

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Oguntoyinbo, 2026 ONCA 320

DATE: 20260506

DOCKET: COA-24-CR-0799

Miller, Paciocco and Wilson JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Deborah Oguntoyinbo

Appellant

Laura Remigio, for the appellant

Ryan Mullins, for the respondent

Heard: March 23, 2026

On appeal from the sentence imposed by Justice Marquis S. V. Felix of the Ontario Court of Justice on March 8, 2024, with reasons reported at 2024 ONCJ 267.

Paciocco J.A.:

OVERVIEW

[1] In late 2023 and early 2024, Deborah Oguntoyinbo pleaded guilty to and was convicted of 23 charges. Those charges were laid in seven different

informations, which together covered a four-year period between March 4, 2019, and February 9, 2023.

[2] Sixteen of those charges, included in six of the informations, were fraud and property-related offences arising from six different events (the “fraud-related offences”). On each occasion, Ms. Oguntoyinbo defrauded others using false identities. On two of those occasions, she fraudulently purchased motor vehicles from victims using false identification and fraudulent negotiable instruments and then resold the fraudulently obtained motor vehicles to other victims. One of the fraudulent negotiable instruments she used to acquire the motor vehicles was in the amount of \$27,500 and the other was in the amount of \$25,000. Two of the events involved rental scams relating to apartments she did not own, one involving the amount of \$3,000 and the other \$400. Although the \$400 rental scam involved a small amount, it was particularly disturbing as it victimized a vulnerable and needy refugee family. The remaining two events involved the fraudulent obtainment of cosmetic procedures from small businesses, in one case having a value of slightly more than \$2,000, and in the other, slightly more than \$10,000.

[3] The remaining seven convictions were for breaching terms of probation or judicial release orders that had been put in place to prevent Ms. Oguntoyinbo, who has an extensive and largely unbroken record of crimes of dishonesty dating back to 2014, from committing further offences (the “offences against the administration

of justice”). Some of the orders she breached were in effect when Ms. Oguntoyinbo committed the fraud-related offences described above.

[4] The sentencing judge imposed a global sentence of five years imprisonment on all the charges, minus 130 days of credit arising from presentence custody. The credit he granted for presentence custody consisted of 117 days of *Summers* credit¹, and 12 days of *Duncan* credit² for the harsh conditions, which he rounded up to 130 days of total credit.

[5] Ms. Oguntoyinbo now seeks leave to appeal her sentence. She argues that the sentencing judge committed material errors of principle in arriving at the sentences of incarceration he imposed, arrived at an unfit sentence, and erred when ordering restitution and imposing victim surcharges. For the following reasons, I agree that the sentencing judge erred in imposing the period of incarceration that he did, and in ordering some of the restitution he identified. I would grant leave and allow the appeal in part, as particularized below.

THE SENTENCES OF INCARCERATION

[6] The sentencing judge arrived at a five-year global sentence of incarceration after following the analysis endorsed by Martin J. for the majority of the Supreme Court of Canada in *R. v. Bertrand Marchand*, 2023 SCC 26, 487 D.L.R. (4th) 201, at paras. 91-93, for identifying a fit total sentence when faced with multiple counts.

¹ Pursuant to *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575.

² Pursuant to *R. v. Duncan*, 2016 ONCA 754.

This analysis entails: (1) first determining the appropriate sentence for each offence individually, (2) next considering whether the sentences ought to be served consecutively or concurrently, and (3) “after doing this”, considering the principle of totality (the “*Bertrand Marchand* analysis”): *Bertrand Marchand*, at para. 91. The sentencing judge arrived at a cumulative sentence of six years after applying steps (1) and (2) of this analysis. This cumulative sentence was identified by grouping the fraud-related offences into five categories and ascribing identical, consecutive 12-month sentences to each grouping and then adding an additional cumulative total sentence of 12 months incarceration for the offences against the administration of justice, to be served consecutively to the fraud-related offences, yielding six-years. He then said, “[h]aving now turned my mind to the cumulative impact of the sentence, totality considerations and the principle of restraint cause me to reduce the sentence to one of five years in jail.”

[7] I am satisfied that the sentencing judge erred in principle in his analysis by sentencing Ms. Oguntoyinbo on a charge to which she originally pleaded guilty, but which was then withdrawn by the Crown before conviction, namely, failing to appear in court on March 31, 2021, contrary to s. 145(2)(b) of the *Criminal Code*, R.S.C. 1985, c. C-46. She was therefore sentenced for an offence for which she was never convicted.

