

# SUPREME COURT OF YUKON

Citation: *R v Silverfox*,  
2022 YKSC 30

Date: 20220620  
S.C. No. 20-01513  
Registry: Whitehorse  
Heard: Pelly Crossing

BETWEEN:

HER MAJESTY THE QUEEN

AND

CHARABELLE SILVERFOX

Before Justice E.M. Campbell

Counsel for the Crown

Leo Lane and  
William McDiarmid

Counsel for the Defence

Jennifer A. Cunningham

**This decision was delivered in the form of Oral Reasons on June 20, 2022. The Reasons have since been edited for publication without changing the substance.**

## REASONS FOR SENTENCE

[1] CAMPBELL J. (Oral): On March 28, 2022, Charabelle Silverfox pleaded guilty to committing second degree murder on the person of Derek Edwards, contrary to s. 235 of the *Criminal Code*, RSC 1985, c C-46 (“*Criminal Code*”).

[2] On the same day, I accepted her guilty plea and found her guilty of second degree murder based on an agreed statement of facts filed with the Court for the purpose of the guilty plea and sentencing.

[3] I do not intend to go into all the facts that were filed before me for the guilty plea and the sentencing, but I will nonetheless touch upon some of those facts.

[4] In the early hours of December 13, 2017, after a day of partying and heavy drinking at different places, Charabelle Silverfox and her sister, Lynzee Silverfox, decided to go to Charabelle's house in Pelly Crossing with Vance Cardinal and the victim, Derek Edwards. The four of them continued drinking hard liquor at Charabelle's residence. At some point, Lynzee and Vance Cardinal left to go to Lynzee's bedroom. Charabelle continued drinking alcohol with Derek Edwards on the couch in the living room.

[5] Later that night, Charabelle states that she woke up to Derek Edwards trying to pull down her sweatpants. She reacted by yelling to Lynzee and Vance Cardinal words to the effect that Derek Edwards was attempting to assault her. A violent altercation involving Charabelle Silverfox, Vance Cardinal, and Derek Edwards occurred in the living room and basement of the house in which Charabelle Silverfox and Vance cardinal inflicted injuries on Derek Edwards. During the altercation, Charabelle Silverfox stabbed Derek Edwards in the chest and discharged arrows from a bow into his head.

[6] At 5 a.m., Charabelle Silverfox called her sister Magdalene, crying. She asked her to come to her residence. Upon arrival at the house, Magdalene Silverfox observed that both Lynzee and Charabelle were crying, appeared scared, and were very intoxicated. Magdalene went downstairs and ran back up, where she called 911. Lynzee Silverfox and Charabelle Silverfox tried to stop their sister from talking to the police. Charabelle and Lynzee then left the house and walked towards another residence. Both were arrested at that residence later that morning.

[7] Charabelle Silverfox appeared intoxicated at the time of her arrest. Cell video footage shows Charabelle Silverfox experiencing sustained periods of vomiting.

[8] An autopsy performed on Mr. Edwards' body found he suffered multiple injuries as a result of the violent attack, including stab wounds to his chest and puncture wounds to his head, which were described in the autopsy as probable arrow injuries.

[9] Ms. Silverfox admitted responsibility for some but not all the injuries. As I said before, she admitted to stabbing Mr. Edwards in the chest and discharging arrows from a bow into his head.

[10] While she admitted responsibility for some but not all injuries, Charabelle Silverfox admitted to being a party to the offence and culpable for the fatal injuries to the victim.

[11] The offence of second degree murder comes with an automatic sentence of life imprisonment, pursuant to s. 235 of the *Criminal Code*. Before I accepted Ms. Silverfox's guilty plea, she acknowledged she was aware she would be sentenced to imprisonment for life and that she would not be eligible to apply for parole until she had served at least 10 years of her life sentence in custody.

[12] Therefore, what I have to decide today is the number of years of imprisonment Ms. Silverfox will have to serve prior to being able to apply for parole. I want to make clear that being able to apply for parole does not mean that Ms. Silverfox will be released on parole on the day she applies. It will be for the National Parole Board to make the decision when the time comes.

