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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs.

File No. 98-015657-FC

THOMAS PETER WICKER,

Defendant.

SENTENCE

BEFORE THE HONORABLE WILLIAM A. CRANE, CIRCUIT JUDGE

Saginaw, Michigan - Wednesday, December 23, 1998

APPEARANCES:

For the People: PATRICK O. DUGGAN (P29978)
ASSISTANT PROSECUTING ATTORNEY
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For Defendant: JAMES F. GUST (P24898)
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Reported by: LINDA L. NEY, RMR, CSR-3278
Official Court Reporter

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Saginaw, Michigan

Wednesday, December 23, 1998

(Proceedings commenced at 8:26 a.m.)

THE COURT: Okay, today is the time and date for the sentencing of Thomas Peter Wicker. Mr. Wicker was convicted on a trial by jury.

And so, Mr. Wicker, have you had a chance to meet with a representative of the department of corrections?

THE DEFENDANT: Yes, I have.

THE COURT: Okay. Mr. Gust, have you received the Presentence Investigation Report?

MR. GUST: Yes, I have, Your Honor. I've reviewed it with my client. We believe the information in the report is accurate.

THE COURT: Okay. Any additions or corrections?

MR. GUST: None.

THE COURT: The Sentencing Information Report classifies this as an assaultive offense with a guideline range of 36 to 80 months. Is that an appropriate classification and guideline range?

MR. GUST: Yes, Your Honor.

THE COURT: I'll sign that report. Is there anything that you'd like to say on behalf of Mr. Wicker?

1 MR. GUST: Yes, Your Honor. The Court heard the
2 trial in this matter, and I believe that it was a very
3 close case. And, of course, the jury compromised the
4 verdict. He was charged with assault with intent to
5 murder and came back with a lesser included offense.
6 I think it shows that they had some reasonable doubt,
7 and they somehow compromised on the offense that he
8 was convicted of.

9 In reading the paper and talking to the police,
10 at various times it -- they -- the police always
11 indicate that Mr. Wicker's a very dangerous man. I
12 don't think that we should sentence him because of a
13 reputation. I think we should sentence him on the
14 facts of this case and the facts of his prior
15 involvement in the criminal justice system.

16 I read things about him. I hear things about him
17 from the police. In dealing with him over the past
18 many months, he's always treated me with respect, and
19 I've never had any difficulty with him. We've gotten
20 along very well. He's an intelligent guy.

21 I would ask that the Court sentence him not on
22 what the police believe his reputation is but on the
23 facts of this case, which was a close case for a jury
24 to make a decision under. In order for the jury to
25 make a decision, they had to compromise to do that,

1 and I would have nothing further.

2 THE COURT: Okay. Mr. Wicker, have you had a
3 chance to review the Presentence Investigation Report
4 and confer with Mr. Gust?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Is there anything that you'd like to
7 say? I did get your letter, by the way. I have read
8 it.

9 THE DEFENDANT: Yeah. My past is not so good,
10 but I was out of prison, out of trouble for a few
11 years. And I didn't commit this crime. I didn't
12 commit this crime.

13 THE COURT: The puzzle -- maybe, Mr. Duggan, you
14 can help me with this -- is that there was an incident,
15 on the 25th of March that -- involving a car and the
16 confrontation there and the witness there identified
17 you as being involved in that as well and that was
18 never charged. I was just curious.

19 THE DEFENDANT: Right.

20 THE COURT: -- what -- what the background there
21 was.

22 MR. DUGGAN: The reason perhaps it was not
23 charged was that it was still being investigated.
24 There was a search warrant done to attempt to identify
25 or locate evidence. The defendant had I believe

1 called police and said after the search warrant -- you
2 may recall the testimony -- he would be right in. He
3 didn't come in. He may have still been in the process
4 of being searched for.

5 We don't authorize cases immediately sometimes
6 when somebody's not in custody, and he did not remain
7 at the scene. He fled. He gave testimony at the
8 trial that was contrary to the witnesses who described
9 him as getting -- the victim getting right in his face
10 in the car and giving his name and making --

11 THE COURT: That's why I didn't think there was a
12 mistake of identity as I understood it from -- based
13 on the fact that the victim had this prior contact.
14 Certainly from the description I gather the prior
15 contact would have merited another charge unless it
16 was perceived as all one event or one transaction.

