

COURT OF APPEAL

ON APPEAL FROM THE PROVINCIAL COURT OF BRITISH COLUMBIA,
FROM THE JUDGMENT AND SENTENCE OF THE HONOURABLE JUDGE
DENHOFF, PRONOUNCED ON THE 25TH DAY OF FEBRUARY 2022.

REGINA

RESPONDENT

v.

PATRICK FOX

APPELLANT

APPEAL BOOK

BAN ON PUBLICATION 486.5(1) CCC

Ministry of Justice, Solicitors for the Crown (Respondent)
Criminal Justice Branch, Criminal Appeals
6th Floor, 865 Hornby Street
Vancouver, B.C. V6Z 2G3
Phone: (604) 660-1126

Ursula Botz, Q.C.

Patrick Fox, Appellant
Appearing on his own behalf

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**INFORMATION BY TELECOMMUNICATION THAT PRODUCES
A WRITING/DÉNONCIATION PAR TÉLÉCOMMUNICATION QUI
REND LA COMMUNICATION SOUS FORME ÉCRITE**

CANADA:
PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

Court Identifier: 2040 - P - R - A		
Court File Number: 244069		
Type Reference: B		
Info. Seq. Number: 8		
Agency File Number: 401:21-132224		
DNA: ☐	K File: ☐	SOR: ☐

Pursuant to Section 508.1(2) of the *Criminal Code* and/or Section 13.1 of the *Offence Act* (British Columbia)/
Suivant le paragraphe 508.1(2) du *Code criminel* et/ou l'article 13.1 de l'*Offence Act* (Colombie-Britannique)

"BY INDICTMENT"

In the Provincial Court of British Columbia/Dans le tribunal provincial de la Colombie-Britannique.

This is the information of / Les présentes constituent la dénonciation de Sgt Alex Charles, a Peace Officer
(the "informant" / le "dénonciateur") of / de Vancouver, British Columbia submitted before a justice by telecommunication that
produces a writing / transmise à un juge de paix, par télécommunication qui rend la communication sous forme écrite.

The Informant says that he/she has reasonable and probable grounds to believe and does believe that: / Le(la)
dénonciateur(trice) déclare qu'il(elle) a des motifs raisonnables et probables de croire et croit effectivement que:

Count 1

Patrick Henry FOX, on or about the 15th day of August, 2021, at or near Vancouver, in the Province of British Columbia, while
bound by a probation order made by The Honourable Judge G. Rideout, on the 12th day of April, 2021, did without reasonable
excuse fail to comply with such order: Within 48 hours of your release from custody you shall take all necessary steps to ensure
that any website, social media page or any 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 or any of her friends, relatives, employers, or co-workers, including the websites published under the domain
www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or any other means, contrary to
Section 733.1 of the Criminal Code.

Pursuant to Section 508.1(2) of the *Criminal Code* and / or
Section 13.1 of the *Offence Act* (British Columbia) the Informant states
that all matters contained in this information are true to my knowledge
and belief.

Suivant le paragraphe 508.1(2) du *Code criminel* et / ou l'article 13.1
de l'*Offence Act* (Colombie-Britannique), le dénonciateur(trice) déclare
qu'il/elle croit vrais, au meilleur de sa connaissance, les
renseignements contenus dans la dénonciation.

Dated/Fait le August 17/2021

at/a Vancouver
British Columbia / Colombie-Britannique

[Signature]
Signature of Informant / Signature du(de la) dénonciateur(trice)

I certify this information was received by me by means of telecommunication that produces a writing at / Je certifie que j'ai reçu la présente
dénonciation par un moyen de télécommunication qui rend la communication sous forme écrite à

7:15 p m, on/le Aug. 17, 2021 at/à Burnaby, British Columbia/Colombie-Britannique
time/heure date city/municipality ville/municipalité

Process/Acte
de procédure: AWW confirmed

[Signature]
A Justice of the Peace in and for the Province of British Columbia / Un juge de
paix dans et pour la province de la Colombie-Britannique.

Name/nom: D. Mayo
Justice of the Peace

[Signature]
A Justice of the Peace in and for the Province of British Columbia / Un juge
de paix dans et pour la province de la Colombie-Britannique.

Provincial Court Record of Proceedings and Endorsement of Information

Court File No. 2040:244069-8-B PRA
Court File No.
Police Agency and File No. 401:21-132224

Name of Accused: Fox, Patrick Henry

D.O.B.: November 24, 1973

Language:

For:

COURT APPEARANCES

Date DD-MMM-YY	Time	Room	Reason	Interpreter Required	A N T P V	Counsel	A C S D T N V	Prosecutor	T V	Results	No JIR by Consent	Custody Status	Prov. Court Judge	T V	Confirmed
17-AUG-21	7:30PM	310	JIR		PV		N	Crown Ad Hoc	T	IBJ		IC	J A Davenport		✓
Appearance Notes and Orders Heard at: Justice Centre (Judicial) (2041)															
18-AUG-21	9:30AM	101	JIR		PV	Daniells, S	DM	Crown Ad Hoc	M	IBJ		IC	J F Galati		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) VAN JAIL;															
01-SEP-21	9:30AM	102	FXD		PV		N	Crown Ad Hoc	M	IBJ		IC	E A Burgess		✓
Appearance Notes and Orders JCM Scheduling Instructions To Schedule For: For Trial Time Estimate: 1 Day(s) Note: Accused in custody; Heard at: Vancouver Provincial Court (2040)															
14-SEP-21	9:30AM	102	CTD		PV	JOHNSON, C	CM	Rosanne Sinclair	M	IBJ		IC	D Senniwi		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
14-OCT-21	9:30AM	305	FT		P		N	Crown Ad Hoc		IBJ		IC	D Senniwi		✓
Appearance Notes and Orders Adjourned to JCM to fix date, Crown application to adjourn granted; Heard at: Vancouver Provincial Court (2040)															
23-NOV-21	9:00AM	304	FT		N		N	Crown Ad Hoc		SBS		IC	O Athans		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
23-NOV-21	9:30AM	512	FT		P	Self - Represented	N	Crown Ad Hoc		IBC		IC	P M Bond		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Judge directed that Accused, Mr. Fox can be accommodated to have access to a sharing screen on the day of the trial 10-JAN-2022.; Accused I/C; Application to ADJ by Accused (Self - Represented) to review Transcripts. Ad Hoc Crown, Chris Johnson consents to ADJ application. ADJ granted per Judge P. Bond.; Judge Bond directs that there will be an appearance two to three weeks before the trial;															
14-DEC-21	9:30AM	101	APP		PV		N	Crown Ad Hoc		IBJ		IC	G Rideout		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Draft order by Crown is granted by Judge Rideout, G. Order signed on bench and placed in file.;															
29-DEC-21	9:30AM	102	CTD		PV		N	Crown Ad Hoc		IBC		IC	J Bahen		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) Accused to appear in person for trial date of January 10th, 2022, CRT 304;															
10-JAN-22	9:30AM	514	FT		P		N	Crown Ad Hoc		IBD		IC	J F Galati		✓
Appearance Notes and Orders Defence application to adjourn; Not opposed; Granted (witness not available); Heard at: Vancouver Provincial Court (2040)															

