

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2020-009-000627
[2020] NZDC 26476**

BETWEEN

COLLIN BARRY WILLIAMS
Appellant

AND

NEW ZEALAND POLICE
Respondent

Hearing: 15 December 2020

Appearances: T Gwaze-Musesengwa for the Appellant
J Whitcombe for the Respondent

Judgment: 15 December 2020

ORAL JUDGMENT OF JUDGE T J GILBERT

Introduction

[1] Mr Williams is an avid hunter; it is a big part of his life. He first gained a firearms licence some 34 years ago when he was 16 years old. However, on 31 December 2019, Inspector Natasha Rodley issued a notice of revocation of that firearms licence on the basis that she considered he was not a fit and proper person to hold such a licence. That notice was served on 12 January 2020 and since that time, Mr Williams has been without a licence. He now appeals the decision to revoke his licence.

Law

[2] There is no real dispute as to the law that applies to appeals of this nature.

[3] The appeal is by way of a de novo hearing. Whilst due weight is given to the opinion of the decision maker, in this case Inspector Rodley, there is no presumption in favour of that decision and no legal onus of proof on the appellant to show that the inspector's decision was wrong. At the end of the day, I need to assess whether in my view Mr Williams is a fit and proper person having regard to the evidence that I have been provided with.

[4] There is no statutory criteria informing who is and is not a fit and proper person. Both parties have quoted the New Zealand Police Firearms manual which includes a definition as follows:

“A fit and proper person is a person of good character, who can be trusted to use firearms responsibly.”

[5] In the case of *McCabe v Police*, Judge Neave commented on the test as follows:¹

Exactly what is meant by fit and proper person is not spelt out in the legislation. Such a determination clearly requires consideration of the applicant's overall character and history to determine that they are the sort of person who should be allowed to be the holder of a firearms licence and thus entitled to lawful possession of firearms. It is perhaps apt to note the long title of the Arms Act 1983 which states that it is “an Act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons.” Clearly the considerations of promoting safe use and control of firearms must inform any decision on the fitness and propriety of any particular person holding a firearms licence.

[6] With respect, in my view, that statement encapsulates well the notion of what a fit and proper person is in the context of the Arms Act and, in particular, firearms licence holders.

Evidence

[7] In this case, to assist me to determine whether or not Mr Williams is a fit and proper person, I have received affidavit evidence from Inspector Rodley as well as affidavits from Mr Williams, his wife Margaret, and his long-time friend and hunting

¹ *McCabe v Police* DC Timaru CIV-2008-076-345, 30 January 2009.

companion Keith Fraser. Inspector Rodley and Mr Williams were cross-examined on the contents of their affidavits.

[8] Inspector Rodley, in her notice of revocation, relied on three grounds in determining that Mr Williams was not a fit and proper person. These were:

- (1) The fact that he had been trespassed from Esk Head Station in 2019 in what, at first blush, at least appeared to be a hunting related incident;
- (2) The fact that in 2010 he had been charged with and ultimately diverted for unlawful hunting; and
- (3) The fact that in 2019 he had been charged with and convicted with unlawful hunting on the Department of Conservation estate.

[9] In her oral evidence, Inspector Rodley said that the first of the factors that I have mentioned above related to Esk Head Station was not a significant feature in her determination. Her primary concerns related to the instances of unlawful hunting, first in 2010 and second in 2019.

[10] I note that in Mr Williams' affidavit, as well as the affidavits from Mr Fraser and Margaret Williams, the background to the Esk Head incident was explained. I do not consider I need to deal with it further except to note that I have put the Esk Head incident to one side. I accept that it does not aggravate Mr Williams' situation.

[11] The two other incidents of unlawful hunting are, however, relevant and I heard evidence about them.

[12] The details of the 2010 incident are relatively scarce. However, what is clear from the material filed and the evidence I heard is that Mr Williams was pig hunting with his son and at least one pig dog. His dog obtained the scent of a pig and bolted across the road into a private landholding.

[13] Mr Williams elected to follow it with his rifle, with the intention of shooting the pig. The landowners came across his dog and seized it, threatening to shoot it

no doubt concerned about its potential to worry stock and the fact that Mr Williams was hunting on their land without permission. The police were called, and Mr Williams was summoned to Court charged with unlawful hunting.

[14] Mr Williams received diversion. In both his written evidence and his oral evidence Mr Williams was somewhat coy about this. However, the reality is that from what he described in his oral evidence, there is every reason for concern that he was hunting on someone else's property without their knowledge or permission and therefore it is no surprise he was charged.

