

Should a Supervisor Be Sentenced to Jail for OHS Violations?



SITUATION

A supervisor for a waste disposal company orders a worker to go onto a roof and clear loose shingles. While tossing the shingles into a bin, he steps back, slips and falls off the roof and onto a walkway. He's permanently paralyzed. The government charges both the supervisor and the company with OHS violations. The supervisor's convicted of failing to ensure a worker wore fall protection devices and both the supervisor and the company are convicted of failing to take every reasonable precaution to protect a worker. The supervisor has a record of multiple environmental violations relating to the company's operations, for which she has unpaid fines totaling \$50,000 and has served intermittent jail time. The Crown asks the court to sentence her to imprisonment for 90-120 days to be served consecutively rather than intermittently, arguing prior fines and intermittent jail time clearly didn't serve as a deterrent. The supervisor argues imprisonment is inappropriate because she cares for her ill, elderly mother. Although she claims to have limited means to pay, she says a fine of \$25,000 with time to pay is a more appropriate sentence than jail. The court sentences the supervisor to 45 days' continuous imprisonment.

QUESTION

Is the court's sentence of the supervisor appropriate'

- A. Yes, because of the seriousness of the violations, her prior record and her failure to pay fines for other regulatory offences.
- B. Yes, because although she must care for her mother, she can't afford to pay a fine.
- C. No, because her prior record was for environmental violations and so is irrelevant.

D. No, because jail sentences are only permitted for violations related to workplace fatalities.

ANSWER

A. Based on the supervisor's string of prior regulatory violations, failure to pay previous fines and the serious violations that led to a worker's permanent paralysis, a jail sentence was appropriate for her.

EXPLANATION

This hypothetical is based on an Ontario decision in which the court sentenced a supervisor to a 45-day prison term, to be served continuously, for fall protection and other OHS violations that resulted in serious injury to a worker. The court considered the supervisor's multiple prior violations of environmental regulations with regard to a waste disposal business, finding that those violations demonstrated a 'serious disregard for public welfare statutes.' The supervisor had served jail terms on an intermittent basis for those violations and been assessed multiple fines. But the bulk of them '\$50,000' remained unpaid. One purpose of fines and other sanctions is to not only punish the violator but also 'send a message' that such conduct won't be tolerated and hopefully deter the violator and others from committing similar violations in the future. Noting that fines or intermittent jail hadn't served as a deterrent, the court imposed the 45-day continuous jail sentence because it didn't see any hope of rehabilitating the supervisor.

Insider Says: For other cases in which courts had to consider whether jail was appropriate, see 'Winners & Losers: When Is Jail the Proper Penalty for a Safety Offence' Oct. 2008, p. 16. And for information about fall protection, see 'Fall Hazards: Does Your Workplace Need a Fall Protection Plan' Nov. 2009, p. 1.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because the supervisor's inability to pay a fine isn't, on its own, a reason to impose jail time instead. And although she must care for her mother, that circumstance isn't dispositive. Courts may impose fines even against bankrupt entities and inactive corporations no longer generating revenue. The purpose of such fines isn't just to collect some funds but to serve as a general deterrent—that is, to deter *others* in society from committing similar violations. In addition, a defendant's personal circumstances may be a mitigating factor that impacts the sentence but are just one of many factors a court considers. In this case, the supervisor's string of violations, continued disregard for regulatory requirements, failure to pay prior fines and inability to pay a fine now outweigh her caring for her mother and thus support a jail sentence.

C is wrong because although the earlier convictions were for environmental violations and the supervisor was being sentenced for OHS violations, the prior violations *are* relevant because all of the violations are of regulatory laws. And the number of prior violations demonstrates a general disregard for public welfare. In addition, her failure to pay the resulting fines for those environmental offences also demonstrates she hasn't been deterred by lesser penalties and can't be relied on to pay fines, thus supporting the court's

continuous jail sentence for these OHS violations.

D is wrong because imprisonment isn't limited to violations involving a fatality. Although jail time isn't necessarily a routine penalty for regulatory violations, the OHS laws do permit jail sentences for individuals convicted of violations. (See, 'Know the Laws: Jail Sentences under the OHS Laws.') Here, jail is appropriate for the various reasons discussed above.

SHOW YOUR LAWYER

Ontario (Ministry of Labour) v. J.R. Contracting Property Services, [2014] ONCJ 115 (CanLII), March 6, 2014.