Citation: *R. v. Silverfox*, 2024 YKTC 47

Date: 20241118
Docket: 21-00311
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before Her Honour Justice S.M. Duncan

REX

v.

WAYNE SILVERFOX

Appearances:
Arthur J. Ferguson — Counsel for the Crown
Amy Steele — Counsel for the Defence

REASONS FOR SENTENCE

[1] DUNCAN T.C.J (Oral): Wayne Silverfox was charged under s. 145(4)(a), failure to comply with a condition of an undertaking dated November 19, 2008, and release order dated December 27, 2019, of the condition not to consume alcohol. He was also charged with operating a vehicle while prohibited from driving under s. 320.18 of the *Criminal Code,* RSC 1985, c C-46.

[2] He pled guilty to both of these offences on March 1, 2022, in Territorial Court. Guilty pleas were accepted at that time, and he was found guilty on these two counts.

[3] These charges were severed from several other charges arising out of the same series of events that occurred on September 4, 2020, and those other charges were

adjudicated at a jury trial. Sentencing on convictions arising from those charges occurred on October 4, 2024.

[4] Today, I am sitting as a Territorial Court judge to complete the sentencing of convictions arising from these events of September 4, 2020. I will be referencing my sentencing decision of October 4, 2024, and relying on that decision, as many of the facts, factors, and cases cited in that decision are equally applicable to these charges.

[5] Crown and defence have advanced a joint submission today on sentencing for these two counts: first, 60 days for the breach under s. 145(4)(a); and second, 12 months for the conviction under s. 320.18, both of which are to be served concurrently.

[6] Mr. Silverfox is currently serving two and one-half years less time served for the convictions under the offences that were adjudicated at the jury trial, and he is also subject to a long-term offender order of four years.

[7] The Supreme Court of Canada in the decision of *R. v. Anthony-Cook*, 2016 SCC 43, has stated that a joint submission by Crown counsel and defence counsel on sentence should be accepted by the Court unless that proposed joint submission would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. In other words, rejection of a joint submission by a judge would mean that the submission is so unconnected or so unhinged from the circumstances of the offence and the offender that its acceptance would lead a reasonable person, who is aware of all the relevant circumstances, to believe that the proper functioning of the justice system had broken down. This is a very high threshold.

[8] Counsel have filed an agreed statement of facts as Exhibit 1 in this sentencing hearing. I will not repeat the facts that are in that agreed statement but note that it is an exhibit on record. I have also set out in some detail the facts occurring on September 4, 2020, in my October sentencing decision. I would only add that the undertaking and release order do set out the condition of abstention from alcohol and Mr. Silverfox has admitted that he was consuming alcohol on that day. I should also note that the undertaking and release order has a prohibition of his driving of a vehicle.

[9] Again, I adopt, where applicable, the legal context and analysis set out in the October 4th decision.

[10] The goal of denunciation and deterrence for an offence under s. 320.18, driving while prohibited, must be emphasized given the direction of the Supreme Court in *R. v. Friesen*, 2020 SCC 9, and the amendments in Bill C-46. I note that this is Mr. Silverfox's 10th driving while disqualified conviction.

[11] For the s. 145 offence, the goals of denunciation, deterrence, and also promoting a sense of responsibility in the offender of his obligation to the Court are relevant. I note that for the last conviction under s. 145 of Mr. Silverfox, he received 60 days; and in his criminal record, I note that there are 23 breaches of undertaking.

[12] However, as I noted in the October decision, Mr. Silverfox has — especially recently — demonstrated commendable rehabilitation efforts and he continues to do so. As his counsel said today, he is taking or has completed a course on personal growth at the Whitehorse Correctional Centre ("WCC") since his last conviction in October; he has been working as a server in the kitchen; and he has recommenced counselling sessions

with a very experienced counsellor. I continue to congratulate you and commend you, Mr. Silverfox, on your rehabilitative efforts. I hope they continue. I encourage you to continue on this path. You have been consistent for the last three years, at least, and it is commendable. You are on the right path; keep going.

[13] I also acknowledge that Mr. Silverfox is an Indigenous person. He is a member of the Little Salmon/Carmacks First Nation. He had horrific and traumatizing experiences in residential schools as a child and, as a result of this and many other factors in his life, he has significant *Gladue* factors to be considered. These are also set out in my decision of October 4, 2024.

[14] Considering all of these factors and applying the principles of parity, restraint, and totality, I find that the joint submission proposed by counsel is proportionate and is a fit sentence.

[15] I sentence you, Mr. Silverfox, to: on Count 1, 60 days; and on Count 3, 12 months to be served concurrently.

[DISCUSSIONS]

[16] THE COURT: No victim fine surcharge and Count 2 is stayed.

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DUNCAN T.C.J.