

Citation: *R. v. Ensor*, 2017 YKTC 2

Date: 20170120
Docket: 16-00117
16-00301
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JONATHAN ARTHUR ENSOR

Appearances:
Megan Seiling
Jonathan Ensor

Counsel for the Territorial Crown
Appearing on his own behalf

REASONS FOR SENTENCE

[1] Jonathan Ensor has entered guilty pleas to having committed the following offences contrary to the Yukon *Wildlife Act*, RSY 2002, c. 229 as amended (the “*Act*”) and/or the *Wildlife Regulations* (the “*Regulations*”):

- 4 offences contrary to s. 6 of the *Act* for hunting wood bison, deer, elk and game birds when not permitted;
- 2 offences contrary to s. 32(1) of the *Act* for wasting meat – wood bison, and grouse;
- 1 offence contrary to s. 9(1) of the *Regulations* for using a vehicle for hunting and transporting wood bison in a closed area;
- 1 offence contrary to s. 31(1)(a) of the *Regulations* for hunting deer with non-soft pointed ammunition;

- 1 offence contrary to s. 8(2) of the *Regulations* for hunting deer within 800 metres of a highway center line;
- 1 offence contrary to s. 23(1) of the *Act* for hunting deer during the period one hour after sunset to one hour before sunrise;
- 2 offences contrary to s. 107(1)(a) of the *Act* for possessing caribou and sheep killed contrary to the laws of another jurisdiction, (British Columbia);
- 2 offences contrary to s. 31(2) of the *Act* for possessing dead wildlife, eagle feathers and sheep horns, that he had come upon by chance or unexpectedly, without a permit.

[2] He has also entered guilty pleas to having committed 2 offences contrary to s. 7(2) of the federal *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (“WAPPRIITA”) for transporting caribou and Dall sheep taken in contravention of the British Columbia *Wildlife Act*, [R.S.B.C. 1996] Chapter 488, from British Columbia to the Yukon.

[3] The facts are set out in an Agreed Statement of Facts which is appended to these reasons for judgment.

[4] Mr. Ensor is an experienced hunter who was well aware of the legal requirements in regard to his actions and, therefore of the fact that he was breaking the law. He took conscious steps to avoid detection.

[5] It is conceded by the Crown that Mr. Ensor was not attempting to profit financially from his actions. Crown counsel accepts that Mr. Ensor was hunting in order to, essentially, fill his freezer with meat. Counsel also accepts that Mr. Ensor was not attempting to hunt illegally in British Columbia or to traffic in wildlife, but points out

correctly that Mr. Ensor was obliged to know where the border between the Yukon and British Columbia lay.

[6] Counsel notes that Mr. Ensor was not in need of meat obtained from hunting for sustenance purposes. There was a measure of planning and deliberation in his actions and he made attempts to conceal what he was doing, which points to his knowledge that he was breaking the law and to his disregard for the law. He also included others in his illegal activities.

[7] In addition, Mr. Ensor continued to illegally hunt for meat when he was already in possession of meat that was going to waste as he was unable to process it properly.

[8] Also noted was the fact that Mr. Ensor was subject to a firearms prohibition under the *Criminal Code* at the time he committed these offences.

[9] Counsel notes that, while initially uncooperative with the investigation, Mr. Ensor soon began to cooperate and accepted responsibility early in the process and, in doing so, saved the Crown from a lengthy and costly trial.

[10] Counsel submits that for the *Act* and *Regulations* offences, Mr. Ensor should receive a sentence of six months in custody. Counsel is opposed to Mr. Ensor serving this time conditionally in the community.

[11] For the *WAPPRIITA* offences, counsel submits that Mr. Ensor should be required to make a contribution of \$15,000 to the Turn in Poachers and Polluters Fund. In addition counsel submits that there is a mandatory fine surcharge of 30%, which would add an additional \$4,500.

[12] Counsel seeks that Mr. Ensor be subject to a 20-year hunting prohibition.

[13] Counsel notes that the fines available for each separate offence under the *Act* and *Regulations* is \$50,000 and up to one year imprisonment, or a combination of the two. Fines up to \$100,000 are available for offences committed for commercial purposes or for profit, or if related to specially protected wildlife. If the offender has been previously convicted of an offence under the *Act*, the fines can be doubled. None of the animals in this case are specially protected wildlife.

[14] Prior to the passing of the current *Act* in 2001, the maximum sentence for most offences under the *Wildlife Act* was \$10,000 and/or 12 months' custody, and offences under the *Wildlife Act Regulations* were punishable by a maximum fine of \$1,000.

[15] The maximum punishment for each separate offence committed under *WAPPRIITA* when Crown elects to proceed by summary conviction and the offender is not a corporation, is \$25,000 and six months in jail, or a combination of both. As with the *Act*, these fines can be doubled for offenders who have been previously convicted of an offence.

[16] Mr. Ensor, who is not represented by counsel, does not take issue with the imposition of a six-month custodial disposition, however, he seeks that he be allowed to serve this sentence conditionally in the community. He also submits that he is prepared to pay a total of \$45,000 in fines and/or contributions and accept a lifetime ban on hunting.

