

Citation: *R. v. Shmyr*, 2017 YKTC 53

Date: 20171020
Docket: 16-05947
16-00569
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Seidemann III

REGINA

v.

BLAKE JORDAN SHMYR

Appearances:
Lee L. Kirkpatrick
Joni Ellerton

Counsel for the Territorial Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] SEIDEMANN III J. (Oral): I have found Mr. Shmyr guilty of three offences.

[2] Two are contrary to the Yukon *Wildlife Act*, RSY 2002, c. 229 ("*Wildlife Act*") that is, of providing false information and hunting when he was not permitted to do so. The fact that he hunted when he was not permitted to do so was because, as a result of having provided false information, the licence that he held, and pursuant to which he purported to hunt, was not a valid licence.

[3] I also found Mr. Shmyr guilty of offences under the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c.52 ("*WAPPRIITA*") for transporting moose parts from the Yukon to Alberta when those

parts were not legally possessed in the Yukon because of the fact that the hunt had been illegal.

[4] The Crown suggests that I should provide a total penalty to Mr. Shmyr of \$12,000 and impose what amounts to a 10-year prohibition on hunting.

[5] Mr. Shmyr, through his counsel, suggests that the minimum penalty under the *Wildlife Act* is \$200 and that, in fact, although Mr. Shmyr is guilty of these offences, this was inadvertence on his part and I should impose close to the minimum on the *Wildlife Act* and something on the order of \$500 to \$1,000 on *WAPPRIITA*.

[6] Mr. Shmyr is a professional in the "hunting industry", if I can call it that. He is someone who is supposed to know the rules. He is someone whose business it is to know the rules, to apply the rules, and to comply with them.

[7] I accept that on the occasion of this hunt, Mr. Shmyr did not have an intention to ignore the suspension that he had. I am not going to go as far as to say that he thought that what he was doing was legal, but I am satisfied that he did not consciously know that it was illegal. I am not satisfied that he necessarily addressed his mind to that issue at all in the way that he really responsibly ought to have. For that reason, the minimum penalties under the *Wildlife Act* are not an appropriate range.

[8] Because Mr. Shmyr is a professional, a message has to be sent. On regulatory offences, one of the primary considerations that I have to consider in imposing a sentence is deterrence to others. I have to send a message to the community that this

is not appropriate behaviour and that there are ramifications and/or consequences if you are not careful about it.

[9] Evidence shows there are not a lot of conservation officers in the Yukon.

Chances are you might get away with it. You have to realize that the consequences, if you do something wrong, are significant and you ought not to try to get away with it.

[10] I am not saying that Mr. Shmyr tried to get away with it. He was careless. I would say you were criminally careless. It is really that simple, sir.

[11] I am not going to go as far as the Crown asks, but I am going to impose what I consider to be significant penalties.

[12] I am going to impose penalties that will total in the amount of \$10,000.

[13] To my mind, the most serious offence relates to providing false information. It may have been inadvertent, but that is where all of this comes from. On the false information, on Count #1, on file 16-05947, I am going to impose a penalty of \$5,000.

[14] On Count #2 of that Information, which is hunting when it was illegal, effectively — and it was illegal simply because of that false information — I am going to impose a penalty of \$2,000.

[15] On Information 16-00569, the *WAPPRIITA* offence, I am going to impose a penalty of \$3,000.

[16] I am not going to impose a 10-year hunting prohibition penalty on you, sir. On the other hand, you are a professional. You have a duty to be careful on this and you

do not get away scot-free. It is just that simple. Pursuant to the provisions of the *Wildlife Act*, on Count #1 of Information 16-05947, I am going to prohibit you from obtaining a licence to hunt in the Yukon Territory for a period of three years from today. This will have the effect, as you are aware, of prohibiting you from obtaining a recreational hunting licence in Alberta or any other place that adopts reciprocity for that same three years.

[17] I am hopeful that you have learned your lesson, sir, and that you are careful and you are not back in court on any more of this. You have to recognize that if you are back in court, you will find those penalties increasing exponentially. The only reason for the three years is because I do accept that this was a mistake. However, you are a professional and you are not supposed to make mistakes in this regard.

[18] I am going to make part of the order that was sought by the Crown — because I think it is relevant, and it is relevant because you are a professional — that you will post on your Internet presence, for example, a professional Facebook page associated with your business: a notice that you have received these convictions; that you have had your right to obtain a recreational hunting licence prohibited for three years; and that you have incurred the fines that I have enumerated. This should be posted no later than November 1, 2017, and it is to remain posted until, at minimum, January 31, 2018.

[19] You are permitted to post such content in your own words, but it must contain those elements that I have set out, namely, that you have been convicted; that your right to obtain a licence has been suspended; and that those fines have been imposed upon you.

[20] There will not be a separate prohibition attached to the *WAPPRIITA* offence. As far as I am concerned, the real issue is providing false information and that is where the penalties attach.

[21] I will leave the matter of victim surcharge(s) to the Territorial Crown.

[22] I will extend time to pay to April 30, 2018.

[23] I believe the forfeiture of the moose antlers to the Territorial Crown is entirely appropriate in the circumstances.

SEIDEMANN III T.C.J.