

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

M.H.

R E A S O N S F O R J U D G M E N T

BEFORE THE HONOURABLE MADAM JUSTICE REDGATE

On May 20, 2022, at GUELPH, Ontario

**INFORMATION CONTAINED HEREIN IS
PROHIBITED FROM PUBLICATION PURSUANT
TO S. 517(1) OF THE CRIMINAL CODE OF CANADA**

APPEARANCES:

J. Forward

Counsel for the Crown

R. Marbarzad

Counsel for **M.H.**

(i)
Table of Contents

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

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Reasons for Sentence

Page 01

- Redgate, J. (Orally)

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FRIDAY, MAY 20, 2022

...

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

5 REDGATE, J. (ORALLY):

[1] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
10 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
15 [REDACTED]
[REDACTED] And then finally,
the two offences that involved both an
aggravating factor as they appear to be either
racially or ethnically based, you were causing a
20 disturbance on March 28th by interfering with [REDACTED]
[REDACTED] **Comp. 3** as she was walking in her community,
yelling at her to go back to her country, and
blaming her for bringing the Corona virus to
25 Canada. That is particularly concerning as that
victim was of Asian descent, and your comments
were ethnically and racially motivated. And then
finally, the assaults in the park on May 11th of
2021, again, using language, particularly
30 concerning, and the spitting in the direction
which and but for good fortune did not hit the
victim in that circumstance.

2.
Reasons for Sentence
- Redgate, J.

5 [2] In addition to the facts before the court, I also have a very eloquent victim impact statement by [REDACTED] articulating the devastating impact of your actions, and she quite rightly points out that nobody in our community should be subject to the racism and discrimination that you displayed by your actions with her on that date. Your actions not only impacted her on that date but have left a profound lasting impact that has caused her ongoing fear, safety, causing her to question her identity and feeling like she does not want to be in her skin, and that is particularly impactful for this court, and it is a very well written victim impact statement.

10 [3] I also have, although [REDACTED] **Complainants** declined to provide a victim impact statement. I still have the fact that they remain fearful, but they do not understand your actions on that date, and that as a result of your actions they wish to have no contact with you and exist in peace at the park that they frequent, which tells me that those actions had an understandably lasting impact on them.

15 [4] I have before me a joint submission that I have to consider. Both counsel are jointly advocating for a suspended sentence, followed by a period of probation, with both protectionary and rehabilitative terms. I have to consider whether or not that sentence addresses the fundamental purpose of sentencing, which is to

3.
Reasons for Sentence
- Redgate, J.

contribute to the respect for the law, and the maintenance of a just, peaceful, and safe society by imposing just sanctions.

5 [5] In deciding whether the sentence is fit, I have to consider both the mitigating and aggravating factors. To your credit you have accepted responsibility. You have entered guilty pleas which alleviates the Crown from having to prove the charges beyond a reasonable doubt in court. It saves considerable court time, and also saves the victims in these matters from coming forward and having to relive those offences in a very public forum.

10 [6] You are very youthful, you had your whole life ahead of you, and I hear in your allocution today that you have very good intentions to become a contributing member of society. You have indicated that you have career aspects, though have not yet embarked on that career. You have a lot of family support as evidenced by the two letters that are before the court. I see through your mother's letter that you have been assisting and taking your brother to school, getting groceries, and both your parents and your sister have indicated that you have become a new person, you are taking care of yourself and are being kind to them, and that is a remarkable change they have seen in you over the past year.

15 [7] I also heard through your counsel, and

4.
Reasons for Sentence
- Redgate, J.

5 through the doctor's letter, and also through
your allocution before the court today that you
have experienced some issues with substances and
mental health. You have addressed by your own
initiative the substance issue that was impacting
you negatively, and that you are at the beginning
of your rehabilitative journey when it comes to
addressing the mental health issues that you have
been experiencing.

10 [8] All of those factors weigh in your favour,
but I have to balance those with the aggravating
factors that are before this court, and these are
deemed statutorily aggravating offences, at least
15 the two of them, in that they were racially or
ethnically based. I considered them to be
particularly serious in light of the facts that
you accepted. I agree with Ms. Forward there is
a strong need for denunciation, and the victim
20 impact is significant, and they were devastating
on the victims as a result of your actions.