[13] According to s. 745 of the *Criminal Code*, when an offender is convicted of second degree murder, the sentencing judge may set the period of parole ineligibility at a minimum of 10 years and a maximum of 25 years.

[14] Section 745.4 of the *Criminal Code* addresses the factors a judge must consider in determining the period of parole ineligibility:

... at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender ... may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission ... substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[15] Crown counsel and defence counsel jointly submit that a period of 10 years of parole ineligibility is appropriate in this case.

[16] I note that Charabelle Silverfox has been arrested and in custody in this matter since May 16, 2019.

[17] While I am not bound by a joint submission, I cannot depart or refuse a joint submission from Crown counsel and defence counsel unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest (*R v Anthony-Cook*, 2016 SCC 43 at paras. 29-34). Therefore, the threshold to depart from or refuse a joint submission is a high threshold.

[18] Crown counsel and defence counsel filed a number of decisions from the Yukon, Northwest Territories, Nunavut, and British Columbia to provide guidance with respect to the appropriate range of sentence regarding parole ineligibility for the offence of second degree murder in circumstances somewhat similar to the present case. In those cases, the period of parole ineligibility that was imposed ranged from 10 to 14 years.

While each case has its own unique set of circumstances, I am satisfied that the cases filed by counsel provide useful guidance in sentencing Charabelle Silverfox (see *R v Yliruusi*, 2011 BCSC 268; *R v Tan*, 2011 BCSC 595; *R v Sheepway*, 2018 YKSC 26; *R v So*, 2021 BCSC 1072; *R v Pirko*, 2020 BCSC 222; *R v Kringuk*, 2012 NUCJ 20; *R v Beck*, 2021 NWTSC 33; *R v Delorme*, 2005 NWTSC 79; *R v Dennis*, 2014 YKSC 14; *R v Dennis*, 2018 YKSC 42; and *R v MDH*, 2005 YKSC 59).

[19] I am also mindful of the fact that the general sentencing principles set out in ss. 718 to 718.2 of the *Criminal Code* continue to provide the necessary context for the analysis under s. 745.4 that I have to make today. Therefore, the fundamental principle of proportionality remains a central consideration in determining the length of parole ineligibility.

[20] I will now turn to the factors I have to consider under s. 745.4. First, the nature and circumstances of the offence.

[21] Second degree murder is one of the most serious crimes that one can commit. The gravity of the offence and society's condemnation for the offence of murder is reflected in the fact that second degree murder is subject to an automatic sentence of life imprisonment.

[22] The circumstances of this case are aggravating in that Charabelle Silverfox and Vance Cardinal violently attacked Mr. Edwards. Charabelle Silverfox admitted to using two different weapons during the attack: a knife, and a bow and arrows. The nature of the injuries sustained by Mr. Edwards reflects the violence and brutality of the attack that led to his death.

[23] Clearly, principles of denunciation and deterrence are of primary consideration in a case of murder. Separation of the offender from society is also a factor to consider. However, I am of the view, for reasons I will address later in my decision, that rehabilitation also plays an important role in the decision I have to make today. In addition, the impact of Mr. Edwards' death and of the circumstances surrounding his death on his family and friends are factors to consider as part of the nature of the offence and circumstances surrounding the offence.

[24] Victim impact statements have been filed in this matter. Many of the statements were read in court today. I want to assure the authors of the statements who did not want their statements read in court that I have read them and considered them in coming to my decision.

[25] Mr. Edwards' death was a tragic event. The victim impact statements filed in this matter reveal how Mr. Edwards' death and the circumstances surrounding his death have deeply affected not only his family and friends but also the members of the Selkirk First Nation and residents of the small community of Pelly Crossing as a whole.

[26] I note that Mr. Edwards was and the accused are members of the Selkirk First Nation.