[17] Mr. Ensor provided a number of support letters. He has been employed for the past 11 and one-half years with Lamar Flooring. His employer indicates that Mr. Ensor is a valuable and hard-working employee. He works in a supervisory role as a foreman, including the planning of jobs. He also deals with customers. His employer states that Lamar Flooring is involved in numerous large products in which Mr. Ensor plays a key role.

[18] Similar support for Mr. Ensor as a hard worker was provided by the Project Manager overseeing the construction of the new Salvation Army building, who has known Mr. Ensor for a number of years.

[19] The mother of Mr. Ensor's young daughter speaks to the regular contact she and Mr. Ensor have in working together to raise their daughter, as well as the importance of the financial support Mr. Ensor provides for their daughter.

[20] Numerous sentencing authorities were referenced by Crown counsel in support of her position on sentence. Some of these decisions are accompanied by the sentencing judge or justice of the peace's reasons for the sentence imposed while other decisions only provide the sentence imposed without reasons. Crown counsel provided additional information with respect to these decisions where such information was readily available.

[21] The following is a brief compilation of these decisions:

- s. 6 of the *Act* (elk): a contribution of \$3,000 and a four-year hunting prohibition (*R. v. Leduc*, 2016 Y.K.T.C. No. 16-04086A);

- ss. 32(1), 15(1) and 118 of the *Act* (wood bison): \$7,000 in fines and a five-year hunting prohibition (**R. v. Dhillon**, 2013 Y.K.T.C. No. 11-07059);
- ss. 6 and 89(1)(a) of the *Act* (wood bison): \$1,500 in contributions and a one-year hunting prohibition (**R. v. Ereaud**, 2015 Y.K.T.C. No. 14-07049);
- s. 6 of the *Act* (wood bison): \$500 fine and hunting prohibition until completion of the hunter education course (“HEED”) (**R. v. Benoit**, 2015 Y.K.T.C. No. 14-06948);
- ss. 6, 32(1) x 2 and 113 of the *Act* (wood bison, grouse): a contribution of \$5,000 and a three-year hunting prohibition (**R. v. Pasula**, 2016 Y.K.T.C. No. 16-00117);
- s. 7(1)(a) of the *Act* (mule deer): a contribution of \$3,500 and a three-year hunting prohibition (**R. v. Allaire**, 2012 Y.K.T.C. No. 11-06745);
- s. 6 of the *Act* (sheep): \$1,750 fine (**R. v. Schroeder**, 2014, Y.K.T.C. No. 14-05432A);
- ss. 32(1), 24(4) of the *Act* (stone sheep, moose): \$11,500 in contributions and a 10-year hunting prohibition for the least responsible offender and a contribution of \$15,000 and a 20-year hunting prohibition for the most responsible offender (a guide) (**R. v. Tallerico**, 2014 YKTC 56);
- ss. 6 x2, 46 of the *Act* (grizzly bear, caribou): \$10,000 in contributions and a seven-year hunting prohibition (**R. v. Garrett**, 2014 Y.K.T.C. No. 13-11355A);
- ss. 10(1), 15(2) of the *Act* (moose): 45 days custody and a three-year hunting prohibition (**R. v. Sevigny**, 2009 YKTC 121);
- s. 15(1) of the *Act* and s. 33(2) of the *Regulations* (moose): \$6,500 in fines/contributions and a two-year hunting prohibition (**R. v. Candow**, 2006 YKTC 45);
- ss. 11(1) x2, 32(1) x2 of the *Act* (moose): \$12,000 in fines and a five-year hunting prohibition (the maximum). The court stated as follows: “...I would be hard-pressed to think of a more aggravated set of facts on charges of this kind. The maximum fine, of course, is reserved for the worst sort of case. This is right up there with the worst sort of case”. (The fine was less than maximum due to early guilty plea, acceptance of responsibility and lack of prior record) (**R. v. Van Mackelberg**, [1992] Y.J. No. 90);

- ss. 6, 10(1), 102(1) of the *Act* (wolves): \$6,500 in fines and a two-year hunting prohibition (**R. v. Thomas**, 2016 YKTC 20, appeal dismissed 2016 YKSC 58);
- ss. 11(2), 17 of the *Act* (elk): 45 days custody, plus 15 days concurrent and a two-year hunting prohibition (**R. v. Taggart**, (1994) Y.K.T.C. No. 93-06958) (At that time elk were a specially protected species with a maximum fine available of \$25,000 and 24 months in jail, or a combination of both);
- three counts under the *Act* for hunting Dall sheep where not permitted, wasting meat and removing parts of the Dall sheep from the Yukon: \$9,500 fine and a three-year hunting prohibition (**R. v. Cartwright** (1997), Y.K.T.C. No. 97-11009;
- ss. 24(1), 32(1), 118(1) of the *Act* and 4(5) of the *Regulations* (wood bison): \$7,000.00 in fines and a five year hunting prohibition (**R. v. Jabbar**, 2014 Y.K.T.C. No. 12-05277).

