

**File No: 244069-5-BC
Registry: Vancouver**

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**ORAL REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE ST. PIERRE**

BAN ON PUBLICATION 517 CCC

Crown Counsel: B. Wolfe

**Appearing on his own behalf by
videoconference: P.H. Fox**

Place of Hearing: Vancouver, B.C.

Date of Judgment: June 12, 2020

[1] **THE COURT:** Mr. Fox is before me to be sentenced on two offences that I found him guilty after a long trial. It was a long process that we engaged in, and I gave reasons for judgment. I cannot remember when that was -- Madam Registrar -- but it was some time ago.

[2] **MR. WOLFE:** The reasons for judgment?

[3] **THE COURT:** Yes.

[4] **MR. WOLFE:** You released them on the 6th of March 2020.

[5] **THE CLERK:** Yes, Your Honour.

[6] **THE COURT:** There you go. So the offences that Mr. Fox was found guilty of are breaches of a probation order that was imposed by Justice Holmes of the B.C. Supreme Court on November 10th, 2017. That was after a very long trial that they had with respect to some criminal harassment Mr. Fox was engaging in against his ex-wife, Ms. Capuano.

[7] So the two probation conditions, one not to attend within 100 metres of the Canada-U.S. border and not to leave British Columbia without the written permission of a probation officer, those two probation conditions were breached without a reasonable excuse, and Mr. Fox was found guilty of those two offences. He attended the Canada Border Services office at Douglas crossing. After attending there he left that office and essentially made his way across the border, breaching those two conditions.

[8] Mr. Wolfe says, quite reasonably, that that was a wilful breach but also that Mr. Fox exhibits a very troubling attitude towards the court order. Mr. Fox is saying

that when he gets out of custody he is going to go to a Canada Border Services office and he hopes that they will assist him, essentially, in leaving the country. That was the evidence that he gave. He desires to be expelled from this country to the U.S. He says he is not a Canadian citizen. All of that had no relevant impact on the breaches that had occurred.

[9] With respect to sentencing for these kind of offences, this is a matter that was prosecuted on summary conviction. It is supposed to be dealt with in a summary type of way, although all criminal offences are, in essence, serious ones, this is a summary matter to be dealt with. The maximum penalty is 18 months. Parliament has raised that maximum as of September 19, 2019, to 2 years less a day, but at the time this offence was committed it was 18 months. That is the maximum penalty.

[10] The administration of justice and the public's confidence in the administration of justice depends on compliance with court orders. It is crucial people comply with court orders because that is how public safety is managed and that is how the risks are assessed and managed. People are put on orders that are designed to mitigate the risk of further offences being committed. When those orders are breached, emphasis is quite properly put on general deterrence.

[11] In this case there is a high degree of specific deterrence that is required given the submissions of Mr. Fox himself. Sentencing for breaches of recognizance should focus on managing the offender's risk to the community and a breach should be examined in light of the potential for reasonably foreseeable consequences of the conduct that gave rise to the breach here. It was obvious to me when I gave my ruling that he was going to be arrested and breached on these two charges when he

engaged in the activity that he did. He says he is not the least bit remorseful. He is intransigent. He is very adamant that the order is essentially a ridiculous order because it prevents him, as he says, a U.S. citizen, from going back to his own country.

[12] Those arguments were made before Justice Heather Holmes in an application to vary the probation order, and then very, very soon after his application was dismissed in front of Justice Heather Holmes he engaged in this activity. The inference is an inexorable one. The inference is that he was going to try it that way first, and if he did not get his way on the application in front of Justice Holmes he was going to breach it. To be fair, he has apparently told his probation officer and everybody who will listen that he was going to breach it, and he is telling us today that not only does he not agree with the verdict -- and he is entitled to not agree with anything that is happening in court and he is certainly entitled not to agree with the verdict, and he does not -- but he also says that he is currently operating a website that got him into trouble in the first place, and he is willingly doing so and basically challenging the prosecution service to charge him.

