

JUDGMENT

City of Chita

22 August 2008

The Ingodinsky District Court of the City of Chita composed of Presiding Judge I.N. Falileyev, with participation of accused Mikhail Borisovich Khodorkovsky, lawyers N.Yu. Terekhova and V.V. Klyuvgant, Acting Prosecutor for Supervision over Compliance with Law in Correctional Facilities A.G. Fedorov, representatives of FBU IZ-75/1 of the UFSIN of Russia for Zabaikalsky Krai V.A. Klyukin and O.V. Andreyeva, representative of FBU IK-10 of the UFSIN of Russia for Zabaikalsky Krai A.V. Ryabko, with secretary M.V. Soloviyev, having considered in an open court session a petition of N.Yu. Terekhova, a lawyer for convict Mikhail Borisovich Khodorkovsky, for M.B. Khodorkovsky's conditional early release from serving his sentence,

ESTABLISHED:

A verdict of the Meshchansky District Court of the City of Moscow of 16 May 2005 sentenced M.B. Khodorkovsky under Art. 33 para 3 and Art. 315 CC RF, Art. 160 para 3 (a) and (b) CC RF, Art. 165 para 3 (a) and (b) CC RF, Art. 33 para 3 and Art. 315 CC RF, Art. 198 para 2 CC RF, Art. 33 para 3 and Art. 199 para 2 (a) and (b) CC RF, Art. 159 para 3 (a) and (b) CC RF and Art. 160 para 3 (a) and (b) CC RF, with application of Art. 69 CC RF, to nine years of deprivation of liberty to be served in a general-regime correctional colony.

A ruling of the Judicial Collegium for Criminal Cases of the Moscow City Court of 22 September 2005 amended the verdict in relation to M.B. Khodorkovsky and reduced the sentence to eight years of deprivation of liberty.

The term of the sentence for M.B. Khodorkovsky is counted starting from 25 October 2003.

Lawyer N.Yu. Terekhova, representing interests of convict M.B. Khodorkovsky, pursuant to Art. 175 of the RF Correctional Code filed the aforementioned petition supported in court by M.B. Khodorkovsky in which she indicated the following.

M.B. Khodorkovsky has been convicted for commission of crimes categorized as medium grave and grave ones. As of the day of filing of the petition to the court, he has actually served not less than a half of the sentence prescribed by the court. While serving his sentence, M.B. Khodorkovsky has proven by rightful behaviour, absence of violations, good-faith execution of duties laid upon him and a respectful attitude towards other convicts and officers of the correctional system that he is not in need of further serving of the sentence prescribed by the court. While serving his sentence in FGU IK-10, M.B. Khodorkovsky was involved in socially-useful labour and had a good-faith attitude towards the labour. While serving his sentence in FGU IZ-75/1 of the city of Chita, M.B. Khodorkovsky observes the rules of internal order; he is not involved in socially-useful labour due to the specificity of the custodial regime in this facility.

Penalties imposed on M.B. Khodorkovsky were announced [*sic*] to him under far-fetched or insignificant pretexts. The penalty imposed on M.B. Khodorkovsky by an order of the governor of FBU IZ 75/1 of the city of Chita of 15 October 2007 was groundless since he in fact had not committed the violation for which he was subjected to the penalty.

M.B. Khodorkovsky is socially adapted, has three minor children and elderly parents. Upon release, M.B. Khodorkovsky has a real possibility of having a home and getting a job.

Convict M.B. Khodorkovsky supported the petition of lawyer N.Yu. Terekhova and explained that while serving his sentence, he had been abiding by all the rules of conduct and met lawful requirements that applied to him concerning work, the internal order and his relationships with the administration. Upon release, he intends to devote himself to humanitarian projects and to be a family man.

Lawyer V.V. Klyuvgant supported this petition and said that the letter of reference concerning M.B. Khodorkovsky submitted by the body for execution of the punishment in fact confirmed his correction. The conclusion of the letter of reference that M.B. Khodorkovsky needs to continue serving his sentence is based on nothing and is in full contradiction with its own content. The grounds referred to by the administration submitting that Khodorkovsky has not settled down to a correction course cannot be taken into consideration. The penalties imposed on M.B. Khodorkovsky, except for the reprimand announced on 15 October 2007, have been repealed by court judgments or removed from his record. The material submitted by the administration does not contain reliable proofs of the violation by M.B. Khodorkovsky of the rules of internal order on 11 October 2007 for which the penalty was imposed on him on 15 October 2007.

Upon a motion of the convict's lawyers, explanations of M.B. Khodorkovsky's mother, M.F. Khodorkovskaya, and I.V. Gnezdilov were heard; they described M.B. Khodorkovsky as a law-abiding person, who always worked hard and helped many people, first of all children.

Representative of the administration of FBU IK-10 of the UFSIN of Russia for Zabaikalsky Krai, A.V. Ryabko, in his explanations described M.B. Khodorkovsky as follows. While serving his sentence in that facility from 15 October 2005 to 20 December 2006, M.B. Khodorkovsky committed violations of the established order for serving one's sentence for which disciplinary penalties were imposed on him. He was employed by did everything he could to evade obtaining professional skills as he thought that he did not have to obtain a profession, although an order of the governor of the facility determined an in-service training period and assigned him a qualified trainer. As a result, M.B. Khodorkovsky was given a job that did not require qualification and training. In his relationships with convicts [he] showed himself from a negative side. He provoked a conflict with convict A.V. Kuchma and tried to induce officers of the facility to commission of offences in order to obtain additional benefits in the form of unsanctioned parcels and packages. In the opinion of the administration of that facility, M.B. Khodorkovsky needs to serve his sentence in full.