[22] In addition the following sentencing decisions were provided for offences committed under *WAPPRIITA*:

- ss. 11 x2, 6(2) x4, 7(1), 8(a) x4 of *WAPPRIITA* (Dall sheep, moose, grizzly bear, Alaskan black bear): \$20,000 total in fines and 10-year prohibition from obtaining export/import permits (**R. v. Martin**, 2015 Y.K.T.C. No.'s 13-06337, 13-04626) (In addition he committed ss. 6, 101(1) offences under the *Act* (moose, Dall sheep, ptarmigan) for which he was prohibited from possessing a firearm in the Yukon, accompanying a hunter or exporting any wildlife or parts for 10 years);
- s. 7(2) of *WAPPRIITA*: \$3,000 (**R. v. Sandbach**, [1998] Y.J. No. 34 (T.C.)) (in addition he received \$2,000 in fines for ss. 52 and 11(1) offences under the *Act*.);
- s. 6(3) of *WAPPRIITA* (bison): \$1,500 fine (**R. v. LaPrairie**, 2003 YKTC 24);
- s. 6(2) of *WAPPRIITA* (Stone sheep) (In addition offences under ss. 11(1)(a)(i), 47(b)(i) and 81(b) of the British Columbia *Wildlife Act*) for which he was sentenced to a total of \$100 in fines, a \$4,900 contribution to the Heritage Conservation Trust Fund and a five-year hunting prohibition. Taken into account was the sentence imposed in the USA for the same actions of four months' house arrest and a total of

\$30,000 in fines and restitution and a two-year worldwide hunting ban) (*R. v. Leggett*, 2004 BCPC 73);

- ss. 6(2) and 8(a) of *WAPPRIITA* (Dall sheep): \$3,500 and a five-year prohibition from obtaining permits (*R. v. Johnson*, 2014 Y.K.T.C. No. 13-00406);
- s. 8(a) of *WAPPRIITA* and s. 40(1) of the *Act* (Colosimo) (Stone sheep): \$5,000 fine and a \$10,000 fine respectively and a 15-year hunting prohibition: 7(2) of *WAPPRIITA* and ss. 42(1)(a), 42(1)(b), 118(1) and 59(2) of the *Act*. (Richards J.): \$4,000 fine and a total of \$27,500 in fines and a 20-year hunting prohibition (remaining in effect until the fines are paid) (*R. v. Richards et al*, 2014 Y.K.T.C. No.'s 12-11062, 63, 64; 12-11461, 62, 63, 64; 12-11380; 12-11083, 84, 85; 13-00846, 47, 48);
- s. 6(2) of *WAPPRIITA* and 153(a) of the *Customs Act* (lizards); \$500 in fines for each and a \$4,000 contribution to the Environmental Damages Fund (*R. v. Anderson*, 2016 BCPC 372).

[23] It is clear from these authorities that offences committed under *WAPPRIITA* and the *Act* and *Regulations* are not taken lightly. In *Candow*, Faulkner J. stated in para. 10:

The cases make it clear that there are a number of special considerations in sentencing for wildlife offences in the Yukon. Firstly, it is clear that wildlife in the Yukon have not only an intrinsic value in and of themselves but form a particularly valuable resource within the Territory. Secondly, the Yukon is very large and much of it is very remote, rendering overseeing of wildlife laws very difficult and, coincidentally, making the temptation to cheat all the greater. Thirdly, as previously indicated, the legislature has recently increased some five-fold the range of fines that may be imposed. This is an indication of the seriousness with which wildlife offences are viewed within the Territory.

[24] Conversation officer Aaron Koss-Young and Environmental Sustainability ungulate biologist Sophie Czetwertynski provided testimony in the sentencing hearing. This testimony was not disputed or challenged by Mr. Ensor.

[25] From their testimony, it is clear that the failure of individuals to comply with legislation designed to protect wildlife has the potential to result in a significant negative impact upon the regulation of wildlife in the Yukon. The science behind the decisions to grant harvesting permits relies heavily on reliable data as to the population density of each particular species of wildlife. A significant amount of work and study goes into the efforts that are made by those responsible for ensuring that the best information as to the current health and populations of wildlife is accurate and reliable. Poaching and inaccurate reporting of wildlife kills renders the compiled data unreliable and can lead to decisions being made that are not what they otherwise would have been, to the detriment of wildlife conservation and to Yukoners.

[26] The offences committed by Mr. Ensor undermine the accuracy of the information that is gathered and thus has the potential to significantly impact the research that is done and the legislative and policy decisions that are made.

[27] The Yukon is a geographically large territory and the research relies, to some extent, on the information provided by hunters. The unreported killing of animals creates uncertainty and that uncertainty undermines conservation efforts.

[28] Officer Koss-Young spoke of the difficulty of so few officers attempting to ensure that the wildlife laws are obeyed within the Yukon. The area is vast and there are a limited number of enforcement officers available to cover this area and ensure that wildlife laws are being complied with.

