

Citation: *R. v. Silas*, 2010 YKTC 71

Date: 20100622

Docket: 10-00156

10-00157

10-04510

Registry: Whitehorse

Heard: Pelly Crossing

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

JOHN KYLE SILAS

Appearances:

Noel Sinclair

Gordon Coffin

Counsel for the Crown

Counsel for the Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): John Silas has entered guilty pleas to three offences, offences contrary to s. 279(2), 266 and 733.1(1) of the *Criminal Code*.

[2] The circumstances in relation to the s. 279(2) and the 266 are that on March 18, 2010, while Mr. Silas was in the company of the complainant, Lillian Joe, as well as Leanne Edwards and Curtis Joe, and consuming alcohol to the point where he was intoxicated enough that his counsel points out he has little recollection of events, he assaulted Ms. Joe, with whom he was in a domestic relationship.

[3] The circumstances leading up to what took place are that Ms. Joe began to get concerned with respect to her safety as she was aware that Mr. Silas, when he is drinking, has a tendency, in her opinion, to become violent. However, her attempt to leave with Ms. Edwards and Mr. Joe did not materialize, and when she attempted to go after they had left, she was prevented from doing so by Mr. Silas, who had become angry and aggressive, accusing her of infidelity. Mr. Silas began to slap her in the face with his open hands repeatedly back and forth, and he would not stop doing so when Ms. Joe asked him to. She attempted to resist but was unable to because Mr. Silas is significantly stronger than her. He grabbed her left arm, causing significant bruising. Ms. Joe stated again that she wanted to leave. Mr. Silas refused to let her go and began to punch both her legs several times with blows that were described as being those intended to cause charley horses. Mr. Silas disabled the telephone so Ms. Joe could not leave. At some point in time, Mr. Silas passed out and Ms. Joe was able to leave.

[4] She had bruising in the photographs to her left arm and face, quite significant, and, as I understood, there was some bruising, although no photographs, to her legs.

[5] Ms. Joe provided a *K.G.B.* statement and she was here in Court today ready to testify. I might note that this guilty plea is on the day of trial.

[6] A warrant was issued for Mr. Silas's arrest and, subsequently, on May 15th information was received that he was at a certain residence in Pelly Crossing. When the RCMP went to investigate, they subsequently observed him behind the residence. When he saw the RCMP, he left the pop bottle that he had in his possession. It was

dropped on the ground and contained vodka. At that point in time he was subject to a probation order imposed on the 18th day of January that required him to abstain absolutely from the possession or consumption of alcohol outside of his residence.

[7] Mr. Silas has a significant criminal record covering a wide spectrum of property offences, fail to comply with court orders and, of most significance, assaultive behaviour going all the way back to his time as a youth, where there were two assaults in 1998. He has an assault in 2001, assault and uttering threat charges in 2002, assaulting a peace officer and uttering threats in 2003, assaults in 2007, an assault in 2009, and an assault with a weapon in January of 2010, for which he received four months custody which, combined with some time served and a disposition on another offence, consecutive at the same time, had caused him to be released within, it appears, about a month of the date of the offences on March 18th. The assault with a weapon involved Leanne Edwards, who was not in a domestic relationship at the time, but of note, was one of the drinking companions on the night in question.

[8] Certainly, aggravating factors here are that Ms. Joe was in a domestic relationship with Mr. Silas, and that is a statutory breach of trust. There is trust in a relationship where each person in the relationship trusts the other person to treat them with respect and not assault them, and certainly in the case where the stronger assaults the weaker, there is a significant and serious breach of trust. It was a significant assault causing considerable bruising. Mr. Silas had just recently been released from custody for another assault when this took place, and he was on probation at the time. The probation order required him not to drink outside of his own residence and, if I am correct, to have no contact with Ms. Edwards.

[9] We are dealing with a guilty plea. The guilty plea is on the day of trial but it is a guilty plea nonetheless and there is some credit that needs to be given for that.

[10] Mr. Silas spoke in Court and clearly identified and said pretty much everything he needs to do in order to perhaps change the course of his life to date. There is a letter that was filed, that will be marked as Exhibit 4, from Superior Diamond Drilling and his employer that talk about how he is a very valued employee and will be given a job when he is released from custody. Mr. Silas clearly has the ability to do better and it is always going to be a question of choice. Alcohol is a significant problem. He understands that it is as simple as this; that if he drinks, as he said, he will be back before the Court. If he does not drink alcohol, then he has a very good chance of not being back before the Court.

[11] The Crown is suggesting six to eight months for the s. 279 and s. 266, plus the 22 days time served on the s. 733. Defence counsel is not taking any real issue with the range of sentencing pointed out, stating that the eight months is perhaps a significant step up. Certainly the range is an appropriate range in this case. I am going to give Mr. Silas credit for the guilty plea and some recognition of his comments to me, which I accept as being sincere.

[12] I am not going to impose the upper end of the range. It is going to be seven months custody concurrent on the s. 279(2) and the s. 266 charge, and then there will be one day deemed served, taking into account 22 days time in custody on the s. 733.1.

