

Citation: *R. v. Silverfox*, 2013 YKTC 70

Date: 20130618
Docket: 12-00423A
Registry: Whitehorse
Heard: Pelly Crossing

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

ANDY SILVERFOX

Appearances:
Ludovic Gouaillier
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Andy Silverfox has entered guilty pleas to having committed offences under s. 267(b), s. 279(2), s. 261.1(1)(a), and s. 86(1) of the *Criminal Code*.

[2] The circumstances are that on July 7, 2012, Mr. Silverfox was in a dispute with his partner, Christine Dick, in their residence. This dispute was over monies that Mr. Silverfox had received and what was to be done with these monies. Each of the parties was sober at the time of the dispute. The dispute escalated from a verbal argument to a physical argument, and during the course of this physical argument, Mr. Silverfox committed a serious and prolonged assault against Ms. Dick. He made threats to kill her; he choked her with his hands and a rope to the point where she felt

that she was perhaps going to die; he would then relax his grip, and then recommence choking her. Mr. Silverfox prevented Ms. Dick from leaving the residence despite her attempts to do so or her attempts to get the attention of others.

[3] Ultimately, Mr. Silverfox took the dispute outside where he knocked Ms. Dick to the ground and punched her numerous times in her face and her body. Mr. Silverfox knocked out part of her tooth, and she was spitting blood. He left her with significant bruising to her face, neck, arms, and back. Mr. Silverfox took a .30-06 rifle that he had, brought it out, held it to his head, and threatened to kill himself. It was not loaded. The shells were not in the clip, the clip was not in the firearm, and there were no shells in the chamber. Mr. Silverfox had Ms. Dick on the ground with his knee on her chest. Their five and three-year-old children were in the residence, but there is no indication they actually witnessed what took place.

[4] Mr. Silverfox has a prior criminal history and the relevant conviction is a s. 266 conviction in 2006 with respect to the same complainant, for which he received a 16-month suspended sentence and probation. He has a dated s. 271 conviction, but as I understand from the sentence and the facts, this was a relatively minor s. 271 conviction and a suspended sentence was handed out. Mr. Silverfox is 46 years of age and a member of the Selkirk First Nation.

[5] There is a joint submission before me for a Conditional Sentence. The range suggested is six to eight months, plus a period of probation in the 18-month range. There has been no dispute between counsel with respect to the range, and there is generally agreement on the terms of the Conditional Sentence. While this would appear

to be a light sentence for these offences, the circumstances are such that I consider this submission to be an appropriate Disposition.

[6] There is a Pre-Sentence Report filed. Mr. Silverfox was released on a recognizance on July 16, 2012. There has been no negative information in regards to his behaviour provided by the RCMP since then.

[7] Mr. Silverfox comes from a family that has been significantly impacted by attendance in the residential school system by both parents. His parents have struggled for years to deal with the consequences of what took place and the abuse. They do not even wish to speak of what they were subjected to and observed during that period of time. Mr. Silverfox's younger brother committed suicide in 2001 in the residence at the same time that Mr. Silverfox was there. In fact, his brother had come into the residence, walked by, said something to Mr. Silverfox, who said he was cooking supper, went into the room, shot himself, and died in Mr. Silverfox's arms. He has had tremendous difficulty talking about this and dealing with this issue. It certainly haunted his life for a number of years and contributed to the substance abuse that Mr. Silverfox, for a substantial period of time, was involved in.

[8] Mr. Silverfox struggled in the education system, and in both the *Gladue* Report and in the Pre-Sentence Report, there is mention of him hearing a Principal basically saying that it was a waste of time to try to do more with Mr. Silverfox; hardly what one would expect from an educational leader whose job is to bring the best out of each child and not discourage them from trying to achieve their best.

[9] Mr. Silverfox suffers from some cognitive issues that appear could well be Foetal Alcohol Spectrum Disorder issues, given the history of the family and the nature of these difficulties, yet in many ways he has done remarkably well. Since the time of the Pre-Sentence Report when he was unemployed, Mr. Silverfox has now obtained employment at Selkirk, and he intends to stay there, not only the days of his shift, but for the five day in/five day out, as he will continue on the other five days as a watchman. This is consistent with what the Pre-Sentence Report said about him having a very positive and dedicated work attitude and ethic, and is also confirmed by his Probation file, his collateral contact, and his actions since the Report was prepared.

