

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

V.

NICOLE BAKER

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

BEFORE THE HONOURABLE MADAM JUSTICE McKERLIE

On May 27, 2022, at STRATFORD, Ontario

APPEARANCES:

J. Costain

J. Schiller

Counsel for the Crown

Counsel for Nicole Baker

**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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- McKerlie, J. (Orally)

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FRIDAY, MAY 27, 2022

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

5 McKERLIE, J. (ORALLY):

[1] Nicole Ruth Baker, on Informations 20-1226, 21-422, 21-832, 22-224, and 22-165, you are being sentenced today for five offences that took place between November 29<sup>th</sup>, 2020 and March 6<sup>th</sup>, 2022. On each of the offences, the Crown elected to proceed summarily and you entered your guilty pleas today. The offences are as follows:

15 1. The November 26<sup>th</sup>, 2020 offence of committing mischief by damaging barbecues belonging to an organization called Blue Branch, a value of which did not exceed \$5,000, contrary to s. 430(4) of the *Criminal Code*.

20 The facts indicate that you attended the Quality Inn motel and were flipping over two barbecues that were outside the motel rooms for the use of people staying there. You were observed by police and other witnesses 25 throwing a rake at the motel building. You destroyed the barbecues such that were unusable. You were described as having an overwhelming odour of an alcoholic beverage on your breath, and when you were taken into the 30 cells you were uncooperative. You splashed all the water out of the toilet. You were

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5 taken to a dry cell. You threatened the police that you would urinate and did urinate in the dry cell. You were spitting at police cameras. Your behaviour during that time was out of control.

- 10 2. The April 6<sup>th</sup>, 2021 offence of uttering a threat to Carmondy Gidge to cause bodily harm to Carmondy Gidge, contrary to s. 264.1(1)(a) of the *Criminal Code*.

15 The facts indicate that Ms. Gidge was simply riding the bus home from school. You were intoxicated on the bus. You approached Ms. Gidge, who was wearing what was described as a PRIDE multi-coloured face covering due to Covid. You began yelling at Ms. Gidge and threatened her by stating, "Turn back around, fag, before I throat punch you." The victim was scared. You continued to yell at her, threatening to punch her multiple times. She exited the bus and contacted police. What a terrible experience for somebody just riding the bus home from school to be verbally  
20 attacked in that manner, and particularly with your homophobic comments.

- 25 3. The July 7<sup>th</sup>, 2021 offence of uttering a threat to cause bodily harm to Hailey Goss, contrary to s. 264.1(1)(a) of the *Criminal Code*.
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The facts indicate that the police were dispatched to a Milverton Street address. Ms. Goss indicated that you had approached her dog in the back yard. She asked you, as she was entitled to do, not to touch her dog. You began yelling at her and stated that you would smash her face in. And then to make things more aggravating, you went into the house, returned carrying a cane and reiterated the threat that you were going to smash Ms. Goss' face in with the cane, while tapping the cane in your hand. That type of repeated threat of causing bodily harm is clearly concerning, particularly when you had been arrested and released for a similar count of uttering a threat.

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In between those two dates, the Crown read in facts that on June 20<sup>th</sup>, 2021 you also had police contact. The police were called to the Walmart store. You had watches on your right and left wrists that were Walmart property. You had a handbag, as well as stolen shoes on your feet, all property of Walmart. The value of the stolen items was \$375.

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4. The February 24<sup>th</sup>, 2022 offence of failing to comply with the reporting condition of your John Howard Society Bail Supervision Program.

5. The March 6<sup>th</sup>, 2022 offence of assaulting Constable Merkley, an officer engaged in the

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execution of his duties, contrary to s.  
270(1)(a) of the *Criminal Code*.

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The facts indicate that the police were  
dispatched to attend at a 60 Cawston Street  
address. The police had been asked to remove  
a female, who was yelling and swearing, from  
the premises. You were described as yelling  
obscenities and refusing to leave. The police  
warned you; they told you that you would be  
arrested for trespassing. You refused to  
leave and walked aggressively toward the  
officer. The officer attempted to effect the  
arrest. There was a brief struggle, and then  
once you were grounded, you kicked the officer  
approximately three times in the groin and the  
knee area.

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[2] You come before the court with a prior  
record for a number of offences, including two  
prior convictions for assaulting a police  
officer, and convictions for assault with a  
weapon, mischief, and failing to comply with  
court orders. You have received jail sentences  
in the past. Today, you come before the court  
with 81 days in pre-sentence custody, which  
credited on a 1.5 to 1 basis is the equivalent of  
122 days or approximately four months.

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[3] Counsel jointly submit that based on that  
period of pre-sentence custody, and taking into  
account your guilty pleas during the Covid 19

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pandemic, a sentence approximating the pre-sentence custody would be appropriate, and the focus on a go forward basis would be on probation. Counsel jointly submit that the appropriate period of probation is for two years. They differ in their submissions with respect to the probation terms. The Crown quite appropriately seeks a reporting condition and a counselling condition. Ms. Schiller, on your behalf, advocates for a non-reporting probation order with restrictions in place with respect to contact with the complainants and not attending the Walmart store.