17 MR. DUGGAN: No. I believe it's more accurate to
18 say that in the sense that it was an assault and
19 battery type matter, not a felony charge, the
20 police -- the police --

21 THE COURT: I don't mean to dwell on it, but at
22 least it was a curiosity.

23 MR. GUST: May I comment on that?

24 THE COURT: Sure.

25 MR. GUST: It appears to me -- I mean I think

1 that the prosecution or the police probably looked at
2 the quality of witnesses they had here and that --
3 that alleged threat by someone in that parking lot had
4 drug overtones. I mean somebody's there to threaten
5 somebody about money or something.

6 Now -- so the alleged victim in that case may
7 have owed somebody some money for some illegal
8 activity or something, and I think maybe the
9 prosecution or the police looked at that and said,
10 look, we can't take this to a jury. We've got a
11 questionable witness. He doesn't run to the police
12 right away. He doesn't do anything like that.

13 It sounds like somebody's trying to collect some
14 money over a drug deal. It just -- I think as the
15 prosecutor -- you know, as a prosecutor, I would look
16 at that case, hey, this is not something you want to
17 take in front of a jury.

18 THE DEFENDANT: I have one thing I want to say.

19 THE COURT: Okay.

20 THE DEFENDANT: I have made a lot of mistakes in
21 my life as a young man because I really didn't have a
22 father figure, but after being incarcerated over a
23 number of years, I learned that I was put on the earth
24 for a reason.

25 Now, what I did in my past, I can't change that.

1 It happened. I gone on TV and tried to give back to
2 my community by saying, yes, I was involved in gangs
3 years ago, but they got me blowed up to be this -- I
4 don't know, man. It's hard for me to understand.
5 Like I'm this heartless -- it's just -- it's hard for
6 me to relate to, you know? I'm not what they want me
7 to be. I'm not that. I made a lot of mistakes in my
8 past. I said that. But nobody talk about --

9 THE COURT: The allegations of being the leader
10 of a gang in a shootout, it sounds pretty serious.

11 THE DEFENDANT: Yeah. Like I say, that was in my
12 past many years ago. That was in the '80s, Your
13 Honor.

14 THE COURT: Well, I don't have to decide whether
15 you were there or not there because the jury's decided
16 that, and I don't -- I thank God I sometimes tell them
17 I don't have to make those decisions. So 12 people
18 collectively are charged with that. I accept what
19 they say as correct and then try to fashion a sentence
20 in accordance with those fact determinations.

21 THE DEFENDANT: All right.

22 THE COURT: And, of course, you do come with a
23 past, six prior felonies, that are almost all of an
24 assaultive nature, involving guns and so on or
25 explosives in one case, I guess, so those are the

1 kinds of things that I'm looking at.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Mr. Duggan, was there anything
4 else?

5 MR. DUGGAN: I had a couple comments. Number
6 one, I apologize for being late. The Court did
7 instruct us last time, and I know there were a couple
8 reset dates at 8 a.m. Apparently it slipped my mind.
9 I actually told my witnesses to be here if they
10 were -- or persons who were interested in sentencing
11 to be here at 8 a.m., and they're here from the gang
12 task force if the Court wants to follow up on any of
13 these issues about reputation.

14 And I agree the Court -- I agree with the
15 defendant. He shouldn't be sentenced on reputation.
16 He should be sentenced on activities that he's
17 actually engaged in or are proven by substantial
18 evidence as to statements in the presentence report,
19 which counsel has already agreed is accurate, and with
20 regard to this case because the jury found beyond a
21 reasonable doubt he was guilty.

22 But this is not a person who can really say he
23 doesn't have a reputation for violence because of his
24 convicted conduct both as a juvenile and as an adult.
25 This man's record goes back 22 years and we know

1 starting with unlawful use of a gun in '77 as a
2 juvenile followed by home break-in, placement in ever
3 more increasing -- increasingly serious juvenile
4 settings, to try to rehabilitate him. Assault with a
5 dangerous weapon, Maxey Boys Training School, which is
6 the place the Probate courts when they're basically
7 out of ideas to rehabilitate or out of -- out of hope
8 and need to protect the community.

