Information No. 4711-998-20-9789 ONTARIO COURT OF JUSTICE 5 HER MAJESTY THE QUEEN 10 V. AARON KERR 15 PROCEEDINGS AT SENTENCING BEFORE THE HONOURABLE M. JUSTICE P.H.M. AGRO on April 6, 2022 at HAMILTON, Ontario 20 25 APPEARANCES: Counsel for the Crown G. Huh C. Valeri Counsel for Aaron Kerr

Table of Contents

ONTARIO COURT OF JUSTICE

	TABLE OF CONTENTS
5	Exam. Cr- Re- WITNESSES in-Ch. exam. exam. Submissions by Ms. Valeri 4
10	Submissions by Ms. Huh 12
	Ruling 16
	EXHIBITS
15	EXHIBIT NUMBER ENTERED ON PAGE 2 Presentence report 2
	3 Letters 2
20	
	Legend
	[sic] indicates preceding word has been reproduced verbatim and is not a transcription error.
25	(ph) indicates preceding word has been spelled phonetically All spellings of names are transcribed as set out in the reporter's notes unless noted with a (ph)
	Transcript Ordered June 10, 2022
	Transcript Completed July 18, 2022
30	Ordering Party Notified July 18, 2022

REASONS FOR SENTENCE

AGRO J. (Orally):

10

5

15

20

25

30

Mr. Kerr, you entered pleas of guilty to three offences. I accept that at the time of these offences, you were "dope sick", you were with some individuals who participate in the drug culture and no doubt their behaviour influenced your behaviour. I am satisfied on that.

However, in finding you guilty of the assault, threatening with the knife, having the brass knuckles and breaching your order not to possess weapons, I also found that these offences were motivated by some bias or prejudice against homosexuals. And that, as Ms. Huh explained, need not be the primary cause or initiating cause of the offences, and it does not mean that you are homophobic. What it does mean is at that time, those offences were wrapped up in an atmosphere, if I can call it that, of prejudice toward homosexuals, and Mr. Lawder, admittedly, by his own admission, given his manner of walking, given the rainbow mask, was clearly a homosexual. it is the impact of the offence on him that matters. I think it is important that you understand that.

I have reviewed the presentence report and by and large it's quite positive, and I've also reviewed

17.
Reasons for Sentence
Agro J.

the letters from your neighbour, your employer and Ms. Fitzmorris. Everything points to your being a productive member of society and a good father, when you are not under the influence of drugs. It is almost as if you are two different people.

I do have to commend you though, for having the good sense to leave the family home when you are on a binge because at least your children are not exposed to that. But keep in mind, sir, that when you are an addict, you choose one thing over everything. When you are in recovery, you choose everything over one thing. And everything in your case, first and foremost, is your family and the children, your mother, your friends, including Mr. Livingstone, and your employment, and your reputation. Surely everything outweighs one thing.

I have before me a joint submission for a custodial sentence of nine months concurrent on each of the charges, with that custodial sentence being served in the community. I take no issue with that. You have made considerable strides over the last year and a half since this offence. I acknowledge that that joint submission was arrived at taking into account that you did spend 20 days in jail until you were released on bail terms.

I am not going to reflect the 20 days on your record, simply the conditional sentence order of

5

10

15

20

25

18.
Reasons for Sentence
Agro J.

nine months. That will be followed by a period of probation for 18 months, and the probation order will contain terms, sir, that will protect Mr. Lawder and assist with your rehabilitation, because recovery is a day-to-day effort. If you have one good day, you can have another one. But because you've had one good day, doesn't necessarily mean the next day will be a good one, not without support and a lot of hard work.

I think the joint submission adequately meets the principles and purposes of sentencing. I will review with you first, the terms of the conditional sentence order, and understand, sir, that if you do not abide by these terms, you will be charged with a breach of your order, and you could be spending the balance of any unexpired term in actual custody. So, it is in your interest to abide.

You will keep the peace and be of good behaviour. Appear before the court when required. Report within two working days, in person, to your supervisor and thereafter report when required by the supervisor and in the manner directed by the supervisor.

You will remain within the Province of Ontario, unless written permission to go outside the province is obtained from the court or your supervisor.

10

5

15

20

25

Reasons for Sentence Agro J.

You will notify the supervisor in advance of any change of name or address and promptly notify the supervisor of any change in employment.

You will cooperate with your supervisor, signing any releases necessary to permit your supervisor to monitor your compliance, and you will provide proof of compliance with any condition of this order to your supervisor on request.

You will live in a place approved of by your supervisor and not change that address without obtaining the consent of the supervisor, in advance.

There will be a home confinement condition for the first three months of the sentence. You will remain in your residence, at all times, except between the hours of 8:00 a.m. and 12:00 p.m. every Saturday in order to acquire the necessities of life, for any medical emergencies involving you or any member of your immediate family, or going directly to and from, or being at school, employment, court attendances, religious services and legal or medical or dental appointments, including methadone clinic appointments, or going directly to or from and being at an assessment, treatment or counselling session. You will confirm your schedule, in advance, with the supervisor setting out the times for these activities, or with the prior written approval of your supervisor which is to be carried with you at

10

5

15

20

25

Reasons for Sentence Agro J.

all times.

At the end of the first three months, the home confinement condition will end, and you will be subject to a curfew. You will be in your place of residence between 10:00 p.m. and 6:00 a.m., except for any medical emergencies involving you or any member of your immediate family, for going directly to and from or being at school, employment, court attendances, religious services and legal or medical or dental appointments including methadone clinic appointments. You will confirm your schedule, in advance, with the supervisor setting out the time for these activities, and again with the prior written approval of your supervisor to be carried with you at all times.

