

TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

JOHN KYLE SILAS

Appearances:
Terri Kaur
Malcolm E.J. Campbell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): The prosecution and defence have presented the Court with a joint submission that John Kyle Silas be found to be a dangerous offender pursuant to s. 753.1 of the *Criminal Code*, that he be sentenced to three years imprisonment (less credit of two years for time in pre-trial custody), that he be subject to the maximum period of supervision being 10 years, that there be a lifetime firearm prohibition, a DNA order and a recommendation that, while in custody, the offender have no contact with the victim, Robert Jones.

[2] The facts of the case are clearly set out in the Agreed Statement of Facts filed on 14 October 2014, which reads as follows:

On the current offences

1. On June 30th, 2013, Whitehorse RCMP responded to a report of a male having been “pepper sprayed”. When police arrived on scene at 1802 Centennial in the Porter Creek neighbourhood of Whitehorse, Yukon, a male identified as Robert JONES was being led to an ambulance by three other individuals, Marian JACK, Daniel HORTON and Robert BLANCHARD. Mr. Jones was visibly injured, unable to open his eyes and shaking uncontrollably.
2. RCMP detected a strong odour of capcasin (the active ingredient in pepper spray and bear spray). They could see the skin on Mr. Jones’ face was bright red in colour. The victim was unable to speak with police immediately and was taken instead to Whitehorse General Hospital by ambulance.
3. Cst. Meaghan Brown of the Whitehorse RCMP Detachment spoke with Ms. Jack who said that someone had knocked on Jones’ door, Jones had answered the door and a man wearing a white muscle shirt and dark pants had sprayed Jones in the face with a can of bear repellent spray. The assailant then took off on foot heading south along Centennial Drive.
4. Both Mr. Blanchard and Mr. Horton identified the male who sprayed Jones in the face as the Accused.
5. RCMP searched for the can of bear spray, which was not located.
6. Cst. Ellis later obtained a statement from Mr. Jones, who stated:
 - a. John SILAS had been at his apartment and there was a drunk, passed out female there as well. Jones believed that Silas was making inappropriate advances on the female. Jones thought this was wrong and argued with Silas about it. Silas came at him with fists raised in a stance that made Jones believe he wanted to fight.
 - b. Jones pulled a knife on Silas and Silas ran away. Silas came back quickly and Jones chased him off again. While this was going on Silas told Jones that he would assault Jones and that he had a friend who would help him do it.
 - c. Silas finally came back a third time, alone. At the time Jones was inside a different residence (the residence of

- one of Jones' friends). Jones answered the door and at that time Silas sprayed him with bear spray.
- d. Silas had been consuming alcohol and was intoxicated.
7. Cst. Brown obtained a statement from Ms. Jack, who stated:
- a. She, Mr. Horton, Mr. Blanchard and Mr. Jones were drinking in Horton's residence at 1802 Centennial Street, Unit 56. It was between 10 p.m. and 11 p.m. the door was open and they were all hanging out drinking.
- b. John SILAS came to the door and Jones went to the door to speak to him. Silas pulled out a can of bear spray and sprayed Jones in the face then ran away, taking the can with him.
- c. A girl named Amber had been at Jones' residence earlier and Jones and Silas had argued over her.
- d. She, Mr. Horton and Mr. Blanchard also felt the effects of the bear spray but to a minor degree which did not require any medical attention.
8. A statement was also obtained confirming Ms. Jack's version of events, from Mr. Horton. Mr. Horton had not been in Jones' residence earlier and was not aware of the girl, Amber. Mr. Horton further stated that Silas said nothing when he came to the door and nothing either before or after he sprayed Mr. Jones in the face with the bear spray.
9. The girl, Amber is Amber Blanchard, who did not report any assault on her. The Crown acknowledges that there is no evidence that Silas assaulted Ms. Blanchard in any way. The Accused denies any form of assault on Ms. Blanchard but acknowledged that this was Mr. Jones' perception and the cause of the argument.
10. At all relevant times, Silas was bound by a probation order with conditions that included to keep the peace and be of good behaviour and to not consume or possess alcohol.

On the Dangerous Offender Application

11. The Accused acknowledges, for the purposes of sentencing and the Crown's dangerous offender application, the facts set out in the Affidavit of Amanda Bornhuse, filed May 21, 2014, including his criminal record.

12. The Accused further acknowledges that he has received appropriate notice of the intention of the Crown to make an application to have him designated a dangerous offer.

