionally resorted to several different means of circumventing the lawful deportation order.

[37] The high degree of planned, deliberate and dishonest actions to illegally return to Canada started within months of being deported from Canada in July 2018, after being found to be inadmissible to Canada on the grounds of being involved in organized criminality, pursuant to section 37(1) of the **IRPA**. In October 2018, he made false declarations in order to obtain a travel authorization to Canada and apparently went by assumed name, presumably with a Romanian passport in that name. Mr. Lazar's efforts to illegally enter Canada were only thwarted at the last minute as he attempted to board a flight to Canada.

[38] Finally, Mr. Lazar's efforts to illegally enter Canada were only successful by virtue of a marriage of convenience, assuming the name of his spouse and, once again, providing false information to obtain a travel authorization. When I consider all of the planned and deliberate efforts to illegally enter Canada occurred over several months, I find that his degree of responsibility or moral blameworthiness is very high.

[39] As for the gravity of these offences, Parliament has indicated that the second offence is far more serious than the first offence for which Mr. Lazar has entered guilty pleas. The first offence, which the Crown elected to proceed by way of summary conviction, is punishable by section 125(b) of the **IRPA** and renders an offender liable to a maximum penalty on summary conviction of a fine of not more than $10,000 and imprisonment of not more than 6 months.

[40] However, the second offence, for which Mr. Lazar entered a plea of guilty, which is punishable under section 128 of the **IRPA** on summary conviction and for that offence, an offender is liable to a maximum fine of not more than $50,000 and not more than 2 years of imprisonment. Based on those objective criteria, I find that Parliament regards the offence of intentional misrepresentations or withholding material facts which induced or could induce an error in the

administration of the **IRPA**, in this case, to obtain the Electronic Travel Authorization, to be a serious offence.

Sentencing Precedents to Establish a Range of Sentence:

[41] As I indicated previously, the parity principle found in section 718.2(b) of the **Criminal Code** requires the Court to consider that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A review of those sentencing precedents provided by counsel or reviewed by the court may be considered to establish a range, as a guideline for trial judges. It does not create a hard and fast rule, nor does the establishment of a range of sentence preclude a greater sentence on grounds of denunciation, deterrence and the gravity of the offence, or a lesser sentence because of special or significant mitigating circumstances.

[42] The Crown Attorney submitted the following cases in support of his sentencing position:

(a) **R. v. Fernandes,** 2013 CanLii 73502 (NLPC). The accused was 52 years old and had a lengthy criminal record for immigration matters in Canada, but no other criminal convictions. He had previously been removed from Canada 5 times. He entered Canada using a fraudulent Passport. For his first offence in 1998, he served one day in jail, 3 months in jail for the second offence in 1999 and 12 months in jail for the attempt in 2012. He had children and other family members in Canada, which was his reason for attempting to return. The main aggravating factor was his repeated attempts to enter Canada illegally. The Court concluded that Mr. Fernandes was not deterred by the recent sentence for the same offence and he was sentenced to 18 months imprisonment to underline specific deterrence.

(b) **R. v. Zelaya,** 2009 ABPC 7. The accused, was originally from Honduras, had illegally entered the United States before arriving at a Canadian border crossing in Alberta in December 1998, where he made a refugee claim. The refugee claim was ultimately denied, but before deportation, Mr. Zelaya was convicted of criminal offences and after serving his sentence, he left Canada and illegally entered the United States, where he committed further criminal offences. In January 2004, he again illegally returned to Canada, committed some serious criminal offences and spent time in jail. Upon his release, Mr.

Zelaya was allowed to stay in Canada until his second claim for refugee status was denied and he was returned to Honduras. Following that, he obtained a passport on false pretenses by using his uncle's identity, but the passport contained Mr. Zelaya's picture and then obtained travel documents by submitting false information and returned to Canada.