Provincial Court Record of Proceedings 244069-8-B

27-JAN-22	9:00AM	510	FT		P		N	Crown Ad Hoc		IBJ		IC	K Denhoff		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) ORDER FOR ATTENDANCE: Pursuant to Section 527 of the Criminal Code of Canada, the person having custody of PRISONER is ordered to deliver the prisoner to the Sheriff for court attendance on 23-MAR-2022. After court, the prisoner is then to be returned to the person having custody.;															
15-FEB-22	2:00PM	510	APP		PV		N	Curt Johnson		IBJ		IC	K Denhoff		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040) March 23 and 24, 2022 trial dates are vacated as per the order of Judge Denhoff.;															
23-FEB-22	9:00AM	307	FT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
23-FEB-22	9:30AM	307	CNT		P	Self	C	Crown Ad Hoc		IBJ		IC	K Denhoff		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
25-FEB-22	9:30AM	307	CNT		P	Self	N	Crown Ad Hoc		END		IC	K Denhoff		✓
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
23-MAR-22	9:00AM	304	FT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															
24-MAR-22	9:30AM	304	CNT									IC			
Appearance Notes and Orders Heard at: Vancouver Provincial Court (2040)															

ARRAIGNMENT

Date DD-MMM-YY	Event	Detail
01-SEP-21	Arraignment	Waives Reading

BANS

Order for Publication Ban

Date DD - MMM - YY	Ban
25-FEB-22	Publication CCC 486.5(1)

JUDICIAL INTERIM RELEASE OR DETENTION

☐ Additional JIRs FollowingDate Ordered
DD - MMM - YY

18-AUG-21

Ordered by Judge / Justice: J F Galati

☒ Detention Order☐ Detained under s. 524(4) or (8)☐ Previous ConvictionRelease Date
DD - MMM - YY☐ _____☐ Bail covers these informations:

Amount: _____ ☐ Deposit: _____☐ Sureties: _____☐ Named Sureties:

☐ Alternate Bail: _____☐ Conditions (See below) ☐ POR ☐ CFC ☐ Passport

Remarks: _____

Document Status: _____ Date: _____

APPLICATION SEQUENCE NO. 1

Date Filed / Made DD - MMM - YY 17-NOV-21 Date of Decision DD - MMM - YY 	By: _____ For: _____ ☐ Adjourned Before: J Lamb ☒ Denied ☐ Granted Remarks / Order: 7Dec2021: TRANSCRIPT ORDERDED: A transcript of the Bail Hearing / Judgment from Aug 18, 2021 is to be prepared and delivered cj-VLC
APPLICATION SEQUENCE NO. 1	
Date Filed / Made DD - MMM - YY 17-NOV-21 Date of Decision DD - MMM - YY 	By: _____ For: _____ ☒ Adjourned Before: L B Gerow ☐ Denied ☐ Granted Remarks / Order: 7Dec2021: TRANSCRIPT ORDERDED: A transcript of the Bail Hearing / Judgment from Aug 18, 2021 is to be prepared and delivered cj-VLC
APPLICATION SEQUENCE NO. 1	
Date Filed / Made DD - MMM - YY 17-NOV-21 Date of Decision DD - MMM - YY 	By: _____ For: _____ ☒ Adjourned Before: H MacNaughton ☐ Denied ☐ Granted Remarks / Order: 7Dec2021: TRANSCRIPT ORDERDED: A transcript of the Bail Hearing / Judgment from Aug 18, 2021 is to be prepared and delivered cj-VLC
APPLICATION SEQUENCE NO. 1	
Date Filed / Made DD - MMM - YY 17-NOV-21 Date of Decision DD - MMM - YY 	By: _____ For: _____ ☒ Adjourned Before: V Jackson ☐ Denied ☐ Granted Remarks / Order: 7Dec2021: TRANSCRIPT ORDERDED: A transcript of the Bail Hearing / Judgment from Aug 18, 2021 is to be prepared and delivered cj-VLC
APPLICATION SEQUENCE NO. 1	
Date Filed / Made DD - MMM - YY 17-NOV-21 Date of Decision DD - MMM - YY 	By: _____ For: _____ ☒ Adjourned Before: G K Macintosh ☐ Denied ☐ Granted Remarks / Order: 7Dec2021: TRANSCRIPT ORDERDED: A transcript of the Bail Hearing / Judgment from Aug 18, 2021 is to be prepared and delivered cj-VLC
Result Comments	

COMMENTS

Result Comments

22 Jun 2016; 244069-1 proceeded on 244069-2-CK

244069-3-B-Fox-Patrick Counts 1 | 244069-4-BC-Fox-Patrick Counts 1, 2, 3 | 244069-5-BC-Fox-Patrick Counts 1, 2, 3

Finding: PNI -Proceeded on New Information or New Ticket

To: 244069-5-BC

244069-9-B-Fox-Patrick Counts 1

Finding: PNI - Proceeded on New Information or New Ticket

To: 244069-10-BC

PLEAS

Crown Proceeded: By Indictment

Date DD-MMM-YY	Count	Election				Re-Election			
		Prov Court Judge	Judge	Judge & Jury	Before Judge	Prov Court Judge	Judge	Judge & Jury	Before Judge
01-SEP-21	1	✓			E A Burgess				

Date DD-MMM-YY	Count	PLEA				Re-enters / Changes Plea		
		Guilty	Not Guilty	Not guilty as charged but guilty of section	Other Description	Guilty	Not Guilty	Not guilty as charged but guilty of section
01-SEP-21	1		✓					

FINDINGS

Date DD-MMM-YY	Count	Guilty	Not Guilty	Not guilty as charged but guilty of section	Dangerous Offender	Long-Term Offender	Mental Disorder	Mistrial	No Action Taken	Detention Review Ineligible	Detention Review Waived
25-FEB-22	1	✓									

SENTENCE

Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Jail	2 Month(s) 18 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Actual Pre-Sentence Time in Custody	6 Month(s) 8 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Credited Pre-Sentence Time in Custody	9 Month(s) 12 Day(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Jail Term that would have been imposed before Credit Granted	12 Month(s)		
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Probation Order	3 Year(s)		
Details: Conditions - See below					
Date DD-MMM-YY	Count	Description	Sentence Term	Amount	Due / TTP Date
25-FEB-22	1	Victim Surcharge Exempt			

CONDITIONS

APPEARANCE: 25-FEB-2022 09:30 AM SENTENCE: Probation Order COUNT: 1

Keep the peace and be of good behaviour.

Appear before the Court when required to do so by the Court.

Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.

Report to a Probation Officer within 72 hours of your release from custody only for the purpose of informing your Probation Officer at that time of the exact steps you have taken to comply with the conditions of this Probation Order, with the following condition of this Probation Order that: within 48 hours of your release from custody you shall take all necessary steps to ensure that any website, social media page or any 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 or any of her friends, relatives, employers, or co-workers, including the websites published under the domain www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or any other means. Once you have reported these exact steps you have taken to comply with that condition, you will no longer be required to report to a Probation Officer.

You shall have no contact or communication directly or indirectly with Desiree Capuano or any of their friends, relatives, employers or co-workers.

You shall not disseminate, distribute, publish or make publicly available in any manner whatsoever, directly or indirectly, information, statements, comments, videos or photographs which refer to or depict, by name or description, Desiree Capuano, or any of her friends, relatives, employers or co-workers.

Exhibit 1

Patrick Fox
1451 Kinsseway Ave
Port Courtenay, BC
V8C 1S2

June 6, 2019

Attn: Detective Jennifer Fontana
Vancouver Police Dept.
2120 Cambie St.
Vancouver, BC V5Z 4N6

Re: Investigation into Patrick Fox,
desicpiano.com website

Dear Det. Fontana:

I have been informed by Kirsty Brown of the
Burnaby RCMP that you are in charge of the
investigation into the website hosted at [www.
desicpiano.com](http://www.desicpiano.com).

I assume by now you've reviewed the website and,
in particular, the "R. v. Fox" section of it. And,
I further assume you have reviewed the affidavit
in support of my claims of ineffective assistance of
counsel; as well as the HTML versions of the transcripts

Exhibit 1

wherein I've highlighted many of Capra's perjurious statements and explained where the proof is (especially right on the very website) that her sworn statements were false (and that Tony Capra and Mark Myhr knew she was lying).

