

2003 NWTTC A9

CERTIFIED TRUE COPY OF THE
Bruser
ORIGINAL

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JEREMY SHANE BERGEN

Transcript of the Reasons for Sentence delivered by The Honourable Judge B.A. Bruser, in Norman Wells, in the Northwest Territories, on the 16th day of June, A.D. 2003.

APPEARANCES:

Mr. J. Cliffe: Counsel on behalf of the Crown

Mr. R. Gorin: Counsel on behalf of the Defence

Charge under s. 86(1) Wildlife Act

1 THE COURT: The offence is pursuant to
2 section 86(1) of the *Wildlife Act*. That provision
3 provides that nobody shall make or give false or
4 misleading entry and so forth, in an application for a
5 licence required by the Act or the Regulations. The
6 accused committed this offence by giving false
7 information in an application for a guide licence.
8 The date of the application was July 4th, 2002. The
9 application for the guide licence and a copy (it would
10 appear to be a carbon copy of the guide licence) is
11 Exhibit 1. Exhibit 2 is a history of his violations
12 under the Alberta *Wildlife Act*. There are three
13 violation tickets entered together as Exhibit 2 in
14 this proceeding.

15 Defence counsel, and the accused, when he had
16 something to say, said that the accused did not read
17 the fine print in the application, Exhibit 1. I have
18 trouble accepting this point. The application is a
19 simple document. It is on a short piece of paper.
20 The so-called "fine print" is not fine print. It is
21 the same size as other print; not all the other print,
22 but some of the other print in the document. In fact
23 he apparently wrote himself or certainly acknowledged
24 that this was accurate, that he was employed by Ram
25 Head. The words "I am employed by" appear to be the
26 same-sized print as the last part that follows in the
27 last section of the application, being the

1 declaration. He signed the declaration.

2 Additionally, he has been guiding for 11 years.
3 I think it a reasonable inference that he has
4 completed applications for guiding licences in the
5 past.

6 Furthermore, he is well-educated. He has a grade
7 12 education and that is followed by an advanced
8 diploma, and he has a Class 1 licence to operate heavy
9 motor vehicles. The so-called "fine print" appears to
10 be the same as the print in the licence itself
11 authorizing him to act as a guide. He must have read
12 it or he would not have been guiding.

13 He also, at the time he completed the
14 application, had a history of the violations from
15 Alberta, to which I have referred. It is noteworthy
16 that these are for (1) unauthorized hunting on
17 occupied land; (2) providing guiding services on
18 privately held land without written authorization; and
19 (3) failing to immediately affix a tag as prescribed.

20 The history of what happened in Alberta, joined
21 with what happened in the Northwest Territories,
22 satisfy me that this offender has very little regard
23 for the proper process, process that is critical in
24 the decision-making process of government officials
25 who issue licences and process that is critical for
26 the accused to earn his livelihood.

27 The system in place depends to a large extent

1 upon trust. As Crown counsel has said, one cannot
2 expect a wildlife officer to be behind every rock and
3 every tree. Wildlife officers trust people, and I
4 think it a further reasonable inference to find that
5 they trusted Mr. Bergen. It took a while before they
6 learned of the prior convictions in Alberta, and after
7 they did they acted upon the information.

8 The Crown characterizes this as a serious
9 offence. I agree. It strikes, as Crown counsel has
10 correctly submitted, at the integrity of the licencing
11 system under the *Wildlife Act*.

12 The maximum fine available for the Court's
13 consideration is \$1,000. The other part of the
14 available punishment is imprisonment not exceeding one
15 year. There could also be a fine and imprisonment.
16 Crown counsel is being reasonable and fair in not
17 seeking imprisonment.

18 The accused has apologized. He says that he
19 relies on his work with Ram Head. From this, I take
20 it he would like to guide again in the Northwest
21 Territories.

22 The guilty plea has been entered at the first
23 opportunity.

24 The accused came here from Alberta. He paid \$950
25 for airfare and has been put to the extra expense of
26 paying for accommodation and food. I think it is
27 appropriate to take these expenses into account.

1 He ought to be given significant credit for the
2 guilty plea. This is something that tends to be
3 consistent in the sentencing of offenders in this
4 jurisdiction. There are a number of reasons for this,
5 which in most cases are obvious, as they are here.

6 The Crown is also asking the Court to make an
7 order under sub-section 12(1)(c). The Crown asks
8 under this subsection, that the Court prohibit the
9 issue or renewal of any further licence or permit that
10 the accused may apply for in order to guide or
11 otherwise. The Crown says this should be for a period
12 of two years.

13 Upon further questioning by the Court, it appears
14 that the renewable resources officials would have in
15 any event a discretion as to whether or not a guide
16 licence or other documentation should issue to this
17 offender after today. In other words, if I do not
18 make a sub-section 12(1)(c) order, it is still open
19 for the officials to deny the accused a guide licence
20 upon application.

21 I decline to make the order in this case. I
22 decline to make it because it is my preference in the
23 circumstances of this case, including the co-operation
24 of the accused today, to leave the issue to be worked
25 out by renewable resources officials. They may be
26 pursuing a proper avenue by not issuing a guide
27 licence to this offender for a period of time. On the

1 other hand, it may be that after today the accused in
2 discussions with them could work out some sort of a
3 plan or some arrangement whereby he should be issued a
4 licence.

5 It is not to be overlooked that guides in this
6 jurisdiction have responsible positions, and because
7 of licenced guides a significant amount of money is
8 brought into this jurisdiction each hunting season.

9 For these reasons, and there may be other reasons
10 that I have been unable to identify, I think it
11 preferable to decline to make the order and leave the
12 issue to be resolved by renewable resources.

13 Sentencing tends to be a package. If I had made
14 the prohibition, that factor, along with the expenses
15 that the accused has been put to to come here, would
16 have led me to make a fine at the low end. I have not
17 made the prohibition. That leaves a fine as the sole
18 remaining component to be dealt with. It will be
19 toward the high end. This is in order to discourage
20 this offender from doing this kind of thing again, and
21 it is an effort to discourage others from doing so.

22 There will be a fine of \$750, along with a 15
23 percent victim fine surcharge. I could make the
24 surcharge higher, but I decline to do so.

25 Mr. Gorin, how long would he need to pay this?

26 MR. GORIN: I'm going to suggest two months.

27 THE COURT: He can have it. I'll give him to

1 Monday, August 18th this year.

2 Does the Crown have anything further?

3 MR. CLIFFE: No, I don't, Your Honour.

4 THE COURT: Does the defence in this matter?

5 MR. GORIN: No, sir.

6 THE COURT: Mr. Bergen, you have to remain.

7 The Clerk of the Court has a document called a fine
8 order to go over with you. After she does that, you
9 are free to leave.

10 I warn you, if this kind of thing happens again
11 in this jurisdiction, I can't conceive of any argument
12 that would likely persuade the court not to grant a
13 prohibition measured in years. I am not saying that
14 would definitely happen, but that is where you are
15 heading with this, or perhaps even imprisonment. This
16 has to stop.

17 It may be in any event that you may not be issued
18 with a licence. With what I have before me, it is my
19 recommendation that one not issue to you. But I am
20 not going to make the order; I leave others to make
21 the judgment call.

22

23

24 Certified correct to the best of
25 my skill and ability.

26

27



Annette Wright, RPR, CSR(A)
Court Reporter