The judge noted, at para. 20, that the sentencing precedents for returning without authorization, even with proper identification contrary to section 124(1)(a) of the **IRPA**, which is similar to the first offence for which Mr. Lazar pled guilty, even for an accused with no prior record could range from a sentence of a fine to a 3-month jail term, depending on the circumstances. In the final analysis for the 4 charges for which Mr. Zelaya pled guilty, including a charge contrary to section 128(a) of the **IRPA** (which is similar to Mr. Lazar's second offence), the court was of the view that the sentence ought to be 18 months in jail. However, after considering what the judge regarded as "significant mitigating factors," the sentence was reduced by one third and the court ordered a global sentence of one year in jail less presentence custody.

(c) **R. v. Daskalov**, 2011 BCCA 169. The accused unlawfully entered Canada under a false identity having purchased a fraudulent Passport. He was 40 years old and a citizen of Bulgaria. He had been living in the United States for about 11 years where he had sought political asylum, but in 2005, an immigration judge ruled that he was no longer in danger and he was ordered deported. Mr. Daskalov wished to return to United States to retrieve his personal belongings and obtained a fraudulent passport in a different name. He planned to land in Canada with that passport and then proceed to the United States to retrieve his effects. When he attempted to cross into the United States, he was told that he needed a visa and was fingerprinted, which led to his true identity being determined.

Mr. Daskalov was denied entry into the United States and was handed over to CBSA officials in Canada, by virtue of an order of removal. The accused spent 8 weeks in custody before being granted judicial interim release. On the trial date, he entered a plea of guilty to a charge punishable by section 123(1)(a) of the **IRPA** for possessing of a false passport. The Crown had proceeded by indictment and he was

liable for a term of imprisonment of up to 5 years. The trial judge acknowledged that a jail sentence was the usual sentence for this offence, however, Defence Counsel had submitted that a conviction would permanently bar his client from admission into Canada. The trial judge granted a conditional discharge based upon the "unique circumstances of this case."

The British Columbia Court of Appeal noted that there was ample authority for the Crown's recommended range of sentence from 4 months to 2 years of imprisonment. The Court held, at para. 28, that while the immigration consequences may be an appropriate consideration in crafting a fit sentence for an offender who has been lawfully admitted into Canada, they are not a relevant consideration for an offender who was without legal status in the country and subject to a removal order. The Court of Appeal held that there were no "unique" or exceptional circumstances in the case to support a sentence outside the range of sentences for an offence of this nature. The Court of Appeal reversed the trial judge`s imposition of a conditional discharge and agreed with the Crown in varying the sentence to 4 months, which was effectively, the time already served.

(d) **R. v. Zhao,** 2013 BCPC 227. The accused was 33 years old when he pled guilty to 2 offences pursuant to section 127(a) of the **IRPA**. He had earlier entered Canada on a study permit under a false Passport and ultimately applied for refugee status using his real name. When he made the refugee claim, he did not disclose that he had been studying in Canada with a study permit during which time he claimed to have been persecuted. After his application for refugee status was approved, he married and sponsored his wife's immigration into Canada. The couple had 2 daughters, who were born in Canada and were 5 and 3 years old at the time of the case. When he renewed his driver's license, it was determined that he had previously received a driver's license under a different name and following a CBSA investigation, he admitted to failing to disclose his real name in the application for the study permit, the refugee claim and his application for permanent residence.

The Crown sought a sentence of 9 months imprisonment while the accused was looking for a conditional sentence. After canvassing several cases, the judge found that the range of sentence was from a

low end of 17 days to a high end of 7 months and that at the high end of the range, the cases dealt with possession or use of a fraudulent passport or other fraudulent documents.

The trial judge ordered a conditional sentence of 90 days to be served in the community, based upon the fact that the accused had been living in Canada for 13 years, working steadily and contributing as a member of Canadian society. He had no prior criminal history. The charges had played a significant role in the breakdown of his marriage and he could no longer see his children as his wife had returned to China with them. The court also noted that, while the case involved breaches of trust by acts of nondisclosure, the accused had never possessed or used a fraudulent passport to obtain entry.