9 He went there 18 years ago. Four years later as
10 an adult he is once again involved in a charge similar
11 to what we have here, assault with intent to murder,
12 which leads to a conviction by plea of assault with
13 intent to do great bodily harm followed by more
14 dangerous activity, one of -- the '84 case after that
15 involved assault with a dangerous weapon and felony
16 firearm.

17 He should not be held accountable for conduct
18 that was not proven, and there are many things on here
19 that show arrests for very serious offenses that are
20 dismissed or nolle prossed. Those aren't against him
21 in any sense, but it helps the Court perhaps to
22 understand the point of view of the victim in that car
23 back in March.

24 That was not a charged incident. That was simply
25 brought up to show the victim knew the defendant and

1 that the defendant specifically had a reason to look
2 to that particular victim a month later in the charged
3 incident.

4 He didn't have a gun as far as we can see on that
5 date in March when the gang task force happened to be
6 conveniently or coincidentally very close by. It may
7 be as Mr. Gust says, because of drug activity, but
8 that's not proven. That's just speculation on his
9 part, speculation he offered to the jury. I don't
10 know if the jury considered it or not.

11 I think their verdict was not a compromise. I
12 think their verdict was their verdict beyond a
13 reasonable doubt. They looked at all the evidence,
14 and they -- they sliced away one charge completely and
15 cut another charge what you could say is in half,
16 convicted him on the felony firearm.

17 But he got right in that man's face. I'm Peter
18 Rabbit. I'll kill you. I'll kill your mother and
19 I'll kill whoever. That is -- that is not something
20 that's in doubt. That was something the jury heard
21 and considered and you may consider to understand the
22 effect he has on people or tries to have on people and
23 on this community. He is a danger. He has proven it.

24 There are three other people we estimate just
25 from this incident that you heard the evidence of who

1 are at large because there were all different types of
2 bullets or ammunition evidence besides the one that he
3 could have held. We don't know which one he
4 particularly held, but it really doesn't matter.
5 There was different types of ammunition.

6 This house and this car were destroyed, and
7 thanks to the victim's ability to run and his wiriness
8 and his quickness, he avoided getting injured. But
9 even then the jury said he was guilty beyond a
10 reasonable doubt of trying to do great damage to this
11 person.

12 THE COURT: Mr. Mason, you're saying, lived at
13 this residence? The other witness, it was his home, I
14 thought.

15 MR. DUGGAN: Mr. Mason was in the process of
16 fixing this up, and the victim who ultimately we moved
17 to amend the Information to let the Information just
18 refer to him, Mr. Thomas --

19 THE COURT: Okay.

20 MR. DUGGAN: Anthony Thomas was the one who had
21 been in the car a month before when the defendant got
22 right in his face. Mr. Mason was the man who --

23 THE COURT: Yes. I --

24 MR. DUGGAN: -- was getting ready to live there,
25 I think.

1 THE COURT: I have that. Mr. Thomas is the one I
2 meant to say did not -- that was not his home but
3 apparently he was following Mr. Mason there.

4 MR. DUGGAN: He had frequented it several times
5 during the day. Mr. Thomas testified to the jury that
6 he was involved in trying to produce records or make
7 records. Mr. Mason was a producer, manufacturer,
8 manager of some kind for a record company, and people
9 who are familiar with where Mr. Mason was going would
10 also have the chance to see where Mr. Thomas was
11 going. As a matter of fact, all witnesses, both the
12 defense and prosecution witnesses, referred to a crowd
13 of people across the street that could see these
14 comings and goings.

15 And they did go there in two cars, and a car
16 driven by Mr. Thomas was a very distinctive car, a new
17 Cadillac or a newer model Cadillac which the Court saw
18 the pictures of. They were offered to the jury.

19 Bottom line, the prosecution's position is the
20 community cries out for protection from this type of
21 vicious violence that he has demonstrated over the
22 years. We were extremely fortunate and so was the
23 victim the bullets, the shotgun blasts, the variety of
24 things didn't hit their mark.

25 The defendant has told this --

1 THE COURT: To -- I'm sorry.

2 MR. DUGGAN: The jury has told this defendant
3 that they didn't believe the statement that he wasn't
4 there.

5 THE COURT: On the prior sentencings there is a
6 number of things that were nolle prossed due to
7 sentencings or as part of plea bargains. It's my
8 understanding that I can consider those for the
9 purpose of sentencing albeit they're not convictions
10 because they were dismissed as part of a plea bargain.