[10] Mr. Silverfox's relationship with Ms. Dick has been for approximately 10 years. They have three children, the two previously mentioned and one baby that Mr. Silverfox has had, really, no real contact with due to the fact that he has been living separate from his spouse. Ms. Dick is very supportive of him, and very supportive of the relationship continuing. All indications are that he is a very good parent. He has taken numerous steps to try to find support for the issues that he has struggled with throughout his life. He has been seeing psychologist Bill Stewart, he has been seeing Andy Nieman, who is well-known to these courts, and Bobby Woods who is well-known to these courts as well.

[11] Mr. Silverfox has a very positive outlook on his life right now. He has maintained sobriety for a number of years. His drug usage decreased substantially after he met Ms. Dick and he no longer takes illegal drugs. The Drug Abuse Assessment and the Problems Related to Drinking Scale both provided results that would indicate that he has no problems related to abuse of either alcohol or drugs.

[12] Mr. Silverfox is very remorseful for what he did that day, and it is clear in the treatment plan that was provided to the Court (this was not a treatment plan for the purposes of sorting out what would take place afterwards, but was a treatment plan with respect to obtaining funding, and it noted the real issues that needed to be addressed, rather than coming up with a plan as to how to address them exactly) the impact that these offences, and his commission of them, have had on him.

[13] I would say that Mr. Silverfox's reaction to what took place has been as positive a reaction as we could expect from an offender. Certainly, the lengthy period of time since these offences were committed makes the assessment of Mr. Silverfox's ability to comply with court orders going forward support a belief that he can actually do this. I say this recognizing, including what Bill Stewart said when he addressed the Court, that there is still a substantial and significant risk. However, because we are not dealing with something that happened in a way that was really logically explainable or understandable, there are a lot of deep-seeded issues that Mr. Silverfox is dealing with. These issues are not resolved, and to some extent, all of them may never be resolved, but it is a manageable risk in the sense that Mr. Silverfox has clearly shown that he is committed to trying to do what is right and not do what is wrong, and there is strong support in the community for him to do this.

[14] I understand that a treatment plan for how to actually deal with his issues and support him in the community, which is critical, is in the process of being developed. I have full confidence that this treatment plan will address in every way necessary what needs to take place in Mr. Silverfox's world - community and family - in order for him to have access to all the support he needs to continue in the positive way that he is doing.

[15] This is not to say there is no risk. There is clearly a risk, but I am fully of the belief, based on the information that I have before me, that it is a risk that has a very high probability of being managed safely.

[16] When we talk about the community support, it was interesting from the reading of the *Gladue* Report to note that the trauma that Mr. Silverfox has dealt with is a trauma the family shares. It has been very difficult for the family to be a support for him because the family needs support itself. This is where the role of the community becomes so critical because the community needs to support everyone, and in the support they give to each person, that person becomes better able to support someone else. The fact that both of Mr. Silverfox's parents have made a serious step with respect to dealing with some of their issues very recently certainly helps for a favourable prognosis for Mr. Silverfox to have not only the community's support, but family support and to be able to provide some family support.

[17] What really needs to take place is what is identified in the *Gladue* Report in the comments of Mr. Stewart, that, other than residential treatment, what really would work is that it would be much better to start with a community-based/skills-based program that involves Andy Silverfox and Christine Dick as a couple, and meeting with those individuals identified through the treatment plan to help them develop a structured way of managing their lives together in the community.

[18] I think the purpose and principles of sentencing are focused on trying to provide courts with a very clear blueprint of the various types of sentences that are available and the need to pull together to come up with a sentence that is just and appropriate in

the circumstances. This is a case that clearly calls out for the application of s. 718.2(e). I am satisfied that denunciation and deterrence, which of course are very significant in cases of domestic violence where you have the abuse in the breach of the trust relationship, can nonetheless be achieved through the imposition of a Conditional Sentence. It is a jail sentence and breaches can result in the offender going back to jail for the full term of the sentence. Denunciation and deterrence are often said to be achieved through the imposition of house arrest, very strict curfews or very strict conditions. The sentence, in-of-itself being a jail sentence, is a denunciatory and deterrent sentence, and in order for someone to properly understand a sentence, especially sentences like this that deviate from what the norm would be to a person looking at it from the outside, it is important when these individuals look at these sentences to understand the entirety of the sentence and understand all of the information upon which the sentence is based.