[29] Certainly, in Mr. Ensor's case, it was only through anonymous information provided by the Yukon public that search warrants were obtained, leading to Mr. Ensor

being charged with having committed these offences. In this regard, it can be said that the enforcement of wildlife legislation in the Yukon relies heavily upon members of the Yukon public providing such information as is available when aware that an individual is committing offences. In a sense, it can be said that this is a responsibility that lies with all Yukoners when they have knowledge or information that a wildlife offence has been or is being committed.

[30] Deterrence, both for Mr. Ensor and for others who would be tempted to commit similar offences, is a primary sentencing objective for these offences. For some individuals, the difficulties associated with policing such a large area as the Yukon encourages them to hunt illegally and assume the relatively low risk of being caught. For that reason, sentences imposed for wildlife offences need to have a deterrent effect. Hunters who break wildlife laws need to know that, if caught, they will lose their privilege to hunt and face significant fines and, in some instances, jail sentences.

[31] Further, denunciation of Mr. Ensor's actions is also important. Society's condemnation of his actions needs to be represented through the sentence to be imposed upon him. In the **Candow** case, the Court noted that Mr. Candow's actions in switching his tag with his wife's on a smaller moose so that he could then place his tag on a larger moose who came by and was also shot by him, upset his hunting companions to the point where they refused to assist him with either of the moose, including with the legally killed smaller moose, who was now illegal due to the tags being switched. Their actions denounced Mr. Candow's actions, as they should. The Court noted in para. 13:

...I also take into account that in using his wife's tag, he risked involving his wife in this scheme. I take into account as well that he placed his hunting companions in a very difficult position. Fortunately, they acted throughout in a principled fashion and refused to become complicit in what had occurred

[32] One's own peers are sometimes in the best position to express how distasteful certain actions are. That is what happened in the **Candow** case. On a broader scale, that is also what I must do through the sentence that I am to impose.

[33] As noted by the Court in **R. v. C.A.M.** [1996] 1 S.C.R. 500, at para. 81:

...The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. ...

[34] I would say the same with respect to offences committed under the *Act*, the *Regulations* and *WAPPRIITA*.

[35] The sheer number of offences committed, the nature of them, and the reckless disregard shown by Mr. Ensor for wildlife laws, requires the imposition of a sentence that sends a message that such acts will be punished in a meaningful way.

[36] I agree with Crown counsel, and for his part, Mr. Ensor, that for these offences he has committed contrary to the *Act* and the *Regulations*, a monetary disposition through the payment of fines or financial contribution is insufficient to provide the necessary deterrent and denunciatory effect that is required. A period of custody is warranted. In addition there will also be a monetary penalty.

[37] The custodial disposition will be for a period of six months.

[38] I have decided, however, in determining that the length of the sentence will be for six months that Mr. Ensor will be allowed to serve his sentence in the community.

[39] The relevant portion of s. 742.1 of the *Criminal Code* reads as follows:

If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under s. 742.3, if

- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.

[40] I accept that Mr. Ensor is remorseful for his actions. The Crown's primary objection to Mr. Ensor receiving a conditional sentence is the concern that if in the community rather than in custody at Whitehorse Correctional Centre ("WCC"), he will re-offend. This belief is based upon the pattern of offending that was involved in the commission of these offences. Counsel also noted his disregard of the firearms prohibition he was subject to at the time of these offences.

[41] There is no absolute guarantee that Mr. Ensor will not re-offend if he is serving his sentence in the community for the four months he would otherwise be in custody at WCC if sentenced to a six-month sentence, based upon the normal application of statutory release after serving two-thirds of his sentence. Absolute guarantees are not

required, however. A decision to allow an offender to serve his or her sentence in the community is based upon the criteria set out in s. 742.1.

[42] I am satisfied that Mr. Ensor appreciates and understands the significance of his actions and the harm he has caused. I also believe that he understands the jeopardy he has placed himself, and those who rely upon him, in. Whether this appreciation and understanding will continue in the long run is something that only time will tell. However I expect and believe that his appreciation and understanding will last for some time.

[43] I am satisfied that any risk of re-offending in the immediate future is low and is such that it does not pose a danger to the community.

[44] It was also made clear by the Supreme Court of Canada in the decision of **R. v. Proulx**, 2000 SCC 5, that the sentencing objectives of denunciation and deterrence can be met through the imposition of a conditional sentence. As stated in para. 41:

This is not to say that the conditional sentence is a lenient punishment or that it does not provide significant denunciation and deterrence, or that a conditional sentence can never be as harsh as incarceration. As this Court stated in *Gladue*, [1999] 1 S.C.R. 688], *supra*, at para. 72:

... in our view a sentence focussed on restorative justice is not necessarily a "lighter" punishment. Some proponents of restorative justice argue that when it is combined with probationary conditions it may in some circumstances impose a greater burden on the offender than a custodial sentence.

