

IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER THE POLICE SERVICES ACT, R.S.O.1990, c.P 15
AND AMENDMENTS THERETO
AND IN THE MATTER OF
POLICE CONSTABLE JASON MATHERS, #6160
AND THE
HALTON REGIONAL POLICE SERVICE

APPEARANCES:

Mr. Ken Kelertas

for the Halton Regional Police Service

Ms. Joanne Mulcahy

for Police Constable Jason Mathers

BEFORE:

Deputy Chief Terence Kelly

York Regional Police (Retired)

Hearing Officer

SENTENCE DATE: June 6th, 2022

SENTENCE

Police Constable Jason Mathers #6160

Deputy Chief Terence Kelly (Ret); before commencing with the sentence in this matter, I wish to thank Mr. Ken Kelertas, the Service prosecutor, and Ms. Joanne Mulcahy, for their comments and exhibits entered, all of which have assisted me.

Police Constable Jason Mathers, #6160 has pled guilty and been found guilty of one count of discreditable conduct under Section 2(1)(a)(ix) of the Code of Conduct, Ontario Regulation 268/10, as amended.

Discreditable Conduct.

Committed discreditable conduct, on or about April 8th, 2020, at the Town of Oakville in the Regional Municipality of Halton, while being a member of the Halton Regional Police Service and while on duty, he committed an assault upon E.Y., contrary to section 266 of the Criminal Code of Canada, and was found guilty before the Ontario Court of Justice on April 5th, 2022, thereby committing the offence against discipline of Discreditable Conduct as specified in Section 2(1)(a)(ix) of the Schedule, Code of Conduct, Ontario Regulation 268/10.

AGREED STATEMENT OF FACTS.

Constable Jason Mathers is and was at the time of these allegations (April 8th. 2020) a sworn member of the Halton Regional Police Service (HRPS). He joined HRPS in 1999, before which he had been a sworn member of the Toronto Police Service since 1996. At the time of this incident, Constable Mathers was 48 years old.

In April 2020, with the onset of COVID-19 pandemic and the state of emergency declared on March 17, 2020, Constable Mathers was aware that HRPS had directed its members not to bring individuals into central lock-up except in the most serious cases. They were directed to make all efforts to keep suspects out of police custody.

On April 8th, 2020, Constable Mathers arrived at work at 4:30 a.m. and was briefed on the occurrences from the prior shift of April 7th, 2020. Constable Mathers was briefed on an incident involving the complainant, E.Y. (born May 1999), from the day before on April 7th, 2020. In addition, prior to going out on the road, Constable Mathers read the report regarding the arrest of E.Y. on April 7th, 2020. As a result of the briefing and reading the report, Constable Mathers learned the following allegations against E.Y. from the day before, namely that it was alleged that:

- a. E.Y. had been loitering around Oakville Trafalgar Memorial Hospital ("the Hospital") located at 3001 Hospital Gate, Oakville on April 7th, 2020. An adult male had attended the emergency department at Oakville Trafalgar Hospital and left his vehicle running with the keys inside the vehicle while he dropped off his wife and infant daughter at the emergency department as they feared their daughter had COVID-19.
- b. E.Y. stole this vehicle while the family was inside the emergency room.
- c. Members of HRPS were dispatched to investigate the theft of the vehicle.
- d. HRPS located the stolen vehicle and observed E.Y. driving in an erratic manner, weaving in his lane, nearly striking the curb, and speeding. The police deployed a tire deflation device to stop the vehicle and multiple police units surrounded E.Y. in the stolen vehicle.
- e. When police approached E.Y., he quickly shoved a large quantity of pills into his mouth. He was subsequently grounded by the police to gain compliance and to get him handcuffed.
- f. After being handcuffed, E.Y. spit out several pills and indicated that they were Xanax. He was observed to be unsteady on his feet, lacking coordination, disoriented, with slow speech and droopy eyes. The police formed the opinion that his ability to operate the vehicle was impaired by drugs.
- g. E.Y. was arrested for outstanding warrants for fraud under, fraudulent use of a credit card, and was arrested for theft of the motor vehicle and impaired operation of a conveyance while impaired by drugs.
- h. E.Y. was transported to the Hospital as a result of his consumption of drugs. While at the hospital, he performed poorly on the drug recognition evaluation test. He was held on a Form 1 under the Mental Health Act. He was released from police custody at the hospital on an undertaking for the criminal charges. Along with a Provincial Offences Act recognizance for driver motor vehicle no licence.

On April 8th, 2020, E.Y. was discharged from the Hospital. He refused to leave and it was reported that he had uttered threats against hospital staff and that he was physically resistant and acting violently towards some of them. He was physically escorted off the hospital premises. While E.Y. was refusing to comply with hospital staff, hospital security called for police assistance at 9:38 a.m. HRPS were advised that this call was with respect to an individual who had stolen the vehicle from outside the emergency department the night before and been brought back to the hospital.

Constable Mathers and HRPS Constable Stephanie Visser were dispatched to the call. Constable Mathers was assigned as the Acting Sergeant at that time.

