

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

JOSEPH O'SULLIVAN MARTINEZ

R E A S O N S F O R S E N T E N C E

BEFORE THE HONOURABLE MR. JUSTICE LIBMAN

On October 1, 2021, at 60 Queen Street, TORONTO, Ontario

APPEARANCES:

A. Yorgiadis

Counsel for the Crown

B. Goldman

Counsel for Joseph O'Sullivan Martinez

**ONTARIO COURT OF JUSTICE**  
**T A B L E O F C O N T E N T S**

Reasons for Sentence

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- Libman, J. (Orally)

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1.  
R. v. Joseph O'Sullivan Martinez  
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FRIDAY, OCTOBER 1, 2021

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R E A S O N S F O R S E N T E N C E

5 LIBMAN, J. (ORALLY):

10 [1] Mr. O'Sullivan Martinez has entered guilty  
pleas to nine matters. They may be described in  
general as involving assaultive behaviour in  
relation to TTC, the property, individuals who  
were doing nothing other than minding their own  
business, taking public transit, and being  
exposed to the most vile and hurtful language,  
exacerbated by being spit on on each and every  
15 occasion. All the while this gentleman was  
subject to court orders, two for probation and  
one for bail at the time.

20 [2] On the other hand Mr. O'Sullivan Martinez  
has always accepted his responsibility, has  
intended from the outset to plead guilty and not  
taking up court time, making the victims having  
to come forward and testify further, and has  
demonstrated history at least going back to 2016,  
25 where issues of paranoia, a lack of support have  
landed him to be treated both at CMHA, and when  
no longer family support was available to him as  
Mr. Goldman pointed out, he then commenced a  
criminal record, each entry of which is for  
30 assault but for one. My task now is to determine  
what is an appropriate and fit sentence, having  
regard to the circumstances of

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Mr. O'Sullivan Martinez, and the circumstances involving the commission of the offence.

5 [3] As I have noted five of the nine counts that he pled guilty to all involved women who were either waiting to take transit or were actually on transit, however, in the course of his accosting them and approaching them in a completely unprovoked way, notwithstanding his comments of paranoia, he not only spit on the victims but in a number of cases uttered hateful and hurtful racial slurs, particularly directed to the Asian community. Although not all of the victims appear to be members of that community, they all in common are women, and their victim impact statements details a profound effect that these comments have had on them.

10 [4] The defendant's record has been made Exhibit Number 1. I have read each of the three victim impact statements that have been tendered before me. They indicate, for example, the heightened anxiety that these women feel. Ms. Dela Reyna indicating stepping out of her home becomes an anxious endeavour for her. Ms. Vaeha has commented about the humiliating and disgusting impact that being spit on has had on her and how it has impacted her in taking the TTC, how there is a sense of nervousness about it. And Ms. Moretto has commented in her statement to me the manner in which it has impacted her, being fearful of being a woman alone taking transit.

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5 [5] In addition to these three victim impact statements, Mr. Chan has shared a very thoughtful and lengthy community impact statement given on behalf of the Chinese Canadian National Council for Social Justice. He has detailed in a very eloquent way the different ways in which members of the community have been impacted by these events. As he described it, there has been an emotional toll that it has taken, there has been a physical impact to them, an economic impact, and there has also been a sense of lack of security that individuals in the community feel. He has noted, for example, how all of these incidents occurred in public, as if there is no space that anyone can be feeling safe in.

10 [6] The Crown has indicated to me that its position is that a one year sentence would be appropriate. She has arrived at this calculation of noting that the defendant has served just over seven months of pre-trial custody, 228 days, and accordingly a further four-and-a-half-month sentence ought to be given now. That should be followed by a two-year probation order, as well as a DNA order and an order for ten years prohibiting the defendant from being in possession of any weapons or explosive substances or the like. She states that specific and general deterrence ought to be emphasized in the court sentence. Also, there has been reference to a CMHA report issued on August the 30<sup>th</sup> of 15 2021 by Dr. Elly, noting the defendant's

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background and suffering from paranoia and being on the spectrum of schizophrenia.