A conditional sentence may be as onerous as, or perhaps even more onerous than, a jail term, particularly in circumstances where the offender is forced to take responsibility for his or her actions and make reparations to both the victim and the community, all the while living in the community under tight controls.

[45] Further, I find that allowing Mr. Ensor to serve his sentence in the community will serve the objective of rehabilitation and, in doing so, enhance the future protection of society. I believe that Mr. Ensor understands that his actions have placed the financial security of his family at risk and that it has placed his employer's ability to fulfill contractual obligations in jeopardy. I also believe that Mr. Ensor, in part through the notoriety he has now achieved through this court process, including the media coverage he has garnered, understands the wrongfulness of his actions and the need to avoid any repetition of them. If Mr. Ensor is found to have breached any of the terms of this conditional sentence order, he will find himself in the position of having to convince this Court that he should not be required to serve all or any remainder of his sentence in custody at WCC.

[46] Therefore the sentence for the offences contrary to the *Act* and the *Regulations* is a period of custody of six months, to be served conditionally in the community.

[47] The terms of the conditional sentence will be as follows:

1. Keep the peace and be of good behavior;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the Yukon unless you have written permission from your Supervisor;

5. Notify the Supervisor in advance of any change of name or address, and promptly, of any change of employment or occupation;
6. Reside as approved by your Supervisor and do not change that residence without the prior written permission of your Supervisor;
7. For the first three months of this order, at all times you are to remain in your residence or on your property, except for the purposes of employment, including travel directly to and directly from your place of employment, or otherwise except with the prior written permission of your Supervisor. Upon request by your Supervisor, you are to provide your Supervisor with a weekly work schedule, either for work which you have already completed or work which is upcoming. You must answer the door or the telephone to ensure you are in compliance with this condition. Failure to do so during reasonable hours will be a presumptive breach of this condition;
8. For the last three months of this order you are to abide by a curfew by being inside your residence or on your property between the hours of 10:00 p.m. and 6:00 a.m. daily, except for the purposes of employment, including travel directly to and directly from your place of employment, or otherwise except with the prior written permission of your Supervisor. Upon request by your Supervisor, you are to provide your Supervisor with a weekly work schedule, either for work which you have already completed or work which is upcoming. You must

answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

[48] It must be remembered that this is a jail sentence which Mr. Ensor is being allowed to serve in the community. As such, as is almost invariably the case in conditional sentence orders, Mr. Ensor will:

9. Not possess or consume alcohol or controlled drugs or substances that have not been prescribed for you by a medical doctor;
10. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
11. Not possess any firearm, ammunition, explosive substance, or any weapon as is defined by the *Criminal Code* except with the prior written permission of your Supervisor.

[49] In addition, for the offences committed under the *Act* and the *Regulations*, Mr. Ensor will be required to make a contribution in the amount of \$10,000 to the Conservation Fund as established under s. 186 of the *Act*.

[50] For the offences committed under *WAPPRIITA*, Mr. Ensor is fined \$1 and will be required to make a contribution in the amount of \$10,000 to the Government of Yukon to be directed to the Turn in Poachers and Polluters Fund.

[51] Notwithstanding Mr. Ensor's offer to pay a total of \$45,000 in fines and contributions, I consider this amount to be excessive and unwarranted and, as such, it would be unfair to require him to do so.

[52] Hunting in the Yukon is a privilege. Mr. Ensor has forfeited his right to enjoy this privilege. He is prohibited from hunting in the Yukon for a period of 20 years. I am satisfied that this is a reasonable limit on his privilege to hunt and that the lifetime ban he has offered to agree to is not required.

[53] With respect to surcharges, in *R. v. Sandover-Sly*, 2000 BCCA 445, it was conceded by the Crown on appeal that s. 737(1) of the *Criminal Code* did not authorize the imposition of a victim fine surcharge under the *Fisheries Act*. Section 737(1) reads as follows:

An offender who is convicted, or discharged under section 730, of an offence under this Act or the *Controlled Drugs and Substances Act* shall pay a victim surcharge, in addition to any other punishment imposed on the offender.

[54] The offence and punishment sections of the *Fisheries Act* mirror that of *WAPPRIITA*. As such, I find that there is no surcharge payable on any monies ordered to be paid in respect of the *WAPPRIITA* offences.

[55] Mr. Ensor will have two years to pay the \$20,001. If he requires additional time, he can have the matter brought back before this Court and request such time. Of course, should he do so, he will be expected to explain what he has done by way of payment and why he has not been able to complete full payment within the allotted time.

[56] Pursuant to s. 167 of the *Act*, there is a forfeiture order with respect to all the items seized.

COZENS T.C.J.

JAN 03 2017

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Agreed Statement of Facts***R. v. Ensor***T.C. No. 16-00117 (Charges under the *Wildlife Act*)T.C. No. 16-00301 (Charges under the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*)**Anticipated Date of Disposition: January 4, 2017**

The following facts are agreed to by Crown counsel and by Jonathan Ensor.

