

IN THE TERRITORIAL COURT OF YUKON
(Before His Honour Chief Judge Lilles)

REGINA

v.

JAMES SMARCH

Zeb Brown

Appearing for Crown

James Smarch

Appearing on his own behalf

REASONS FOR SENTENCING

[1] LILLES C.J.T.C. (Oral): Mr. James Smarch has plead guilty, at a very early opportunity, to a charge contrary to s. 32 of the *Wildlife Act*, R.S.Y. 2002, c. 229, namely being in possession of wild game meat. He allowed that meat to be wasted contrary to the *Wildlife Act*.

[2] I am very grateful for the discussion that we have had here today, and the participation of everyone who spoke. In particular, I want to underscore the fact that I was impressed by Mr. Smarch's comments to the Court. This is not a formal court; this is a community court, so these were comments made to the clan leaders and for the community as a whole.

[3] I am satisfied, based on his comments, that he has expressed a considerable amount of remorse for what happened, what he did, what he did not do, and what he could have done, to produce a different result. He very clearly, and in a very articulate manner, acknowledged his responsibility, that while he did not intend to waste the meat, in retrospect, he made some poor decisions. He took a chance with the weather and with the time and it did not turn out the way that he had hoped. It is pretty clear to me that the next time he will do things differently.

[4] I thought that his comment that even as an experienced hunter he can make mistakes was an important thing to say. Sometimes that is not an easy thing to acknowledge. He is an experienced, good hunter but he can make mistakes. He has things to learn, and I think it is pretty clear that, listening to him, he has a lot of things that he can teach other people. I hope the disposition that I make here today will encourage him to transfer some of his learning skills and knowledge to other individuals.

[5] It is pretty clear to me that whatever I do here today, in terms of disposition, will not be nearly as important as what has already happened. That is to say, there has been a reference to issues arising in the community, clearly based on community displeasure. The community accountability that has taken place already speaks much more loudly than anything I could do or could say here today.

[6] The fact that this process has brought him into this community court where he spoke to the clan leaders and heard the clan leaders speak to him; a member of the community at church spoke on his behalf, that process, I think, has a deterrent effect that is much greater than anything that I could do here today. I think it is a very strong process, a very suitable process.

[7] The disposition I am going to make clearly has to reflect the applicable legislation.

[8] I also want to ensure that I do not set a precedent here that is misunderstood by some other court. I want to make it very clear that I consider this a very serious matter, as Mr. Smarch, himself, has acknowledged. I want to make sure that the disposition I make, that a significant portion comes back to benefit the community and does not end up in the Yukon coffers or somewhere else. This is very much a community matter and I would like to ensure that the consequences, the results of my disposition, benefit the Teslin community.

[9] I am obligated, as I see the legislation, to impose a fine. I am going to impose a \$100 fine. We will come back to Mr. Smarch with respect to time to pay.

[10] However, pursuant to s. 169, in particular s.169 (1)(h) of the *Act*, I am directing that Mr. Smarch pay the amount of \$1,400 into the Conservation Fund, established pursuant to s. 186. I am going to direct that at least \$1,000 of that amount be expended in the Teslin community for preventative and educational purposes, preferably workshops involving young people, taught by senior or elder members of the community, transferring First Nation know-how, culture and skills to those young people in a way that will reduce the likelihood of something like this happening in the future.

[11] I am also directing that, pursuant to s. 169(e) of the *Wildlife Act*, that Mr. Smarch perform 40 hours of community service. That community service is to be performed as follows:

- (1) He is to, within the first six months, attend and complete the HEED

program dealing with ethics and education relating to hunting. I understand that is a 20-hour program. Upon completion of that program he will get credit for 20 hours of the 40 hours of community service.

- (2) Then for the balance of the 40 hours of community service, he is to involve himself in workshops or other educational activities, with young people in the community, where he transfers some of his know-how, knowledge and experience to those young people, hopefully, in a skills-based manner.
- (3) I am going to direct that he report to the conservation officer.

[12] Mr. Knutson, would it be you that he would report back to?

[13] MR. KNUTSON: It would be best if he reported to David Bakica.