And, having received all of that, I am guessing you have come to the only reasonable conclusion - that there is absolutely no way we'll be able to have another criminal harassment trial which will depend on Capra's testimony. Obviously, I'm going to make sure she's cross-examined on every one of those instances of perjury.

Obviously, with the proof of Capra's excessive perjury and blatant manipulation of the jury at the first trial, she will have absolutely no credibility at another trial. In other words, I think we all know there is absolutely no way of getting a conviction on another criminal harassment charge (this is, of course, why the Burnaby RCMP dumped the case on you).

On the other hand, how do you and the Crown explain NOT pursuing another criminal harassment charge to the many angry feminists and Canadian news media who adamantly refuse to accept that Capra is simply an evil person? Particularly,

Exhibit 1

since by publishing the new website I have engaged in exactly the same conduct which Justice Heather Holmes declared formed much of the basis of the guilty verdict in 2017 (at the first criminal harassment trial). I mean, if the website constituted criminal harassment at that point then it must certainly still constitute criminal harassment now! Right?

I suppose the VPD and the Crown could simply admit that Caporuso lied extensively; that Lapremat and Myhre colluded extensively to suppress critical evidence, and to offer perjured testimony; and that Justice Holmes repeatedly and blatantly refused to acknowledge or consider any evidence in my favor. I mean, the proof of all of that is on the website any way; it's all publicly accessible; there's no point in doing it any more.

So, any way, in closing, I respectfully request you charge me with criminal harassment and with violating probation by publishing the new website. Alternatively, I would like to request you declare publicly that such charges will not be forthcoming. Either way, I would certainly appreciate the return of my property (phone, tablet, et cetera), at your convenience.

Exhibit 1

I thank you for your time and assistance in these matters and I look forward to hearing from you soon.

Sincerely,



Patrick Fox

P.S. I apologize if this letter comes across as sarcastic or antagonizing. That is not my intention. I am merely attempting to communicate regarding the status of the investigation.

File No: 244069-8-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**ORAL REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE DENHOFF**

COPY

BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel: C. Johnson

Appearing on his own behalf: P. Fox

Place of Hearing: Vancouver, B.C.

Date of Judgment: February 25, 2022

[1] THE COURT: Mr. Fox is charged with a breach of probation on or about August 15, 2021. Mr. Fox admitted at trial that on August 12, 13, 14, 15 and 16, 2021, he was bound by a probation order made by Judge Rideout on April 12, 2021 which included the following condition number 6:

Within 48 hours of your release from custody, you shall take all necessary steps to ensure that any website, social media page, or any 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, or any of her friends, relatives, employers or co-workers, including the websites published under the domain www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or any other means.

[2] The allegation is that contrary to s. 733.1 of the *Criminal Code* Mr. Fox breached that probation order made by Judge Rideout on April 12, 2021 by failing to comply with condition 6 on or about August 15, 2021.

[3] Mr. Fox did not dispute at trial that on August 12, 13, 14, 15 and 16, 2021, the website www.desicapuano.com was operational and could be viewed by anyone capable of accessing the internet.

[4] The Crown called a civilian analyst with the Vancouver Police Department who testified that she checked the website www.desicapuano.com on August 12, 13, 14 and 15, 2021 and it was accessible and active on each of those days. On August 15, 2021, the analyst accessed the website at 6:10 p.m. and it was still active and accessible, which was more than 48 hours after Mr. Fox's release from custody.

[5] Constable Tanino testified that she interviewed Mr. Fox on August 17, 2021 for an hour and 10 minutes regarding his involvement with the website. Mr. Fox admitted at trial that the statement was voluntary.

[6] According to Constable Tanino, Mr. Fox told her, on August 17, 2021, that prior to the probation order taking effect, he transferred ownership and control of the website www.desicapuano.com to a third party. He indicated that he could not identify the third party and he offered no proof of the transfer of the ownership of the website. Mr. Fox further stated that he transferred ownership and control of the website so that he would not be obligated to take it down in accordance with the probation order. Mr. Fox also told Constable Tanino that when his probation term ended, he would take back control of the website.

[7] When Mr. Fox was asked if he had access to the website, he stated that he would not answer the question. He also stated that within 48 hours of his release from custody, he had sent an email to the editor of the website, as listed on the website, and asked for the website to be taken down. Although Mr. Fox said he would provide a copy of that email at a later date, he did not ever do so, even though his laptop was made available in the courtroom during the trial and he could have accessed the email. Mr. Fox claims that he did not access the email in the courtroom because he did not want the police to have access to all of his computer content in the courtroom. However, by that time, the police had already searched the computer. Furthermore, Mr. Fox could have asked for the court permission to access the email on his laptop himself in order to show it to the court without the police seeing the other content. He did not do so.

[8] At the trial, Constable Dent testified about his investigation of Mr. Fox in August 2021. He was aware that Mr. Fox was released from custody on the morning of August 12, 2021 and Constable Dent was responsible for assigning an

analyst to see if the website was still accessible after Mr. Fox's release. When Constable Dent received confirmation that the website was operational on August 12, 13, 14 and 15, 2021, he arrested Mr. Fox for an alleged breach of his probation. He then asked Constable Tanino to interview Mr. Fox on August 17, 2021.

[9] During cross-examination, Mr. Fox asked Constable Dent a number of questions relating to his investigation and interview of Mr. Fox in 2020. Constable Dent testified that Mr. Fox told him in the 2020 interview that he had transferred ownership of the website to a third person and that he would regain control of the website at a later time.

[10] Both Constable Tanino and Constable Dent acknowledged that they could not say whether the website had been taken down at any point on August 12, 13, 14 or 15. They could only say that when Constable Tanino checked the website at one point on each of those days, the website was operational.

[11] During his testimony, Mr. Fox contradicted his earlier statements about transferring the ownership and control of the website www.desicapuano.com. Instead, he claimed that the original website, www.desireecapuano.com, had expired because he stopped making monthly payments to the server. His friend, Liz Munoz, who resides in California, was responsible for making payments while Mr. Fox was in Canada and she apparently forgot to make the payments while Mr. Fox was in jail in Canada in 2018.

[12] According to Mr. Fox, Ms. Munoz then launched a new website, www.desicapuano.com with the same content as www.desireecapuano.com and she was the owner of that website and was responsible for monitoring it. She did have a

friend assist her in launching the website, however, as she apparently is not very technically savvy.

[13] It was in November or December of 2018 that Ms. Munoz told Mr. Fox about the new website. Knowing that he was going to be released from custody at the end of December and would be bound by a probation order to ensure that the website was not accessible, Mr. Fox apparently instructed Ms. Munoz not to tell him anything about the website until his probation period was complete, so that he would not have to take it down.

[14] He knew the website was online when he was released from custody because he checked online. He was also able to say that there had been updates to the website in the last year and a half, which means that he must have been accessing it during that time.

[15] Mr. Fox claimed that he told Constable Dent in 2020 and Constable Tanino in 2021 that he transferred ownership and control of the website because it was "simpler" than telling them that Ms. Munoz launched the new website of her own volition. That explanation is not compelling.

[16] It is in no way simpler to say that he transferred ownership and control. It is, however, more incriminating, which Mr. Fox obviously realized before testifying in court.

[17] In addition, the new website, www.desicapuano.com not only has all of the old information from the former website he used to harass his former spouse, but it includes updates about his ongoing court processes in Canada.

[18] It is notable that according to Mr. Fox, he and Ms. Munoz have drifted apart and are no longer in frequent contact. It is simply absurd to suggest that Ms. Munoz, who is not in regular contact with Mr. Fox, would pay for a website that is entirely related to Mr. Fox's harassment of Ms. Capuano and to Mr. Fox's criticisms of his legal processes. Moreover, in a letter written to Detective Fontana on June 6, 2019, Mr. Fox was encouraging the police to charge him with criminal harassment of Ms. Capuano. His apparent purpose was to force Ms. Capuano to testify and for him to be able to cross-examine her on what he claimed were her lies in a previous trial before Justice Holmes.