Background:

1. On October 1, 2015, Conservation Officers obtained a search warrant to search the residence of Mr. Jonathan Ensor based on anonymous tips that he had been illegally hunting wildlife in the Yukon. Conservation Officers executed the search warrant on October 2nd, 2015.
2. As a part of the search, Conservation Officers located and seized firearms, ammunition, and electronic equipment as well as the carcasses, meat, and body parts of various big- and small-game animals.
3. As a result of the ensuing investigation and evidence uncovered during and after the execution of the search warrant, Mr. Ensor was charged with contraventions of the *Wildlife Act* and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*.

The facts listed below pertain to Counts 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 19, 20 and 21 on Information 16-00117 and to Counts 1 and 2 on Information 16-00301.

Bison (Information 16-00117: Counts 1, 3, 4, and 5)

1. On September 12, 2015, Mr. Jonathan Ensor went hunting for bison outside of Haines Junction, Yukon with his girlfriend (Ms. P)
2. In the fall 2015 hunting season, in the Haines Junction area, the hunting of bison was prohibited outside of a 3 km wide corridor along the north side of the Alaska Highway between Whitehorse and Slims River Bridge (the "hunting corridor"). This restriction was in place on September 12, 2015.
3. Ms. P held valid a Yukon hunting licence and a valid permit to hunt wood bison and small-game. She had minimal experience hunting and this was the first time she had ever held a big-game hunting licence.
4. Mr. Ensor had neither a hunting licence nor a permit, yet had extensive experience hunting, field dressing animals, and operating firearms for the purpose of hunting. He had been teaching Ms. P about handling guns and was leading the hunt on September 12, 2015.
5. On September 12, 2015, Mr. Ensor was also prohibited from possessing firearms by an order of the court.
6. Ms. P and Mr. Ensor drove Ms. P's truck approximately 15kms down Cultus Bay Road off of the Alaska Highway, 12 kms outside the hunting corridor where bison hunting was permitted.
7. Ms. P and Mr. Ensor were both aware that the hunting corridor was in effect on September 12, 2015. Despite having a personal copy of the Yukon's hunting regulations, they did not confirm the exact boundaries of the corridor, but were aware of it, generally, and knew that they had driven beyond it.
8. The pair got out of the truck and walked in search of game. Ms. P shot and killed several grouse with a 22 calibre rifle.
9. Mr. Ensor maintains that during the hunt he was carrying a 300 Winchester Magnum rifle.

10. Eventually, the pair spotted a bison. Ms. P and Mr. Ensor maintain that both of them shot the bison, three times in total. They maintain that Ms. P shot the bison twice, first with a 458 calibre rifle and when it fell, wounded, Mr. Ensor took another shot with a 300 Winchester Magnum rifle in the back of its head to complete the kill.
11. Upon examining the hide of the bison after its seizure on October 2, 2015, Conservation Officers found signs of 4 bullet entries into the bison. They found three entry holes in the shoulder – two which matched the size of a bullet from a 300 calibre rifle, and one which matched the size of a bullet from a 458 calibre rifle. They found a further entry point in the back of the head of the bison with an entry hole matching the size of a bullet from a 458 calibre rifle.
12. Mr. Ensor drove Ms. P's truck approximately 50 metres off of Cultus Bay Road into the bush in an area where the *Wildlife Regulations* prohibit using a vehicle for the purpose of hunting or transporting hunters. He did this in order to load the harvested bison into the back of the truck and transport it from the kill-site.
13. Ms. P lived in Haines Junction at the time, but the pair returned to Mr. Ensor's residence in Whitehorse and hung the bison in his shop with all of the skin still on it. It was agreed that he would butcher the bison.
14. Ms. P attached her seal to the bison and cancelled it at the time of the hunt, however she did not report the kill to Conservation Officers as was required under her permit.
15. Knowing the hunt was illegal and outside the permitted area for bison, and given that fact that Mr. Ensor hunted illegally, the pair made a conscious decision not to report the bison kill.
16. The following day, Ms. P returned to her home in Haines Junction and Mr. Ensor assumed responsibility for butchering the bison.
17. Mr. Ensor hung the bison in his shop without first washing it. When he began to butcher the bison several days later he found the meat had already begun to mould.
18. Four days prior to hunting the bison, Mr. Ensor had hunted an elk which was hanging in his shop when he returned with the bison. Having to first complete butchering the elk delayed Mr. Ensor from beginning to butcher the bison.
19. Over the next few weeks, Mr. Ensor progressively butchered and packaged parts of the bison, but made no significant progress and the remaining meat began to waste.
20. Mr. Ensor and Ms. P were unwilling to pay a butcher to deal with the bison meat for fear of being reported. Instead, the pair sought out friends who would help and 'do it quietly'. They could not find help dealing with the meat.
21. Any person who took meat from the bison hunt, as a gift or in exchange for helping them to butcher it would be in possession of illegally killed wildlife and therefore, themselves, be in contravention of the *Wildlife Act*.
22. Neither Ms. P nor Mr. Ensor had time to attend to the grouse hunted by Ms. P on September 12, 2015. The grouse wasted while Mr. Ensor attempted to attend to the big-game animals.
23. While executing the search warrant on October 2, 2015, Conservation Officers located the carcasses of several animals including the bison hanging in Mr. Ensor's shop.
24. All parts of the bison were seized and taken to a butcher in Whitehorse who salvaged what meat was still edible. In total, from what was left on the bison, approximately 66 pounds of meat was wasted and had to be discarded.
25. During the investigation of these offences, Ms. P gave two statements to Conservation Officers. In her first statement, she claimed that she and Mr. Ensor had parked their truck not far off the highway and walked a short distance before seeing the bison, suggesting that the hunt was within the hunting corridor. Mr. Ensor, in a cautioned statement to Conservation Officers, gave the same story, stating that the pair only traveled 'not very far' down Cultus Bay road off of the Alaska highway before encountering the bison.
26. Due to the information provided by Ms. P and Mr. Ensor in their statements, officers were unable to locate the kill site. Officers extracted metadata from photos taken on Mr. Ensor's telephone to