[4] I have considered those submissions. Ms. Schiller indicates that you have struggled with transience, ADHD and depression. She submits that, in her view, a probation order would set you up to accumulate more charges. I have considered that submission. In this case there are a number of different issues, including offences committed while you were under the influence of alcohol, out of control behaviour displayed toward the police, repeated uttering of threats, and the initial utter threat involved a homophobic comment as well.

[5] It is important in those circumstances that counselling be a part of the probation order, and counselling would be the best way to achieve rehabilitation. Rehabilitation is necessary for you to not accumulate further offences of

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violence. So, counselling and a reporting condition go hand in hand, and would be entirely appropriate and entirely necessary given the timing of the offences before the court, the nature of the offences before the court, and the circumstances of the offences before the court, particularly the uttering threat charges. I have considered counsel's submission, but in my view the probation terms advocated by the Crown are not only appropriate, but they are necessary. They are necessary to achieve sentencing principles in the *Criminal Code*, including protection of the public and rehabilitation.

[6] Accordingly, I accept the joint submission of counsel as to the form of sentence and impose sentence as follows. I take it counsel were not expecting to apportion the pre-sentence custody and are seeking a concurrent sentence on all counts, am I correct?

MR. COSTAIN: That was my point of view, yes, Your Honour.

THE COURT: All right.

MS. SCHILLER: Yes, my expectation was concurrent as well.

THE COURT: Okay, so I will deal with the charges chronologically then.

[7] On Information 1226, pre-sentence custody is noted as 81 days, with time credited as 122 days and the term that would have been imposed before credit granted 122 days. So there is a sentence



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of imprisonment today of one day, with two years' probation. The victim surcharge with respect to that offence is waived.

5 [8] On Information 422, the pre-sentence custody is concurrent, with the credit concurrent, one day in custody concurrent, and probation concurrent. There will be a weapon prohibition order under s. 110 of the *Criminal Code* for a period of 10 years that prohibits you from 10 owning, possessing or carrying any firearm, crossbow, prohibited weapon, restricted weapon, explosive device or ammunition for a period of 10 years.

15 [9] There will be a secondary DNA order that requires you to provide samples of bodily substances for DNA data banking purposes to the Stratford Police Service or its designate prior to June 30<sup>th</sup> at 4:00 p.m. When you are released from custody, you will contact the police and make an appointment to attend and provide your samples of bodily substances. You should not be 20 waiting until June 30<sup>th</sup>, but June 30<sup>th</sup> is the deadline. I have given lots of time there just to address housing and stability first and also any Covid issues.

25 [10] On that charge, taking into account the circumstances of the offence and the nature of the homophobic comment that accompanied the threat, I do impose the victim surcharge of \$100. 30

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Taking into account your circumstances, you will have five months to pay that victim surcharge with minimum payments of \$20 per month. I am going to waive the victim surcharges with respect to the other offences, but I think it is important that the victim surcharge be imposed here. I have taken into account your limited circumstances in waiving the victim surcharges on the other utter threat charge, and also in terms of the time for payment.

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[11] Moving now to Information 832, the pre-sentence custody is concurrent, the one day in custody is concurrent, and the credits are all concurrent there. The probation order is concurrent. There will be also a s. 110 order and a secondary DNA order. The victim surcharge is waived.

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[12] On Information 224 for 2022, again, it is concurrent pre-sentence custody and credit, one day custody concurrent, and probation concurrent. There will be a secondary DNA order, and the victim surcharge is waived.

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[13] On Information 165 for 2022, again, pre-sentence custody is concurrent, the credit is concurrent, the one day imprisonment is concurrent, and probation is concurrent. There is a s. 110 weapons prohibition order for 10 years. There is a secondary DNA order, and I waive the victim surcharge on that offence.

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5 THE COURT: Any clarification sought with respect to the ancillary orders, or the sentence imposed? And, counsel, does that accurately reflect the joint submission?

MR. COSTAIN: Yes, thank you, yes.

MS. SCHILLER: It does, thank you.

THE COURT: Thank you.

10 [14] The probation order requires you to comply with the following terms. The length of the probation order is for two years. You are to keep the peace and be of good behaviour. Appear before the court when required to do so. Notify the probation office in advance of any change of name, address, employment, or occupation.

15 [15] You are to report in person to a probation officer by telephone at [REDACTED] within two working days of your release from custody, and after that at all times and places as directed by the probation officer or any person authorized by a probation officer to assist in your supervision. You should call in today while you are waiting to be released. So, report in person to a probation officer by telephone at [REDACTED] [REDACTED] within two working days of your release from custody, and after that at all times and places as directed by the probation officer or any person authorized by a probation officer to assist in your supervision.