11 MR. DUGGAN: I would --

12 THE COURT: Or is your -- what's your position?

13 MR. DUGGAN: I would not have you do that. I
14 would rather have your sentence be based on the
15 convicted activity. There's more than enough of it,
16 of the violence in this case, and, frankly, I would
17 like the Court to make a sentence that doesn't require
18 you to reset for some other day when it's not as fresh
19 in your mind as it is now. I'm not sure of the legal
20 position on those unconvicted things.

21 THE COURT: Let me just go through then those
22 that I should consider. There are three juvenile
23 matters that involved assaultive offenses, 6-2-77,
24 8-25-80 and 10-9-80.

25 Then there is an adult charge, assault with

1 intent to murder, March 14th, '84, in which he was
2 sentenced to five to ten. Then the next one in '84 I
3 should not consider because it was nolle prossed due
4 to sentencing. 10-26-84 same. 10-28-84 same.

5 Then 10-27-84, assault with a dangerous weapon,
6 and he pled guilty to all counts. There was a number
7 of them, five of them, two to four in prison, I will
8 consider.

9 Then 11-7-84, extortion. That was nolle prossed.
10 Then 5-24-90, murder, first degree. That was
11 dismissed. 4-21-91, assault with intent to murder,
12 pled guilty to Count IV, attempted felonious assault
13 and HOA second. Twenty-four months out. I will
14 consider that.

15 And so in looking at the front page then, instead
16 of six, I don't believe we have that many.

17 MR. DUGGAN: We may have seven.

18 THE COURT: Well, if we count juveniles --

19 MR. DUGGAN: No. I'm counting there's five
20 counts in the 10-27-84 matter, one in 3-14-84 and one
21 in '91.

22 THE COURT: Okay. So that --

23 MR. DUGGAN: There's seven.

24 THE COURT: -- you feel is correct, and if
25 anything is not stated, enough.

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MR. DUGGAN: That's correct.

THE COURT: Okay. I just wanted to make sure I had the things correct here.

Mr. Gust, have you had a chance -- is there anything further you wish to say?

MR. GUST: No, Your Honor.

THE COURT: Okay. And I think, Mr. Wicker, we've given you a chance to say anything. Is there anything further you wish to say?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. It will be the sentence of the Court that as to felony firearm, Count II, you will receive two years in prison with credit for 229 days, which should be raised, I believe, as we've had a week's delay here. That would be 235 days now or 36 days, I guess?

MR. DUGGAN: I think 236, Your Honor, would be --

THE COURT: Two hundred thirty-six. As to Count I, it will be the sentence of the Court that after you complete the service time on Count II that you serve life on the balance of that term.

Further, you'll serve \$60 to the Crime Victims Rights Fund.

The reason for the sentence, of course, is your prior criminal record which follows you, and if you

1 were in California, this would have happened after
2 three and not six. And so I am persuaded, too, of
3 course, as the jury has found the facts that I have to
4 consider that this was again another case of an
5 assault with guns on an individual in a very
6 threatening situation.

7 And so I feel at some point along the line that
8 people who are out threatening other people with guns
9 need to be removed from the street. Apparently in
10 this case at least nobody was injured, and that's
11 fortunate. But I think we're tempting fate to -- so
12 we need to -- I need to consider the protection of
13 society and deter others from similar conduct.

14 If you wish to appeal this, you have the right
15 to. You may appeal. If you cannot afford an attorney
16 to represent you on appeal, the Court will appoint an
17 attorney and furnish the attorney with portions of the
18 transcript and record that the attorney needs free of
19 charge.

20 A request for the appointment of attorney must be
21 made in writing and sent directly to the Court at the
22 address noted on the form within 42 days. The
23 financial schedule on the back of the form must also
24 be completed.

25 I have handed to your attorney the notice of

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right to timely appeal and request for the appointment of an attorney.

THE DEFENDANT: Ooh, wee.

THE COURT: I might say I have not considered the guidelines because of the prior being habitual fourth.

THE DEFENDANT: Your Honor, I need a lawyer and all that for appeal.

THE COURT: Just sign the forms and turn them in and you'll get one.

THE DEFENDANT: Took my life away from me, man. I didn't even do this, man. I swear I didn't do this, man.

(Proceedings concluded at 8:47 a.m.)