

File No: 244069-6-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE N. PHILLIPS**

COPY

Crown Counsel:	C. Johnson
Appearing on his own behalf:	Patrick Fox
Place of Hearing:	Vancouver, B.C.
Date of Judgment:	August 19, 2020

[1] **THE COURT:** The record will reflect that having just found Mr. Fox guilty on Count 1, the court embarked upon a brief sentencing hearing. Mr. Johnson on behalf of the Crown filed Mr. Fox's criminal record, which is relatively new. Counsel on behalf of the Crown is seeking a six-month jail sentence and, given credit for time served, Mr. Fox would not be obligated to serve any further time if the court accedes to that six-month jail sentence. The Crown asked for a very focused and relatively short duration probation order to follow that jail sentence.

[2] Mr. Fox, on his own behalf, submitted that the six-month sentence was not agreeable, but in a somewhat unusual fashion, submitted he should be sentenced to a longer period of custody. He submitted that given that Justice Holmes ordered him to serve a jail sentence of 12 months and that he is now a repeat offender should cause this court to sentence him to something greater than that 12-month sentence. Mr. Fox underscored that by stating, clearly, he has not learned his lesson and that he was trying at least to be consistent or invited the court to be consistent with respect to sentencing.

[3] He also said with respect to taking down the website, which is the heart of the conviction under Count 1 today, that there was absolutely no way the website was going to be coming down. He said that his likely release from jail at the end of this year will lead him to going to the United States, which he seemed to be suggesting would cause the website to remain up.

[4] He submitted that the Count 1 offence that I am sentencing him on now, the breach of probation, was arguably more serious than what Justice Holmes sentenced him to 12 months in jail for. Mr. Johnson provided the court (at that point

in time) with a copy of Justice Holmes' sentencing decision. I have briefly had the chance while standing down to review Justice Holmes' decision. I have considered her description, in particular, of the criminal harassment count on which she convicted Mr. Fox, or a jury convicted Mr. Fox before Justice Holmes. In my view, that criminal harassment charge is qualitatively different from the breach of probation count which I just convicted Mr. Fox of. In my view, the criminal harassment matter is of a much more serious nature, not to minimize the breach of probation. The campaign described by Justice Holmes in her decision that Mr. Fox embarked upon against his former wife or partner, Ms. Capuano, was a very serious criminal harassment that led to that 12-month sentence. Combined with the weapons offence of which Mr. Fox was also convicted --

[5] MR. JOHNSON: Sorry, Your Honour, Mr. Fox is on his feet.

[6] THE COURT: Yes, sorry.

[7] THE ACCUSED: I am sorry, there seems to be some misunderstanding or confusion here. The criminal harassment sentence was three years I was sentenced to.

[8] THE COURT: I am sorry, thank you.

[9] THE ACCUSED: The 12 months that you are talking about was for the two other probation violations that I was just convicted of --

[10] THE COURT: Thank you --

[11] THE ACCUSED: -- a few months ago.

[12] THE COURT: -- for clarifying that, Mr. Fox. Thank you. Yes. So, just to

back up, then, because I should speak about that. Mr. Fox -- and I appreciate you clarifying that. I was not clear at the time that you were speaking of the prior probation breaches, and thank you. I think Mr. Johnson did refer to that. I just misunderstood.

[13] Looking at Mr. Fox's substantive offence that led to the probation order, I do think puts this matter into context. It is difficult for me to assess the significance of those prior breaches of probation convictions that led to 12-month sentences. As Justice Holmes stated, and as Mr. Johnson also noted, sentencing is really an individualized process that requires the court to look at the offender and the offences in front of the court. Although it is possible that Mr. Fox could be looking at a sentence that is greater than what the Crown has asked, in the circumstances here, I am not going to depart from what the Crown has suggested would be an appropriate sentence.

[14] Mr. Fox now has another conviction on his record for breaching a court order. He engaged in conduct here which is serious. It continues. It is prolonged and completely inexplicable behaviour in relation to Ms. Capuano. Rather than moving on, why he chooses not to do so is completely baffling to the court, but it is clear from his comments just now that he intends to do so. I am satisfied that a six-month sentence of jail reflected on his record is enough of a specific deterrent to Mr. Fox. Frankly, I am not sure, given his stated intent both before Justice Holmes and again at this point in time, whether six months or 12 months or 18 months is really going to matter. It is going to take something in Mr. Fox's own mind that is required before he stops. Again, why he continues to do this is completely baffling.

[15] He must be specifically deterred. That will always, in my view, lead to a likely sentence of jail and, in these circumstances, I am not going to depart from the six-month sentence that has been advanced by the Crown. I am mindful of the fact Mr. Fox is a self-represented litigant. I am also mindful, however, that he is a sophisticated and smart self-represented litigant.

[16] On Count 1, I am satisfied that Mr. Fox's record should reflect that he has served four months in custody and to be credited, and his record will reflect a six-month sentence of jail. To make it a lawful sentence, he will be required to serve one day to be followed by a period of probation for six months. The terms of the probation order will be the statutory terms: keep the peace and be of good behaviour; appear before the court when required.

[17] Mr. Fox will also be subject to the following terms.

[18] Mr. Registrar, I am really following closely Justice Holmes' Condition 13, with some minor changes.

[19] Rather than "Within 24 hours," it will say, "Within 48 hours of your release from custody, you will take all necessary steps to ensure that any website, social media page, or other publication which you have authored, created, maintained, or contributed to which contains any information, statements, comments, videos, pictures which refer to or depict by name or description Desiree Capuano," and not the other two names, "or any of her friends, relatives, employers, or coworkers including the websites published under the domain 'www.desireecapuano.com' and 'www.desicapuano.com' are no longer available via the Internet or by any other means."

[20] I have heard what Mr. Fox has said. I have already referred to it. That is a court order. He will be expected to comply with that court order. Given his comments today, if there was a copy of the transcript obtained, if Mr. Fox was charged with breaching that term of probation, his wilfulness would be exceedingly high and I would think a court would conclude that. He would be looking at a considerable period of custody so to attempt to further deter Mr. Fox from subsequent offending behaviour that continues to create a problem in the community.

[21] Mr. Registrar, because Mr. Fox is in custody -- sorry, Mr. Johnson, I think you heard from Mr. Fox as to when his anticipated next appearance is in Port Coquitlam?

[22] MR. JOHNSON: [Indiscernible] in December.

[23] THE COURT: It is in December. What I have in mind, because of Mr. Fox's history of non-compliance, is to direct that the probation order be reviewed by a justice of the peace and that his signature be taken. I think it is imperative in the circumstances.

[24] MR. JOHNSON: I was going to ask you about that, Your Honour. Thank you.

[25] THE COURT: Thank you. So that will have to happen. I know it is our practice during the pandemic to avoid that when possible. I am not satisfied it is appropriate to waive that requirement. So the probation order will be reviewed with Mr. Fox, specifically the terms and consequences of non-compliance reviewed with him, as well, which I am satisfied given Mr. Fox's comments to the court today and

his experience with the process he is already fully apprised of, but that will underscore the significance of that.

[26] Thank you.

(REASONS CONCLUDED)