On Sentence

13. The Crown acknowledges that the Accused has been in custody, on consent, on this matter since his arrest on July 1st, 2013.

[3] Mr. Silas, these are very well-written letters, both to the Court and the letter of apology to the victim (Appendices A and B). I do thank you for taking the time to prepare them in such a meaningful way. I am inclined to agree with you. I do not think that, at this present time, anybody is trying to paint you as an evil psychopathic character. It came through in the reports that I read that there are many good sides to you, especially, of course, when you are totally sober.

[4] The reports that I have read here -- the older pre-sentence report from Lianne Couch-Lacey from December of 2011, the current pre-sentence report from Jonathan Steele, and the report from Dr. Lohrasbe -- have all been very helpful. They have been well written. In particular, the report from Dr. Lohrasbe is one of the finest reports that I have seen in my three decades on the bench. I have seen many reports in terms of civil cases, family cases, and criminal cases, and this one was definitely one of the best written and thought out.

[5] If this offence were more serious with more serious consequences to the victim, the sentence would have been longer and it would have been, of course, a federal sentence and you would have been able to avail of the programs there on a reasonably long-term basis. To send you to a federal penitentiary for a net period of two years or slightly more with applicable early release, I do not think it is really going to be of any

benefit to you, nor of any particular benefit to the citizens of the Yukon and, more particularly, the residents of Pelly Crossing.

[6] You are a relatively young 31-year-old Selkirk First Nation man before us with a very long criminal record with many crimes of violence. The criminal record as an adult since 2001, includes five convictions of s. 266, one of 270(1)(a), one of s. 267(a), one of s. 267(b), one of s.279(2), one of s. 268, plus others which may or may not have had elements of violence. The degree of violence escalated from s. 266 in 2001 with a sentence of 30 days to s. 268 in 2011 with a sentence of 729 days. The present offence is less serious than those from 2010 and 2011.

[7] Based on my reading of the pre-sentence reports and the report from Dr. Lohrasbe, I am certainly prepared to endorse the recommendation put to me by both the Crown and the defence.

[8] Mr. John Kyle Silas, you are hereby designated a dangerous offender. The jail sentence is fixed at three years less two years credit for time served. You are hereby subject to the maximum period of long-term supervision, which is 10 years. There will be a lifetime firearms prohibition. There will also be a DNA order, and a recommendation that while you are in custody, you are not to have any contact in any manner with Robert Jones.

[9] In terms of when the day may come when you can shake the hand of Robert Jones and apologize, you can take that up with the parole authorities after you are released. As we have already indicated, there will be no victim surcharge in this particular case.

[10] One of the quotes that I am going to refer to briefly is from the bottom of page 29 of the Psychiatric Report; the following sentences in particular:

... At some risk of oversimplifying, it can be said that the goal of most treatment approaches is to enhance self-awareness in order to improve self-control. ... An offender, like any human being, may not be able to avoid aggressive thoughts or impulses, but he can learn to recognize, interrupt, and not act on them. (In philosophical circles, this principle is sometimes summarized in the maxim, "Whether or not we do have free will, we do have free won't").

[11] I do think, Mr. Silas, that you have started to learn that.

[12] The critics and skeptics may suggest that we are only seeing this improvement from you because you have been facing the dangerous offender designation and the consequences flowing from that. I would be surprised, and it would be unrealistic to assume, that the dangerous offender application had no effect. Clearly, this was a strong motivating factor for you to improve your ways of behaviour.

[13] I do believe that another powerful factor here is the realization that at the age of 31, you have a four-and-a-half-year-old child that you want to establish a relationship with because there really has never been a relationship. Your desire to be a good father, I think, is very compelling as well. I trust that that will carry the day and that you will pursue the activities that you are good at. I mean, you are talented in some areas and you do have a worthwhile future before you. As to whether or not that happens, you know is strictly within your control. Like Dr. Lohrasbe wrote and I paraphrase here: "we have a free will to do things, but we also have a free won't to not do things." So if something does upset you in the future, like you said in your very well-written letter, do

not turn to alcohol and to the dysfunctional friends you were with, but go to people like Mr. Kelly and others that are a strong part of your support team.

[14] Mr. Silas, would you stand, please?

[15] Based on the reports that I have read, and based on the joint submission by counsel, I am going to make this dangerous offender designation. The jail sentence of three years will be imposed less the two years of pre-trial custody for a total of one year plus long-term supervision of 10 years. There will be a lifetime firearms prohibition. The DNA order will be placed into effect. There will be a recommendation from the Court that you are not to have any contact with Robert Jones while you are in custody. The victim surcharge is waived.