[19] In that letter, Mr. Fox stated:

Particularly since by publishing the new website, I have engaged in exactly the same conduct which Justice Heather Holmes declared founded much of the basis of the guilty verdict in 2017 (at the first criminal harassment trial). I mean, if the website constituted criminal harassment at that point, then it must certainly still constitute criminal harassment now.

[20] In that letter, Mr. Fox was making a clear admission that he launched, owned and controlled the website www.desicapuano.com. I do not accept his current explanation that he was lying to the police about publishing the website so that they would charge him with criminal harassment. It is apparent from Mr. Fox's frequent statements that he will never remove the website, and that Mr. Fox launched the website in order to continue to harass Ms. Capuano and to encourage the police to charge him so as to be able to cross-examine Ms. Capuano.

[21] In his final submissions at trial, Mr. Fox argued that the Crown has not proven its case of a breach. First he argued that there is no evidence that he owns or has

control over the website. As noted, Mr. Fox admitted to Constable Fontana, in a letter dated June 6, 2019 that he published the new website and engaged in criminal harassment. In addition, Mr. Fox told both Constable Tanino and Constable Dent that he would take the website back when his probation ended, indicating he has retained control over the website.

[22] Mr. Fox also argues that the Crown has not proven that the website was not taken down by him within 48 hours of his release and then reposted by someone else. That argument also fails because, as already discussed, Mr. Fox retained control over the website and could have taken back the management of it at any time.

[23] Mr. Fox rhetorically asked the prosecutor what further steps, other than sending a supposed email to the editor of the website, he could have taken to ensure that the website was no longer available. To begin, I do not believe that Mr. Fox sent an email to the editor of the website. Mr. Fox refused to produce the email to the police when asked and also failed to offer to produce the email when his laptop was available in court during the trial.

[24] In terms of steps he could have taken, he could not have launched the website as he has admitted to doing.

[25] Even if I were to believe that Mr. Fox only told the police he launched the website so he would be charged with harassment, which I do not accept, Mr. Fox clearly maintained control over the website. Therefore, he could have contacted Ms. Munoz to regain control of it upon his release from custody and ensured it was no longer available.

[26] If he was not successful in persuading Ms. Munoz to take down the website, he could have provided her name and contact information to the police so the police could have made a request to Ms. Munoz. He did not do so, either because he actually owns the website, not Ms. Munoz, or because he did not want the website to be taken down. In either case, Mr. Fox did not take all necessary steps to ensure that the website is no longer available.

[27] Finally, Mr. Fox argues that he was not obligated to do anything with respect to the website after 48 hours after his release from custody and there is no proof that he did not take it down during that 48 hours. He claims that if he published the website again, after the 48-hour time period, it would not be a prohibition of condition 6 of his probation order.

[28] However, the probation order placed Mr. Fox under a positive obligation to take all necessary steps, within 48 hours of his release from custody, to ensure that the website www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or any other means. The term "no longer available" has the ordinary meaning of being available in the past but not continuing to be available.

[29] Mr. Fox had control of the website www.desicapuano.com within 48 hours of his release and continuing past that time, as he repeatedly boasted to the police. As such, he was obligated to ensure that the website did not continue to be available via the internet. He failed to do so and he is guilty of breach of condition 6 of the 12-month probation order issued by Judge Rideout on April 12, 2021.

(REASONS CONCLUDED)

File No: 244069-8-B
Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

PATRICK HENRY FOX

**ORAL REASONS FOR SENTENCE
OF
THE HONOURABLE JUDGE DENHOFF**

COPY

BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel:

C. Johnson, Q.C.

Appearing on his own behalf:

The Accused

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

February 25, 2022

[1] THE COURT: Mr. Fox is being sentenced for breaching condition 6 of the probation order of Judge Rideout, issued on April 12, 2021.

[2] As described in my reasons for judgment issued earlier today, the condition required Mr. Fox to ensure, within 48 hours of his release from custody, that a website concerning his ex-spouse with a domain of www.desicapuano.com is no longer available via the internet or other means. Mr. Fox failed to comply with that condition.

[3] By way of background, on November 10, 2017, Mr. Fox was convicted by a Supreme Court jury for criminally harassing his former spouse, Desiree Capuano. He was also convicted on that date for being in possession of a firearms at a place other than where he was authorized to possess them.

[4] The criminal harassment of Ms. Capuano took place between January 11, 2015 and May 27, 2016 and involved an orchestrated campaign by Mr. Fox to harass Ms. Capuano to the point of trying to drive her to suicide. He sent hundreds of emails to Ms. Capuano and several other emails to people she knew. He also created a website in her name on which he has disseminated information which was intended to embarrass Ms. Capuano, undermined her relationship with her family, friends, employers and colleagues, ruin her financially and intimidate her. Further details of the harassment which caused Ms. Capuano to lose friends, colleagues and employment are contained in the sentencing reasons of Madam Justice Holmes in *R. v. Fox*, 2017 BCSC 2361.

[5] On November 10, 2017, Justice Holmes sentenced Mr. Fox on the criminal harassment to three years' imprisonment, to be discounted by time already served,

followed by probation for three years. There was a condition in the probation order which was similar to condition 6 in Judge Rideout's probation order. That condition required Mr. Fox, within 24 hours of his release from custody, to take all reasonable steps to ensure that any website, including the domain www.desireecapuano.com, is no longer accessible via the internet or by any other means.

[6] Mr. Fox was sentenced to a further 10 months of incarceration for the firearms offence.

[7] On June 12, 2020, Mr. Fox was convicted of breach of the probation order of Justice Holmes, in relation to his attendance at the U.S./Canada border and he was given a sentence of 12 months' incarceration, plus probation for 18 months.

[8] On August 19, 2020, a further probation order was made by Judge Phillips when sentencing Mr. Fox for a breach of the condition that he ensure that the website www.desicapuano.com is no longer available via the internet or other means. The new probation order by Judge Phillips also contained a similar condition.

[9] When Mr. Fox was released from custody on August 20, 2020, after being sentenced by Judge Phillips and while bound by the probation condition discussed, he placed an open letter to the then attorney general, David Eby, on the website, noting that he was required by law to take down the website. He stated in the letter:

They can lock me up for the rest of my life but I will never take down the website.

[10] The website was still operational as of September 16, 2020. Mr. Fox was sentenced by Judge Rideout on April 12, 2021 for the breach and given a custodial

sentence of 16 months and 15 days and a further probation order for 12 months.

That probation order also contained a condition similar to the condition previously imposed by Justice Holmes on November 10, 2017 and by Judge Phillips on August 18, 2020.

[11] Therefore, since June 2020, Mr. Fox has now been convicted of three separate breaches of conditions in probation orders. He has been twice convicted of a condition requiring him to ensure that the website www.desicapuano.com by which he criminally harassed his former spouse for over a year in 2015 and 2016 is no longer available via the internet or by any other means.

[12] It is difficult to determine a sentence which would deter Mr. Fox from continuing to breach probation orders, especially since he has publicly stated that he will never remove the website.

[13] Mr. Fox has a criminal record in Canada only for the offences related to his criminal harassment of his former spouse and the breaches of the probation orders.

[14] As noted, his last sentence by Judge Rideout was 16 months and 15 days, plus a one-year probation order which is due to expire in August 2021.

[15] The Crown is seeking a sentence today of 12 months' incarceration and three years' probation. The Crown prosecutor explains that the length of the probation order is more helpful in ensuring that Mr. Fox will not continue to harass his former spouse and to publish negative information about her than is the period of incarceration.