[8] I am persuaded that this was a material error of principle that impacted the sentence of incarceration assigned, within the meaning of *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 44, and thus warrants appellate intervention. The Crown disagrees, noting that at step (3) of the *Bertrand Marchand* analysis, the sentencing judge made the 90-day sentence on this count concurrent as part of his reduction in the total sentence. The Crown thus contends that this error had no impact on the total sentence. This misses the fact that, as part of arriving at a gross sentence of six years at step (2) of the *Bertrand Marchand* analysis, the sentencing judge initially made this sentence consecutive. This was so he could arrive at a total consecutive sentence of one year for the offences against the administration of justice. Thus, his erroneous conclusion that “[t]he fail to appear and fail to comply convictions would add another year to the defendant’s sentence” is inextricably tied to his decision to sentence Ms. Oguntoyinbo for an offence not before the court. This sentence thus inflated the cumulative sentence from which he deducted the one year. Therefore, the total sentence he ultimately imposed was longer than it otherwise would have been had he not made this error.

[9] I also note that a fit total sentence for multiple counts is to be arrived at by considering, among other things, the cumulative or overall criminal misconduct: see e.g., *R. v. Jewell* (1995), 100 C.C.C. (3d) 270 (Ont. C.A.), at p. 279; *R. v. Polemidiotis*, 2024 ONCA 905, 174 O.R. (3d) 359, at para. 80. Throughout

his reasons, the sentencing judge cites the sheer number of offences committed and Ms. Oguntoyinbo's pattern of flouting the administration of justice as aggravating features of her offending conduct. This analysis assumes that the fail to attend count was properly before the court as an aspect of Ms. Oguntoyinbo's pattern of offending. In my view, its inclusion tainted the sentencing judge's assessment of the ultimate total sentence imposed.

[10] This error of principle warrants appellate intervention and removes the need to defer to the sentence he imposed: *Bertrand Marchand*, at para. 50.

[11] Ms. Oguntoyinbo argues that the sentencing judge also erred in principle by not following the *Bertrand Marchand* analysis despite purporting to do so. She bases this submission on his decision to assign the same 12-month sentence to the five groupings of fraud-related offences he identified despite the material differences between the grouped offences. Although she did not put it this way, Ms. Oguntoyinbo is, in substance, submitting that the sentences appear not to be based on a close determination of fit sentences for the crimes falling within each grouping, but to have been selected mechanistically to achieve the overall sentence, even though the nature of the frauds, the amounts at stake, the number of transactions, and the impact on the victims varied between them.

[12] Even if this approach represents a deviation from the *Bertrand Marchand* analysis, I am not persuaded it amounts to an error in principle. Martin J. did not

hold that a sentencing judge will err in principle if they do not use the analysis she described. She simply expressed her agreement with the trial judge in that case for having approached the sentencing task by using the mode of analysis that he did, and she endorsed the benefits of this approach: *Bertrand Marchand*, at paras. 91-93; and see *Polemidiotis*, at para. 82; *R. v. C.B.*, 2024 ONCA 160, at para. 43.

[13] There is an alternative approach, long endorsed by this court, that permits sentences to be assigned in the fashion used by the sentencing judge in this case. This approach was endorsed by Finlayson J.A. in *Jewell* and, put in simple terms, involves applying the principles of sentencing to identify an appropriate total sentence given the mitigating and aggravating circumstances relating to each of the offences and to the offender, and then imposing “sentences with respect to each offence which result in that total sentence and which appropriately reflect the gravamen of the overall criminal conduct”: at p. 279. As Finlayson J.A. explained, “In performing this function, the trial judge will have to consider not only the appropriate sentence for each offence, but whether in light of totality concerns, a particular sentence should be consecutive or concurrent to the other sentences imposed”: *Jewell*, at p. 279; and see also *R. v. Ahmed*, 2017 ONCA 76, 136 O.R. (3d) 403, at para. 85. This court has recognized that this approach can be effective in avoiding compartmentalized reasoning and can carry the advantage of ensuring that the imposition of consecutive sentences does not “lengthen the sentence

imposed beyond what is just and appropriate”: *R. v. Stuckless*, 2019 ONCA 504, 146 O.R. (3d) 752, at para. 80.

[14] I therefore see no error in principle by the sentencing judge in assigning sentences to the underlying offences to achieve an appropriate total sentence. In busy courts where multiple pleas can be received on the same day this approach can operate as a fair but more efficient way of arriving at a fit sentence than engaging in the painstaking exercise of precisely quantifying a fit sentence for each offence, as if it was the only offence being sentenced.

