

1991

CY No. 5614
5615
5616

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

HER MAJESTY THE QUEEN

- and -

TAMMY JILL THIBODEAU

EARL PATRICK BOUDREAU

MICHAEL JOHN CORPORON

HEARD: At Yarmouth, in the County of Yarmouth, Nova Scotia on the 9th day of August, A.D., 1990 and the 14th day of February, A.D., 1991

BEFORE: The Honourable Judge C. E. Haliburton, JCC

CHARGE: C.C. Section 354(1)

SENTENCE: On the 14th day of February, A.D., 1991

COUNSEL:

R.M.J. Prince, Esq., Crown attorney

P. J. Star, Esq., on behalf of Tammy Thibodeau and Earl Boudreau

G. M. Warner, Q.C., on behalf of Michael Corporon

- S E N T E N C I N G -

HALIBURTON, J. (Orally)

This is the sentencing of three persons, all of whom have pled guilty to the same offence. They were all charged with theft over a thousand dollars and all entered guilty pleas to a charge under Section 354 of the Criminal Code, possession of stolen goods in relation to the same matter. I intend to deal with all three persons at once. The sentences, of course, may not all be the same, because of their different personal circumstances.

Perhaps I might as well say at the outset that the offence is one which, in my view, requires that the Court impose some period of incarceration. These people participated in a theft of lobsters. While the charge is one of possession only, it's clear from the circumstances that they planned and executed a theft of substantial quantity of lobsters, some eleven hundred pounds, having a value of thirty-three hundred dollars. They planned the theft together, it would appear. While there is no evidence of that, I think it's implicit in the circumstances. A truck was borrowed, plans were made as to where the lobsters would be sold, the parties apparently, at least I take it as being implicit, went together to a wharf at Pinkney's Point, they broke into a lobster car there, stole eight crates of lobsters, took them to Meteghan, a distance of some forty or fifty miles, where they were pretty much unknown and disposed of the lobsters the next day, at a rate of four dollars and fifteen cents a pound.

There is, perhaps, no industry as vital to the welfare of Western Nova Scotia as the lobster industry and as no doubt everybody in this court room knows the bulk of the lobsters that are caught in Western Nova Scotia are stored for some period of time

2.

in lobster cars or in other storage facilities which are very easy to access, if anyone should be interested in committing a theft. It's obvious that with several hundred thousand or millions of pounds of lobsters being caught and flowing through that system the cost of either establishing secure facilities like a pound within a building that could be securely locked and located on shore, or the cost of placing guards around to protect that property, would be tremendously expensive if it added to the cost of shipping and selling lobsters a dollar or even fifty cents a pound. The cost would translate into millions of dollars for the fishermen of this area. The parties who are before me are all involved in the fishing industry.

One of the accused intends to become a lobster fisherman. It is to me incomprehensible that they could contemplate a scheme that would affect the welfare of the very industry that they wish to join, or at least in some peripheral way they participate in.

In the circumstances, it seems to me that general deterrence is unusually relevant in the kind of options that are open to the court in imposing sentence. In the sentencing process, of course, the Court must remind itself that protection of the public is the objective to be achieved, and that can be achieved by either general deterrence, that is, deterring potential offenders in the community at large from copying this conduct, or it may be achieved in certain circumstances by simply deterring the particular offender from committing such an offence again, or by rehabilitating the offender, if it appears there are rehabilitative measures that can beneficially be taken.

With respect to these three persons who are before me, their respective counsel have indicated that rehabilitation is not a con-

3.

cern, that this was a one-time effort triggered by financial difficulty or even necessity and they needed the money that was generated by this sale of lobsters in order to satisfy outstanding financial obligations. Of course, I'm sympathetic with that. I appreciate that desperate circumstances may prompt people to be irrational in what they think is the right way to deal with their problem. Not only these accused, but the public at large who may have similar problems must, however, be assured that the theft of lobsters is not the right way to deal with their own financial problems.

The pre-sentence report in each case are complimentary and do not indicate that there is very much need on the part of the Court to impose any sanctions that would be rehabilitative in nature. The parties are each gainfully employed much of the year. The people in their community say they are decent people. Their counsel assert that there is no problem with drugs and alcohol. The only observation I would make with respect to those aspects of the pre-sentence report and the submissions is that if all those things are correct, it's difficult to understand how they could have become involved in this kind of scam.

With respect to specific deterrence, counsel are suggesting to the Court that each of these persons now understands and appreciates the error of their ways and that we need have no concern about the fact that, having been caught stealing once, that they will ever steal again. I hope that is the case. I hope the sentence I will impose will persuade both them and the public at large that they won't steal lobsters again.