[27] The victim impact statements reveal how Mr. Edwards' family and friends were and continue to be emotionally and psychologically affected by his death. Mr. Edwards was 39 years old when he died. He was described as a person who was a hard worker, someone always willing and happy to lend a hand when needed, someone with a great sense of humour and a big laugh, a person with whom friends and family enjoyed spending time. His death has left a big hole in their lives.

[28] Many reported being in shock when they learned of Mr. Edwards' death and the circumstances of his death. The initial shock has over time been replaced by great sadness, grief, and, for some, anger. Some of Mr. Edwards' family members have sadly resorted to drinking to numb their pain, which has no doubt further impacted their lives and the life of their family. Some have reported on the additional burden associated with the fact that they knew and/or are related to the victim and the accused, and the division the offence has created in the community. Some have expressed the desire that the offender not come back to the community.

[29] I will now turn to the community impact statement.

[30] The Selkirk First Nation accepted the Council of Yukon First Nations' offer to prepare and file a community impact statement to report on the impact the offence had on the community as a whole. In doing so, the Selkirk First Nation council stated that it recognized the importance of remaining neutral to help their nation heal and move forward in a positive manner. Thirteen people participated in the process, including community members and representatives of Selkirk First Nation's administration that represent the community through their work. Only portions of the community impact statement were read in court during the sentencing hearing. However, I have read and considered the entire statement.

[31] The community impact statement provides information on the history, language, culture, and social organization of the Selkirk First Nation. This information helps contextualize the impact the offence had on the community as a whole.

[32] The community impact statement reveals that the offence has created a long-lasting division between the members of the community because the family of the

victim and the family of the accused are citizens of the Selkirk First Nation. It was reported that members of both families are suffering as a result of what happened. Community members reported feelings of shock, incomprehension, and anger as the news regarding the death of Mr. Edwards became known in the community. Vicarious trauma and compassion fatigue were also reported among those in the community who try to support and help others affected by the crime. Some reported concerns regarding the increase in alcohol and drug abuse in their community and the connection between substance abuse and the commission of offences. People reported being afraid for their safety because of the level of violence involved in the commission of the offence. Some indicated that they do not want the accused to come back to the community.

[33] According to the community impact statement, it is well known in the community that Charabelle Silverfox's house, where the offence was committed, was burned down because of what happened.

[34] The offence also had an economic impact on the Selkirk First Nation government as the administration office was closed for at least a day out of respect for the grieving family and providing support. This has led to other business and services being postponed. In addition, the Selkirk First Nation brought in healers to provide support for both families and the community.

[35] Finally, community members who participated in the process reported on the long-lasting effect of historical and compounded trauma in the community, as well as the importance of healing and of land-based activities in that healing process.

[36] I will now turn to the circumstances of the offender, which is another factor I have to consider in determining a fit period of parole ineligibility for Charabelle Silverfox.



[37] A comprehensive *Gladue* report was prepared in this matter that provides valuable information and insight with respect to Charabelle Silverfox's personal circumstances as an Indigenous person. Ms. Silverfox fully participated in the preparation of the *Gladue* report.

[38] Charabelle Silverfox is 31 years old. She was 26 years old when she committed the offence. Ms. Silverfox is a member of the Selkirk First Nation. Her parents are also members of the Selkirk First Nation. She is from and was raised in Pelly Crossing. Ms. Silverfox has two sisters and a brother.

[39] From a young age, Charabelle Silverfox experienced intergenerational trauma caused by the long-lasting negative impact of the residential school system imposed by the Canadian government on her community and her family. She was victimized multiple times throughout her childhood, her teenage years, and into her adulthood. Traumatic life experiences led her to rebel and to start consuming drugs and alcohol at an early age. Ms. Silverfox dropped out of high school when she was in Grade 10. Ms. Silverfox eventually married. She and her former partner have three children together.

[40] In 2010, Ms. Silverfox started working as an emergency first responder in Pelly Crossing. She worked for Emergency Medical Services ("EMS") until 2015. Ms. Silverfox reported that she stayed away from alcohol and drugs after her first child.