[15] That said, the sentencing judge did commit the material error described above of including an offence in the sentencing exercise that was not before him. I must therefore reconsider the sentence he imposed. This makes it unnecessary to determine whether the sentence imposed was demonstrably unfit, as Ms. Oguntoyinbo claims.

[16] I do note, however, that after a careful canvas of the authorities, Hill J. determined in *R. v. Atwal*, 2016 ONSC 3668, at para. 42(4), that sentences in the five-year range tend to be imposed for sophisticated, large-scale frauds that have been committed in breach of trust: see also *R. v. Dobis* (2002), 163 C.C.C. (3d) 259 (Ont. C.A.), at p. 271. That remains true. By way of illustration only, in *R. v. Campbell*, 2024 ONSC 5242, a lawyer who had defrauded at least 22 victims, including numerous clients, over several years, of an accumulated total of

\$3.2 million, received a five-year sentence. The Crown did not identify any cases before us where comparable sentences have been imposed for a series of unsophisticated, smaller scale frauds such as these. Even multiple unsophisticated smaller scale frauds committed by recidivists often tend to attract reformatory sentences, including when accompanied by breaches: see e.g., *R. v. Sampat*, 2025 ONCA 644; *R. v. Erhunmwunsee*, 2022 ONCA 708; *R. v. Andrew*, 2024 ONSC 5348; and *R. v. White*, 2007 ONCJ 227. Although judges are free in appropriate cases to depart from the range of sentences typically imposed for the offences in question and sentencing is an individual exercise, ranges offer an important reference point by demonstrating that the offender is not being treated more harshly than others would be in their situation.

[17] Based on my reconsideration of the sentence of imprisonment imposed, I would set it aside. Except for the sentence imposed for the withdrawn fail to appear charge, which I would vacate, I would adopt for the purpose of the sentencing exercise the individual sentences the judge assigned to each offence at steps (1) and (2) of his *Bertrand Marchand* analysis, which, after vacating the improper sentence assigned to the fail to appear charge, together produce a gross cumulative sentence of five years and nine months. However, I conclude that this sentence is materially longer than required to satisfy the sentencing objectives that apply and must be reduced to best accord with the principles of sentencing. I would therefore reduce the cumulative sentence to a total sentence of three years and

six months, minus the 130 days of presentence credit identified by the sentencing judge.

[18] In my view, this total sentence remains proportionate to the gravity of the offences and the degree of responsibility of the offender, based on a close examination of the aggravating and mitigating circumstances identified by the sentencing judge. It amply satisfies the principles of sentencing and meets the sentencing objectives that require prioritization, namely denunciation and deterrence. This is a serious penitentiary sentence that reflects the number and nature of the offences and the impact those offences had on Ms. Oguntoyinbo's victims. It also reflects the high level of moral fault she bears arising from the preplanning involved, her long record of similar offences, and her incorrigibility to date. And it recognizes that on most occasions, she was disregarding court-ordered conditions designed to ensure her good behaviour when she committed the offences. This is a substantial sentence capable of denouncing each of her crimes and it meets the needs of general and specific deterrence.

[19] A net sentence of three years and six months also respects the principles of parity, restraint and totality: see *R. v. Hamilton* (2004), 72 O.R. (3d) 1 (C.A.), at para. 96; *R. v. M.* (C.A.), [1996] 1 S.C.R. 500, at para. 42. In my view, a cumulative sentence longer than three-and-a-half years would be longer than required to meet the objectives of sentencing, and materially longer than the principles of parity support. It would also fail to recognize the mitigating effect of Ms. Oguntoyinbo's

guilty pleas, her “recognition of remorse” that the sentencing judge found, and her personal circumstances.

THE RESTITUTION ORDERS

[20] In his reasons, the sentencing judge ordered restitution to be paid to eight victims in the total amount of \$88,795, including to Mr. Gary Kaleas in the amount of \$25,000, and Mr. Robert Orgovan in the amount of \$16,000. No formal restitution orders were ever issued, and the sentencing judge did not specify a time to pay, as the parties now agree he should have done. Appropriately, Ms. Oguntoyinbo does not suggest that these deficiencies, on their own, invalidate the orders, and agrees that if this court does not vacate all eight of the restitution orders, it should assign a reasonable time to pay, bearing in mind the period of incarceration she must serve. Instead, she challenges the restitution orders on two other grounds.