[19] I have not gone in detail into what is in the *Gladue* Report and in the Pre-Sentence Report, which were very helpful, but they provided enough of a basis for Crown counsel to give full recognition and full effect to the purpose and principles of sentencing, and for me to find that to be appropriate and concur with it.

[20] Therefore, with respect to all counts there will be a conditional sentence of eight months on the following terms:

1. You are to keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;

3. Report to a Supervisor immediately and thereafter when and in the manner directed by the Supervisor;
4. Remain within Yukon Territory unless you have written permission from your Supervisor;
5. Notify the Supervisor in advance of any change of name or address and promptly notify the Supervisor of any change of employment or occupation;
6. Reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;
7. Abstain absolutely from the possession and consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. You are not to attend any bar, tavern, off-sales, or other commercial premises whose primary purpose is the sale of alcohol;
9. You are to take such assessment counseling and programming as directed by your Supervisor;

I will add the no-contact, but I am doing it on the understanding that contact is going to be allowed. It is there in order to allow the ability to withdraw it if anything, given that the risk factors exist, does not go according to plan and it is felt that contact would be inappropriate.

10. No contact directly or indirectly, or communication in any way with Christine Dick except with the prior written permission of the Supervisor;

I am going to add a term that I have never actually used before, and I am going to say, in the event that contact that has been allowed is going to be restricted, this should be done in consultation with the treatment team. Does anyone have any concerns about that?

[21] MR. GOUAILLIER: You just need to identify who the treatment team is.

[22] THE COURT: Right. I will. Once again, Lois Joe is going to find herself in the role of providing that information to Probation Services.

11. You are not to attend at the residence of Christine Dick except with the prior written permission of your Supervisor;
12. If there is going to be a restriction on what attendance has been allowable, attendance at the residence will be done in communication with the treatment team;
13. You will do your best to comply with all of the requirements of your treatment team and treatment plan that they will have prepared for you;

We do not have one yet, but we will have one. There will be a direction that a copy of the treatment plan be provided to the Conditional Sentence Supervisor when it is available.

14. You shall meet with the members of your treatment team as and when directed by Lois Joe or such other person as Lois Joe may designate or as your Conditional Sentence Supervisor may designate;

[23] I will also make a direction that once a treatment team is put together, that a copy of who these individuals are be provided to the Conditional Sentence Supervisor as well.

15. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
16. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counseling, or employment that you have been directed to do pursuant to this Conditional Sentence Order.

[24] I am not going to put a curfew or house arrest on in this case. They certainly are the norm. In this case I do not feel that it is necessary. I am also not going to include community work service hours in this order.

[25] There will be a period of probation. It will be 18 months. The terms of the Probation Order will be that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Probation Officer in advance of any change of name or address and promptly notify the Probation Officer of any change of employment or occupation;

The remaining terms will be identical. I do not see any need to change them from what they were, except for the necessary changes from Supervisor to Probation Officer.

Does anyone have any concerns? I do not intend to try to repeat those because I am sure I will not say them exactly the same, but they will be read and made clear.

[26] There will be a forfeiture order with respect to the .30-06 rifle that was used in the commission of the s. 86(1) offence, but subject to any concerns that may arise from the Chief Firearms Officer, the other firearms can be returned as long as all of the paperwork and licensing is appropriate.

[27] There will be the mandatory DNA order that attaches to the s. 279 charge and to the s. 267(b) charge. I will not make a discretionary DNA order with respect to the s. 264.1(1). This is a s. 110 for the purpose of a firearms prohibition. In the circumstances, based on Mr. Silverfox's employment and his connection to the land, I am going to use my discretion not to impose that order.

[28] I am also not going to impose a Victim Fine Surcharge in this case. I am not going to do that because I think that with this young family right now, I do not believe this is a case where it is necessary to do so. Mr. Silverfox is just starting to work again.

[29] I believe I have touched on everything. The remaining counts?

[30] MR. GOUAILLIER: There will be a stay of proceedings.

COZENS C.J.T.C.