

THE
NATIONAL LAW REVIEW

Prison Sentence for Responsible Corporate Actors Upheld

George Horn

July 12, 2016

On July 6, 2016, the U.S. Court of Appeals for the Eighth Circuit, by a 2-1 vote, held that corporate executives Austin “Jack” DeCoster, 81, and his son Peter DeCoster, 51, could be sentenced to terms of imprisonment for their failure to prevent or remedy violations of the federal food-safety laws pursuant to the Responsible Corporate Officer or “Park” Doctrine. The DeCosters were each sentenced to three months in prison and \$100,000 fines following their guilty pleas to misdemeanor violations of 21 U.S.C. § 331(a) as “responsible corporate officers” of Quality Egg, LLC, under the Food Drug & Cosmetic Act (FDCA). In their appeal of the District Court’s sentencing order, the DeCosters argued their prison sentences were unconstitutional and, alternatively, that their sentences were procedurally and substantively unreasonable. The split panel of the Eighth Circuit disagreed, affirming the prison sentences handed down by the trial court. The decision contains one of the most detailed reviews in recent history on the limits of the Park doctrine and reaffirms the validity of the doctrine despite significant pressure by amici and other commentators to overturn or limit its application.

Jack DeCoster owned Quality Egg, LLC, a mammoth Iowa egg production company. His son, Peter, was the company’s chief operating officer. The DeCosters’ criminal case arose out of a salmonella outbreak that sickened approximately 1,900 reported consumer illnesses in multiple states, leading to the August 2010 recall of millions of eggs produced by Quality Egg. The government’s investigation revealed that, among other things, Quality Egg employees had previously falsified records about food safety measures; lied to auditors for several years about pest control measures and sanitation practices; and bribed a U.S. Department of Agriculture (USDA) inspector in 2010 to release eggs for sale which they knew had failed to meet minimum quality standards. As to the defendants specifically, the government investigation revealed that Jack DeCoster had once reprimanded a Quality Egg employee for not moving a pallet of eggs in time to avoid USDA inspection and that Peter DeCoster had made inaccurate statements to Walmart about Quality Egg’s food safety and sanitary practices in 2008.

Prior to their sentencing, the DeCosters argued that a term of imprisonment would be unconstitutional as they had no knowledge eggs were contaminated at the time of their shipment and thus no mens rea sufficient to impose what they viewed as a harsh criminal sanction. The

trial court dismissed this argument, determining that while the record did not indicate Jack or Peter DeCoster had any actual knowledge the eggs they sold were infected with salmonella, it did demonstrate that their safety and sanitation procedures were “egregious,” they ignored positive salmonella test results prior to July 2010, and they knew Quality Egg employees had deceived and bribed USDA inspectors. The District Court found the DeCosters had “created a work environment where employees not only felt comfortable disregarding regulations and bribing USDA officials, but may have even felt pressure to do so.” In rendering its sentencing determination, the trial court found that this case was not about “a mere unaware corporate executive.”

Seizing upon this language, the Eighth Circuit made a clear distinction between the type of “vicarious liability,” wherein a supervisory party may be held liable for the “actionable conduct of a subordinate” and the responsibilities of corporate officers under the FDCA, where food company executives have the responsibility to “prevent or remedy” conditions. In so doing, the court found that “[n]either of the DeCosters claimed to have been ‘powerless’ to prevent Quality Egg from violating” the FDCA. The court further concluded “that the record here shows that the DeCosters are liable for negligent failing to prevent the salmonella outbreak,” finding the DeCosters “...responsible for their own failures to exercise reasonable care to prevent the introduction of adulterated food” and stating that “[t]he law is clear the defendant can be sentenced to imprisonment based on negligence – or, for that matter, based on strict liability stemming from his own conduct.”

While Eighth Circuit’s opinion was fractured in that each judge on the panel wrote separately and reached somewhat different conclusions, each appeared unanimous in finding that a sentence of imprisonment for a misdemeanor violation of the FDCA **would** violate principles of due process if the offense at issue involved merely “vicarious liability,” which was defined as liability “for the actionable conduct of a subordinate... based on the relationship between the two parties.” Judge Diana Murphy, writing for the court, addressed the issue of “vicarious liability” by finding that *Park* liability under the FDCA identifies “blameworthiness” of a corporate officer who “fail[s] to prevent or remedy the conditions which gave rise to the charges against him.” Judge Raymon Gruender, concurring, also distinguished DeCoster from a case involving “vicarious liability” given the District Court’s finding that the DeCosters were negligent for failing to address safety issues in their egg production operations. In writing separately, he noted that pursuant to *Park*, negligence is required in order to impose a prison sentence on a responsible corporate officer under the FDCA. Judge Clarence Beam, in dissent, did not disagree with the notion that “vicarious liability” could not justify imposition of a prison sentence for violating the FDCA. Contrary to the opinions of Judges Murphy and Gruender, he concluded that a finding of negligence is also an insufficient basis upon which to impose a prison sentence.

This case sparked great debate among competing interest groups. Pro-business groups (including the U.S. Chamber of Commerce, the National Association of Manufacturers and the CATO

Institute) all filed briefs in support of the DeCosters, arguing that executives lacking requisite mens rea or knowledge of criminal activity should not serve jail time.

The clear message of this case is that executives who risk exposure as “responsible corporate officers” need to be vigilant: not only may they be held liable for the actions of corporate employees under an ever growing set of circumstances, they may be imprisoned for their lack of vigilance and responsive action. As U.S. Attorney Kevin W. Techau of the Northern District of Indiana stated: “[t]he message this prosecution and sentence sends is a stern one to anyone tempted to place profits over people’s welfare.” He went on to add that “[c]orporate officers are on notice. If you sell contaminated food, you will be held responsible for your conduct. Claims of ignorance or ‘I delegated the responsibility to someone else’ will not shield them from criminal responsibility.”

The DeCosters are likely to seek *en banc* review before the full 11-member Eighth Circuit and/or petition the U.S. Supreme Court for a writ of certiorari.