

CANADA / JUDGMENT

R. v. Millar

2025 BCSC 1243

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1243 R. v. Millar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Millar,

2025 BCSC 1243

Date: 20250404

Docket: 41995

Registry: Port Alberni

Between:

Rex

Respondent

And

Ryan Owen Millar

Appellant

Before: The Honourable Justice Thompson

On appeal from: An order of the Provincial Court of British Columbia,
dated November 6, 2023 (R. v. Millar, 2023 BCPC 237)

Oral Reasons for Judgment

Counsel for the Appellant:

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E. Lehrer

E. Aston (A/S)

Place and Date of Hearing:

Nanaimo, B.C.

March 11, 2025

Further written submissions:

March 28, 2025

Place and Date of Judgment:

Nanaimo, B.C.

April 4, 2025

[1] This is a sentence appeal. Following his trial, convictions were registered on the following charges on the information:

Count 1

[O]n or about the 14th day of October, 2021, at or near Tofino, in the Province of British Columbia, did kill wildlife, namely a black bear, at a time not within open season, contrary to Section 26(1)(c) of the Wildlife Act, R.S.B.C. 1996.

Count 3

[O]n or about the 14th day of October, 2021, at or near Tofino, in the Province of British Columbia, did take or kill a black bear less than two years old, or a black bear in the company of it, contrary to Section 13.1(1)(b) of the Hunting Regulation, B.C. Reg. 190/84, pursuant to the Wildlife Act, R.S.B.C. 1996.

[2] The judge imposed a concurrent 30-day jail sentence on each count, a \$5500 fine on each count, a 20-year hunting prohibition, and a 20-year weapons and firearms prohibition. He also ordered the weapons used to be forfeited. The appellant appeals against the imposition of the jail sentence and the weapons and firearms prohibition, and submits the length of the hunting prohibition ought to be two years.

[3] The sentencing judge summarized the facts in his sentencing decision, indexed at 2023 BCPC 237:

[2] Mr. Millar lives in Tofino, which is a town on the west coast of Vancouver Island. On October 14, 2021, there were two black bears near his house. One was a sow and the other was her cub. They were in a tree in his yard. He saw the bears, went into his house, and retrieved a

bow and some arrows as well as his crossbow. He deployed at least one arrow from his bow at the cub, injuring it and causing it to fall out of a tree. He then used his crossbow to kill it. He then shot a number of arrows at the sow bear and injured it. As it tried to escape, he chased after it and killed it. The investigation of the killing revealed that the sow was found a short distance from his house. Immediately after killing the younger bear, he then hid the cub on his property.

- [3] He thought nobody was watching when he killed these two bears. Unbeknownst to him, there were two people enjoying a hot tub next door at an AIRBNB. They were visiting from Vancouver. They were enjoying watching the bears up on the trees. They witnessed the killings, took some photographs of what was happening, and called the police.
- [4] When the police arrived at the scene, the accused told them that he knew nothing about any bear being shot. In other words, he lied. The police attended again and then at that time, the accused admitted that there had been one bear shot. He said he was trying to chase it away from his house as it had acted aggressively towards him. Once more, this was a lie.
- [5] One witness told the court that after the officer left the second time, a white pick-up truck drove up to the accused's house, the accused loaded it up with the dead cub and a bunch of bows and arrows.
- [4] The standard of review on a sentence appeal is highly deferential. Intervention is justified only if the sentencing judge made an error in principle that impacted the sentence, or if the sentence is demonstrably unfit: *R. v. Friesen*, 2020 SCC 9 at para. 26. With regard to errors in principle, the intervention parameters are explained in *Friesen*, at para. 26:

Errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle "[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably" (*R. v. McKnight* (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, cited in *Lacasse*, at para. 49). Not every error in principle is material: an appellate court can only intervene if it is apparent from the trial judge's reasons that the error had an impact on the sentence (*Lacasse*, at para. 44).