Tammy Thibodeau is twenty-four years of age, she has a grade twelve education and some post-secondary education. She is the

4.

oldest in a family of three, she comes from a broken home, however the difficulties in her home were apparently many years ago and while her mother accepts some responsibility for the fact that she may have gotten off to a bad start, she appears to have had a reasonable upbringing. As said by counsel, I think both prosecution and defence, she comes from a good home, a good family background. She is employed seasonally with Schooner SeaFoods. She earns eight or nine dollars an hour. In terms of the persons who generally come before the Court, she is clearly in the high range of intellectual potential, as the pre-sentence report suggests. She admitted her guilt and expressed remorse after apprehension. She and her common-law spouse, who is Mr. Boudreau a co-accused, have debt obligations of some nine hundred and sixty-three dollars a month. She was cooperative and frank in disclosing to the probation officer what their problems were and what motivated the theft. I am a little curious that, while the representations are that there is no problem with drugs or alcohol or unsatisfactory behaviour in the community, there are suggestions from the interviews that were conducted that she fell in with the wrong group and that she is under the influence of people who are not pure. It may be that some of those people are her co-accused.

Earl Boudreau is twenty-seven years of age. Again, he has a grade twelve education. He resides in a common-law relationship with Tammy Thibodeau. The two of them reside in a home owned by Mr. Boudreau's grandmother, as I understand it. Their cost of occupying that home is minimal, but they nonetheless have the financial difficulties and he outlines the same financial problems that Miss Thibodeau outlined to her probation officer in the pre-sentence report.

5.

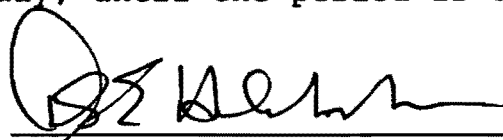
Mr. Boudreau expressed remorse and admitted his guilt. He has never been in any serious trouble before. In fact, all three persons are first-time offenders. Boudreau fell in with a bad crowd at some point and there were some concerns about him but the probation officer is satisfied that that's not the case now. He is a lobster fisherman when the opportunity presents itself. He goes Irish-mossing, he works as a carpenter. He apparently comes from a good family.

Mr. Michael Corporon, the third of the accused, is twenty-five years of age. He has a grade seven education. He apparently has slightly less education and less potential in that regard than the other two co-accused. He is married, he has three children, one of whom is very much an infant and the oldest of whom is eight years of age. He apparently comes from a good home and takes his family responsibilities seriously and he likewise has financial problems. His financial obligations are in the range of five hundred dollars a month, according to the pre-sentence report. That appears to be confirmed by financial information presented by his counsel this morning. He and his wife have a monthly income of something under fourteen thousand dollars a year and obligations of something over twenty-five thousand dollars a year. In his household budget his counsel indicates to the Court that there is something more than a thousand dollars in deficit per month. Mr. Corporon perhaps gave the clearest indication of remorse with respect to the offence he had committed, in that he was relatively quick to tell the authorities the full story of what transpired. He himself says he wasn't too co-operative with the police at first, but later became more co-operative.

6.

I'm genuinely concerned about Mr. Corporon's family, his ability to earn money and support his family. His wife is also employed and endeavours to support the family, to the best of her ability.

After considering all the factors, the need for general deterrence, the circumstances of the parties, the needs of their respective families, I'm satisfied that a proper sentence for the Court to impose would be a period of incarceration. With respect to Tammy Thibodeau, in the amount of three months; Earl Boudreau three months and Michael John Corporon, two months, in a Provincial Institution. I would order, in addition to that, that there be a period of probation with respect to each of the three persons of two years, during which time they will be obliged to pay restitution to the owner of the lobsters which were stolen, **Hervic Enterprises Limited** at a total value of thirty-two hundred dollars, so that would be, in the case of Mr. Corporon, restitution in the amount of sixteen hundred dollars, Tammy Thibodeau eight hundred dollars and Earl Boudreau eight hundred dollars. During that period of probation they will, of course, be required to keep the peace and be of good behaviour; exercise their best efforts to obtain and maintain full-time employment or pursue further education; report as directed to a probation officer. The sentences, in each case, may be served intermittently, from nine o'clock in the evening on Friday until six o'clock in the morning on Monday, until the period is completed.



C. E. HALIBURTON
JUDGE OF THE COUNTY COURT OF DISTRICT
NUMBER THREE

DATED at Yarmouth, in the County of Yarmouth, Nova Scotia
this 28th day of February, A.D., 1991.