- get GPS coordinates which led them to the kill site for the bison, approximately 15 kms back on Cultus Bay Rd, well outside Alaska highway corridor where the hunting of bison was permitted.
27. Mr. Ensor and Ms. P coordinated their stories in order to cover up the actual location of the bison hunt. Both Mr. Ensor and Ms. P, when confronted with the evidence of the actual location of the kill site, admitted they had lied about the location of the kill, and admitted that they knew they had hunted the bison outside the area where it was legal.
 28. Further, in his first statement to officers, Mr. Ensor denied having shot the bison. Only when informed by officers that Ms. P had confessed that both she and Mr. Ensor had shot the bison did Mr. Ensor claim that he took the last shot with the 300 Winchester Magnum, ultimately killing the bison.

Deer (Information 16-00117: Counts 7, 8, and 9)

- * 10 
29. On August 31, 2015, Mr. Ensor went hunting with a friend down Annie Lake Road, outside of Whitehorse, in the Yukon.
 30. The hunt was unsuccessful, and Mr. Ensor dropped his friend back at his residence near the Carcross Cutoff outside of Whitehorse between 11-11:30 pm that evening.
 31. Mr. Ensor returned to Annie Lake Road alone. While driving down Annie Lake Road away from the highway, he spotted a deer not far off the road.
 32. He exited his vehicle, and using a rifle loaded with service ammunition (full metal jacket), shot the deer once. It died. At the time that Mr. Ensor shot the deer, it was within 800 m of Annie Lake Road.
 33. Hunting big-game animals with full metal jacket ammunition is prohibited under the *Wildlife Act*. Using full metal jacket ammunition is considered a less humane way of hunting, more likely to wound an animal, rather than kill it compared to soft-point ammunition, and it has a greater range, meaning there is more potential for it to travel greater distances once fired.
 34. Mr. Ensor was aware that hunting with full metal ammunition was not permitted under Yukon's *Wildlife Regulations* for these reasons and he was also aware that the *Wildlife Regulation* prohibits the hunting of big-game animals within 800m of the centre-line of Annie Lake Road.
 35. Mr. Ensor returned the deer whole to his residence before gutting it. The deer's carcass, including its hide, feet, and legs, were found hanging in Mr. Ensor's shop on October 2, 2015.
 36. On August 31, 2015, the sun set at 8:07pm. As per the regulations, no hunting is permitted one hour after sunset which would have been 9:07pm on August 31, 2015. Mr. Ensor was aware of the legal hunting hours in the Yukon. Nonetheless, Mr. Ensor shot the deer in the dark, sometime between 11:00pm-12:02pm.
 37. On August 31, 2015, Mr. Ensor had no licence or permit issued pursuant to Yukon's *Wildlife Act* authorizing him to hunt deer. At present in the Yukon, only 10 permits to hunt deer are issued to Yukon residents a year through a lottery system.
 38. In his first statement to Conservation Officers, Mr. Ensor alleged that he shot the deer between 7:00pm and 8:00pm. In his second statement, he confessed to the actual time and location of the hunt.
 39. While executing search warrants, Conservation Officers located the hides of two other deer in Mr. Ensor's freezer which he claimed were shot by a friend in 2014. He butchered the deer and saved the hides.

Elk (Count 13)

40. While executing the search warrant, Conservation Officers located remnants of an elk carcass, including a head, hide, and legs.
41. On September 8, 2015, Mr. Ensor took his cube van to Stoney Creek Pit outside of Whitehorse, Yukon near Mendenhall subdivision. He slept the night in his van and in the morning, near to

where he had parked, saw a cow elk. He proceeded to shoot the elk once with a 300 Winchester Magnum rifle.

42. Mr. Ensor shot the elk in a core area where no licences are issued for the hunting of elk.
43. Mr. Ensor gutted the animal on-site, loaded it into his van, and returned it to his residence where he proceeded to butcher it and freeze it.
44. Mr. Ensor was not authorized to hunt elk in the Yukon and admitted he was aware of this when he went hunting on September 8, 2015.