- [5] A sentence is demonstrably unfit where it is clearly or manifestly excessive or inadequate, or represents an unreasonable or marked departure from the principle of proportionality: *R. v. Lacasse*, 2015 SCC 64 at para. 52-53.
- [6] The appellant contends that the sentence was demonstrably unfit, and that the sentencing judge made errors in principle:
 - 1) in relation to aggravating and mitigating factors, by treating lack of remorse and continued pleas of innocence as aggravating, by giving no mitigating effect to good character, by mischaracterizing witnesses as victims, and speculating about harm, and by characterizing an element of the offence as aggravating;

- 2) by applying the wrong legal test;
 - 3) by preferring an overturned judgment to the judgment of the appellate court;
 - 4) by failing to give adequate reasons in relation to the weapons and firearms prohibition; and
 - 5) by imposing a firearms prohibition that did not meet the test under s. 84.1 of the Wildlife Act for imposing this prohibition.
- [7] It is common ground on this appeal that it is generally an error in principle to consider an absence of remorse as aggravating: *R. v. Zeek*, 2004 BCCA 42 at para. 24. I conclude that the appellant has established that the sentencing judge made this error, and that it had an impact on the sentence. I note at the outset, in fairness to the judge, that he may well have been led into error by the written submission of Crown counsel (who is not counsel on this appeal) which listed lack of remorse as an aggravating circumstance.
- [8] The judge found that the appellant lacked remorse, and this finding is rooted in the appellant dishonestly maintaining that he acted out of fear for himself and his family (paras. 66-70). And, the judge listed lack of remorse as one of the aggravating factors when explaining the sentence he imposed.
- [9] The respondent submits that the judge placed lack of remorse under the incorrect heading, but that it is clear in the context of the whole of his reasons that he correctly approached lack of remorse as an absence of a mitigating factor. The respondent refers to *R. v. Alderman*, 2017 BCCA 26 at para. 15, in support of the proposition that lack of remorse is relevant to sentencing where it relates to the degree to which an offender poses a continuing risk to the public.
- [10] On reading the reasons as a whole, I am satisfied that the judge considered the appellant's lack of remorse as aggravating. The judge listing of lack of remorse as an aggravating factor was not an infelicitous slip during delivery of an extemporaneous oral judgment. To the contrary, it is evident that the judge's reasons are the product of thoughtful deliberation. And, it does not seem that the finding of lack of remorse was key to an assessment of continuing risk, per *Alderman*.
- [11] The impact of an error in principle on the sentence imposed may be apparent, or it may "arise either by necessary implication or reasonable inference from the reasons as a whole": *R. v. Agin*, 2018 BCCA 133 at para. 49. Because of the many factors considered by the judge in arriving at the sentencing orders imposed, I cannot be sure whether the error in principle had an effect on some component of the orders that were made.

- [12] It is apparent that the sentence was based in large measure on the appellant's moral blameworthiness, which the judge found to be "extremely high" (para. 79). Reading the reasons as a whole, my impression is this moral blameworthiness finding was grounded in substantial part on the appellant's lack of remorse for his wanton execution of these bears. I infer that the judge's treatment of lack of remorse as aggravating likely impacted on the severity of the sentence.
- [13] Where a threshold for appellate consideration has been met, as it has in this case (and, because of my conclusion on the lack of remorse ground of appeal I need not consider the other alleged errors in principle), the appellate court is to conduct its own analysis to determine a fit sentence and apply sentencing principles without deference to the existing sentence. Deference is owed, however, to the sentencing judge's findings of fact or identification of aggravating and mitigating considerations (to the extent they are unaffected by error). See Friesen, at paras. 27-28. Where, as in this case, the local judge is well-attuned to the importance to the Tofino region of wildlife such as black bears, and the judge has heard the trial, there is especially strong justification for respecting the judge's findings of fact.
- [14] Section 84(3) of the Wildlife Act provides for a maximum punishment for each of the offences of a fine of up to \$100,000, or a term of imprisonment not exceeding one year, or both. And s. 84.1(1) of the Wildlife Act provides a discretion to add prohibitions and requirements, including:
- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
 - (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.
- [15] In *R. v. Brown*, 2010 BCCA 225, the Court cited with approval authority for the proposition that "deterrence is a key component of sentences for breaches of environmental protection statutes." Of course, the fact that deterrence is a key component of the sentence does not displace the overarching principle of proportionality: a just sanction is one that is proportionate to the seriousness of the offence, and the degree of responsibility of the offender. The task in this case, in line with the principle of restraint, is to impose the least sentence that will sufficiently deter the appellant and others, and sufficiently denounce the appellant's appalling behaviour.
- [16] The appellant places heavy reliance on parity and the role it plays as an adjunct to the principle of proportionality. He contends that the imposition of a jail sentence and very lengthy hunting and weapons prohibitions are outside of the range of sentences previously imposed in similar cases. The respondent submits that imposition of this combination of sanctions resulted in a fit and proportionate sentence.

