

T A B L E O F C O N T E N T S

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

V.

BRITTANY BEST

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

BEFORE THE HONOURABLE MADAM JUSTICE BRODERICK

On December 16, 2022, at PETERBOROUGH, Ontario

APPEARANCES:

E. Kingsmill

T. Burgis

Counsel for the Crown

Counsel for Brittany Best

(i)
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ONTARIO COURT OF JUSTICE

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FRIDAY, DECEMBER 16, 2022

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

BRODERICK, J. (ORALLY):

[1] First , I accept the joint submissions for a 60-day conditional sentence order and 18 months probation, along with the ancillary orders. The joint submission would not be contrary to the administration of justice and, indeed, it takes into account the public interest, in that it will achieve the sentencing objectives of denunciation and deterrence, while also giving some weight to the objective of rehabilitation.

[2] The court must denounce not only the use of physical violence, but also the use of language that can reasonably be interpreted as racist. Even where it is prefaced with "if you cannot afford to live here", the phrase "go back to your own country" has a hurtful and marginalizing connotation for people of colour. That expression would have communicated to Ms. S [REDACTED] that as a visiting student from India, she was not welcome in our community. This kind of conduct and this language is contrary to our societal value of inclusivity.

[3] The court must also through sentencing deter the use of physical violence towards racialized,

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vulnerable people like Ms. S [REDACTED]. Having said that, although denunciation and deterrence are the primary objectives of sentencing, rehabilitation does still play a role, given some of the challenges that Ms. Best has experienced by way of mental health and addiction. This sentence as I have said addresses denunciation and deterrence by the imposition of a sentence of imprisonment, although allowing Ms. Best to serve it in the community addresses her ongoing rehabilitation. I find that the sentence is also consistent with the principle of the use of restraint in incarceration.

[4] The sentence also appropriately balances the aggravating and mitigating factors. I find that it is aggravating that Ms. Best's use of violence towards Ms. S [REDACTED] was persistent. It involved grabbing her, during the course of which her phone was broken. Ms. Best then dragged Ms. S [REDACTED] to the front of the front yard where she punched her in the head and spat at her. I find that spitting is a particularly degrading act of violence. It is also aggravating that the physical assault was accompanied by words that could reasonably be interpreted as prejudicial, and as made out by the Crown, that is a statutorily aggravating factor.

[5] It is also aggravating that this assault took place at Ms. S [REDACTED]'s home, and it would have undermined her sense of safety and security. The

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physical, mental and emotional impact on Ms.

S [REDACTED] has also been significant and is an aggravating factor. The presence of a child during the assault is also aggravating. Finally, although Ms. Best does have a prior criminal record, it is minor and there are no prior convictions of violence. Ms. Best, are you able to concentrate for what I am saying?

BRITTANY BEST: Yeah, I heard everything, thank you.

THE COURT: All right.

[6] By way of mitigation, Ms. Best pled guilty and accepted responsibility for this incident. In doing so she spared Ms. S [REDACTED] from having to re-live what would have been a traumatic experience for her. Ms. Best's guilty plea also spares the criminal justice system a trial at a time when judicial resources are strained. Ms. Best has also taken steps towards her own rehabilitation which are, in my view, significant. She also has stability now by way of housing, and she has taken some steps towards her education. I also take into account that Ms. Best has had her own challenges by way of addiction and mental health, and she is doing her best to overcome them.

[7] For all of these reasons I accept the joint submission. Ms. Best, I am sentencing you to a 60 day sentence of imprisonment that you are permitted to serve in the community as part of a conditional

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sentence order. There will be statutory conditions of the order that I am not going to read through, however, they will be on the order.

[8] You will report to a supervisor by telephone immediately and after that at all times and places as directed by the supervisor or any person authorized by the supervisor to assist in your supervision. You will cooperate with your supervisor. You must sign any release as necessary to permit the supervisor to monitor your compliance, and you must provide proof of compliance with any condition to your supervisor upon request.