Representatives of the administration of FBU IZ-75/1 of the UFSIN of Russia for Zabaikalsky Krai, V.A. Klyukin and O.V. Andreyeva, in their explanations described M.B. Khodorkovsky for the period when he was held in that facility from 21 December 2006 to the present day as follows. In communication with officers of the facility [he] was regardful, built his relationships with cellmates on mutual respect and trust and maintained relationships with a group of positively-oriented persons. [He] committed a violation of the requirements of the custodial regime expressed in failure to carry out lawful demands of a representative of the administration for which he has on his record a disciplinary penalty in the form of a reprimand. In the opinion of the administration of the facility, M.B. Khodorkovsky needs to serve the sentence prescribed to him by the court.

According to a letter of reference of the administration of FBU IZ-99/1 of the FSIN of Russia, while he was held there from 27 October 2003 to 8 August 2005, M.B. Khodorkovsky was not brought to disciplinary liability and maintained even relationships with his cellmates.

According to a letter of reference of the administration of FBU IZ-77/1 of the FSIN of Russia, while he was held there from 8 August 2005 to 9 October 2005, he committed a violation of the custodial regime, for which a disciplinary penalty was imposed on him. He did not maintain relationships with his cellmates and not entered conflicts. He reacted incorrectly to measures of educative nature.

Having listened to convict M.B. Khodorkovsky, lawyers N.Yu. Terekhova and V.V. Klyuvgant, who supported the petition for the grounds set out therein, representatives of FBU IZ 75/1 V.A. Klyukin and O.V. Andreyeva, representative of FBU IK-10 of the UFSIN of Russia A.V. Ryabko and prosecutor A.G. Fedorov, who asked that the aforementioned petition not be granted, the court finds that the petition should not be granted on the following grounds.

Pursuant to Art. 79 CC RF, a person serving his/her sentence is subject to conditional early release if the court finds that for his/her correction he/she does not need to serve his/her sentence in full. Conditional early release from serving one's sentence can be applied after not less than a half of the sentence prescribed has been actually served.

While serving his sentence, convict M.B. Khodorkovsky maintained relationships with a group of positively-oriented persons, in communication with officers of the facility observed the line of authority, was polite and regardful and was involved in labour activity. According to the writ of appeal in possession of the correctional facility, by the time of consideration of this petition, the sum recovered from M.B. Khodorkovsky under a civil claim has been repaid. M.B. Khodorkovsky is socially adapted, has a possibility of having a home and getting a job outside the prison.

At the same time, while serving his sentence M.B. Khodorkovsky did not express voluntary desire to receive professional training in a profession in which he could get a job at the correctional facility. Pursuant to Art. 103 of the RF Correctional Code, each and every convict is obligated to work in places and jobs determined by the administration of the correctional facility. Pursuant to Art. 108 of the RF Correctional Code, correctional facilities arrange for mandatory professional training of persons sentence to deprivation of liberty who do not have a profession (specialty) in which the convict can get a job at the correctional facility. Pursuant to this provision, attitude of convicts to obtaining of initial professional education and professional training shall be taken into account to determine the degree of their correction.

Convict M.B. Khodorkovsky has a disciplinary penalty in the form of a reprimand of 15 October 2007 for violation of the rules of internal order which has not been removed from his record.

Convict M.B. Khodorkovsky has no rewards.

In substantiation of their arguments, convict M.B. Khodorkovsky and his lawyers say that the material submitted by the administration does not contain reliable proofs of commission of the violation.

The court cannot agree with these arguments of the convict and his lawyers.

As follows from the material submitted, the order of the governor of SIZO-1 of the city of Chita of 15 October 2007 announced a reprimand to M.B. Khodorkovsky. This penalty was imposed by a competent official within the limits of the rights given to him by the law in force. In accordance with the established order, an explanation was obtained from M.B. Khodorkovsky prior to imposition of the penalty. This disciplinary penalty has not been appealed by the convict in the procedure established by the law.

Taking into account the behaviour of convict M.B. Khodorkovsky while he was held in correctional facilities, taking into consideration that the convict has a penalty and does not have rewards and also taking into account his attitude towards professional training, the court cannot find that at this time M.B. Khodorkovsky does not need to serve the sentence prescribed to him

by the court any further to get corrected. In view of this, he is not subject to conditional early release.

On the basis of the above and pursuant to Art. 399 CCP RF, the court

ADJUDGED:

To deny the petition of lawyer N.Yu. Terekhova in the interests of convict Mikhail Borisovich Khodorkovsky for his conditional early release from serving his sentence.

The judgment may be appealed to the Chita Oblast Court within ten days from the day of its issuance.

Judge

[signature]

[The round stamp of the Ingodinsky District Court of the City of Chita]

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True copy] [signature]