[17] The following excerpt from *R. v. Ellis*, 2022 BCCA 278, is instructive regarding the limits on the proper role of sentencing ranges, the components of a proper assessment of the gravity of the offence, and the assessment of moral culpability:

[126] The Supreme Court of Canada's most recent discussion of ranges is found in *Parranto*. The following principles emerge from the majority judgment and are particularly germane to this appeal:

- Sentencing ranges reflect "judicial consensus on the gravity of the offence" (at paras. 20, 44, emphasis added).
- They provide judges with a "place to start" in crafting a fit sentence (at para. 16).
- Sentencing ranges are established based on "strictly offence-based considerations" (at para. 47, emphasis added)
- Ranges do not factor in the characteristics of the offender (at para. 47).

[127] The *Parranto* majority cautioned against creating sentencing ranges based on a type of offender:

[47] Any inclusion of characteristics of an archetypal offender could impede individualization of sentences, rendering the guidance inconsistent with the standard of review and with Parliament's express choice to vest sentencing judges with the discretion to determine a fit sanction. While this Court's role is not to dictate how provincial appellate courts should establish sentencing ranges and starting points, we emphasize that those tools are applicable only inasmuch as they solely speak to the gravity of the offence. By restricting starting points and ranges to strictly offence-based considerations, they will continue to be useful to sentencing judges without fettering their discretion or impeding individualization in a way that could produce clustering of sentences.

[Internal references omitted; emphasis added.]

[128] This same point was made by Justice Doherty in *Hamilton*. He noted that ranges reflect the "objective seriousness" of the crime (at para. 111), not the type of offender that is before the court.

[129] The objective seriousness of an offence is generally assessed with reference to its essential elements, including the requisite mens rea, the degree of harm that can flow from the prohibited conduct, and the legislated penalty provisions: *Morris* at para. 67.

[130] The assessment of gravity is focused on "the normative wrongfulness of the conduct and the harm posed or caused by the conduct": *Morris* at para. 68, citing *Friesen* at paras. 75-76. See also *R. v. Okimaw*, 2016 ABCA 246, wherein the court stated that the:

[14] "gravity of the offence" is directed to what the offender did wrong. It includes two components: (1) the harm or likely harm to the victim; and (2) the harm or likely harm to society and its values

[131] The gravity of an offence is not focused on the circumstances of the offender, including their personal characteristics or aspects of the offender's social context or background that may provide an explanatory context for the choice to commit the offence: *Morris* at para. 75. Those factors are relevant to an assessment of the offender's personal responsibility or blameworthiness, which represents a different aspect of the proportionality analysis.

[Emphasis in original text.]

Circumstances of the Offences

[18] The sentencing judge made significant and well-grounded findings that factor into my assessment of the seriousness of the circumstances surrounding the offences. He found the killing of the bears was unprovoked (para. 66), and that the appellant "simply executed them" (para. 70). The bears did not die instantly; they were in "considerable pain" before they died (para. 71).

[19] The judge found that the appellant took active steps to avoid detection of his offences by hiding the cub until he could try to surreptitiously remove it from the scene and by removing weapons from the scene, and that he elicited the assistance of others to accomplish these cover-up efforts (para. 76).

[20] The offences caused evident harm to the animals sought to be protected by the statute and regulations, but the judge also found consequential and collateral damage. The sow might have had any number of cubs in her lifetime. And, protecting cubs is important because a youthful black bear population is necessary to ensure a healthy population of the species (para. 65). The judge concluded that the tourists who witnessed these killings were traumatized by what they saw and heard (para. 77), and that the reputation and harmony of Tofino were damaged by the appellant (para. 78).