[15] Similarly, given that it appeared to be a one-off incident it is no real surprise that he was diverted as a result of which he paid \$100 to charity. In order to be eligible for diversion, Mr Williams must have accepted wrongdoing although he had real difficulty in acknowledging that in his evidence. He seems to think that his traversing onto someone else's landholding, armed with a rifle and with a pig dog was just an unfortunate fact of hunting life caused by the dog bolting across the road.

[16] Whilst no formal action was taken in relation to his firearms licence in 2010, one would have expected that this would serve as a real wake up call. Every firearms licence holder must know that it is a privilege and not a right to hold a licence and that strict compliance with the rules and regulations is expected.

[17] The 2019 incident involved Mr Williams hunting on designated public conservation land located in the Lewis Pass Scenic Reserve. That land is governed by Department of Conservation rules which require a hunting permit. Moreover, hunting is prohibited during the hours of darkness and spotlighting, heat seeking and night vision equipment is also prohibited.

[18] At about 11 pm on 20 April 2019, Mr Williams used night vision equipment to spot a deer grazing on a river flat. He fired two shots from a high-powered hunting rifle killing the animal which he then went to retrieve. At about that time, police were in the area involved in an active search and rescue operation. They heard the shots and located Mr Williams.

[19] According to the summary of facts which he pleaded guilty to, Mr Williams admitted shooting the deer and accepted that he was on Department of Conservation land. He also said that he was aware of the conditions surrounding hunting in the area in darkness. In explanation, he said he had “taken a chance and been caught”.

[20] Mr Williams appeared in Court on 23 May 2019 charged with unlawful hunting. He pleaded guilty immediately and was fined \$2,000 and ordered to pay court cost of \$130. It was shortly thereafter that the police officer involved in that incident started the ball rolling to have Mr Williams’ fitness to hold a firearms licence reviewed.

[21] Before any formal action was taken in the form of issuing a revocation notice etc, the complaint relating to Esk Head was received. It was shortly after that incident that formal revocation action commenced although I note specifically that revocation action was under consideration prior to the Esk Head incident.

[22] Mr Williams had a meeting which lasted 20 or 30 minutes with Inspector Rodley. She gave him an opportunity to explain matters but having heard his explanation, she was not satisfied that he was a fit and proper person to hold a firearms licence. She felt that his comments were an attempt to explain away or downplay his culpability.

[23] In her evidence before me, she said he was unquestionably sorry that he had been caught but she was not sure that he was sorry about actually breaking the rules. In any event, Inspector Rodley was not persuaded by Mr Williams’ submissions and the notice to revoke was issued and served.

[24] When the police went to serve the notice, Mr Williams had just returned from hunting. He was in the bath. When he got out, he had to retrieve a hunting rifle from behind the back seat in his ute.

[25] The vehicle was locked, and the ammunition and bolt were stored separately in the glove compartment which was also locked. Irrespective of that, however, the Arms Regulations 1992 require firearms licence holders to take reasonable steps to

ensure that any firearm in the holder's possession is secured against theft. Reasonable steps is specifically defined to include ensuring that no firearm in the licence holder's possession is left in a vehicle that is unattended.

[26] Mr Williams, in his evidence, said that he had recently returned from hunting and was cold and wet. As a result, he decided to have a bath prior to attending to his firearm. In fairness to him, as I have noted, the vehicle was in his driveway and was locked. However, there was still a clear breach of the regulations albeit at the lower end.

[27] Inspector Rodley said that she was not aware of this at the time she issued the notice to revoke but it further reiterated, in her mind, that Mr Williams was not a fit and proper person who could be expected to take all his obligations as a firearms licence holder seriously. Inspector Rodley said that having read the various affidavits filed by and on behalf of Mr Williams, she was not inclined to change her view as to his fitness to hold a firearms licence.

[28] Mr Williams filed two affidavits and gave supplementary oral evidence. He was also cross-examined by Mr Whitcombe who appeared for the Police.

[29] I immediately accept that the loss of his firearms licence has been a heavy blow. Hunting appears to be his primary hobby and it is one that he enjoys with his wife and children. It is also a primary food source for he and his family. However, those factors are not particularly relevant as to whether he is a fit and proper person to hold a firearms licence.