Constable Visser arrived in the area first and attended at the Hospital. She observed E.Y. being escorted off the hospital premises by 6 to 7 security guards. E.Y. was wearing a bright orange jacket.

Constable Visser received information from hospital staff as to what had earlier occurred in the hospital with E.Y. which resulted in him being escorted off of the hospital premises and being directed not to return to the hospital. Constable Visser subsequently updated Constable Mathers via car radio and in person.

During this time E.Y. had crossed the road to a strip mall plaza located at 2524 Third Line, Oakville. The foot traffic at the strip mall was light. As a result of the Covid-19 restrictions, some stores were closed. There was at least one sign posted at the strip mall which read 'NO LOITERING-Violators will be prosecuted to the full extent of the law". Constable Visser lost sight of E.Y. when he went to the plaza. She drove her police vehicle to the plaza to look for E.Y. to ensure, in her view that he did not continue to disrupt.

E.Y. entered the Royal Oak Clinic and IDA Pharmacy (these are adjacent units open to each other from the interior). E.Y. was looking for a doctor. A lab technician advised E.Y. that there were no doctors at the location due to Covid-19 and that he needed to call for an appointment if he required assistance.

Constable Visser entered the clinic and asked staff if they wanted E.Y. there. She understood that there was no doctor present and that E.Y. did not have an appointment at the clinic and she believed that the staff did not want E.Y. there (although no staff specifically asked the police to remove E.Y.). Constable Bryan had also entered the clinic. When Constable Visser heard that there was no one there to help E.Y., she asked E.Y. to walk with her outside and he did.

Constable Mathers arrived on scene and was in the plaza parking lot in his cruiser. Constable Mathers got out of his cruiser and was advised by Constable Visser that the walk-in clinic did not want E.Y. there and that there was no doctor there.

E.Y. immediately approached Constable Mathers. Constable Mathers told E.Y. that he had to leave the property. E.Y. did not comply with that direction and swore at Constable Mathers. By that time, a total of four HRPS officers, were at the scene to deal with E.Y., namely Constable Mathers, Constable Visser, Constable Bryan, and Constable Thomas.

An unknown bystander video-recorded a portion of the interaction between E.Y. and police outside of the clinic. On June 20th, 2020, a 49-second video clip that captured a portion of the interaction was posted to an online social media platform, 6ixbuzztv. The video does not capture the beginning of the interaction between the police and E.Y. at the plaza, and there is no audio in the video. The videographer has never been identified.

The video shows the three officers close to E.Y.: Constable Mathers (who is directly dealing with E.Y.), Constable Visser, who is observed kicking E.Y.'s duffle bag towards him along the ground, and Constable Bryan. A fourth officer, Constable Thomas, stands further away from the group and closer to the videographer.

Witnesses from a Bank of Montreal branch, located in the same strip mall, and a Shoppers Drug Mart across the street overheard the police telling E.Y. to leave the property.

The video depicts Constable Mathers shoving E.Y. multiple times, in one instance causing E.Y. to trip on the parking curb behind him and fall backwards, Constable Mathers at one point picks up E.Y.'s bag and throws it at his torso. E.Y.'s mobile phone falls out of the bag, and Constable Mathers kicks it forward into the curb as he pushes E.Y. towards the edge of the property, causing it to be damaged.

At no time was E.Y. punched or kicked during this altercation.

After the video recording stopped, E.Y. collected his belongings and went to another strip mall across the road and entered the Shoppers Drug Mart at that location.

Based on the facts, on February 16th, 2021, Constable Mathers was charged with Assault with a Weapon, contrary to section 267(a) of the Criminal Code of Canada and Mischief to Property not exceeding \$5000, contrary to section 430(4) of the Criminal Code of Canada.

On March 18th, 2022, Constable Mathers pled guilty to one count of assault in the Ontario Court of Justice. The charge of Assault with a Weapon and Mischief to Property were withdrawn.

On April 5th, 2022, Justice S.G. Gage found Constable Mathers guilty and granted him a conditional discharge having a duration of six months, with the condition that Constable Mathers keep the peace and be of good behavior, and that he has no contact with E.Y.

I accept the plea based on the facts in this case. The facts stated and agreed to, provide clear and convincing evidence of the alleged misconduct strongly supporting Constable Mathers' plea of guilty. If not for his plea to this Tribunal, which I take into account as a mitigating factor and recognition of his misconduct, I would consider a greater penalty.

Due to the circumstances surrounding the misconduct, notwithstanding Constable Mathers' guilty plea and the agreed statement of facts. I believe the allegation when taken in the broader context of employee/employer relations, indicate it is prudent to provide written reasons for my findings.

The Service prosecutor spoke to a number of relevant factors to be taken into account when assessing penalty. When assessing what might be the appropriate penalty for such behaviour, a Hearing officer is obliged to take into account a number of factors. *In Williams and Ontario Provincial Police (1995) 2 O.P.R. 1047 O.C.C.P.S.*, as it was then known, the Commission identified three key elements. These include the nature and seriousness of the misconduct in question, the ability to reform or rehabilitate the officer; and the damage that would occur to the reputation

of the Police Service. The Service prosecutor noted other factors that can be relevant; either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history and experience and recognition of the seriousness of the transgression.