[21] These findings of consequential and collateral damage are amply supported by the record. The judge heard the testimony of one of the tourists, and his reasons refer to various reports that were in evidence, including a report from a senior wildlife biologist, a monitoring ecologist, and reports from Tla-o-qui-aht elders on the cultural significance of black bears.

[22] On my review of the record, I think the judge correctly regarded the offences as serious. As he observed in his trial reasons, this was not a fair or ethical hunt (para. 129). The bears were in the appellant's backyard. The appellant's actions were intentional and disgraceful. I would place them in the very serious part of the spectrum of conduct targeted by the statutory provisions designed to protect our wildlife - aptly described in the authorities as a national treasure.

Moral Culpability of the Offender

- [23] The sentencing judge took notice of mitigating factors, including the appellant's relative youth, the absence of a criminal record, the fact he is employed and has a family, and his volunteer work (paras. 58-63). The judge also recounted the appellant's extensive experience as a hunter and wildlife guide, and his history of involvement in animal protection and conservation (paras. 38-44). The judge also referred to the appellant's apology to the community and reference letters from friends and family (para. 67). The appellant submits that the offences are out of character. His otherwise good character is relevant to an assessment of moral culpability: *R. v. Davies*, 2022 BCCA 391 at paras. 27-29.
- [24] The assessment of the circumstances of the offender includes their personal characteristics and "aspects of the offender's social context or background that may provide an explanatory context for the choice to commit the offence" (Ellis, at para. 131). While it would be wrong to ignore the appellant's positive personal characteristics, the appellant's life experience makes clear that he well knew he was acting illegally. There is nothing in his "social context" or background that explains, in any mitigating sense, why he made the cruel choice to kill these bears. The judge, correctly in my view, characterized the appellant as having blatantly and utterly disregarded the law (para. 79). These circumstances, and the steps he took to cover up his offending, reduce the degree of mitigation that would otherwise attend evidence of the appellant's good character. I find that the degree of moral blameworthiness is substantial.

Other Sentencing Cases

- [25] I appreciate the importance of parity and I have read the various cases cited by the appellant and respondent. The appellant argues that there are few if any cases where a jail sentence has been imposed for killing bears, and few cases with unduly prolonged hunting or weapons prohibitions. The respondent points to cases, most of them outside of a hunting context, where jail sentences have been imposed, and refers to several cases where 10- or 20-year hunting or fishing prohibitions have formed part of the sentence.
- [26] None of these cases cited to me are particularly useful comparators. The case at bar is not comparable to the hunting cases. This was a senseless and clumsily-conducted backyard execution. The "strictly offence-based considerations" underlying the results in these other cases do not operate to provide a useful starting point.

Conclusion

- [27] I conclude that a combination of a relatively short jail sentence of 30 days on each count to be served concurrently, substantial fines in the amounts imposed by the sentencing judge, and a hunting prohibition of moderate length is a proportionate response to the circumstances of the offence and the circumstances of the offender. I think a fine and prohibition, without a jail sentence, would be insufficient to denounce these serious

offences, an inadequate recognition of the variety of harms caused by the appellant's senseless acts, and an insufficient general and specific deterrent.

- [28] The parties agree that s. 84.1(1) of the Wildlife Act is a provision that enables prohibitions, and that s. 110 of the Criminal Code is not engaged. I am to have "regard to the nature of the offence and the circumstances surrounding its commission" when deciding whether to make a s. 84.1(1) order, and it is apparent from the material paragraphs (1)(a) and (1)(i) that the goals of prohibitions and conditions includes preventing continuation or repetition of the offences or to secure the offender's good conduct. I think the jail sentences and the substantial fines will go a long way toward these objectives; I have not lost sight of the fact that this is a first offence, and I conclude that the two-year hunting ban contended for by the appellant is a sufficient prohibition. The forfeiture order will stand.
- [29] With regard to the weapons and firearms prohibition, the sentencing order indicates that this prohibition was made under the Criminal Code and it cannot stand. If there is jurisdiction to make a similar order under s. 84.1 of the Wildlife Act, I would not do so. In my view, a weapons prohibition is unnecessary to the full accomplishment of the sentencing objectives.
- [30] In the result, the appeal is allowed, but only to the extent of reducing the length of the hunting prohibition to two years and the setting aside of the weapons and firearms prohibition.

"Thompson J."

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