Citation: *R. v. Thomas*, 2016 YKTC 20

Date: 20160418
Docket: 13-05249A
Registry: Whitehorse

TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

CLAYTON ROBERT THOMAS

Appearances:
Lee L. Kirkpatrick — Counsel for the Crown
Clayton Robert Thomas — Appearing on his own behalf and assisted by Kusta

REASONS FOR SENTENCE

[1] LUTHER J. (Oral): In terms of how this case is going to be concluded from the Territorial Court of Yukon this afternoon, I just want to remind everyone of the decision that I gave in December where we went over the facts and the Aboriginal law issues in great detail. One thing that I did not emphasize perhaps enough in that decision, and I will mention it now, is the *Wildlife Act,* RSY 2002, c. 229 and the difference between what citizens of the Yukon can do and what the wildlife officers can do. This came up for a bit of discussion this afternoon.

[2] Under "Defence of life":

> 86(1) Subject to subsection (2), a person may kill wildlife in defence of his or her life or the life of another person if
>
> (a) there is imminent or immediate threat of grievous bodily harm; and
>
> (b) all other practical means of averting the threat of harm have been exhausted.
>
> ...

[3] And then under "Defence of property":

> 87(1) Subject to subsection (2), a person may kill wildlife in defence of property if
>
> (a) there is imminent or immediate threat of irrecoverable and substantial damage to property; and
>
> (b) all other practical means of averting the threat of damage have been exhausted.

[4] The conservation officer's authorities extend beyond that, and that is in s. 132:

> 132 Despite any other provision of this Act, conservation officers or wildlife technicians may hunt or trap at any time and at any place wildlife that they believe, on reasonable grounds, is dangerous, destructive, wounded or diseased.

[5] The concepts of "imminent" or "immediate" threats apply clearly to the citizens and not so with the conservation officers.

[6] Mr. Koss-Young has explained to us the procedures that they normally take and I understand that. With regard to the situation that Mr. Thomas found himself in, living in the Mount Sima area, he has not established that there was imminent or immediate threat of grievous bodily harm to his family.

[7] The potential existed that there could have been, but there was not at that time. These animals were shot at night, and, like I said in the judgment, his wife and children were safely in their homes. All other practical means of averting the threat of harm had not been exhausted. They were not exhausted because Mr. Thomas did not get after the conservation officers to come up and take care of this issue. Mr. Koss-Young has explained what they did in that particular situation and described the response of the homeowner there in that area whose dog had been killed.

[8] With regard to the fines; the fines under the *Wildlife Act* can be quite substantial. Under s. 161(1) of the *Act*, a person is liable to a fine of not more than $50,000 or to a term of imprisonment of one year, or to both. That can be bumped up, under subs. (2), to $100,000 or two years in jail if there was some commercial purpose established. Then there are higher fines for second and subsequent offences, as Ms. Kirkpatrick indicated, about the continuing offences and the cumulative fines, forfeitures, and the like.

[9] Generally speaking, the highest fines and the highest jail sentences are reserved for the worst offenders under the worst circumstances, neither of which apply in this case. It cannot be said with any degree of seriousness that Mr. Thomas is the worst offender and nor were these the worst circumstances. They were serious circumstances for sure, but not the worst by any means.

[10] I indicated earlier that the purpose of the *Wildlife Act* is to preserve and protect wildlife in the Yukon in a sensible way, and to discourage people from violating the *Act.* That is why the Court has to impose meaningful sentences. The Court notes with some

interest that Mr. Thomas has two prior convictions which go back eight years and for which the fines imposed were modest: one at $500 and another at $750. Both the Crown and Mr. Thomas have told me that the amount of meat wasted was small.

[11] The Crown is seeking overall a financial penalty of up to $10,000. In this particular case, I feel that the Crown has made their position clear and have given a number of aggravating factors as to why that should be so, but I feel that the ends of justice can be met with fines slightly less than what the Crown is seeking.

[12] With regard to Count #1, the Crown is seeking a fine of $4,000. The Court is going to impose in total a fine of $3,000.

[13] With regard to Count #10, the Crown is seeking a fine of $5,000. The Court is going to fix the fine in that case at $2,500.

[14] With regard to Count #9, the commercial aspect, the Court is going to set that at the $1,000 sought by the Crown.

[15] To summarize, the Court is imposing monetary penalties of $6,500.

[16] There will be no surcharge because this money will be directed towards the Turn in Poachers & Polluters (TIPP) fund, as recommended by the Crown.

[17] The Court will order a forfeiture of all items seized, except for Exhibit 39.

[18] Furthermore, the Court will order that the two sheep horns be plugged by the Conservation Office officers and be returned to Mr. Thomas.

[19] As to the hunting, the Court feels, having considered these 20 or 30 cases that the Crown has put forward in their Book of Authorities, that the two year hunting ban fits within the pattern, and that will be ordered. That applies in the Yukon, except for subsistence rights, and it does not apply in the Province of British Columbia.

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LUTHER T.C.J.