[16] It has been remarked on in many judgments concerning Mr. Fox that he is an

intelligent and capable individual. He worked in information technology and it was that knowledge which enabled him to harass his former spouse so extensively through the internet.

[17] The fundamental purpose of sentencing is to protect society, including Mr. Fox's former spouse. There are six main objectives in sentencing, including denouncing the offending conduct, deterring the offender and others from criminal conduct, separating the offender from society when necessary, rehabilitating the offender, making reparation to victims or the community and fostering the offender's acknowledgement of responsibility and of the harm to victims in society.

[18] So far, Mr. Fox has been entirely resistant to offers of rehabilitation through psychiatric assessment and treatment. He has also been resistant to acknowledging responsibility.

[19] In this case, where there has been an ongoing and deliberate contravention of numerous probation orders resulting in the source of the criminal harassment of the victim to continue to be available to the public, the primary principles of sentencing must be denunciation, deterrence and separating the offender from society when necessary.

[20] In all of the circumstances, it is my view that an appropriate sentence is 12 months' incarceration, to be followed by a three-year probation order.

[21] The probation will be as follows: You will keep the peace and be of good behaviour.

[22] You will appear before the court when required to do so.

[23] You will report to a probation officer at 275 East Cordova Street, in Vancouver, British Columbia, within 72 hours of your release from custody, only for the purpose of informing the probation officer at that time of the exact steps you have taken to comply with the following condition of this probation order: That within 48 hours of your release from custody, you shall take all necessary steps to ensure that any website, social media page or any 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 or any of her friends, relatives, employers or co-workers, including the websites published under the domains www.desireecapuano.com and www.desicapuano.com, are no longer available via the internet or any other means.

[24] Once you have reported the exact steps that you have taken to comply with that condition, you will no longer be required to report to a probation officer.

[25] You shall have no contact or communication, directly or indirectly, with Desiree Capuano or any of her friends, relatives, employers, or co-workers.

[26] You shall not disseminate, distribute, publish, or make publicly available, in any manner whatsoever, directly or indirectly, information, statements, comments, videos or photographs which refer to or depict, by name or description, Desiree Capuano, or any of her friends, relatives, employers or co-workers.

[27] Any other conditions that you are seeking --

[28] CNSL C. JOHNSON: No, thank you, Your Honour.

[29] THE COURT: -- Mr. Johnson?

[30] All right. Sir, you have served six months and eight days, which I will give you enhanced credit for, amounting to nine months and 12 days.

[31] As I indicated, your period of incarceration and jail sentence is 12 months. That means that you have two months and 18 days remaining to be served. So, time served, six months eight days. Your sentence is two months 18 days. Enhanced time is nine months 12 days. Jail time that would have been imposed before credit for time served, 12 months.

[32] Are you content with that wording, Mr. Johnson?

[33] CNSL C. JOHNSON: Yes, I am, Your Honour.

[34] THE COURT: Okay.

[35] Given that you have been in custody for a lengthy period of time, I am going to waive the victim surcharge.

(REASONS CONCLUDED)

**Warrant of Committal
Upon Conviction - Form 21**
Canada: Province of British Columbia

Police File No.
401:21-132224

Court File No.
2040:244069-8-B

IND

Proceeded: **By Indictment**
D.O.B.: November 24, 1973

Primary Enf. Agency:
Ban on Publication CCC 486.5(1)

To the **Peace Officers** in the Province of British Columbia and to the **Keeper** of a **Provincial Correctional Centre** (the "place of detention").

Whereas **Patrick Henry Fox** (the "offender") was convicted on **February 25, 2022** before **Provincial Court Judge K Denhoff** on the following charge(s) and it was adjudged on **February 25, 2022** that the offender for his/her offences be committed to a place of detention in the Province of British Columbia for the term(s) as specified below:

Count 1, on or about August 15, 2021, at or near Vancouver BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.
SENTENCE: Jail: 2 Month(s) 18 Day(s) [Credited Pre-Sentence Time in Custody: 9 Month(s) 12 Day(s) ; Actual Pre-Sentence Time in Custody: 6 Month(s) 8 Day(s) ; Jail Term that would have been imposed before Credit Granted: 12 Month(s) ;]; Victim Surcharge Exempt; Probation Order: 3 Year(s);

See a total of 1 Charge

Accordingly, you are commanded, in Her Majesty's name, to arrest the offender if it is necessary to do so in order to take the offender into custody, and to convey him/her safely to a place of detention and deliver him/her to the keeper thereof. You, the **Keeper**, are commanded to receive the offender into custody in a place of detention and imprison him/her for the term prescribed above, and this is a sufficient warrant for so doing.

Dated / Fait le **February 25, 2022**
at / à **Vancouver**
British Columbia / Colombie-Britannique

K. Anderson 2022.02.25 15:19:38
-08'00'

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
Judge / juge K Denhoff of the Provincial Court / de la cour provinciale, in
and for the Province of British Columbia / dans et pour la province de la
Colombie-Britannique

Warrant of Committal (Jail)

Notes: See attached: ☐ Information(s) ☐ Probation Order ☐ Pre-Sentence Report
☐ Indictment(s) ☐ Conditional Sentence Order ☐ Medical/Psychiatric Documents
☐ Record of Proceedings
☐ Sentence imposed in offender's absence (warrant sent to police)
☐ Other:

Warrant executed by:

Date:

Mandat de dépôt sur déclaration de culpabilité - Formulaire 21

Canada: Province de la Colombie-Britannique

Nu. de dossier de la police Nu. de dossier du greffe
401:21-132224 2040:244069-8-B

IND

Procédé : **par mise en accusation**

D.D.N. : November 24, 1973

Org. prim. d'app. de la loi :

Ban on Publication CCC 486.5(1)

Aux **agents de la paix** de la province de la Colombie-Britannique et au **gardien** d'un **Centre correctionnel provincial** (le <<lieu de détention>>).

Attendu que **Patrick Henry Fox** (le(la) <<contrevenant(e)>>) a été déclaré coupable le **February 25, 2022** devant le juge **K Denhoff** de l'(des) inculpation(s) suivante(s) et que le **February 25, 2022** il a été décidé que le(la) contrevenant(e) doit être incarcéré(e) pour son(ses) infraction(s) dans un lieu de détention dans la province de la Colombie-Britannique pour la(les) période(s) indiquée(s) ci-après :

Count 1, on or about August 15, 2021, at or near Vancouver BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.
SENTENCE: Jail: 2 Month(s) 18 Day(s) [Credited Pre-Sentence Time in Custody: 9 Month(s) 12 Day(s) ; Actual Pre-Sentence Time in Custody: 6 Month(s) 8 Day(s) ; Jail Term that would have been imposed before Credit Granted: 12 Month(s) ;] ; Victim Surcharge Exempt; Probation Order: 3 Year(s);

Voyez 1 inculpation

En conséquence, il vous est ordonné, au nom de Sa Majesté, d'arrêter le(la) contrevenant(e), si cela est nécessaire pour l'amener en détention, et de le(la) conduire sûrement au lieu de détention et de l'y remettre au gardien dudit lieu de détention. Il vous est ordonné, à vous le **gardien**, de recevoir le(la) contrevenant(e) et de l'incarcérer dans le lieu de détention pour la durée de la peine prescrite ci-dessus. Les présentes sont, pour ce faire, un mandat suffisant.