[43] Defence Counsel submitted the following authorities in support of his sentencing position:

(a) **Suarez c. R**., 2019 QCCA 649. The accused and her son had pled guilty to illegally entering Canada contrary to Section 52(1) and 124(1)(a) of the **IRPA**. The Crown had proceeded by indictment. The accused, who were originally from Columbia, had applied for visas as visitors, which were denied. However, they came into Canada and claimed refugee status. They were determined to be ineligible and were removed from Canada and were not entitled to return for a period of one year. A short time later, notwithstanding their inadmissibility, they re-entered Canada illegally and sought permanent residency on sponsorship and on humanitarian and compassionate grounds. Those applications were pending at the time of the appeal decision.

The trial judge had referred to a positive presentence report, the fact that the accused had no criminal record, they were suffering from depression and posttraumatic stress as a result of threats to their safety made by criminal groups in Columbia and as a result of the difficult immigration process. The trial judge considered the appropriate sentence should not deviate from the sentences generally imposed for similar situations, which ranged from 30 days to 6 months of detention. The judge was aware of the collateral immigration consequences, but concluded that the accused had “flouted the

decisions made against them by Canadian authorities" on more than one occasion. The Court ordered a sentence of 45 days in prison.

The Court of Appeal substituted a conditional discharge for the 45 days imprisonment. The Court of Appeal noted that, in contrast to the number of decisions cited by the trial judge, the appellants had no criminal record, did not make any false statements and this was their first and only attempt at unlawful entry into Canada. Given the positive nature of the presentence reports for both appellants and the psychological reports, the trial judge ought not to have excluded the possibility of a conditional discharge.

(b) **R. v. Hupang**, 2008 BCCA 4. In this case, the Court allowed the accused's appeal from 2 months' imprisonment and $2500 fine following a guilty plea for contravening section 127(a) of the **IRPA** for falsifying Citizenship and Immigration Canada documents. The accused had purchased false transcripts and a false acceptance letter for $3000 and had attached them to an application for renewal of his study permit, so that he could continue to study in Canada. He had been studying in Canada for 2 years on a legitimate study permit, but the college closed, depriving him of his tuition and student status. He was 22 years old and had no prior criminal history. The trial judge emphasized the need for general deterrence in the interest of international and national security.

While the Court of Appeal rejected Mr. Hupang's request to substitute a conditional discharge for the trial judge's order, they noted that he was a young man without any criminal record, who entered Canada legally at the age of 18 to study here and improve his circumstances. However, the Court noted that Mr. Hupang had resorted to illegal methods to remain in Canada when his educational institution closed. The Court of Appeal added that there is a requirement for honesty in submitting applications and that a person who circumvents the system through falsification of documents, participates in a breach of trust. Given the impact of the criminal proceedings, a criminal record and the likely expulsion from Canada, the Court ordered an effective sentence of 17 days in custody to reflect his presentence custody, which was deemed served, but left the $2500 fine in place.

(c) **R. v. Juarez Ortiz**, 2012 ABPC 70. This case involved an illegal entry charge contrary to Section 52(1) and 124(1)(a) of the **IRPA**. The

> accused had a significant criminal record spanning 17 years until his removal from Canada in 2008. He subsequently returned back without authorization in 2009 and, after his arrest in November 2010, he was ordered deported back to Guatemala. He had plans to reside there with his wife and child. The Crown sought a sentence of 6 months, while the defence was seeking a suspended sentence and probation. The accused had a family in Canada as well as young child and was working 6 days a week on a work permit to support his family. After a review of the authorities and sentencing principles, the Judge ordered a conditional sentence order of 4 months.

The Just and Appropriate Sentence

[44] In examining the sentencing precedents provided by counsel with a view to establishing a range of sentence for the purposes of the parity principle found in section 718.2(b) of the **Criminal Code**, I find that the range of sentence for the section 125(b) **IRPA** offence could range from a significant fine and a short jail sentence at the low-end, and where more aggravating factors were present, to a 3 month jail term at the upper end.

[45] With respect to the objectively more serious offence, that is, the second offence contrary to section 128 **IRPA** for providing false information or misrepresenting material facts in order to induce an error in the administration of the **IRPA**, I find that the range for this offence, absent "exceptional circumstances" which appear to have been present in the recent Québec Court of Appeal case, to be 4 months at the low-end of the range as noted by the BC Court of Appeal in **Daskalov**.