20 [16] You are to cooperate with your probation

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5 officer. You must sign releases necessary to permit the probation officer to monitor your compliance, and you must provide proof of compliance of any condition of this order to your probation officer on request. You are to live at a place approved of by the probation officer and not change that address without obtaining the consent of the probation officer in advance.

10 [17] Do not contact or communicate in any way, directly or indirectly, by any physical, electronic or other means with Carmondy Gidge or Hailey Goss, and there are no exceptions to that. The next term, do not attend any place where you know any of the persons named above to live, 15 work, or go to school.

20 [18] Next, there is a non-attendance with respect to the Walmart store. Do not attend the premises or parking lot of the Walmart store at 920 Ontario Street, Stratford. And the next term, do not attend the premises or parking lot of the apartment building at 60 Cawston Street, Stratford.

25 [19] The next term is the weapon term. Do not possess any weapons as defined by the *Criminal Code*, for example, a BB gun, pellet gun, firearm, imitation firearm, crossbow, prohibited or 30 restricted weapon, ammunition or explosive substance, or anything designed to be used or intended for use to cause death or injury, or to

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threaten or intimidate any person.

5 [20] The next term is the counselling term.  
Attend and actively participate in all  
assessment, counselling, or rehabilitative  
programs as directed by the probation officer,  
and complete them to the satisfaction of the  
probation officer for all issues, including but  
not limited to: anger management, alcohol abuse,  
10 and then I will put "offence-specific  
counselling, including the homophobic comment  
accompanying the utter threat charge". Mr.  
Costain, I am open to other wording there, I am  
just trying to think how to word that and maybe  
15 the probation officer will know how to address  
that. Does that cover.

MR. COSTAIN: It does cover it and I certainly  
can't think of anything else I would suggest.

20 THE COURT: Okay, thank you. Any other  
suggestions by you, Ms. Schiller, with respect to  
that wording?

MS. SCHILLER: No, Your Honour.

25 THE COURT: Okay, thank you. And, Mr. Clerk, do  
you want me to repeat that again or was that  
clear?

CLERK OF THE COURT: I think that is clear, Your  
Honour, thank you.

30 [21] Ms. Baker, you are to sign release of  
information forms to enable your probation  
officer to monitor your attendance and completion  
of any assessment, counselling or rehabilitative

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programs as directed. And you are to provide proof of attendance and completion of any assessment, counselling or rehabilitative programs as directed.

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[22] You have had some time for reflection while you have been in pre-sentence custody. It must be somewhat troubling for you to hear all of those facts read in today. The totality of the facts demonstrates that, particularly when you have been consuming alcohol, your behaviour is out of control. Your behaviour was out of control in the police cells. This is the third time you have been convicted of assaulting a police officer. Then, to make matters worse, you were uttering threats to members of the community as well. One in a public place on a city bus, accompanied by a homophobic comment. Then the second, a repeated threat where you came back brandishing the cane or tapping the cane in your hand, I suppose to demonstrate that you were prepared to make good on the threat.

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[23] You need to know that type of aggressive, out of control behaviour is not tolerated for people who are drunk or sober. You know now in the sober clear light of day that your behaviour when you have been consuming alcohol is out of control. Your consumption of alcohol does not justify that behaviour. You need to think very carefully in the future how you are going to approach difficult situations, and make sure that

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5 you are not consuming alcohol to the point that  
you are losing control of your ability to manage  
yourself in public. You have accumulated now  
three more convictions for three more crimes of  
violence, and you need to make a decision that  
your criminal record is going to end with these  
convictions today.

10 [24] You need to attend the counselling and  
address the underlying issues so that you are not  
back before the court. If at the 18 month mark  
things are going well and you are back to work,  
you have some stability in the community, you are  
no longer displaying threatening or concerning  
15 behaviour to members of the public, you can  
always apply for early termination of the  
probation order if you have turned your life  
around. So make sure that is a goal which you  
set for yourself. Mr. Costain, were there any  
20 other terms of probation sought or suggested by  
the Crown?

MR. COSTAIN: No, thank you.

THE COURT: Thank you. Ms. Schiller, any other  
suggestions from you?

25 MS. SCHILLER: No, Your Honour.

THE COURT: Okay. Ms. Baker, any questions about  
those terms of probation?

NICOLE BAKER: No, there isn't.

30 THE COURT: Please remember that the probation  
order is a court order. Failure or refusal to  
comply with any condition of the probation order  
is a criminal offence for which you may be

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5 arrested, prosecuted and imprisoned for up to  
four years, fined up to \$5,000, or both, if found  
guilty. Make sure that you are reporting to your  
probation officer immediately, that you are using  
the supports in the community that Ms. Schiller  
outlined, and that you are also attending  
counselling so that you can end your involvement  
with the criminal justice system. Good luck to  
you. Thank you.

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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 27, 2022, in the  
Ontario Court of Justice held at 100 St. Patrick Street,  
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10 MCGowan.

15 February 15, 2023

Date



\_\_\_\_\_  
Elaine Paquette

Authorized Court Transcriptionist

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