5 [7] His criminal record and related entries are aggravating factors in her view. The use of racial slurs not being uttered for the first time. She has made reference says the Crown to Parliament's statutory factor of hate crimes being recognized and being deserving of enhanced punishment. She has noted the impact of the racial slurs on the victims and that all of the victims were women. The Crown has noted as well that spitting on a stranger, while highly demeaning and humiliating at the best of times, has been heightened as it has occurred during a pandemic. She does note by way of mitigation the defendant should be given credit for pleading guilty, accepting his responsibility, and sparing the victims of further need to come forward.

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[8] Mr. Goldman in his thoughtful comments on behalf of his client has noted that his client is still a relatively youthful offender, he is 26 years old. He has no children. He has worked in the landscaping industry. This matter was always on the resolution track but had to await the completion of the CMHA report that has been referred to.

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[9] Mr. Goldman has gone through the history of his client and he has noted that the record which started relatively recently corresponds to the

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defendant losing the support of his family, when they stopped bringing him to the hospital and essentially turned from the difficulties that he posed to them. Then unfortunately the defendant then was able to act out in public, and unfortunately went to assaulting members of the public. He notes, however, this is reflective of his deteriorating mental health condition. It was not motivated by racial hatred. Mr. Goldman has noted that there is no political animus or racial animus that the defendant has. As he put it, there is no politics and no ideology behind this. He ought not to be punished for his sickness and he notes, in fact, that that is precisely why the proceedings have occurred today in our Mental Health Court.

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[10] Mr. Goldman takes the view that this defendant has essentially served his sentence. Seven months is more than a sufficient sentence. Indeed, in his view, having regard to the relatively short periods of time that the defendant has served, a sentence in the range of two to three months would be appropriate, a robust probation term in the area of one year and not two as sought by the Crown would be appropriate. The view of the defence is that what this individual needs more than anything is follow-up within the system so that he is given support, he would benefit from a case worker, and that if he could be essentially kept out of going into crisis, he would not act out in public. He

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5 specifically takes issue with one of the terms of  
probation recommended by the Crown, which was as  
I understand it, it would not be an outright  
prohibition of the defendant using the TTC, but  
not using the TTC as it relates to subway  
stations or subway services.

10 [11] The defendant was given the opportunity to  
address the court. Mr. O'Sullivan Martinez, in  
what I take to be a sincere and genuine comment  
to not only the court but indeed to the victims,  
expressed his apologies, has stated that he felt  
remorse, is willing to change his way and become  
a better member of the community. He  
15 specifically indicated, to give him credit, that  
he wished to apologize to the Chinese Canadian  
Community. He assured them that this was not  
intended to be a hate crime but rather, as he put  
it, due to his mental conditions. He expressed a  
20 willingness to make his sentiments in writing and  
indicated that he would not be back before the  
court again.

25 [12] I have indicated to set out then what are  
the relevant factors that are put before me as  
being aggravating factors and those that are  
mitigating. The overriding principle of  
sentencing as set out in our Criminal Code is the  
principle of proportionality. That was added to  
30 our Criminal Code in 1996 and has remained since.  
In that Parliament has indicated that a sentence  
ought to be proportionate to the gravity of the



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offence and the degree of responsibility of the offender.

5 [13] Applied in bold terms in relation to the matter before me, this is a series of exceedingly serious crimes of concern to the community, not only the Chinese members of the community, not only to the women of the community who were impacted, but to all members of the community. 10 The conduct that this defendant engaged in is antisocial, it impacts on everyone. It produces a feeling of unsafeness and anxiety for all of those who are in public. Those aggravating and serious components of the seriousness of the 15 offence have to be balanced with an individual who clearly for a period of time has suffered from significant mental health concerns.

20 [14] He does comment to me today in terms of qualifying some of the disturbing conduct, indicated his feelings of paranoia, and how he acted out when individuals were around him. It appears on some of the incidents members of the public quite rightfully came to the assistance of 25 the victims and were even filming his conduct, and attempting to contact the authorities.

