

**File No: 244069-10-BC
Registry: Vancouver**

In the Provincial Court of British Columbia

REX

v.

PATRICK HENRY FOX

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

BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel:

**T. Laker
R. Elias**

Appearing on his own behalf:

P. Fox

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

May 15, 2023

[1] **THE COURT:** I found Mr. Fox guilty of one count of breach of probation. Mr. Fox has been in custody since May 16, 2022. Crown seeks a sentence of 18 months, which is almost a sentence of time served -- tomorrow it will be a sentence of time served -- followed by three years of probation and an order that Mr. Fox return the laptop and materials he has obtained from Crown in relation to this prosecution.

[2] Are you hearing me, okay, Mr. Fox? I see you leaning forward.

[3] **THE ACCUSED:** Somewhat. It's a little bit choppy. It keeps breaking up.

[4] **THE COURT:** Oh, really.

[5] **THE ACCUSED:** Yeah.

[6] **THE COURT:** I wonder if I -- is it better if I talk this way?

[7] **THE ACCUSED:** Yes. Now you're very clear, yes.

[8] **THE COURT:** Is that more clear, okay?

[9] **THE ACCUSED:** Oh, yes, very much. Thank you.

[10] **THE COURT:** Okay. Mr. Fox was convicted of criminal harassment of an ex-spouse in 2017, and sentenced to three years' jail followed by three years of probation. This is his fifth trial for breach of probation. Mr. Fox was convicted of two counts of breach of probation in June 2020, and sentenced to 12 months in custody, followed by 18 months of probation. Mr. Fox was convicted of one count of breach of probation in August 2020, and sentenced to six months' jail followed by six months' probation. Mr. Fox was convicted of one count of breach of probation in April 2021, and sentenced to 16 months' jail followed by one year probation. Mr.

Fox was convicted of one count of breach of probation in February 2022, and sentenced to 12 months' jail followed by three year's probation. Mr. Fox did not take a position of how much time in jail he should receive for this offence. He did not disagree with Crown.

[11] Crown says the previous convictions for breach of probation are aggravating factors, and there are no mitigating factors here. I agree with that Crown submission, but I also have regard to the principle of restraint, and the fact that I found Mr..Fox guilty of one count of breach of probation. In my view, the fit sentence and the sentence I am going to impose here is a term of 15 months' jail. That is, the jail term that I would have imposed before granting credit is 15 months jail. I am going to credit ten months of the time Mr. Fox has spent in custody at one and a half days per day. The sentence I am imposing today is one day jail with credit for 15 months' time served. That will be followed by three years of probation.

[12] The conditions of probation will be the following: These are statutory conditions, Mr. Fox. Keep the peace and be of good behaviour. Appear before the court when required to do so by the court. Notify the court in advance of any change of name or address and promptly notify the court of any change of employment or occupation. Do you understand those conditions?

[13] THE ACCUSED: Yes.

[14] THE COURT: Next condition, you shall have no contact or communication, directly or indirectly, with D.C. or any of her friends, relatives, employers, or coworkers. Do you understand that condition?

[15] THE ACCUSED: I understand that. I -- I do have a bit of a concern, though, because we have a child in common together. So that condition prohibits me from having any contact with our son, as well.

[16] CNSL T. LAKER: What we understand is that Mr. Fox's son is 20 years old now. So there would -- Pardon me?

[17] CNSL R. ELIAS: Approximately.

[18] CNSL T. LAKER: Approximately. So he -- there would not need to be any contact with -- with D.C. about their son. However, the term that relates to relatives. The only -- the only issue that I -- that I have here, Your Honour, is that we don't know whether or not the son wants any contact with his father. But if Your Honour is inclined to provide an exception as it relates solely to the son, I don't take any position with -- with regards to that. I'm -- I'm afraid I don't actually know Mr. Fox's son's name, however.

[19] CNSL R. ELIAS: G.

[20] CNSL T. LAKER: G.

[21] THE ACCUSED: G.T.

[22] CNSL T. LAKER: T.

[23] THE ACCUSED: It's -- yes.

[24] THE COURT: G.T.? How do you spell T.?

[25] THE ACCUSED: [Name omitted]

[26] THE COURT: T.

[27] THE ACCUSED: Just like -- same as [Name omitted], yeah, the comedian.

[28] THE COURT: Okay. And how old is your son, Mr. Fox?

[29] THE ACCUSED: Twenty-one.

[30] THE COURT: Twenty-one.

[31] THE ACCUSED: No, 22, sorry. Twenty-two, sorry.

[32] THE COURT: Okay, all right. Crown is proposing that there be an exception to that condition?

[33] CNSL T. LAKER: I think that's reasonable. However, Mr. Fox should -- well, I'm -- I'm sure he would be well aware of the fact that any -- any indirect contact, but he's still prohibited from having any indirect contact with D.C. --

[34] THE COURT: Of course.

[35] CNSL T. LAKER: -- via the son, obviously. Just to -- just so he is well aware that that still would be a requirement.

[36] THE COURT: Okay. Condition 5 will read, you shall have no contact or communication, directly or indirectly, with D.C. or any of her friends, relatives, employers, or coworkers. Then the exception is, you may have contact or communication with your son, G.T.

[37] CNSL T. LAKER: Judge Denhoff's order is a little bit contradictory on that -- on that front currently, so Mr. Fox should just be aware of that.

[38] THE COURT: I am sorry. I am not following.

[39] CNSL T. LAKER: Well, Judge Denhoff's order, which is still in effect for --

[40] THE COURT: Oh, I see what you are saying.

[41] CNSL T. LAKER: -- a couple of years. Yes.

[42] THE COURT: I see what you are saying. So the order of Judge Denhoff is still in effect and it does not have this exception. So either you or the Crown, as we have been discussing, can apply to vary a condition of probation. It may be, depending on what the Crown decides to do about Judge Denhoffs order. Crown quite fairly and properly is asking me to alert you to that fact. There is a conflict there. You should apply to vary that or Crown should apply to vary that, just so your two probation orders are consistent, okay?

[43] THE ACCUSED: Okay.

[44] THE COURT: Next condition, 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 D.C. or any of her friends, relatives, employers, or coworkers.

[45] Those are the conditions of probation that I am imposing, Mr. Fox.

[46] With respect to the victim fine surcharge, that is mandatory.

[47] CNSL T. LAKER: I don't believe Mr. Fox is very likely in a position where he can pay in light of the fact that he's been in -- in jail for the past year. So --

[48] THE COURT: I can waive it for financial hardship reasons. is that something that you would be asking me to do, Mr. Fox?

[49] THE ACCUSED: Yes, please.

[50] THE COURT: Crown is suggesting do that. Okay, I will waive the victim fine surcharge in this case and with respect to the Order, so that is the remaining fact here, so the Order is that the accused, Patrick Henry Fox, will immediately return the laptop, hard drive, and written materials provided to him by Crown counsel when Mr. Fox has been sentenced in this case, prior to being released from custody, and I further order that this return shall be to the warden, or his or her designate, prior to leaving the provincial correctional institution from which he is being released.

(REASONS COMPLETED)