

Citation: *R. v. Silas*, 2012 YKTC 4

Date: 20111215
Docket: 10-00617A
10-00617B
10-00617C
10-00617D
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

JOHN KYLE SILAS

Appearances:
Terri Nguyen
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): John Kyle Silas stood trial on a charge of aggravated assault. After the victim, Lorne Jules, had testified, Mr. Silas changed his plea to guilty.

[2] The incident occurred on November 20, 2010. Mr. Silas, who had recently been released from jail, was living at the Adult Resource Centre pursuant to a probation order. He received a pass to go to Pelly Crossing to visit family. Instead, he went on a drinking spree. He ended up in the back of a motor vehicle being operated by John Erickson. Mr. Jules was the front seat passenger. As they drove, some sort of a dispute arose and Mr. Jules appears to have struck the defendant. The defendant's

response was to attack Mr. Jules with a knife, rapidly inflicting some 11 stab wounds to Mr. Jules' head, neck, upper body and arms. No real explanation has ever been forthcoming for this potentially lethal attack on Mr. Jules.

[3] Mr. Silas has also entered guilty pleas to three charges of breach of recognizance, which occurred in June and July of 2011 after Mr. Silas had secured his release on bail. One breach was for failing to report; the second, for breach of a term requiring him to remain in his place of residence; and the third, for failing to surrender himself to police as required.

[4] Mr. Silas has a very serious criminal record including many related convictions for assaults. The circumstances of this case show that he was prepared to retaliate for a very minor affront by taking up a knife and attacking his unsuspecting and defenceless victim with sudden and murderous fury.

[5] The *Gladue* report and Pre-Sentence Report filed herein reveal that Mr. Silas, who is an aboriginal offender, comes from a very unfortunate background, so much so that it is perhaps not surprising that he finds himself before the Court in these circumstances. However, whatever his antecedents, Mr. Silas, at this point, has proved himself a dangerous man who needs to be incarcerated for the safety and protection of the public.

[6] The Crown seeks a combined penitentiary sentence of three years and two months. However, Mr. Silas has served some 217 days, or roughly seven months, in pre-trial custody, and the Crown accepts that Mr. Silas is entitled to credit for that time. The defence seeks a sentence of two years less one day to be followed by a lengthy

period of probation. Surprisingly, the defence made no effort whatever to establish that circumstances existed that would justify increasing Mr. Silas's remand credit beyond the normal one-to-one credit now provided for by law. Perhaps such evidence could not have been marshalled in Mr. Silas's case; however, had it been successfully done, the difference between the Crown and defence position would have narrowed to a scant few months.

[7] As it is, the Court is called upon to choose between the Crown's position of roughly two and half years, after allowing the remand credit, versus the defence contention that two years less one day and probation should be imposed. The primary advantage of accepting the defence position is that the overall length of sentence, combining the custodial and probationary portions, could be as much as five years less a day. Since a probation order cannot attach to a penitentiary sentence, the total length of supervision consisting of custody and any possible release on parole would cease after two and one half years.

[8] The Crown argues with some force that putting Mr. Silas on probation is pointless considering his prior record, which is replete with breach charges, and his performance, or, more properly, his lack of performance, while on bail with respect to these matters. The Court is not so naive as to think that Mr. Silas, despite his protests to the contrary, is now prepared or even able to fully comply with a probation order. Nonetheless, imposing a probation order does provide a significant means of control over his whereabouts and activities and, ultimately, a means of bringing Mr. Silas back before the Court, should there be breaches.

[9] Whether Mr. Silas goes to the penitentiary or the Whitehorse Correctional Centre, he will ultimately be released. In all of the circumstances, I prefer to maximize the period of control as much as possible.

[10] In the result, the sentence of the Court with respect to the charge of aggravated assault is that you be imprisoned for a period of two years less one day. With respect to the breaches, on the first and second, two months time served, and on the final one, one month time served.

[11] Following your release from imprisonment, you will be subject to a probation order for a period of three years. The terms will be as set out in the Pre-Sentence Report.

[12] Additionally, there will be an order whereby you will provide samples of bodily substances for the purpose of DNA analysis and banking, and there will be a further order pursuant to s. 109 of the *Criminal Code* prohibiting you from having in your possession any firearm, ammunition, explosive substance or other items more compendiously described in s. 109(2)(a) of the *Criminal Code*, and any of the items described in subsection (3) of s. 109 for the remainder of your life.

[13] The surcharges are waived.

[14] MS. NGUYEN: Sir, if there could be a no contact order on the probation period with the complainant and a not attend at his residence as well?

[15] THE COURT: So ordered.

[16] MS. NGUYEN: And the remaining counts are withdrawn.

[17] THE COURT: Withdrawn at the request of the Crown.

FAULKNER T.C.J.