Mandat de dépôt (prison)

Notes: Voir annexe: ☐ Acte(s) d'accusation ☐ Ordonnance de probation ☐ Rapport présentenciel
☐ Dénonciation(s) ☐ Ordonnance de condamnation avec sursis ☐ Documents médicaux/psychiatriques
☐ Procès-verbal
☐ Peine prononcée en l'absence du (de la) contrevenant(e) (mandat envoyé à la police)
☐ Autres:

Mandat exécuté par:

Fait le:

Probation Order

(Prison)

Canada: Province of British Columbia

Ban - none

Police File No.
401:20-164388

Court File No.
2040:244069-7-B

IND

Primary Enf. Agency:

D.O.B.: November 24, 1973

Proceeded: By Indictment

☐ Interpreter present

Whereas on **November 26, 2020** at **Vancouver**, British Columbia,

Patrick Henry Fox

(the "offender") was convicted or found guilty, as the case may be, upon the following charge(s) and on **April 12, 2021** the Court adjudged that the offender be imprisoned in the Province of British Columbia as follows:

Count 1, between August 19, 2020 and September 16, 2020, at or near Vancouver BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Jail: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(s);

I have read or have had read to me and understand a total of 1 Charge

Order explained to offender and acknowledged in court

and in addition thereto, that the said offender comply with the conditions hereinafter prescribed:

Now, therefore, the said offender shall for the period stated above, from the date of expiration of imprisonment, comply with the following conditions, namely, that the said offender shall:

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page

Dated / Fait le **April 12, 2021** at / à **Vancouver**, British Columbia / Colombie-Britannique

I, the undersigned offender, acknowledge that I have received:

- a copy of the Probation Order
- an explanation of the substance of the sections dealing with changes to the Probation Order and failing to comply with the Probation Order (Sec 732.2(3) and (5), and Sec 733.1), and
- an explanation of the procedures for applying for changes to the Probation Order,

and that I understand the terms of this Probation Order and the explanations which I have received.

Signature not required

Offender / Contrevenant(e)
Address / Adresse :

NFA
Vancouver, BC

Phone Number / Numéro de téléphone :

Je, le(la) contrevenant(e) soussigné(e), reconnais que j'ai reçu :

- une copie de l'Ordonnance de probation
 - une explication du contenu des articles ayant trait aux changements apportés à l'Ordonnance de probation et au défaut de se conformer à l'Ordonnance de probation (Art. 732.2(3) et (5), et Art 733.1), et
 - une explication des procédés à suivre pour faire une demande de changements à l'Ordonnance de probation,
- et que je comprends les conditions de cette Ordonnance de probation et les explications que j'ai reçues.

V. Lee-Young 2021.04.12 12:46:11
-07'00'

A Clerk of the Court on behalf of / Un greffier du tribunal au nom du
Judge / juge G Rideout, in and for the Province of British Columbia /
dans et pour la province de la Colombie-Britannique

Probation (Prison)

**Ordonnance de probation
(prison)**

Nu. de dossier de la police Nu. de dossier du greffe
401:20-164388 2040:244069-7-B IND

Canada: Province de la Colombie-Britannique

☐ Interprète présent

Ban - none

Org. prim. d'app. de la loi :

D.D.N. : November 24, 1973

Procédé : par mise en accusation

Attendu que le **November 26, 2020** à **Vancouver**, Colombie-Britannique,

Patrick Henry Fox

(le(la) <<contrevenant(e)>>) a été condamné(e) ou reconnu(e) coupable, selon le cas, de l'(des) infraction(s) suivante(s) et le **April 12, 2021** le tribunal a décidé que le(la) contrevenant(e) soit **incarcéré(e)** dans la province de la Colombie-Britannique comme suit :

Count 1, between August 19, 2020 and September 16, 2020, at or near Vancouver BC, did commit an offence of Failure to comply with probation order, contrary to section 733.1(1) Criminal Code.

SENTENCE: Jail: 6 Month(s) [Jail Term that would have been imposed before Credit Granted: 16 Month(s) 15 Day(s) ; Credited Pre-Sentence Time in Custody: 10 Month(s) 15 Day(s) ;]; Victim Surcharge Exempt; Probation Order: 1 Year(s);

J'ai lu ou j'ai m'a lu et je comprends 1 inculpation

et, de plus, que ledit (ladite) contrevenant(e) se conforme aux conditions prescrites suivantes :

Pour ces motifs, ledit (ladite) contrevenant(e) devra pour la période ci-dessus prescrite à compter de la date d'expiration de la sentence d'emprisonnement, se conformer aux conditions suivantes, notamment que ledit (ladite) contrevenant(e) devra :

J'ai lu ou j'ai m'a lu et je comprends 6 conditions sur 1 page de l'Annexe des conditions

Probation (prison)

**Probation Order/
Ordonnance de probation**

(Prison/ prison)
Canada: Province of British Columbia
Province de la Colombie-Britannique

Police File No./
Nu. de dossier de la police
401:20-164388

Court File No./
Nu. de dossier du greffe
2040:244069-7-B

D.O.B./ D.D.N. : November 24, 1973

Ban - none

Re/ Objet : Fox

**Conditions Attachment/
Annexe des conditions**

Condition 1: Keep the peace and be of good behaviour.

Condition 2: Appear before the Court when required to do so by the Court.

Condition 3: Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation Officer of any change of employment or occupation.

=====

POR Condition 4: You shall have no contact or communication directly or indirectly with Desiree Capuano or James Pendleton or any of their friends, relatives, employers or co-workers.

POR Condition 5: You shall not disseminate, distribute, publish or make publicly available in any manner whatsoever, directly or indirectly, information, statements, comments, videos or photographs which refer to or depict, by name or description, Desiree Capuano, James Pendleton or any of their friends, relatives, employers or co-workers.

POR Condition 6: Within 48 hours of your release from custody you shall take all necessary steps to ensure that any website, social media page or any 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 or any of her friends, relatives, employers, or co-workers, including the websites published under the domain www.desireecapuano.com and www.desicapuano.com are no longer available via the internet or any other means.

I have read or have had read to me and understand a total of 6 Conditions on 1 Conditions Attachment Page/ J'ai lu ou j'ai m'a lu et je comprends 6 conditions sur 1 page de l'Annexe des conditions

Probation (prison)/ Probation (Prison)

Important Information for a Person Placed on Probation

1. Changes to a Probation Order

Criminal Code Section 732.2(3)

You may apply to change or cancel a condition of your *Probation Order*, or reduce the time you will be on probation. Ask the Court Registry for an *Application to a Judge* form, to make this request.

The probation officer or the prosecutor may also ask to change or cancel a condition of your *Probation Order*, or to reduce the time you will be on probation.

You may have to appear in court, and the Court may issue a *Warrant* or *Summons* to make you appear.

If any changes are made, you will have to sign the changed *Probation Order* and you will receive a copy.

Criminal Code Section 732.2(5) and Section 730(4)

The prosecutor may ask to have you come back to court if you are convicted of another offence, including breach of probation, as long as:

- you have not appealed that conviction, or
- you are out of time to appeal it, or
- your appeal was dismissed, or
- you do not intend to appeal.

The Court may then:

- revoke a *Suspended Sentence* or a *Conditional Discharge* and give you a different sentence, or
- change the additional conditions, or
- extend your probation by up to one more year.

2. Failure to Comply with a Probation Order

Criminal Code Section 733.1

If you are on probation and fail to comply with the order, you can be charged with "breach of probation". If the Court finds you guilty of a breach of probation, you can be sentenced to:

- a jail term for up to four years, if the Crown proceeds by indictment, or
- a jail term for up to two years less a day, or a fine of up to \$5,000.00, or both if the Crown proceeds by summary conviction.

Your court appearance for a breach charge does not have to be where your *Probation Order* was made. You may appear in the court closest to where the offence happened, or where you were found, arrested, or in custody.

3. Changes to Personal Information

If you change your name or address, you must notify the Court or your probation officer of any change in advance. Any changes to other personal information, including your employment or occupation must be reported to the Court or your probation officer. To report any changes, you should ask the Court Registry or your probation officer for a *Notice of Change of Personal Information* form.

This is an information sheet. In the event of any conflict between this information and any Act(s) or law, the provisions of the Act(s) apply.