30 [15] I want to reference then the other factors of sentencing that are important to give effect to. There is, as the Crown has noted, the fact that this qualifies as a crime motivated by hate based on race, national or ethnic origin, noting

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5 that a number of the victims were of the Asian  
community, and also all of them were women,  
gender is also implicated. Also relevant,  
however, to the credit of the defendant are these  
factors, that the court imposing a sentence must  
be mindful of the principle of totality. I am  
sentencing this man for nine counts that occur  
within essentially less than a ten-day period of  
10 time in April of 2021. Accordingly, I have to be  
mindful of the overall sentence that I impose.  
Though I might have been inclined to impose a  
longer period of time for any one of these  
matters, I have to take into account the  
principle of totality or consecutive sentences as  
15 identified in 718.2(c) of the Criminal Code.

[16] I am mindful as well that as subsection (d)  
refers to, an offender ought not to be deprived  
of their liberty if less restrictive sanctions  
20 may be available, or to put it in another way,  
the principle of restraint. And, finally, as  
counsel have referenced, the step principle is  
also relevant. I need to take into account that  
this individual has not served what appears to be  
25 more than a 60-day prior sentence on any of the  
assault sentences that he has served.

[17] Taking all of these matters into account  
and giving the matter my very best consideration,  
30 I am of the respectful view that the principles  
of deterrence and denunciation need to be given  
the primary emphasis. I am mindful that Mr.

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O'Sullivan Martinez has a diminished responsibility, a diminished understanding of his conduct given his state of paranoia. That said, in my respectful view, it is important to send out a very clear message when individuals in our community, particularly those who are members of an ethnic community, in this case of the Asian community, and those who are all women, that they have a right to look to the courts for protection, that deterrent and denunciatory sentences will be imposed when their wellbeing is impacted by this type of what can only be called disgusting, degrading and humiliating conduct.

[18] I am very certain Mr. O'Sullivan Martinez that if someone were to lower a mask in your presence, spit on your face or on any part of your body, accompanied by a racial slur in regard to your background, you would be rightfully offended and feel very much victimized. These women precisely feel that way. You do not have the right to take away from them their safety, their anxiousness, that when they walk outside and particularly go onto TTC property, that they will be assaulted in the manner that you did. There were five assaults here that occurred. I am of the respectful view, notwithstanding the very thoughtful comments of your lawyer, that a period of jail was required for each.

[19] I am of the respectful view that overall a sentence in the range of one year would have been

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5 appropriate for you. You have served the  
equivalent of over seven months already. A  
sentence from today of four months would be  
accomplished by essentially imposing 15-day  
sentences on each count. Nine times 15 would  
take you to just, to about 145 days. However, I  
have reflected further on the fact of your guilty  
plea that these offences, as you have not only  
explained them, but I have read in Dr. Elly's  
10 report, also bears some diminished responsibility  
on your part. You were suffering at the time  
from conditions of paranoia that impacted your  
perception of what occurred. I have further  
reflected on that, and I have determined  
15 accordingly that the period of jail that I should  
impose today ought to reflect that.

20 [20] In sum then I decided that on each of the  
nine counts that I am to sentence you on today, I  
am going to impose sentences of ten days  
consecutive, meaning that I am sentencing you  
today to a further period of three months or 90  
days. I have arrived at that calculation by  
imposing ten-day sentences on each of the nine  
25 counts. As I have indicated, I would have been  
inclined to have imposed a sentence of more than  
that and had the total sentence approach one  
year, but for the factors that I have referred  
to.

30 [21] So, by way of sentence of imprisonment,  
sir, there will be a further period of 90 days

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5 based on a ten day sentence on each of the nine counts. I had taken into account in that regard the principle of totality, the fact that it represents a significant but not overarching step up from your previous sentence, and I am also being mindful that I have determined no punishment short of jail would be appropriate.