[46] In terms of the upper end of the range for the section 128 **IRPA** offence for a first-time offender who is subject to penalty sections of the **IRPA** on summary conviction, it would likely be significantly less than the two-year sentence at the upper end of the range as noted in **Daskalov**. However, it should be remembered that the **Daskalov** decision and the sentencing precedents at the upper end of that range which were referred to by the Court of Appeal were based upon the offender using a false passport.

[47] In this case, Defence Counsel acknowledges that Mr. Lazar made false declarations, but he was using a legitimately issued Romanian passport in his legal name. In those circumstances, I find that, in this case, the upper end of the range for the section 128 **IRPA** offence for this offender, where the Crown has

proceeded summarily, would be 6 to 9 months in prison, which was recommended by the Crown Attorney.

[48] I have previously concluded that Mr. Lazar's degree of responsibility or moral blameworthiness for the 2 offences before the court is very high given his planned, calculated and deliberate attempts, which started within months of his deportation from Canada to illegally return to Canada. I have also found that the gravity of both offences, viewed objectively, is serious, but that is particularly so for the second offence which involved misrepresentations or withholding material facts which induced or could have induced an error in the administration of the **IRPA**.

[49] In those circumstances, I agree with the Crown Attorney that specific deterrence of Mr. Lazar and general deterrence of like-minded individuals must be emphasized on this sentencing decision. The **IRPA** is legislation designed to assist lawful immigration to Canada and to protect legitimate refugees. Mr. Lazar did not enter Canada as a lawful immigrant nor as a refugee. Quite to the contrary, he provided false statements to Canadian authorities on several occasions in an effort to induce them to provide the necessary travel documentation.

[50] In the final analysis, the only reason he got into Canada on this occasion was by further modifying his attempts and using a marriage of convenience, which allowed him to legally change his name and use a passport in that name. However, notwithstanding the legal name change, Mr. Lazar continued to provide false information in order to obtain the necessary travel documentation. In those circumstances, I cannot regard Mr. Lazar using his own legitimately issued passport as a mitigating circumstance, since, regardless of the name on the passport, he falsely stated that he had not been previously deported from Canada or convicted of offences in the United Kingdom. By making those false statements and withholding relevant information, which he would have known to pertain to him, regardless of the name on the passport, Mr. Lazar was able to circumvent a lawful deportation order to illegally gain entry into Canada.

[51] However, I also find that there are some mitigating circumstances which would tend to the reduce the sentence to be imposed by the court. In particular, I find that the early guilty plea has saved significant court time and public expense to pursue this prosecution, the fact that he has consented to his immediate removal from Canada and I also take into account that he has been either locked down at

the correctional centre for almost the entire day or on other occasions for the entire day and that he has no prior record for any criminality in Canada.

[52] In those circumstances, I hereby order a sentence of 1½ months of imprisonment for the offence of returning to Canada after having been previously deported, without obtaining authorization from an officer, which offence proceeded by way of summary conviction and is under section 125(b) of the **IRPA**.

[53] With respect to the second offence that relates to directly or indirectly misrepresenting or withholding material facts relating to a relevant matter which induced or could have induced an error in the administration of the **IRPA,** which was also prosecuted as a summary conviction offence contrary to section 127(a) of the **IRPA** and punishable under section 128 of the **IRPA**, I hereby order a sentence of imprisonment of 4 ½ months for that offence.

[54] I am satisfied that the 2 offences for which Mr. Lazar entered guilty pleas represent one continuing criminal operation or transaction, and despite the fact that they occurred on different days and in different ways, I conclude that there is a reasonably close nexus between those offences and that they should be served concurrently with each other. In those circumstances, I find that a just and appropriate sentence for Mr. Lazar, in all the circumstances of this case, should be 4½ months of imprisonment, less presentence custody.

[55] The Crown Attorney and Defence Counsel have agreed that, as of today's date, Mr. Lazar has served 48 days of actual custody which translates into 72 days or roughly 2½ months with enhanced presentence custody credits of 1½ days for each day served in custody.

[56] Therefore, the total sentence going forward for Mr. Lazar shall be 2 months of imprisonment in a provincial correctional centre. The Crown did not seek any ancillary orders.

Theodore Tax, JPC