Probation (prison)/ Probation (Prison)

Renseignements importants à l'intention d'une personne mise en probation

1. Modification d'une ordonnance de probation

Article 732.2(3) du *Code criminel*

Vous pouvez faire une demande de modification ou d'annulation d'une condition de votre *ordonnance de probation* ou de réduction de la durée de votre mise en probation. Pour ce faire, demandez un formulaire de Demande à un juge au greffe de la cour.

L'agent de probation ou le(la) poursuivant(e) peut également demander de modifier ou d'annuler une condition de votre ordonnance de probation, ou de réduire la durée votre mise en probation.

Vous devrez peut-être comparaître devant un tribunal et le tribunal peut émettre *un mandat* ou une *somation* pour vous obliger à comparaître.

En cas de changement, vous devrez signer l'*ordonnance de probation* modifiée et vous en recevrez une copie.

Articles 732.2(5) et 730(4) du *Code criminel*

Le(la) poursuivant(e) peut demander votre comparution devant le tribunal si vous êtes déclaré(e) coupable d'une autre infraction, y compris un manquement aux conditions de la probation, pourvu que :

- vous n'ayez pas interjeté appel de cette déclaration de culpabilité, ou
- le délai d'appel soit expiré, ou
- votre appel ait été rejeté, ou
- vous n'ayez pas l'intention d'interjeter appel.

Le tribunal peut alors :

- révoquer une *condamnation* avec sursis ou une *libération conditionnelle* et vous infliger une peine différente, ou
- modifier les conditions supplémentaires, ou
- prolonger la durée de votre probation d'au plus un an.

2. Défaut de se conformer à une ordonnance de probation

Article 733.1 du *Code criminel*

Si vous avez été mis(e) en probation et que vous omettez de vous conformer à l'ordonnance, vous pouvez être inculpé(e) d'un manquement aux conditions de la probation. Si le tribunal vous reconnaît coupable d'un manquement aux conditions de la probation, vous pouvez être condamné(e) à :

- une peine d'emprisonnement d'au plus quatre ans, si la Couronne procède par mise en accusation, ou
- une peine d'emprisonnement pouvant deux ans moins un jour, ou une amende d'au plus 5 000 \$, ou les deux, si la Couronne procède par déclaration sommaire de culpabilité.

Votre comparution devant le tribunal pour manquement aux conditions de l'ordonnance ne doit pas nécessairement se faire au lieu où l'ordonnance de probation a été rendue. Vous pouvez comparaître devant le tribunal le plus près du lieu où l'infraction a été commise, ou du lieu où vous avez été trouvé(e), arrêté(e) et mis(e) sous garde.

3. Changements de renseignements personnels

Si vous changez de nom ou d'adresse, vous devez en aviser le tribunal ou votre agent de probation à l'avance. Vous devez également informer le tribunal ou votre agent de probation de tout autre changement de renseignements personnels, y compris un changement d'emploi ou de métier ou profession. Afin de signaler un changement quelconque, vous devriez demander le formulaire *Avis de changement de renseignements personnels* au greffe de la cour ou à votre agent de probation.

La présente est une feuille de renseignements. En cas de conflit entre ces renseignements et une ou plusieurs lois, les dispositions de la (des) loi(s) s'appliquent.

Probation (prison)/ Probation (Prison)



Court of Appeal
for BC

Notice of Appeal or Application for Leave to Appeal

VANCOUVER
MAR 08 2022
COURT OF APPEAL
REGISTRY

(Where appellant not represented by a solicitor)

CA 48145

Lower Court Registry Number 244069-8-B

Lower Court Registry Location Vancouver

To the Registrar:

Name of appellant: Patrick Fox

Place of trial: Vancouver

Name of court: Provincial Court

Name of judge: Kathryn Denshoff

Was this a jury trial? No

Offence(s) of which convicted: s. 733.1 (breach of probation)

Plea at trial: Not guilty

Sentence imposed: 12 months jail; 3 years probation

Date of conviction: 2022-02-25

Date of imposition of sentence: 2022-02-25

Name and address of place at which appellant is in custody: North Fraser Pretrial Centre

Or if not in custody, appellant's address: _____

If in custody, address other than institution: NFA

I, the above named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction and sentence on the grounds set out on this notice.

I desire to present my case and argument whether it be for leave to appeal or by way of appeal where leave is not necessary,

~~(a) in writing~~

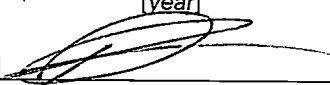
(b) in person

If a new trial is ordered and you have a right to trial by jury, do you wish trial by jury?

Yes

Dated this 28th day of February, 20 22.
[1st, etc.] [month] [year]

[Signed]



Appellant

Notes

1. (a) If your appeal against conviction involves a question of law alone, you have a right of appeal.
(b) If your appeal against conviction is upon any other ground than a question of law, then you have no right of appeal unless leave to appeal is first granted. Your Notice of Appeal includes an application for leave to appeal where leave is necessary.
(c) You have no right to appeal against sentence unless leave to appeal is first granted by the Court of Appeal or a justice. Your Notice of Appeal includes an application for leave to appeal.
2. Further take notice that if you appeal from sentence the Court of Appeal may increase your sentence.
3. (a) If your appeal is against conviction or sentence alone, or against both conviction and sentence, this notice must be filed within 30 days of the date of imposition of the sentence.
(b) If this notice is filed beyond this time, then you must apply for an extension of time by completing Form 7 [Notice of Application for Extension of Time to Appeal].

Grounds of Appeal

These must be filled in before notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why his or her conviction should be quashed or his or her sentence reduced. If one of the grounds set out is "misdirection" by the judge, particulars of the alleged misdirection must be set out in this notice.

[Use additional separate sheet if necessary]

Please see attached pages.

Grounds of Appeal

1. The trial judge erroneously believed/assumed I had access to the internet and to my email from within NORC and/or PRCC. Due to that erroneous belief the judge did not accept my testimony regarding my inability to obtain and present as evidence an email I had sent the site administrator upon my release from custody; and my testimony that I could not possibly be the person who put the current website online and who has been updating it over the past 3 years (while I have been in custody).
2. I believe the trial judge erred in her interpretation or understanding of the term "no longer available" as it is used in condition 6 of the probation order (which I was convicted of breaching). My understanding of the precise wording of condition 6 was, essentially, that it required me to perform some particular actions in order to cause the website to be "no longer available" on the internet and, once that is achieved and the website is "no longer available" then the condition had been fulfilled. Condition 5 of the probation order prohibited me from publishing, et cetera, particular information and would, necessarily, prohibit me from putting the website back online after having

Grounds of Appeal (cont.)

complied with condition 6. The court, however, interpreted "no longer available" to mean "not available during the entire duration of the probation order". I argued that if that were the case then it should have been stated as, for example "no longer available and remains no longer available". The court did not accept that proposition.

This point is significant because the witnesses admitted they had no knowledge of whether the website had been taken down for any duration of time in between the very brief, 4 times they had checked it over a 4 day period (once per day). Under my understanding of condition 6, if the website had been taken down for any duration of time, no matter how brief, then it would have been in compliance with condition 6.

3. The trial judge erred in finding that it was implausible that a third party, who is not related to or involved in the matters between Capicano and myself would be willing to put the time and effort into maintaining the website on their own. However, the time and effort involved in maintaining such a website is, literally, almost completely nil. Moreover, as I had testified, since 2018

Grounds of Appeal (cont.)

when the website was taken over by a third party, it has been focused almost exclusively on highlighting the corruption and misconduct going on in the local justice system - NOT on Capuano; and in fact, as I had testified since the website had been put back online in 2018 there have not been any updates about Capuano.

In addition, the Crown and the Crown's witnesses acknowledged that there have been updates to the site while it have been in custody and, therefore, it could not possibly have been the one to make those updates. Therefore, contrary to the judge's finding, there must be a third party who is maintaining the website.