[21] First, Ms. Oguntoyinbo submits, and the Crown agrees, that the restitution orders in favour of Mr. Kaleas and Mr. Orgovan were made in error and should be vacated. A restitution order made under s. 738(1)(a) of the *Criminal Code* cannot exceed the victim’s loss: *R. v. Sears*, 2007 ONCA 259, at para. 1. Although initially victimized in the motor vehicle sale frauds, both Mr. Kaleas and Mr. Orgovan

managed to recover their losses.³ Those two restitution orders must therefore be vacated.

[22] Ms. Oguntoyinbo asks that the remaining six restitution orders also be vacated, submitting that the sentencing judge erred by ordering her to pay restitution when she is unable to do so as an unemployed single mother who is in debt from prior restitution orders. She adds that combined with the sentence of incarceration imposed, the restitution orders result in an unduly harsh sentence.

[23] It is not an error to impose a restitution order on someone who is unable to pay, provided the judge has considered the inability of the accused to pay: *R. v. Robertson*, 2020 ONCA 367, at para. 8. The sentencing judge accepted that Ms. Oguntoyinbo cannot pay restitution in her present circumstances and therefore he clearly considered it. It is an error, however, to recognize the “inability to pay the order imposed” without addressing “why that fact became irrelevant in ultimately imposing the order”: *R v. Biegus* (1999), 141 C.C.C. (3d) 245 (Ont. C.A.), at para. 22; and see also *Robertson*, at para. 8. The sentencing judge did not offer any such explanation here and he therefore erred in this regard. It therefore falls to this court to reconsider whether to impose the remaining six restitution orders.

[24] After reconsideration, I would vary those remaining orders by granting reasonable time to pay but would not set them aside. Ms. Oguntoyinbo did not

³ In fact, Mr. Orgovan made a profit of \$2,000 when he resold the motor vehicle he had purchased from Ms. Oguntoyinbo.

oppose the orders during the hearing and expressed her desire to repay the victims. This assisted her in demonstrating her remorse, which she has received the benefit of in the total sentence I would impose.

[25] The restitution orders made in favour of Mr. Kaleas and Mr. Orgovan are therefore vacated, and the remaining six restitution orders, totaling \$47,795, are varied to provide that restitution is to be paid within 10 years from the date of sentencing, March 8, 2024. This period to pay is warranted given the length of Ms. Oguntoyinbo's sentence, her existing restitution obligations, and the significant restitution that I would order.

THE VICTIM SURCHARGES

[26] Section 737(2.1) of the *Criminal Code* empowers a court to order that an offender pay no victim surcharge, either "on application of the offender or on its own motion", where imposing the surcharge "would cause undue hardship to the offender" or "would be disproportionate to the gravity of the offence or the degree of responsibility of the offender". Ms. Oguntoyinbo did not seek an exemption below but argues before us that given her inability to pay, and the restitution orders that have been made, it would cause undue hardship and be grossly disproportionate to require her to pay the victim surcharges that were imposed, totaling \$3,700.

[27] Naturally, the \$100 victim surcharge imposed for the withdrawn charge must be vacated, but beyond this there is no basis to interfere. Although this would have been an appropriate case to waive the victim surcharges given Ms. Oguntoyinbo's financial constraints and the potential for this order to impede the payment of restitution, the decision whether to impose victim surcharges was for the sentencing judge to make. I can find no error on his part in making this order that would permit this court to interfere with the remaining \$3,600 in victim surcharges.

CONCLUSION

[28] I would therefore make the following orders:

- (1) The sentence imposed for failing to appear contrary to s. 145(2)(b) of the *Criminal Code* in count 1 on information 75005579 is vacated, including: (1) the 90 days concurrent sentence of imprisonment, (2) the \$100 victim surcharge; and (3) the DNA order.
- (2) The net sentence of incarceration of five years imprisonment imposed by the sentencing judge on all the remaining counts is set aside. I would substitute a global sentence of three-and-a-half years imprisonment, minus 130 days credit.
- (3) The restitution orders made pursuant to s. 738(1)(a) of the *Criminal Code* in favour of Mr. Gary Kaleas of \$25,000, and Robert Orgovan of \$16,000, respectively, are set aside, and the remaining restitution

orders are varied to be paid within 10 years from the date of sentencing, March 8, 2024.

Released: May 6, 2026 "B.W.M."

"David M. Paciocco J.A."

"I agree. B.W. Miller J.A."

"I agree. D.A. Wilson J.A."