

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BRIAN ABBOTT

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Transcript of the Reasons for Sentence (re Appeal from Sentence) delivered by The Honourable Justice K. Shaner, in Yellowknife, in the Northwest Territories, on August 18, 2014.

APPEARANCES:

The Appellant:            Appearing on his own behalf

Ms. J. Scott:             Counsel on behalf of the Respondent

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1 Brian Abbott and Her Majesty the Queen

2 August 18, 2014 - Yellowknife

3 Reasons for Sentence of Justice K. Shaner

4 re Appeal from Sentence

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6  
7 THE COURT: I have had an opportunity to  
8 consider your submissions, both of you. The  
9 question that is before me, as I emphasized  
10 earlier, is whether to impose the sentence that  
11 is proposed by the Crown, which was initially a  
12 joint submission, or to uphold the sentence of  
13 Judge Schmaltz, or, thirdly, to impose another  
14 sentence that I craft myself based on what I have  
15 heard.

16 The original joint submission was a global  
17 fine for four counts under the Fisheries Act:  
18 namely, failing to accurately and completely keep  
19 commercial harvest log books; secondly, operating  
20 an unregistered fishing vessel used for  
21 commercial fishing; thirdly, fishing in areas  
22 closed to commercial fishing; and fourth, not  
23 having nets properly marked.

24 In addition to the global fine of \$3,000, it  
25 was also proposed that Mr. Abbott serve a  
26 probationary term for six months and that he  
27 perform 40 hours of community service work; that

1 he be required to keep log books with respect to  
2 his fishing activities in a certain way; that he  
3 report at certain intervals to the fisheries  
4 authorities; and finally, that he issue a public  
5 apology.

6 During submissions today, and I agree with  
7 this, the Crown indicated that the need for a  
8 public apology has largely been obviated given  
9 the media attention that this case has garnered.  
10 The purpose of the apology was to explain to the  
11 public and have some sort of public  
12 acknowledgement of what had happened, and that  
13 has already occurred without the need for a  
14 public apology. So I agree with the Crown that  
15 certainly that component of the original joint  
16 submission should not be imposed.

17 When this appeal was first heard there were,  
18 basically, two matters that were brought up on  
19 appeal: the first was that Mr. Abbott wanted to  
20 withdraw the guilty pleas he had entered; and the  
21 second was that he wanted to appeal from  
22 sentence. The appeal was dismissed with respect  
23 to the withdrawal of the guilty pleas but allowed  
24 on a limited basis with respect to the sentence.  
25 And when I say "on a limited basis", I invited  
26 counsel and Mr. Abbott to provide submissions on  
27 those concerns that the sentencing judge had

1 raised, namely, whether the sentence that was  
2 proposed in the joint submission would meet the  
3 goals of denunciation and deterrence, whether it  
4 met the goal of parity, and the circumstances  
5 under which the Crown and the defence lawyer at  
6 the time came to that agreement. Those reasons  
7 are recorded at 2014 NWTSC 30.

8 I cannot do anything about the convictions.  
9 I have ruled on the request to withdraw the  
10 guilty pleas, and I have denied that, so I am now  
11 what is called functus on that point.

12 With respect to the sentence, however, I  
13 agree that what was in the joint submission  
14 should largely be restored. This is based on  
15 what I heard about what went into the joint  
16 submission and the considerations that the Crown  
17 had in crafting that sentence and proposing it.

18 Sentencing is, of course, a highly  
19 individualized process. No two cases are the  
20 same; no two individuals are the same. And so  
21 while the Court must pay attention to parity in  
22 the sense that similar infractions and crimes  
23 should attract similar sentences, it is key that  
24 we keep that to similarity and not require that  
25 sentences be identical, because if that was the  
26 case then we could not meet the need to  
27 individualize our sentencing processes.

1 I also agree that what is proposed by the  
2 Crown largely meets the primary goals of  
3 deterrence and denunciation in this case,  
4 particularly in light of Mr. Abbott's  
5 circumstances.

6 Based on what I heard from him in the appeal  
7 and the inferences that I have drawn from your  
8 submissions today, Mr. Abbott is a very hard  
9 working man who is of modest means, who works  
10 hard for his money, but who also committed an  
11 infraction under the Fisheries Act – in fact,  
12 committed four infractions to which he pleaded  
13 guilty. So in my view, it is appropriate that  
14 there be a fine of \$3,000 imposed globally in  
15 consideration of all four counts to which Mr.  
16 Abbott pled guilty.

17 With respect to the issue of probation, I am  
18 not convinced, based on what I have heard, that  
19 probation is necessary in order to meet the goals  
20 of denunciation and deterrence. In my view, a  
21 \$3,000 fine is a very large fine. I think it is  
22 a significant amount of money for most people. I  
23 think it is a significant amount of money for Mr.  
24 Abbott. And I think that that, in and of itself,  
25 is punitive, and to impose probation on top of it  
26 would be unnecessary for either the purposes of  
27 driving home the point to Mr. Abbott or driving

1 home the point to the general public. Mr. Abbott  
2 is not a danger to the public. He does not need  
3 to be watched. Moreover, the new requirements  
4 under the Fisheries Act with respect to the  
5 requirement to keep log books and report on those  
6 log books every two weeks in my view largely  
7 obviates the need for probation.

8 As well, that new requirement obviates the  
9 need to have Mr. Abbott do any more reporting.  
10 In the event that fisheries officials are not  
11 satisfied with what he reports on every two  
12 weeks, it is certainly open to Fisheries (and I  
13 am certain that they will) to follow up on any  
14 shortcomings they perceive in his record-keeping.

15 Finally, for the same reasons that I do not  
16 think probation would serve any purpose and would  
17 be overly punitive, I do not think that 40 hours  
18 of community service is going to serve any  
19 purpose either. Mr. Abbott is self-employed and  
20 all it will do is take away, essentially, what  
21 most of us would consider a work week from him in  
22 which he could be earning a living, and,  
23 accordingly, I think it would introduce an  
24 additional and unnecessary financial penalty to  
25 him.

26 Accordingly, the sentence that will be  
27 imposed is a fine of \$3,000, globally, in respect

1 to the four counts under the Fisheries Act that I  
2 mentioned earlier to which Mr. Abbott pled  
3 guilty.

4 Is there anything else?

5 THE ACCUSED: The value of the fish.

6 THE COURT: The value of the fish is  
7 something that I factored in. The value of the  
8 fish is not something -- That has been factored  
9 in already with respect to the amount of the  
10 fine.

11 .....

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13 Certified to be a true and  
14 accurate transcript pursuant  
15 to Rule 723 and 724 of the  
16 Supreme Court Rules of Court.

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Annette Wright  
Court Reporter, CSR(A)

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