4. The trial judge erred in finding my testimony about my friend putting the current website online not credible considering my prior statements to the police that it had put the current website online then transferred ownership and control to a third party. The judge found my statements in my testimony were less incriminating than the statements I had made to the police and that that was the reason for the inconsistent statements.

Grounds of Appeal (cont.)

However, it was no more incriminating to say I was involved in putting the current website online than transferring control to a third party; than it is to say my friend arranged, through a third party, to put the current website online without my prior knowledge; because either way, it occurred BEFORE the probation began and by the time the probation began I had no involvement or association with the website. Moreover, the statement to the police could not have possibly been true because I was in custody at FRCC at the time the website was published and did not have access to the internet or a computer - therefore, it would have been impossible for me to publish the website.

I had explained, in my testimony, that the statements I am making in my testimony are under oath and subject to penalty of perjury whereas the statements I made to the police were not under oath, I was not under any legal obligation to tell them the full truth, and I had an interest at that time of encouraging them to charge me with criminal harassment related to the current website.

Moreover, what the judge characterized as an inconsistency between my statements to the police and my statements

Grounds of Appeal (cont.)

on the witness stand was not an inconsistency, but rather a clarification or a more thorough and precise explanation of the matter. I had stated that in my testimony, I had also explained that my prior statements to the police that I had published the current website and that I initially had ownership and control of it before transferring control to a third party would have been symbolic, not actual or physical because I was in custody at the time and did not have access to the internet - it would have been impossible for me to be the person who published and had control of the website at that time.

And finally, contrary to the Crown and the court's assertions that this was the first time I had raised the possibility that a third party had actually put the current website online - Not me - I had actually alluded to exactly that when I cross examined VPD Det. Jennifer Fontana at my trial in Provincial Court file 244069-6-13 (BCCA file CA46979) on 2020-08-19 (CA46979 TR p37 l21-31).

Grounds of Appeal (cont.)

5. The trial judge erred in finding my testimony that it was easier to say to the police I had "transferred ownership and control of the website to a third party," than to say "a third party put the current website online without my involvement", not credible because, according to the judge, it is just as easy to say one as the other.

However, it had been my experience, in conversations with others, that saying I transferred ownership and control to a third party was generally accepted without further inquiry, particularly since the police enter the conversation with the assumption that I own and control the website anyway (if you "admit" to something the police already assume/believe they don't generally pursue the questioning any further), whereas saying my friend put the website online through

Grounds of Appeal (cont.)

a third party without my involvement, generally lead to more follow up questions requiring more explanation: the fact, that is even what happened when I testified. For that reason, it is clearly true and correct to say that the explanation that I had transferred ownership and control to a third party is significantly easier to say.

6. The trial judge erred in making numerous erroneous assumptions and/or inferences regarding critical parts of my testimony, rather than requesting clarification or further explanation. The judge should have known that as a self-represented, in-custody defendant I may not have been aware of what additional, unstated information may have been helpful for the court or required for me to make full answer and defense. I believe, when dealing with a self-represented defendant the court should not make ANY inferences or assumptions regarding the defendant's statements - particularly the statements made by the self-represented defendant while giving testimony. The self-represented defendant may not be aware that information which he unknowingly takes for granted and therefore inadvertently failed to state may not be obvious to the court or the other parties.

Grounds of Appeal (cont.)

Those erroneous assumptions and/or inferences were not made apparent until the judge read her Reasons for Judgment and Reasons for Sentence, by which point it was too late for me to clarify or further explain.

7. The trial judge misapprehended my testimony about taking back control of the website when my probation expires - I testified I would either do that if the current owner will release it to me OR if not then I would start a new website. The judge erroneously found that my statement that I would take back control of the website was evidence that I maintained some control over it, however that only works if you only consider a particular fragment of my statement (that I intend to take back the website) and deliberately ignore the other relevant and critical parts of the statement (if the current owner releases it to me; and, if not, then I would create a new site).

When taken in it's entirety my statement did not suggest that I maintain any control or influence over the website.

Grounds of Appeal (cont.)

8. The trial judge erred in finding I had sufficient opportunities to present the email I had sent to editor@desicapucano.com requesting they take down the website.

The judge found that at the time of my arrest I could have provided the police access to the email. However, what the police were requesting of me - the only option they presented me - was to give them the passwords for my phone and laptop so THEY could locate the email. However, providing them the passwords would have given them full access to all of the data and information on the devices. I believe the intentions of the police were to gain access to my devices to try to find incriminating evidence on them - NOT to access and verify the email I sent editor@desicapucano.com. That belief is supported by Det. Dent's testimony that they put no real effort into obtaining the email. Moreover, as discussed in the trial, "gmail" is an IMAP based service which means the messages are stored on the server, not on the user's device. So even if I had provided the police my passwords, giving them full access to my laptop and phone, that would not necessarily have given them access to my

Grounds of Appeal (cont.)

email account or more specifically, to the email I sent to editor@desicopeans.com on 2021-08-13.

The judge found that I could have used my laptop, which was in police custody and which Det. Dent had brought to court for the trial, to access and present the email in the court room, during the trial. However, it is my understanding, based on Crown Counsel's statements to me, that by doing that it would be opening the laptop to further inspection by the police and Crown and the court may have ordered me to provide Crown the passwords for it, providing the police full access to it. As discussed during the trial, the laptop runs Linux, but also the Linux partitions are encrypted so the VPD's Digital Forensics Unit had been unable to access anything on the laptop other than the unused Windows partition. It was my understanding, from Crown, that booting, logging into, and accessing content on the laptop as part of the trial could result in the court ordering me to make the encrypted partitions of the laptop accessible to the police and/or Crown so they could prepare a cross examination.

The judge had erroneously believed I had access to the

Grounds of Appeal (cont.)

internet, and therefore to my email, from within NFPC.
For that reason, she believed that at any point over the past 6 months, while I've been detained at NFPC, I could have forwarded a copy of the email to Crown or the police. But that was simply wrong - from the moment of my arrest on 2021-08-17 until now I have been in custody with absolutely no access to the internet or to my emails.

Presumably I will be released from custody before the LSS and section 684 applications are completed so I will be able to include, as new evidence which was not available to me at the time of trial, the email and possibly other supporting artefacts which I was not able to obtain prior to trial as a result of being in custody and having no access to them.

9. The trial judge erred by not allowing me to confront the witness, Det. Dent, with specific clips/segments from the audio/video recordings of his 2020-09-17 interview of me. I explained to the court the reason I wanted to confront Dent with the clips was to show the significant discrepancies between how my statements were made

Grounds of Appeal (cont.)

in the interview and how Dent misrepresented them at the subsequent trial. My intention was to show that Det. Dent had a clear history of misrepresenting relevant facts and deliberately misleading the court when giving testimony in my prior trial.

10. The trial judge erred in accepting Det. Dent's testimony over mine in matters where there was a dispute or discrepancy between Det. Dent's testimony and mine. On cross examination I had confronted Det. Dent on two specific instances of him contradicting himself in his testimony in my prior trial. Those two instances, together with the audio/video evidence showing that Det. Dent clearly and deliberately misrepresented my statements to the court in that prior matter should have been sufficient for the judge to question Dent's credibility as a witness. In addition, even Det. Dent himself testified that he has never encountered any evidence and has no reason to believe I have ever been dishonest in any of my legal proceedings. Yet in almost all matters where there was a discrepancy between Dent's testimony and mine, the judge accepted Dent's testimony over mine.

Grounds of Appeal (cont.)

11. Such further grounds as I may advise and this Honorable Court may permit, I believe upon reviewing the transcripts and the judge's Reasons for Judgment and Reasons for Sentence further grounds will be identified.