25 [9] So, the sentence that I impose has to be
proportionate to when I consider the gravity of
the offence and your degree of responsibility,
and moral blameworthiness. I agree with Ms.
Forward's submission that this joint position is
on the very lenient end. I have to ensure that
the sentence sends a message that your actions
30 are contrary to our community values. And to be
clear, our community values are that people are
treated equally. That regardless of your

5.
Reasons for Sentence
- Redgate, J.

5 culture, your race, ethnicity, or skin colour, we are all treated equally, and we deserve to be treated equally. We all have the right to exist in our community in a safe peaceful environment without experiencing the actions that you engaged in on the various dates.

10 [10] I have to ensure that the sentence that I impose would discourage, is severe enough to discourage both you and others from engaging in similar behaviour that you chose to engage in on those four dates. And I also have to consider your rehabilitative journey and ensuring that the objective of protecting the public is satisfied as ultimately by addressing the issues that you and your counsel have flagged will assist in protecting the public going forward.

20 [11] It strikes me that if you are to address the smoking of marijuana, which you have done on your own initiative, but also address the mental health issues, that the probability of having you before the court is significantly less. I take that from the submissions of your counsel, the medical report and your supporting letters which would all support your rehabilitative journey.

30 [12] Ultimately I am satisfied that the joint submission is an appropriate one, although it is a very lenient one in the circumstances. I will suspend the passing of sentence, concurrent on each count before the court, and place you a

6.
Reasons for Sentence
- Redgate, J.

period of probation - how long was the probationary period?

MS. FORWARD: Twelve months.

MR. MARBARZAD: Twelve months, Your Honour.

THE COURT: For a period of 12 months, thank you, counsel. Madam Clerk, I am going to return those to you.

MS. FORWARD: Thank you.

[13] All right, **M.H.**, so during the period of probation you are to keep the peace and be of good behaviour. You have to appear before the court when required to do so, and you have to notify the court or your probation officer in advance of any change of your name or address, and you have to promptly notify the court or your probation officer of any change in your employment or occupation.

[14] You are to report to a probation officer within two working days and after that at all times and places as directed by your probation officer, or anybody who is assisting them, and you have to cooperate with your probation officer. You have to live at a place approved of by your probation officer and not change that address without obtaining the consent of your probation officer in advance.

[15] You are not to contact or communicate in any way, directly or indirectly, by any physical, electronic, or other means, with

7.
Reasons for Sentence
- Redgate, J.

Affected individuals

█. Did I get all of those names?

MS. FORWARD: Yes, Your Honour.

5 THE COURT: Ms. Forward, it struck me that in the
uttering threats there was another involved
party, █, and his father.

MS. FORWARD: I will see if I can find the
father's name, it is also █, but I will see
if I can find it.

10 THE COURT: Okay. There are no exceptions to
that order. Also, you are not to be within 50
meters of any place where you know any of those
people to live, work, go to school, frequent, or
any place that you know them to be. You are not
15 to attend at the Preservation Park, Orin Reid
Park in the City of Guelph.

[16] You are to attend and actively participate
in all assessment, counselling, or rehabilitative
20 programs as directed by your probation officer,
and complete them to the satisfaction of your
probation officer. Ultimately it is up to your
probation officer to direct you to appropriate
counselling. I am going to suggest anti-racism
25 and mental health as areas of concern for this
court, specifically psychiatric or psychological
issues, but ultimately if your probation officer
directs you attend any counselling, you have an
obligation to comply with that direction, do you
30 understand that?

█ M.H. █ : Yes.

8.
Reasons for Sentence
- Redgate, J.

5 [17] You need to sign any release of information forms that will allow your probation officer to monitor your attendance or the completion of any assessments, counselling, or rehabilitative programs, and you have to provide proof of your attendance for any assessment or rehabilitative programs as directed.

10 [18] Counsel, it deviates from the joint submission, but I am contemplating including an order that he either make reasonable efforts to maintain or to seek and maintain suitable work, or attend school, or education, or a vocational training program in an effort to assist him in his articulated goal of being a contributing positive member of this community. Any thoughts, submissions, or concerns?