[13] There will be a period of probation of 12 months to follow. The terms of

probation will be:

1. To keep the peace and be of good behaviour;
2. To appear before the Court when required to do so by the Court;
3. To notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change in employment or occupation;
4. Remain within the Yukon Territory unless you obtain written permission from your Probation Officer or the Court;
5. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
6. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
7. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. To not attend any bar, tavern, off-sales or other commercial premises whose primarily purpose is the sale of alcohol;
9. To take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;

Based on the submissions that you made that you intend to take residential treatment, I am going to include the clause that:

10. Having given the Court your consent, attend and complete a residential treatment program as directed by your Probation Officer;

I will note with respect to the alcohol assessment and counselling that in imposing this sentence I have taken into account what you have done while you were in custody to take some first steps to addressing the alcohol issue and what you have stated you are willing to continue to do and what your plans are while you are in custody. That is an important factor in this disposition, that you have already started taking steps. You are not just standing here promising to do it.

11. To take such other assessment, counselling and programming as directed by your Probation Officer;
12. To have no contact, directly or indirectly, or communication in any way with Lillian Joe except with the prior written permission of your Probation Officer in consultation with Victim Services;

Are there any concerns about contact while he is in custody?

[14] MR. SINCLAIR: Well, I haven't received any information from the complainant that she has any interest in maintaining contact with him. I think he's been under a no contact condition.

[15] THE COURT: Is the relationship over?

[16] MR. SINCLAIR: I have no information with respect to that.

[17] NATIVE COUNSELLOR: No, Your Honour, the RCMP might have something, but my conversation is that -- the understanding is the relationship is not over, so. But I haven't spent a lot of time with Ms. Joe, but that's the information I do have.

[18] MR. COFFIN: I don't think that's it's an issue for contact.

[19] THE COURT: I am just wondering whether there is a need to make the order with respect to prohibiting contact at Whitehorse Correctional Centre while he is serving.

[20] MR. SINCLAIR: Well, I think that if it could be, given the information we've received from Victim Services, if we leave it in the discretion of the -- or make it prohibited except in consultation with and as permitted by his Probation Supervisor in consultation with Victim Services.

[21] THE COURT: I am going to impose an order under s. 743.21 prohibiting Mr. Silas from communicating directly or indirectly with Lillian Joe during the custodial period of his sentence except in accordance with any permission granted by the case manager, after consultation with Lillian Joe and Victim Services.

13. To not attend at or within 25 metres of the residence of Lillian Joe except with the prior written permission of your Probation Officer;
14. To provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling that you have been directed to do pursuant to this probation order;

[22] The Crown proceeded indictably and is seeking a DNA order. I am going to make the DNA order that attaches to the s. 279 charge. That is primary designated.

[23] There will be a firearms prohibition for a period of ten years, prohibiting Mr. Silas from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substances or weapons for that period of ten years.

[24] Are those all the terms of the probation order that are sought?

[25] MR. SINCLAIR: That included an abstain clause?

[26] THE COURT: Yes, there was an abstain clause, yes.

[27] MR. SINCLAIR: The order, I think, encompasses the notion that Mr. Silas ought not to be in the company of Lillian Joe while he is under the influence of alcohol to any extent, because he's not supposed to drink at all.

[28] THE COURT: He is not supposed to be in contact with her unless he has permission.

[29] MR. SINCLAIR: Right. My only other comment or submission, Your Honour, is that perhaps consideration could be given to requiring Mr. Silas to carry with him either a copy of the transcript of his own comments during the period of the probation order or a copy of the probation order itself, simply as a reminder to him. I mean, he presents in Court as a thoughtful, articulate person who has some, you know, ambition to make something of himself in his life, and yet the moment that he puts a bottle to his lips and starts to consume alcohol, he really changes into a different person. So I think that anything that the Court can do to help Mr. Silas remember the better part of himself or to, you know, conduct himself according to his own ambition for doing better in life, would serve him well.

[30] MR. COFFIN: My only comment about that is, and I understand the direction my friend is coming from, but to add an order like that suggests to me that there raises the possibility of him being stopped by the police to see whether he's

carrying his papers. If he's otherwise stopped by the police it's because something's going on. There is -- he appeared to be drinking, he's involved in some disturbance; there's some reason for the police to question him other than whether he's got his papers. What difference does it make whether he's carrying his papers, then? I would hate to set a situation up where somebody, out of an abundance of enthusiasm, somebody with the RCMP, says, "Hey, John, you got your order on you?" I don't think we need to set up that kind of a situation.

[31] THE COURT: I kind of agree with both of you, but what I am going to do, I am going to ask -- I am going to want this reviewed, this probation order reviewed, if you are in Pelly. I mean the first circuit, after he is out of custody, I want it reviewed. In all likelihood I will be at that circuit or the next circuit. I am going to ask you when you read that last. I am going to ask you if you have a copy with you in court that day and when you read it last of what you said to me today. Okay? What the Crown is saying here, it is important because it is actually the more you remind yourself, the better off you are going to be and, from the Crown's point of view, the better off you are the better off the people around you are. The Crown wants the same thing for you as we do, as I do, for you to live a healthy lifestyle. That said, I am not going to make an order that you carry the paperwork with you because I also think your counsel has a good point, too. But I am going to ask you, at a review, when you read it last, and I am going to ask you if you have a copy with you.

[32] So you will get a copy. It will be sent to the Whitehorse Corrections Centre, I expect. One way or the other, you will get a copy of what you said today, and I would remind you to read it occasionally just because it is what you said, not what I said.

[33] I am going to waive the victim fine surcharges. The remaining counts?

[34] MR. SINCLAIR: Stay of proceedings.

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COZENS T.C.J.