[30] I formed a number of impressions of Mr Williams during the course of his evidence which went on for an hour or more. First, in my view, Mr Williams was reluctant to accept fault in a genuine and appropriate way. He consistently tried to downplay the seriousness of the 2010 unlawful hunting incident, the 2019 unlawful hunting incident, and the fact that his firearms were inadequately stored when the police went to serve the revocation notice.

[31] Whilst each of those incidents were in themselves far from desirable, what was perhaps of more concern to me was Mr Williams lack of capacity to genuinely acknowledge wrongdoing. For example, in relation to the 2010 incident, he seemed to think that a pig dog following a scent and roaming into neighbouring property was just a fact of life when hunting and that there was no real issue with his decision to then go on to private property, armed with a weapon with the intent to shoot a pig.

[32] In relation to the 2019 incident, he repeatedly tried to imply that it was all a misunderstanding borne of ignorance. This, however, was completely at odds with his comment to the police as recorded in the summary of facts that he “took a chance and got caught”. Somewhat reluctantly in his evidence, he eventually conceded that he knew his activities were illegal and that he had done just that – taken a chance knowing that it was illegal to shoot the deer in the circumstances that he did, but he banked on not being caught.

[33] As I have already commented, he seemed very reluctant to accept any fault in relation to not having stored his firearm properly when the police served the revocation notice. He went as far as to say that it is no different to a hunter stopping to fuel up a car with a firearm in a boot.

[34] In my view, that is a very different situation if, for no other reason, that in those circumstances, the hunter would be within a few metres of the vehicle at all times and have it under his or her watch. The vehicle could not, in my view, be considered unattended. That is quite different from luxuriating in a bath with a weapon in the car parked on a driveway.

[35] Having regard to those factors, I agree with Inspector Rodley’s impression that Mr Williams was reluctant to accept culpability and was trying to downplay the seriousness of what had occurred.

[36] During the course of the evidence, Mr Williams was asked some questions about the basic firearm safety rules as well as the conditions that are attached to hunting permits issued for the DOC Estate.

[37] For a person wanting to demonstrate that they are a fit and proper person, I would have expected that Mr Williams would have a very good grasp of these rules. Whilst I accept that the pressure of the courtroom is perhaps a difficult place for a layperson like him to demonstrate such knowledge, his lack of apparent familiarity with some of the rules and regulations did not inspire confidence.

[38] I have of course considered that Mr Williams is of otherwise of good character. Aside from one minor driving conviction more than 30 years ago, he has no involvement with the law outside of his illegal hunting activities. I also note the evidence that he is generally careful about not using drugs and alcohol around firearms and that he has appropriate firearms storage facilities at his home and so forth.

[39] Notwithstanding that, I was concerned at Mr Williams' seemingly cavalier attitude to the rules and regulations which exist to ensure that firearms are stored, possessed and used safely. I was concerned at his reluctance to accept genuine wrongdoing. It seemed to me, that in a number of areas, he was prepared to take the view that whilst there were technical breaches or whilst he had been caught out, his actions were in fact, not unreasonable and were safe; he was just unlucky to get caught.

[40] My impression largely mirrors that which Inspector Rodley seems to have formed when she met with Mr Williams to discuss the potential revocation of his licence. Having regard to this, I have to say that unless there is an evident attitude shift, that I do not have any real confidence, that placed in a similar situation in the future, things would play out differently.

[41] Whilst Mr Williams is clearly a very experienced and capable hunter, my sense is that if he encountered situations in the future where he was hunting and some rule or other did not suit his purposes, he would be willing to take the chance just as he did in 2019, on the proviso that he did not think he would be caught.

[42] Accordingly, having looked at the matter afresh, I do not consider him to be a fit and proper person who can be trusted to use firearms responsibly at all times and in accordance with the rules and regulations applicable to firearms licence holders.

[43] I therefore find myself, perhaps contrary to my initial expectations when reading the file in chambers, in agreement with Inspector Rodley and the appeal will be dismissed.

[44] I do note, however, that there is nothing preventing Mr Williams from reapplying for a firearms licence at some point in the future. If and when he chooses to do so, he will no doubt be carefully vetted. If whoever has that task forms the view that there has been a demonstrable shift in attitude, then there is no reason why he should not be reissued with a licence.

[45] I expect that my confirmation of the police decision to revoke the firearms licence will have a very salutary effect on Mr Williams, who I acknowledge will be very, very disappointed by this decision.

Judge TJ Gilbert
District Court Judge

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