[9] This home confinement condition will be in effect for the full duration of your sentence. Remain in your residence or on the property of your residence at all times, except for one period of five hours on a day of the week to be determined by your supervisor, with input from you, in order to require the necessities of life. Except for any medical emergency involving you or any member of your immediate family (spouse, child, parent, sibling). Except for going directly to and from and being at school, employment or court attendances, legal, or medical, or dental appointments for you or your child. Except while the in the company of your children on a date on a schedule to be determined by your supervisor, with input from you. Except for going directly to or

from, and being at assessment, treatment or counselling sessions, including treatment at the methadone clinic. You will confirm your schedule in advance with the supervisor setting out the times for these activities. Except with the prior written approval of the supervisor, the written approval is to be carried with you during these times, and except for carrying out any legal obligations regarding compliance with this conditional sentence order, or any other court order. Ms. Best, do you understand the conditions of your house arrest for home confinement?

BRITTANY BEST: Yes, I do.

THE COURT: All right.

[10] During your period of home confinement, do not permit any persons whatsoever to visit your residence unless approved of in advance by your supervisor. Do not buy or consume alcohol or any illegal drugs or substances (refer to the *Controlled Drugs and Substances Act*), except with a valid prescription or those available over-the-counter. And you must present yourself at the doorway of your residence upon the request of the supervisor or a peace officer for the purpose of verifying your compliance with your home confinement condition. You shall reside at an address approved of by your conditional sentence supervisor and/or designate and not change your address without prior permission of the supervision.

[11] Do not contact or communicate in any way, either directly or indirectly, by any physical, electronic, or other means with Gauri S [REDACTED]. Do not be within 100 meters of any place where you know any of the persons named above to live, work, go to school, frequent, or any place you know the person to be, except for court attendances.

Finally, you will attend and actively participate in all assessment, counselling and rehabilitative programs as directed by the supervisor, and complete them to the satisfaction of the supervisor, for any counselling as directed by your supervisor. Ms. Best, those are the conditions of your conditional sentence, do you understand them?

BRITTANY BEST: Yes, I do understand (indiscernible).

THE COURT: And do you agree to be bound by this order?

BRITTANY BEST: Yes.

THE COURT: Mr. Burgis, do you have any submissions to make on the conditions?

MR. BURGIS: No, Your Honour, thank you so much for sending it to us so we could read along, that's very, very helpful.

THE COURT: Ms. Kingsmill?

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

THE COURT: Thank you.

[12] Ms. Best, following your conditional sentence order I am placing you on probation for a period of 18 months. The conditions of probation are that

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you keep the peace and be of good behaviour.
Appear before the court when required to do so by
the court. Notify the court or probation officer
in advance of any change of name or address, and
promptly notify the court or probation officer of
any change of employment or occupation. You will
report to a probation officer by telephone within
two working days of the end of your conditional
sentence order, 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. Ms. Best, your supervisor
will likely become your probation officer, so he
will make sure that you have a reporting date
within two days of the end of your conditional
sentence.

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[13] You will cooperate with your probation
officer. You must sign any releases necessary to
permit the probation officer to monitor your
compliance, and you must provide proof of
compliance with any condition of this order to your
probation officer on request. I am also going to
indicate that your reporting requirement ends when
you have satisfied your probation officer that you
have completed all of your counselling.

MR. BURGIS: Thank you, Your Honour.

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[14] You will attend and actively participate in
all assessment, counselling or rehabilitative
programs as directed by the probation officer and

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complete them to the satisfaction of the probation officer for any counselling as directed by your probation officer.

[15] Do not contact or communicate in any way, either directly or indirectly, by any physical, electronic, or other means, with [REDACTED] S [REDACTED], and do not be within 100 meters of any place you know any of the persons named above to live, work, go to school, frequent, or any place you know the person to be except for required court attendance. Mr. Burgis, do you have any submissions with respect to the probation order?

MR. BURGIS: No, Your Honour, thank you, it's very clear.

THE COURT: MS. KINGSWELL?

MS. KINGSWELL: No, thank you.

THE COURT: Ms. Best, do you understand the probation order and do you agree to be bound by it?

BRITTANY BEST: I do.

THE COURT: All right.

[16] I am also ordering that you provide a sample of your bodily substance suitable for forensic DNA analysis, to be used in accordance with the *DNA Identification Act*.