[41] After she left EMS, Ms. Silverfox held short-term employment with different employers. During that time, Ms. Silverfox engaged in traditional activities, such as hunting and berry picking, to support her family.

[42] Her second child was born in 2015. Unfortunately, approximately six months after her second child was born, Ms. Silverfox started partying and binge drinking again. She left her husband in charge of caring for their children while she was binge drinking. She then started using harder drugs.

[43] Ms. Silverfox had her third child while she was incarcerated at Whitehorse Correctional Centre (“WCC”) for this offence. She had regular visits with her baby from August 2019 until the beginning of the pandemic in March 2020. Since then, she has only been able to see him through a glass window.

[44] Ms. Silverfox and her husband separated in 2021.

[45] In December 2020, Ms. Silverfox’s house in Pelly Crossing was burned down. Ms. Silverfox and her family lost all their possessions in that fire.

[46] Apart from a few gaps, Ms. Silverfox has been meeting biweekly with Nathan Schultz, a counsellor with the Forensic Complex Care Unit, while in custody. Mr. Schultz reported that she has been engaged in programming and has put a lot of effort and work into self-emotional regulation in order to avoid conflict and violence.

[47] Ms. Silverfox states that being raised on the land and practising First Nations traditions has helped her, guided her, and given her a sense of purpose and something to look forward to while in custody.

[48] Ms. Silverfox states that her children are her motivation and that her goal remains to one day, if possible, being on the land and operating the family trap line.

[49] Ms. Silverfox has a criminal record that contains prior convictions for offences of violence, including a conviction for simple assault in 2012, break and enter, and another simple assault for which she was convicted in 2018. Therefore, I find her record to be an

aggravating factor in this case. I also find the fact that she was serving a period of probation at the time of committing the offence before the Court to be an aggravating factor.

[50] When sentencing someone for life imprisonment and determining the period of parole ineligibility, I do not have to make a finding with respect to credit being given at a certain rate for time spent in custody.

[51] However, I will note that Ms. Silverfox spent seven months in segregation while on remand at WCC. Ms. Silverfox reported to the author of the *Gladue* report the negative impact this had on her mental health.

[52] Section 718.22 of the *Criminal Code* requires me, as the sentencing judge, to consider Ms. Silverfox's circumstances as an Indigenous offender.

[53] In the cases of *R v Gladue*, [1999] 1 SCR 688, and *R v Ipeelee*, 2012 SCC 13, the Supreme Court of Canada provided guidance on the application of that provision. In sentencing an Indigenous offender, I have to consider both the unique systemic and/or background factors which may have played a part in bringing the particular offender before the court, and the types of sentencing procedures and sanctions which may be appropriate in the particular circumstances with the goal of achieving a fit and proper sentence for that particular offender.

[54] In this case, I take into consideration the systemic and background factors, including the residential school system, that have impacted Indigenous offenders in Canada and in the Yukon in particular. I am also considering the specific *Gladue* factors that have affected Ms. Silverfox's life and her personal circumstances, as disclosed in

the *Gladue* report, that have no doubt had an impact or a role in bringing her before the Court today.

[55] Ms. Silverfox entered a guilty plea to the offence of second degree murder. While her guilty plea was not entered at the first opportunity, as it occurred after a preliminary inquiry and on the first day of her jury trial, it was still entered before the jury selection started and, as I understand from her counsel, at the first opportunity to plead guilty to the offence of second degree murder. I also note that, through her counsel, Ms. Silverfox has expressed remorse and regrets for her actions. Ms. Silverfox's guilty plea and her expression of remorse are mitigating factors to take into consideration in sentencing her.

[56] Before imposing sentence on Ms. Silverfox, I want to acknowledge that no sentence I impose, even a sentence of life imprisonment, can bring Mr. Edwards back. No sentence can make up for the loss suffered by the members of his family and his friends as a result of the offence that was committed. I think it is important to acknowledge that.

