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R. v. Earl Hermanus
Reasons for Sentence
- Latimer, J.

THURSDAY, APRIL 22, 2021

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

5 LATIMER, J. (ORALLY):

[1] Your matter was pre-tried on an earlier date which is to say Mr. Hayward and myself and the Crown had a conversation about your case, your circumstances, in aid of trying to determine what an appropriate sentence would be, and I think we have arrived at an appropriate sentence.

EARL HERMANUS: Yes.

[2] There are concerning aspects of what happened and there are what we call mitigating aspects.

EARL HERMANUS: M'hmm.

THE COURT: What is mitigating is your plea, the expression of remorse that I see in the documentation Mr. Hayward filed, as well as what I have heard from you and what is inherent into the plea. The fact that you have taken the anger management counselling and you are continuing with the CMHA counselling is important to me and that goes to your credit. The obvious aggravating feature is these hateful comments that were made during this interaction, that is a significant aggravating feature.

[3] The range of sentence available to this offence would probably start with a conditional

2.
Reasons for Sentence
- Latimer, J.

5 discharge. That is not what is being proposed today and I believe that addresses what is a significant aggravating feature. Notwithstanding your plea and all the other things I have said, in my view entering a conviction is appropriate and that is what I intend to do.

10 [4] The sentence is as follows, is a suspended sentence. You will be on probation for 18 months. You are going to get this in writing, I am going to review it out loud right now, but when we are done we are going to send it to Mr. Hayward and he is going to provide it to you, okay, Mr. Hermanus?

15 EARL HERMANUS: Yes, Your Honour.

20 [5] You are going to report by telephone in the next three business days to probation and thereafter as required. You are not to have any contact or communication with Junior Turner or Holly Nonis.

EARL HERMANUS: Yes, Your Honour.

25 THE COURT: I am not inclined to have any condition about proximity, Madam Clerk, because of the living circumstances. I am essentially adopting what was on the undertaking, that seems to have worked so far.

30 [6] You will attend and actively participate in all counselling or programming as directed by probation, in particular for counselling related to anti-racist programming.

3.
Reasons for Sentence
- Latimer, J.

EARL HERMANUS: Yes, Your Honour.

5 [7] I am making what we call a s. 110 weapons prohibition. That prohibits you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, for 10 five years from today. I don't really think you have any of these things, I am prohibiting you of having them...

EARL HERMANUS: I don't have any of that.

THE COURT: ...going forward.

15 [8] I have considered the request for a DNA databank order. In the vast majority of cases we are making these orders.

EARL HERMANUS: M'hmm.

20 THE COURT: The assault is a reason to make it. I weigh that against your prior lack of a criminal record, your privacy interest. What I find compelling that in the immediate 25 circumstances is the requirement of these samples to - the requirement to have attendance at a courthouse during this particular portion of the pandemic, I believe that is relevant to your privacy interest, it is not determinative, but in the circumstances it tips the balance against 30 making the order, and I decline the DNA databank order in this particular case.

EARL HERMANUS: Yes, Your Honour.

THE COURT: There is a fine surcharge of \$100, Mr. Hayward, is there any need to consider

4.
Reasons for Sentence
- Latimer, J.

setting a time to pay or doing anything otherwise with that count?

MR. HAYWARD: Well considering he is on ODSP, if you are able to waive it that would be my first request. If you feel that you are not able to do that or willing to do that, then I would ask that it be extended six months in order to pay.

THE COURT: Any submissions, Ms. Muller, on this point?

MS. MULLER: I would leave it to Your Honour's discretion.

THE COURT: Given that you are a caregiver for your parents I will waive it in the circumstances. Is there anything I have failed to expressly consider from either sides with respect to this?

EARL HERMANUS: No, Your Honour.

MR. HAYWARD: No, fine with the defence.

MS. MULLER: No, thank you, Your Honour.

[REDACTED]

6.
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Evidence Act, Subsection 5(2)

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5 accurate transcript of the recording of April 22, 2021, in the
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October 8, 2021

Date

Elaine Paquette
Authorized Court Transcriptionist

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