[14] THE COURT: David?

[15] MR. KNUTSON: He is a Teslin officer.

[16] THE COURT: To report back to Mr. Bakica with respect to the community service. Mr. Bakica will ensure that the clan leaders are advised upon the completion and that a piece of paper be filed with the court within six months with respect to the 40 hours.

[17] So, in summary then, there is a modest amount of community service, the program that he is going to attend and complete, the \$100 fine, and the \$1,400

contribution to the Conservation Fund, \$1,000 of which to be used for the specific purposes I have identified, which are Teslin-oriented.

[18] Mr. Brown, I have sort have stumbled my way in this direction, trying to incorporate the basic principles of what you have presented to me. The financial accountability, community accountability, do you have any comment or any correction you would like to make?

[19] MR. BROWN: First, I was just wondering about the Yukon hunting licence prohibition?

[20] THE COURT: Yes, thank you. I had intended to address that. Thank you for reminding me.

[21] There will be a one-year Yukon hunting licence suspension. I note that that was recommended by the Teslin Tlingit Council. I also understand that, from Mr. Brown's comments, that this would not interfere with Mr. Smarch's subsistence hunting, which would be hunting for himself and his family members; is that correct?

[22] MR. BROWN: I believe so, yes.

[23] THE COURT: That would be my initial reaction too. Anything else from you?

[24] MR. BROWN: My other comment was the matter we did not address which is the meat. This came up at the last appearance. I had suggested that there was this issue of what to do with the meat, and the conservation

officers --

[25] THE COURT: You still have the meat?

[26] MR. BROWN: The conservation officers still have the meat and Mr. Knutson advises me that it is not fit for man or dog at this point. They would just like to destroy it.

[27] THE COURT: Please dispose of it as quickly as possible.

[28] MR. BROWN: Thank you.

[29] THE COURT: There will be an order for disposition. Let me just say, and I know that this may not be applicable here, but certainly when it comes to seizing things and holding them as evidence, photographs will do in the great majority of cases. So I hope the meat was not kept for the purposes of a possible exhibit. It need not go that far; photographs will do just fine. I understood, however, that based, on our last court appearance, that Mr. Smarch wanted to have the opportunity of disposing of it for dog food or something else, if it were appropriate to do so. Having seen the photographs, having heard your representation today, I am satisfied that it should not be consumed by anything or anyone. There will be an order permitting destruction in the discretion of the conservation officers.

[30] Mr. Knutson?

[31] MR. KNUTSON: Just on the HEED program, I cannot guarantee that there will be one within the next six months. I do not know when the

next one is scheduled for Teslin. So you may wish to give him a year to get the 40 hours in because it may take some time to get a program developed for the waste of meat.

[32] THE COURT: We will extend that to 12 months. Mr. Smarch, is there anything that I have ordered here that you think, perhaps, is inappropriate or that you would have some difficulty in completing?

[33] THE ACCUSED: No, I am quite satisfied with that.

[34] THE COURT: You are satisfied with that?

[35] THE ACCUSED: Yes.

[36] THE COURT: You are satisfied with the fact that most of this comes back to the community?

[37] THE ACCUSED: Yes.

[38] THE COURT: Time to make the monetary contributions, total of \$1,500. How much time do you need to do that?

[39] THE ACCUSED: I just started back to work, so I would need some time.

[40] THE COURT: Three months?

[41] THE ACCUSED: Three months would be fine.

[42] THE COURT: Three months would be fine?

[43] THE ACCUSED: Yes.

[44] THE COURT: Three months for the time and the contribution to the Conservation Fund. Again, you do not have to wait until the last minute; you can make \$500 contribution a month, for example.

[45] THE ACCUSED: And who would I pay that to?

[46] THE COURT: I am going to direct this: \$100 fine goes to the Territorial Court; \$1,400 to be paid in trust to the Territorial Court for the benefit of the Conservation Fund, then we will be able to track it through our court registry and you do not have to worry about it, and three months to pay.

[47] Should you find some untoward circumstance and you cannot make the payments, come to court and we will give you an extra month or two if necessary, Mr. Smarch.

LILLES C.J.T.C.