[13] He is one of those individuals that requires a large degree of specific deterrent consideration. These conditions were put into place for Ms. Capuano's benefit to afford her some measure of safety, some measure of peace, and they do not seem to be working. Mr. Fox does not seem to be engaged or willing to comply with those in any sort of significant fashion.

[14] Some of the cases that I have read here that talk about breach charges deal with administration-type breaches in our system and they have recently become the

subject of some inquiry about how we maybe are too focused on prosecuting and gaining liberty restrictions for administrative breaches. This is not one of those cases. This is a breach that goes to the heart of keeping the public safe, in this case the victim, Ms. Capuano, on the index offence.

[15] For all of those reasons I think the sentence should be a significant one for a breach charge. I have read the cases that were passed up to me by Crown counsel, and I should list them for the record. There is the case of *Foster* -- I will just give the citations -- 2008 BCSC 1368. There was a case of *D.G.O.*, which is a 2001 case which I had reference to and was specifically referenced here, 2001 O.J. No. 3358 from Ontario Court of Justice. I have also considered the reasons from Madam Justice Holmes in the index sentencing. That is 2017 B.C.J. No. 2619. There is the *Friesen* case from Judge Koturbash of this court, and that is 2019 B.C.J. No. 1419, a case where there was a probation breach not to have any contact with children under the age of 16 in a sort of sexual interference context that was breached, and Judge Koturbash made the point that I am making is that that goes to the heart of protection of the safety of the public. In that case Judge Koturbash found that a 12-month sentence for one of those breaches was appropriate. The case of *Ko*, which is 1979 B.C.J. No. 1526 from our Court of Appeal was filed on this case. There is a case of *R. v. Manning*, 2014 N.J. No. 40. There is the case of *R. v. Murphy*, which is 2011 N.J. No. 43, a case from the Newfoundland Court of Appeal dealing with sentencing for breaches of probation and upholding a significant sentence in that case given the public safety concerns that were being impacted. There is the case of *R. v. O'Quinn*, 2017 N.J. No. 40 that was passed to me as well. And finally, the

case of *S.B.Y.*, 2001 B.C.J. No. 2558, which is a case from our provincial court, Justice Warren in 2001, where in cases where there is little hope of rehabilitation, little evidence of any aptitude for rehabilitation, little hope of any desire or an active sort of resistance to it, the primary considerations are deterrence and denunciation.

[16] In light of all of that, and given Mr. Fox's situation now that he is in, he is in a situation where he has now got 14 months, I am told, of time served, but for these two offences I am going to deal with them on a concurrent basis, and I do find that a sentence of 12 months is the appropriate sentence given the seriousness of it and a lack of mitigating factors. That means that 8 months that he has in time served should be credited at 12 months. So 8 months of the time served that he has in should be credited towards the sentence of this matter, which is a 12-month sentence concurrent on both counts that he was found guilty of.

[17] Does that make sense, Mr. Wolfe?

[18] MR. WOLFE: Yes.

[19] THE COURT: And, Mr. Fox, do you have any questions about that?

[20] THE ACCUSED: No.

[21] THE COURT: Okay.

[22] THE CLERK: I'm sorry, Your Honour. Eight months credit, four months to serve?

[23] THE COURT: Pardon me? Eight months time served. He gets credit for 12. Yes. He is in an excess situation. He has got --

[24] MR. WOLFE: And with respect to Crown's submission for --

[25] THE COURT: Yes.

[26] MR. WOLFE: -- to at least extend the area restriction.

[27] THE COURT: I am going to -- yes. Because of the unique circumstances of this case and the express desires of Mr. Fox, if he has dealings with Canada Border Services, he can go to an office that is well outside of the border where he is not supposed to be going to, and for that reason I am going to propose an 18-month probation period designed to follow along and end somewhere around his current probation order. The only terms of this probation order are to keep the peace and be of good behaviour, and not to attend within 500 metres of the Canada-U.S. border.

[28] So that is the sentence. I am going to waive any surcharge that may be due, the victim surcharge, given Mr. Fox's custodial status.

(REASONS CONCLUDED)