



**SHERIFF APPEAL COURT**

**[2016] SAC (Crim) 27  
SAC/2016/000310/AP**

Sheriff Principal M W Lewis  
Sheriff Sean Murphy, QC

STATEMENT OF REASONS

delivered by SHERIFF SEAN MURPHY, QC

in

SUMMARY APPEAL AGAINST SENTENCE

by

MARK REID

Appellant:

against

THE PROCURATOR FISCAL, PERTH

Respondent:

**Appellant: Ogg So. Advcoate; Collins & Co  
Respondent: McFarlane, AD; Crown Agent**

10 August 2016

[1] The appellant appeared before the sheriff in Perth of contravention of section 1 of the Protection of Wild Mammals (Scotland) Act 2002. The sheriff imposed imprisonment for a period of 4 months, having regard to certain factors. The first of these was that the appellant has a directly analogous conviction dating from 2007 in this jurisdiction and has a subsequent conviction for poaching in England dating from 2011.

[2] The second factor which appears to have significantly influenced the sheriff was his view that the appellant was unlikely to pay any fine. The sheriff had been told that the appellant while currently in receipt of benefits, had capital out of which a fine could be met.

[3] Before us today Miss Ogg has submitted that the sentence imposed was excessive. She has repeated the submission that the appellant is in a position to pay a substantial fine. She has pointed to the period since the appellant's convictions for the other matters and she has indicated that the appellant is in a position to perform unpaid work as part of a community payback order, provided that this was limited to light duties. The report which was before the sheriff indicated that he was not fit to perform unpaid work at the time of the appearance in the sheriff court, he having had an operation on his back shortly before. He is apparently still convalescing from that operation.

[4] Before us today Miss Ogg indicated that capital of some £2,000 was available to meet a fine. She further submitted that the appellant provides substantial assistance along with his partner to his daughter and granddaughter in view of certain difficulties on their part.

[5] Taking all of these matters into consideration, but in particular taking into account the submission made by Miss Ogg that on all previous occasions when fines were imposed, the appellant has met those fines without difficulty, this court considers that the sheriff did not appropriately impose a period of custody when a fine could have been levied against the appellant. The sheriff's concerns of his ability to pay do not seem to have been supported either on the submission made or on the consideration that all previous fines were paid timeously.

[6] Accordingly in these circumstances we consider that the appropriate course for this court to take would be to quash the period of imprisonment which was imposed by the sheriff and to substitute therefore payment of a substantial fine of some £1,500. The level of

that fine is assessed by reference to the appellant's apparent ability to pay and in view of the fact that this is now his third offence concerning matters involving wildlife. We shall order payment of that fine within seven days and we shall impose an alternative today of 45 days' imprisonment to be served in the event of that fine not being paid within that period.