Public Interest

The legislative purpose of the Police Services Act is to increase confidence in the provisions of police services in Ontario, including disciplinary matters. It is appropriate to consider public expectations as one of the considerations in the determination of an appropriate disposition.

It is a fundamental principle of police discipline that the public has an interest in ensuring a high standard of police conduct, which is necessary to garner the trust and confidence of the community. To this end, the police discipline process must not only hold officers accountable when their actions fall short of public expectations, it must also impose sanctions that accord with the level of severity with which the public views the misconduct. Any penalty imposed should impress upon the public that the Police Service does not tolerate misconduct.

The well-entrenched penalty factors described in the jurisprudence of police discipline: the public interest, the nature of the misconduct, and the damage to the reputation of the police service, in my view, all relate to the concept of the public trust in policing, and our willingness and ability to address wrong doing when it surfaces.

Seriousness of the Misconduct

The seriousness of the offence is, of course, the primary consideration. In this particular case, the actions of Constable Mathers were clearly inappropriate and an embarrassment to the Halton Regional Police Service.

The evidence presented to this Trier-of-Fact demonstrated the public interest was not first and foremost in the mind of Constable Mathers. Professionalism and integrity cannot be compromised. The Public is entitled to have high expectation of a police service and its members. To retain this trust and confidence, the service must be professional and ethical in everything they do.

The conduct of Constable Mathers in this matter is completely at variance with the standards expected of members of the Halton Regional Police Service. Informed police officers possess a sense of responsibility to the Service of which he or she is part, and to the community, which they serve. It is unfortunate that when faced with this situation Constable Mathers would not permit himself to be guided by his better judgment and responsibility.

Recognition of the Misconduct

Police Constable Mathers has pleaded guilty at the very first opportunity and by doing so acknowledges responsibility for his actions. This is significant mitigating behaviour and it should be acknowledged that he has accepted responsibility for his behaviour.

Constable Mathers fully cooperated with the Professional Standards Investigation and advised them he understands his actions were inappropriate and he takes full responsibility for them.

Specific and General Deterrence

Specific and general deterrence is a well-recognised principle in sentencing law, which is meant to discourage others from participating in similar conduct.

It is particularly important where it is desirable to send a message to other police officers that certain conduct will not be tolerated. In almost all situations there must be a strong message of general deterrence. Members of the Service must know that the penalty for this type of conduct will be significant personally, professionally, and financially. Therefore, it is important that a clear message be sent that general deterrence is an important factor in matters of this kind.

Specific deterrence is meant to deal solely with the officer and ensure a clear message is sent that his conduct is unacceptable and should not be repeated.

Police officers perform difficult and sometimes disagreeable tasks on a daily basis. The circumstances of which seldom come to the attention of the general public. By contrast, acts of misconduct such as those committed by Constable Mathers receive considerable attention, and are not easily forgotten, and serve to tarnish the image of policing.

I am mindful it is essential for the Tribunal to assess the prospect of rehabilitation of an officer whenever a suitable disposition is being devised. In *Ceyssons' Legal Aspects of Policing* the Commission offered the following analysis: "...rehabilitation is a very important and significant factor when considering an appropriate penalty...the Commission believes that unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration."

It has always been the position of this Trier-of Fact that when a police officers falls afoul of the Police Services Act, he or she is entitled to fall back on their record of service. The employment file pertaining to Constable Mathers identifies previous informal and formal discipline in his failure to follow General Procedures.

Constable Mathers began his career with the Toronto Police Service and subsequently the Halton Regional Police Service. Constable Mathers' employment history and the evaluations of his work spoke to his capabilities. There are numerous examples of good work, letters and notes of appreciation listed in his personal file dating back to 1996 up to the present date 2022, that are complimentary in nature. A number of these items are from members of the community and other officers from the Halton Police Service.

This case disturbed me in the fact that the officer involved is a senior member of this Service. Someone who should be setting a good example for his subordinates, rather than being the focus of *Police Service Act* charges. His behaviour fell far short of the conduct expected of a serving officer, more so an officer with his length of seniority

Clearly, Police Constable Mathers recognizes the mistake he has made and accepts full responsibility.

I hope Police Constable Mathers has learned a great deal from this experience, that this penalty constitutes a significant chance for him to rehabilitate his career with the Service. He must also recognize that any further misconduct is likely to be met with a more substantial penalty.

To reflect the seriousness of this offence and bearing in mind all the evidence before me. It is the decision of this Tribunal that Police Constable Jason Mathers #6160, be:

- (a) Gradated in rank from First Class Constable to Second Class Constable for a period of twelve (12) months, after which Constable Mathers will return to First Class status; and
- (b) that Constable Mathers be prohibited from applying for placement with any specialized unit within the HRPS for a period of twelve (12) months, unless the placement is part of a workplace accommodation.

Terence Kelly.

Terence Kelly

Deputy Chief (Retired)

York Regional Police Service

Hearing Officer