15 MR. MAKBARZAD: Those are fine, Your Honour.

20 THE COURT: Ms. Forward? All right, and so I will include those two terms. You either have to make reasonable efforts to obtain work, or you have to attend and make efforts towards your education and provide proof of either or to your probation officer. Do you understand that?

25 **M.H.**: Yes.

THE COURT: Counsel, have I covered all of the - oh, sorry.

30 [19] Further, you are not to possess any weapons as defined by the *Criminal Code*, for example, a BB gun, a pellet gun, firearm, imitation firearm, crossbow, prohibited or restricted weapon or

9.
Reasons for Sentence
- Redgate, J.

device, ammunition or explosive substance, or anything that is designed to be used or intended for use to cause death, or injury, or to threaten, or to intimidate a person.

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MS. FORWARD: I may have missed it but did Your Honour include non-attendance terms with respect to each of the victims and the Preservation Park and Orin Park?

THE COURT: I did.

10

MS. FORWARD: Okay, thank you.

THE COURT: Were there specific, other than the two parks that were listed, were there any specific addresses that you wanted me to include?

15

MS. FORWARD: If we have the residence term, I think it is fine.

THE COURT: That was included in the general order then. All right, sir, do you understand all of the terms of the probation?

M.H.: Yes.

20

THE COURT: Any questions?

M.H.: No, I just wanted to say I'm sorry, I didn't mean to hurt them. I am really sorry 'cause every, every night it bothers me, 'cause I'm not that type of person.

25

THE COURT: Okay, thank you.

M.H.: And it bothers me every night.

THE COURT: All right, thank you. I have to warn you, given that you understand, you agree to be bound by all the conditions of the probation order?

30

M.H.: Yes.

THE COURT: I have to warn you that if you are

10.
Reasons for Sentence
- Redgate, J.

5 found to be breaching any terms of the order, you could be charged with further criminal offences, and if found guilty you could find yourself subject to jail time. Do you understand that that is a possible consequence of breaching this court's order?

M.H.: Yes.

10 [20] I have a joint request for a s. 110 order for a period of five years. I am prepared to accede to that request. Sir, you are prohibited from possessing any or all firearms, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or
15 explosive substance, for a period of five years.

20 [21] Ms. Forward also requests on three of the offences before the court DNA. It is a secondary designated offence. Counsel if not in consent on this aspect of the request. It is my test that I have to consider is whether it would be in the best interest of the administration of justice to make the order. When I consider your criminal history and the circumstances surrounding the
25 offence, when I consider that it was racially motivated, I have no hesitancy in ordering that you provide samples of your bodily substance reasonable required for the purpose of the forensic DNA analysis to be used in accordance with the *DNA Identification Act*. Are these GPS charges?

30 MS. FORWARD: Yes.

11.
Reasons for Sentence
- Redgate, J.

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THE COURT: DNA can be taken today?

CONSTABLE: Yes, Your Honour.

THE COURT: Okay. All right, were there any requests that I had not yet addressed?

MS. FORWARD: Thank you.

THE COURT: Anything further from you, counsel?

MR. MARKBARZAD: No, Your Honour.

THE COURT: All right. Additional counts before the court then?

10

MS. FORWARD: Withdrawn, please.

THE COURT: So ordered.

MS. FORWARD: Thank you.

15

CLERK OF THE COURT: The court's indulgence, Your Honour. The 110 order does that attach to the two assaults and the utter threats?

THE COURT: Yes.

CLERK OF THE COURT: And the victim fine surcharge?

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THE COURT: I did not receive a request from counsel that it be waived, 30 days to pay.

CLERK OF THE COURT: Thank you.

THE COURT: All right, I believe that completes your matters then, **M.H.**, thank you.

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M.H.: Thank you, Your Honour.

THE COURT: Thank you, counsel.

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12.
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 May 20, 2022, in the Ontario Court of Justice held at 36 Wyndham Street South, Guelph, Ontario taken from Recording 4611-crtrm#1-20220520-092812-6-REDGATEN which has been certified in Form 1 by Linda Doradea.

10
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February 17, 2023

Date

Elaine Paquette

Authorized Court Transcriptionist

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