Caribou (Information 16-00117: Counts 17) (Information 16-00301: Count 1)

45. BC's *Hunting Licencing Regulations*, B.C. Reg 8/99, made pursuant to BC's *Wildlife Act*, RSBC 1996, c.488 provides that a person commits an offence if the person hunts, among other game, caribou or mountain sheep, unless he or she holds a hunting licence and an uncanceled species licence for the species hunted.
46. In the fall of 2014, between August 2014 and December 2014, Mr. Ensor went hunting in what is commonly referred to as the 'Paddy Pass' area located in British Columbia between the border of Yukon and Alaska with a friend.
47. While driving in the mountains, the pair came upon a male caribou.
48. Mr. Ensor shot the caribou twice with a 308 Winchester Magnum rifle. Mr. Ensor maintains he did so for his hunting partner at her request.
49. He proceeded to transport the caribou back to his residence in Whitehorse where he butchered it and saved the antlers. The antlers were located at his residence during the search executed on October 2, 2015.
50. Mr. Ensor did not possess any hunting authorization issued under BC law.
51. Mr. Ensor did not have a permit to transport the caribou out of BC to the Yukon.
52. Mr. Ensor's hunting companion at the time was a member of the Carcross Tagish First Nation.
53. In his statements to officers, Mr. Ensor claimed he believed that her citizenship meant that he could hunt so long as she was present. He did not have a Yukon or a BC hunting licence to hunt for caribou.

Sheep (Information 16-00117: Counts 19) (Information 16-00301: Count 2)

54. In the fall of 2014, between August 2014 and December 2014, Mr. Ensor went hunting with the same hunting companion in the Paddy Pass area in BC.
55. He and his hunting companion encountered two dall sheep, one male and one female. Mr. Ensor proceeded to shoot and kill both sheep. Mr. Ensor maintains he did so for his hunting partner at her request.
56. Mr. Ensor left the horns from both sheep on the mountain and transported the sheep to his residence outside of Whitehorse where he butchered the sheep.
57. During the execution of the search warrant on October 2nd, 2015, hides from both sheep were located in his freezer. Several packages of wrapped sheep meat from the hunt were found discarded in the garbage and wasted. Mr. Ensor admitted that some of the meat had been poorly wrapped and he had removed it from his freezer to make room for the bison he was in the process of harvesting.
58. Dall sheep is a species of mountain sheep, which persons are prohibited to hunt in BC without the necessary licences and permissions. In BC, a non-resident hunter wishing to hunt sheep must be accompanied by a registered guide outfitter specially permitted to accompany non-resident hunters.
59. Mr. Ensor had no authorization under BC or Yukon law to hunt dall sheep in BC or the Yukon.
60. In his first statement to investigating officers, Mr. Ensor claimed that the sheep located in his residence were shot by his companion, and that he was not involved in the hunt.

61. Later, when officers collected a second statement, Mr. Ensor admitted that he had shot and killed both sheep and lied to officers in his first statement.

Small-Game (Information 16-00117: Counts 4 and 15)

- 62. While executing the search warrant on October 2, 2015, Conservation Officers located at least four grouse thrown away whole and wasted in a garbage can. Mr. Ensor admitted that the grouse were those shot by Ms. P during their bison hunt.
- 63. Officers also located several rabbits, approximately six, and one grouse, cleaned and frozen in Mr. Ensor's freezer. Mr. Ensor and a friend shot the rabbits while hunting in the fall of 2014.
- 64. On or between August 23, 2015 and August 24, 2015, Mr. Ensor went hunting with a friend and her son. While out, Mr. Ensor shot two grouse.
- 65. At no time did Mr. Ensor possess a small-game hunting licence permitting him to hunt either grouse or rabbit.

Eagle Feathers and Sheep Horns (Information 16-00117: Counts 20 and 21)

- 66. While executing the search warrant on October 2, 2015, Conservation Officers located a set of eagle feathers in Mr. Ensor's residence.
- 67. Mr. Ensor claimed he removed the eagle feathers from a dead eagle he found almost wholly decomposed outside of the Whitehorse dump, approximately six or seven years ago. He did not obtain a permit to possess them.
- 68. Officers also located a set of sheep horns during the October 2, 2015 search.
- 69. Mr. Ensor did not, at any time, obtain a permit to possess the horns as required by the *Wildlife Act*.

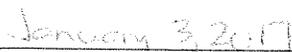
Additional Facts

- 70. Mr. Ensor:
 - o has extensive experience hunting;
 - o was fully aware of legal requirement to possess a valid hunting licence at time offences were committed;
 - o made conscious efforts to evade detection; and
 - o has hunted for other big-game animals in the Yukon without success, including moose in August, 2015.

These facts are agreed to by Crown counsel and by Mr. Jonathan Ensor.



Megan Seiling
Crown Prosecutor



Date



Jonathan Ensor



Date