Chatto v Kruf [2007] NTSC 61

PARTIES:	CHATTO, RAYMOND ERIC
	v
	KRUF, REINOLD
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA14 of 2007 (20615453)
DELIVERED:	9 November 2007
HEARING DATES:	7 November 2007
JUDGMENT OF:	OLSSON AJ
ON APPEAL:	Sentence imposed by Court of Summary Jurisdiction on 14 March 2007

CATCHWORDS:

Justices Appeal -- re-sentencing after allowance of appeal -- factors applicable to sentencing in respect of wildlife offences -- range of penalties or sentences appropriate -- recognition of principle of double jeopardy in particular circumstances.

REPRESENTATION:

Counsel:

Appellant:	P Elliott
Respondent:	A Crane

Solicitors:

Appellant:	Department of Natural Resources Legal Office
Respondent:	A Crane

Judgment category classification:	C
Judgment ID Number:	ols200708
Number of pages:	4

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Chatto v Kruf [2007] NTSC 61
No. JA14 of 2007 (20615453)

BETWEEN:

CHATTO, RAYMOND ERIC
Appellant

AND:

KRUF, REINOLD
Respondent

CORAM: OLSSON AJ

REASONS FOR JUDGMENT

(Delivered 9 November 2007)

[1] On 7 November 2007 I published reasons for judgment in relation to this Justices Appeal (*Chatto v Kruf* [2007] NTSC 55).

[2] Having done so, I made orders allowing the appeal and setting aside the penalty imposed in the Court of Summary Jurisdiction. I then heard counsel as to the penalty that ought to be imposed on a re-sentencing of the respondent.

[3] After receiving submissions from counsel on the question of penalty, I substituted a fine of $2000 for the fine originally imposed. I indicated that I would publish brief reasons as to penalty at a later date. This, I now do.

[4] It is stating the obvious to say that there is no settled sentencing standard in cases of this nature. Clearly, any penalty or sentence imposed must reflect the potentially very variable circumstances of the offending and the degree of culpability of the offender, as disclosed by the factual evidence. I pointed out in my reasons that key aspects to be borne in mind are the inherent gravity of this type of generic offence (indicated by the maximum penalties stipulated by the legislature) and the need to pay due regard to the factors of general and, as appropriate, personal deterrence.

[5] Important considerations to be taken into account are the extent of any cruelty occasioned to the fauna involved, the degree of rarity of the species concerned, the scale of the offending (in terms of the numbers of creatures taken), whether the offending exhibited any degree of commerciality, the motivation of the offender and the degree of criminal culpability evidenced by the relevant facts (cf the dicta in *Robison* (1992) 62 A Crim R 374, albeit in relation to a prosecution under Federal wildlife protection legislation).

[6] Particularly because of the difficulty of detection of this type of offending and its potential to both degrade our wildlife heritage and potentially spread disease from one area to another, the factor of general deterrence must be a paramount consideration (*Robison* at 380).

[7] The judgment in *Robison* was published as long ago as 1992, at which time it was pointed out that fines of $5,000 were by no means uncommon in relation to serious wildlife offences of various types and that custodial

sentences were appropriate where cruelty was involved and/or a risk of transmission of disease was created. It is fair to say that, since that time, there has been a greater awareness of the enormity and danger of offences of this type, especially where some commercial element is apparent. Current prescribed sentencing maxima reflect such a situation.

[8] In the instant case, a large number of fauna were taken and 23 of them perished, apparently due to dehydration. What was done constituted a callous ill-treatment of the reptiles in question and it is difficult to avoid the conclusion that a very real commercial element was intended. Whilst the respondent was not the prime mover in what transpired, he was willingly complicit in what was done and the obvious inference is that he, personally, may well have stood to benefit from it in some way.

[9] Whilst, under the Sentencing Act, due regard must be had his financial situation, it is clear that a fine in the range of $5000 -- $10000 was appropriate. Indeed, had it not been for his willingness to cooperate with the authorities, a modest custodial sentence might properly have been imposed.

[10] However, in re-sentencing the respondent, the principle of double jeopardy is of particular importance, especially when it is borne in mind that the respondent has no prior record of convictions. Moreover, it is now the best part of a year since the offence was committed and there has been a considerable time lapse since he was first sentenced.

[11] In those circumstances, common fairness requires that, although it is inevitable that a substantially increased fine be imposed, it is proper that this be less than what would otherwise be warranted, had the matter been *res integra*. If this matter had come before a Court of Summary Jurisdiction for the first time I consider that a fine of the order of $5000 would have been warranted, given the prosecution attitude in not pressing for a custodial sentence.

[12] However, in recognition of the double jeopardy principle, I felt it proper to moderate the penalty to a fine of $2000. I must emphasise that I do not consider that quantum of fine to constitute any precedent or standard for the future.

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