[57] Considering the nature of the offence, the circumstances of the offence which I have already mentioned, and the circumstances of the offender, I am of the view that a period of 10 years of parole ineligibility, as jointly submitted by Crown counsel and defence counsel, is appropriate.

[58] Ms. Silverfox, would you please stand.

[59] Charabelle Silverfox, for the second degree murder of Derek Edwards, I sentence you to life imprisonment without being eligible for parole until you have served 10 years of imprisonment.

[60] Crown counsel seeks a number of ancillary orders, including a DNA order. The defence did not raise any issue with respect to Crown counsel's request for a DNA order. Second degree murder is a primary designated offence and a DNA order is therefore mandatory in this case. Accordingly, I am prepared to make an order authorizing the taking of the number of samples of bodily substances reasonably required for the purpose of DNA analysis from Charabelle Silverfox.

[61] Also, Crown counsel seeks a firearms prohibition order for 20 years, pursuant to s. 109 of the *Criminal Code*. Defence counsel submits that a period of 10 years would be more appropriate. Considering, on the one hand, that the offence before the Court is one that involves the use of two different weapons in causing Mr. Edward's death, as well as Ms. Silverfox's criminal record, which includes convictions for violent offences, and, more particularly, the recent offences that she committed while in custody. Considering, on the other hand, the time she will have to spend in custody before being eligible for parole and the age she will be when she can apply for parole. Considering as well, the efforts she has made with respect to counselling and dealing with the trauma and the factors behind her alcohol and drug consumption, and her resorting to violence. I find that, because of the serious circumstances surrounding this offence and her previous convictions, it is appropriate that Charabelle Silverfox be prohibited from possessing any firearms or weapons for a period of 20 years after her release from custody, pursuant to s. 109 of the *Criminal Code*. She will be able to apply for an exemption under s. 113 of the *Criminal Code* when the time comes.

[62] In addition, I direct the Registrar of the Court to transmit all the exhibits filed during Ms. Silverfox's sentencing proceeding to the Correctional Service of Canada. A transcript of my decision will be requested and provided to them as well.

[63] Mr. Lane, I do not believe that you have sought a victim fine surcharge in this matter. I do not believe that the Crown has sought any form of restitution either.

[64] Mr. Lane?

[65] MR. LANE: That's correct.

[66] THE COURT: Ms. Cunningham, considering Mr. Lane's position, do you have anything you would like to say?

[67] MS. CUNNINGHAM: Nothing further, thank you.

[68] THE COURT: Considering the circumstances of this case and Ms. Silverfox's situation, I am not imposing a victim fine surcharge. There will not be any restitution ordered in this matter.

[69] Is there a need for me to make a forfeiture order with respect to anything that has been seized by the RCMP in this matter, Mr. Lane?

[70] MR. LANE: I don't have a list of the exhibits but if Your Honour would consider making an order forfeiting any exhibits that were seized in relation to this investigation, I can work with my friend on compiling a list.

[71] THE COURT: I do not know, for example, if a knife has been seized or if the bow and arrows — some of them have been seized. That's why I inquired.

[72] MR. LANE: Yes, well certainly the bow as a weapon used in the commission of the offence is automatically forfeited —

[73] THE COURT: Yes.

[74] MR. LANE: — as per that order now. So perhaps if it could just be limited to any weapons that were seized by the RCMP, I can draft an order for my friend to consider.

[75] THE COURT: Ms. Cunningham, any issue with that?

[76] MS. CUNNINGHAM: It seems fine, thank you.

[77] THE COURT: So, I will make that order.

[78] Anything else, Mr. Lane, that I need to consider or should consider in the case of Charabelle Silverfox?

[79] MR. LANE: No, thank you, Your Honour.

[80] THE COURT: Ms. Cunningham?

[81] MS. CUNNINGHAM: Nothing, thank you.

[82] THE COURT: Thank you.

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CAMPBELL J.