10 [22] Mr. O'Sullivan Martinez, I want to indicate as well by way of other orders and then we will unmute you and hear any comments that the lawyers wish to make by having me clarify. I think you would benefit from a period of lengthy probation. I am mindful of the fact that you were subject to 15 two probation orders at the time. A further period of two years' probation in my view would also give the community further protection and would also assist you.

20 [23] The terms of probation that in my view are appropriate to add are to ensure that you have no contact with any of the named complainants. So, you are not to have any contact with them, they were all strangers, so I am confident that you 25 should have no difficulty in doing that. You would certainly benefit from counselling in any of the areas that have been identified whether for substance abuse or continuing the treatment at CMHA for schizophrenia or paranoia. It is 30 appropriate that you not possess any weapons as defined by the Criminal Code. In addition, sir, to not having any contact with the victims, I do

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not want you to attend at any address known to where any of them would be.

5 [24] Your lawyer has asked that I not impose a term that would prohibit you from taking the TTC. The Crown has proposed a term that would prohibit you from, as I understand it, taking the TTC underground or being on a subway. I am of the respectful view that to impose a term that would prohibit you from being on the TTC it would be punitive, and it would impact on your prospects for employment.

10 [25] I have arrived at this conclusion for a number of reasons that I want to explain. To begin with, the recommendation made by the Crown is simply unworkable and not appropriate for the facts of the case. I note that it involved your also going onto the TTC property, we have heard by either going over the turnstile or getting into altercations in that way. Having a prohibition that you essentially not be on a subway it would not address your ability to ride either a bus, a streetcar or other transit. In addition to that I am satisfied, as Mr. Goldman indicated, that it would have the effect of essentially rendering it impossible for you to make a living and, therefore, be a contributing member of our community.

15 [26] Having said all of that, sir, I want to make very clear to you that none of this would

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prohibit the authorities from seeking to seek  
such an order in the future. I want you to be  
mindful, recognizing that there are some mental  
health challenges that you have, that whether you  
are in a transit vehicle above the street or  
below the street, it is important that you  
conduct yourself appropriately and to in  
particular be taking medication.

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[27] As you know being in violation of a  
probation order it would constitute a criminal  
offence, indeed you have pled guilty to that  
today, so it is very important that you be  
mindful of the fact that for the next two years,  
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based on the order that I have imposed today, and  
any order that was imposed earlier, that you  
follow the terms of.

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[28] The two other orders that I am going to  
make and then I will conclude, sir, to review  
everything with everyone, it is appropriate that  
a DNA sample would be taken from you. I  
understand that you have given a sample on a  
prior occasion, and if the authorities confirm  
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that then it will not be retaken, but clearly the  
public interest is such that a DNA sample be  
taken from you. That you not possess any weapons  
over a ten year period, please. That will also  
give some measure of protection to the public.

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[29] I am finally going to indicate before I  
then call upon the Crown and your lawyer to go

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over the orders that I have made, the victim surcharge provisions of the Criminal Code would amount here to a \$900 surcharge being imposed against you, that would be nine times \$100. I am certainly understanding, due to your modest circumstances and mental health challenges, that that would constitute a significant hardship for you. accordingly, I have exercised my discretion to waive the victim surcharge on your behalf so that you are not facing a \$900 surcharge due to your nine findings of guilty today.

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[30] So by way of summary before asking the Crown if she has any matters for me to review, I have determined that a period of ten days each on the nine counts before me would be warranted, that amounts to a further period of 90 days that I have imposed today. It will be followed by two years of probation, a DNA order, a weapons prohibition order for ten years, and I have waived the victim surcharge.

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[REDACTED]



19.  
Certification

Certificate of Transcript  
Evidence Act, Subsection 5(2)

5 I, Elaine Paquette, certify that this document is a true and  
accurate transcript of the recording of October 1, 2021, in the  
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10 which has been certified in Form 1 by Rosina Pisani.

15 June 25, 2022

Date



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Elaine Paquette  
20 Authorized Court Transcriptionist

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