You will not contact or communicate in any way, directly or indirectly, by any physical, electronic or other means with Benjamin Lawder.

You'll not be within 100 metres of any place where you know that he lives, works, goes to school, frequents or any place you know him to be.

You will not possess any weapons as defined in the Criminal Code.

Counsel, did you consider any counselling during this period or only in the probation order?

MS. VALERI: So, I think, yes, there was supposed to be counselling in this period. If Ms. Huh can

5

10

15

20

25

Reasons for Sentence Agro J.

confirm. I think that's what we did discuss, so I apologize if that was left out as a specific term. I know the term is specifically set out in the probation order.

THE COURT: Well, given that he's going to be — this is a nine-month order. I think to have that kind of support over that period of time would be important.

MS. VALERI: Yes, I think that makes sense, Your Honour, and I know he has an exception for the house arrest for counselling, so I think we had contemplated it and I just failed to include it as a standalone term. Apologies for that.

THE COURT: All right. Would you add then, Madam Clerk, to the conditional sentence order:

You will attend and actively participate in all assessment, counselling or rehabilitative programs as directed by the supervisor and complete them to the satisfaction of your supervisor, including but not limited to substance abuse and aftercare. You will sign any release of information forms as will enable your supervisor to monitor your attendance and completion of any assessments, counselling or rehabilitative programs, as directed.

I think we need another exception to the home confinement, as well, because Mr. Kerr will have to attend at Hamilton Police Services to provide a DNA sample. So, Madam Clerk, if you could, in the home confinement condition, add the following.

CLERK REGISTRAR: Sorry, Court's indulgence, Your

5

10

15

20

25

Reasons for Sentence Agro J.

Honour, I just closed it.

THE COURT: It would be number eight, I guess.

CLERK REGISTRAR: Okay.

THE COURT: For the purposes of attending at Hamilton Police Services to provide a sample of DNA, as required by the DNA order made this date.

All right. I believe that would cover everything for the conditional sentence order, counsel?

MS. VALERI: Yes, thank you, Your Honour, that covers everything.

THE COURT: All right, then...

MS. HUH: Thank you.

THE COURT: ...as indicated there will be a probation order for 18 months, Mr. Kerr.

You will keep the peace and be of good behaviour. Appear before the court when required. Notify the court or probation, in advance, of any change of name or address.

You will not communicate in any way, directly or indirectly, by any physical, electronic or other means with Benjamin Lawder. You will not be within 100 metres of any place where you know that he lives, works, goes to school, frequents or any place you know him to be.

You will report in person or by telephone to a probation officer, within two working days, after the expiry of your conditional sentence order and after that at all times and places as directed by

10

5

15

20

25

Reasons for Sentence Agro J.

probation or any person authorized by probation to assist in your supervision. The reporting requirement will end upon completion of counselling.

5

10

15

20

25

30

You will attend and actively participate in all assessment, counselling or rehabilitative programs as directed by probation and complete them to the satisfaction of probation, including for addiction recovery and relapse prevention. You will sign any release of information forms as will enable probation to monitor your attendance and completion of any assessments, counselling or rehabilitative programs, as directed. You will provide proof of your attendance and completion of any assessments, counselling or rehabilitative programs, as directed.

Do you understand the terms of the conditional sentence order firstly, sir?

AARON KERR: Yes, Your Honour.

THE COURT: You're prepared to abide by those

terms?

AARON KERR: Yes.

THE COURT: You understand the terms of the

probation?

AARON KERR: Yes.

THE COURT: And you're prepared to abide by those

terms?

AARON KERR: Yes.

THE COURT: Very well. There will be an order for

DNA, sir. You'll have to attend at Hamilton

Reasons for Sentence Agro J.

Police Services within seven days, business days of today's date, and you'll attend between the hours of 9:00 a.m. and 5:00 p.m., Monday to Friday. For that purpose, you'll go to King William Street, Central Station.

In addition, there will be a forfeiture order for the brass knuckles and any other weapons that were seized by the police.

You will be prohibited from owning or possessing any firearms, explosives, ammunition or other weapons as defined, pursuant to Section 110 of the *Criminal Code*, and that will be for a period of 10 years. Again, remember, sir, if you breach that order, you know, you are going to be facing another charge of breaching the weapons order as well.

Now, Ms. Valeri, there will be victim fine surcharges here on each of these charges. I believe the Crown proceeded summarily, if I'm not mistaken.

MS. VALERI: Yes, that's my understanding.

THE COURT: Your client is employed, unless you have some argument to the contrary, I think he's going to have to pay the victim fine surcharges.

It'll be a case of how much time does he need.

MS. VALERI: I think so, Your Honour. I'd ask for six months to pay.

THE COURT: Six months to pay the victim fine surcharges.

10

5

15

20

25

R. v. Aaron Kerr

CLERK REGISTRAR: And Your Honour... THE COURT: Yes. CLERK REGISTRAR: ...for the DNA and the 110, is that assault with weapon you want me to attach it to? 5 THE COURT: Yes, please. 10 15 20 25 30

Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

I, <u>Janet Smith</u>, certify that this document is a true and accurate transcript to the best of my skill and ability (and the quality of the copy of the recording and annotations therein) of the recording of <u>Regina v. Aaron Kerr</u> in the <u>Ontario Court of Justice</u> at <u>Hamilton</u>, <u>ON</u>, taken from Recording No: <u>4711 304 20220406 095136</u> 6 AGROM.DCR which has been certified in Form 1.

15

20

10

5

July 18, 2022

Date

Hon it

Janet Smith
Authorized Court Transcriptionist
ACT # 2474492821
asapcourttranscripts@gmail.com

25