[16] Is there anything else, then, for the Crown on this?

[17] MS. KAUR: Just to confirm that the sentence on the breaches of probation would be six months each --

[18] THE COURT: That is right, six months each and concurrent.

[19] MS. KAUR: Yes. And that leaves Count #2, Sir, which is withdrawn.

[20] THE COURT: Okay.

[21] And Mr. Campbell, was there anything else, then, for you?

[22] MR. CAMPBELL: No, Sir.

[23] THE COURT: Okay.

[24] Mr. Silas, when I spoke to you about the things that you do have going for you and the inner strength that you have, I fully meant that. I have no doubt that if you fully turn your mind to this and stay in close touch with Mr. Kelly and your other supports, you really can turn this around, and life will be a lot better for you and also for your child.

LUTHER T.C.J.

Appendix A

To whom it may concern

This time in jail has given me a lot of time to think about the negative impact my lifestyle is creating for myself and the profound consequences that I am facing.

My outlook and perspective on life have changed dramatically towards changing my negative behaviors and working intensely on my underlying issues that lead me to reoffend. I have dwelled on the direction my dysfunctional lifestyle has led me. I am working intensely with my counselor to address childhood trauma and to make positive choices towards leading a healthy productive life without alcohol and reoffending. I will be incorporating my strengths and vulnerabilities into my treatment plan. I am creating a strong support network to help me when I am released from custody upon serving my debt to society.


This includes going to an intense residential treatment center outside of the Yukon, and to complete and maintain the twelve steps with my A.A. sponsor, as well as enrolling into a trade school for heavy duty mechanics. I will be maintaining close ties to my family and positive influential people in my life, who will be helping me to maintain our family fish camp and trap line. I will be maintaining my traditional lifestyle hunting and fishing on a regular basis to reconnect with the land on my healing journey. I will continue to see my counselor on a weekly basis. I will be spending time with my elders. I will dedicate myself to following the direction of my parole officer.

I have not taken any intense or credited treatment programs. I want to change and I will change for the greater good of myself and my family and my four and a half year old son I do not know yet. I have made significant progress on my road to sobriety and healing myself. When I feel down and out I will turn to my support network instead of the bottle and group of dysfunctional people I used to call friends.

I am not a cold blooded inconsolable psychopath that the crown is trying to perceive me as. I have a bright personality, with a sense of humor, I am optimistic, I am kind hearted and fairly honest, Artistic, hardworking young man, I am actually a pretty good guy when I am sober.

I have mentally, spiritually grown significantly over this past sixteen months in pre-trial custody. I have taken advantage of every program being offered. I have finally figured out the root to my problems, and no longer carry that anger from childhood traumatic experiences. As I described above I now know what I have to do to stay out of the precarious situations I get myself into. I will be exploring new avenues and staying away from old cul-de-sacs. I have created a strong support network to turn to when I feel under the weather. I understand this is the last chance to turn my life around. I will not reoffend because that will lead to a very lengthy prison sentence. I am on the right path towards change and I cannot wait to start the next chapter of my life. I want to be a father to my son and make positive choices to regain the trust of my community and be a role model, to the youth, that people can overcome their addictions and childhood trauma, live a healthy productive lifestyle.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. S. L.', written over a horizontal line.

Appendix B

To: Robert Jones

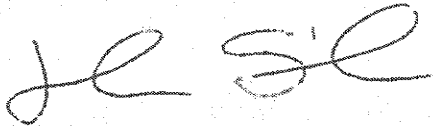
From: John Silas

Re: Apology letter

I am truly sorry for assaulting you, Robert. I wish I could go back to that day to make the right choice but I can't. I have to live with the consequence of my actions. I have made significant changes to my negative behaviors and my whole outlook on life has moved towards solving my child hood traumas and dealing with my anger. I have taken advantage of many programs and counselling services and will continue to work on myself through my healing journey. I am also upgrading my education.

I am a totally different person than I was last year. For example, I have been avoiding confrontations and walked away from two people who sucker punched me this year. I would like to shake your hand one day and make amends. I want to let you know I have no hard feelings towards you and do not want to cause you any troubles.

Sincerely,

A handwritten signature in black ink, appearing to read 'JL Silas'. The signature is written in a cursive style with a large initial 'JL' and a stylized 'Silas'.