MR. BURGIS: And, Your Honour, if I could just interject there. I know that Ms. Best had indicated to me there's a certain day when she comes to Peterborough for her methadone. Brittany, what day of the week is that?

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BRITTANY BEST: That will be on a Thursday, I go in
(indiscernible) for every three weeks.

THE COURT: Okay.

MR. BURGIS: Okay, so do you know the exact dates -
sorry, Your Honour, ...

THE COURT: Yes.

MR. BURGIS: ...do you know the exact date of the
next time that you are going to Peterborough?

BRITTANY BEST: This Thursday coming up.

MR. BURGIS: Okay, so that would be....

THE COURT: That's the 22nd.

MR. BURGIS: Perfect, thank you, Your Honour, I
think that makes the most sense to sort of kill two
birds with one stone so to speak, and as long as
she knows. So Brittany, that means that on that
day you will have to go to the courthouse. You
will have permission to be able to do that. You
know, it's the only other thing you are allowed out
for, because it's a court obligation. So that day
just make sure you get your methadone and get that
done down at the courthouse by one of the special
constables. Thank you, Your Honour.

THE COURT: So, Ms. Best....

BRITTANY BEST: (Indiscernible).

[17] Sorry, Ms. Best, you will attend at the
Peterborough courthouse at 70 Simcoe Street in
Peterborough on Thursday, December 22nd at 10:00
a.m. Does that work with the time that she would
come in to provide your methadone or would another

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time be better - sorry, to take your methadone I should say?

BRITTANY BEST: Can I make it a little bit later, let's say can I take noon so I can get there, 'cause I walk.

THE COURT: Yes, that's fine, at twelve noon then.

BRITTANY BEST: Because I'd have to walk from my methadone clinic to the courthouse, and I don't drive and I don't have any (indiscernible).

THE COURT: All right, 12:00 p.m., okay?

MR. BURGIS: Okay, thank you, Your Honour.

[18] I am also making an order under s. 110 of the *Criminal Code*. Ms. Kingsmill, did you suggest the duration? I am sorry if I missed that.

MR. BURGIS: Five years, Your Honour.

MS. KINGSMILL: Sorry, could you repeat that, Your Honour.

THE COURT: Sorry, Mr. Burgis said you were seeking a five-year s. 110 order?

MS. KINGSMILL: That's correct, Your Honour.

THE COURT: Ms. Best, I am making the order that you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, for a period of five years. Ms. Best, do you agree to be bound by the DNA order and the s. 110 firearms prohibition?

BRITTANY BEST: Uh, yes, I don't really know why giving my DNA, I don't (indiscernible).

MR. BURGIS: I'll explain that to her further, Your

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Honour, when we get a break, it's one of the things we had talked about...

THE COURT: Okay.

MR. BURGIS: ...but I'll explain that in more detail.

THE COURT: I am going to waive the victim fine surcharge on the matter which would have been \$100 on the basis of the information that I have heard with respect to Ms. Best, that it would cause undo financial hardship to impose that on her.

MR. BURGIS: Thank you, Your Honour.

THE COURT: Ms. Best, these orders that I have made today, the conditional sentence order, probation, DNA, the firearms prohibition order will be signed by the clerk of the court on your behalf, because you are not here in person. These are nonetheless legally binding court orders, and any breaches could result in additional charges. In respect of the conditional sentence order, if you are alleged to have breached the conditional sentence order, you can be brought back before me. There will be a hearing and if it is found that you have breached the conditional sentence order, one of the options that I have is sentencing you to incarceration for the remainder of your conditional sentence. So there is a very serious consequence for breaching your conditional sentence order. Do you understand that?

BRITTANY BEST: Yes.

THE COURT: All right. If you have any doubt about something that might be a breach of your

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conditional sentence, reach out to your supervisor in advance and make sure that you have either permission or they could clarify the condition and it is okay for you to do it. Don't just go ahead and do it and then hope that it's not a breach, do you understand that?

BRITTANY BEST: I do.

[REDACTED]

15.
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Certificate of Transcript
Evidence Act, Subsection 5(2)

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February 16, 2023

Date

Elaine Paquette
Authorized Court Transcriptionist