

May 17, 2024

## **'An injustice:' WA Supreme Court overturns conviction of Yakama man in 1924**

Tammy Ayer; Yakima Herald-Republic, Wash.

May 16—A century after Yakama Nation citizen Jim Wallahee killed a deer in Kittitas County on land ceded in the Treaty of 1855, the Washington Supreme Court has vacated his conviction.

In 1924, Wallahee, a Yakama citizen, was convicted by Kittitas County Superior Court for killing a deer on open and unclaimed land. The conviction was upheld by the Washington Supreme Court in 1927.

In an opinion released Thursday, seven of the nine Washington Supreme Court justices said Wallahee's 1924 illegal hunting conviction ignored a clear treaty right to hunt and "was consistent with a pattern of disregard for the rights of Native people."

The Yakamas ceded more than 10 million acres of land to the United States "in exchange for certain promises," the opinion said of the June 9, 1855, treaty between the United States and the 14 tribes and bands that comprise the Yakama Nation.

"These promises included that the Yakamas would reserve a portion of land for their 'exclusive use and benefit;' would retain the right to fish in their usual and accustomed places; and could hunt, gather and pasture stock on open and unclaimed land," it said.

Wallahee admitted that he killed the deer while "hunting upon certain open and unclaimed lands" the Yakama Nation ceded to the United States in the treaty. He and his attorneys argued that he had a treaty right to hunt the deer but he was convicted in a Kittitas County court.

"Relying on precedent that has since been overturned, this court affirmed his conviction," the opinion said. "Today we reject the harmful logic that underpins his wrongful conviction and recognize that Mr. Wallahee had a clear and enforceable treaty right to hunt that deer. Accordingly, we withdraw our previous mandate and vacate Mr. Wallahee's conviction."

Attorney Jack Fiander brought the motion on behalf of the estate of Clyde Wallahee, a family member of Jim Wallahee. Fiander had brought a motion in 2005, seeking an order vacating the Washington Supreme Court's prior decision. Before he died in 2007, Clyde Wallahee instructed Fiander to continue the effort to disavow the 1927 decision.

Fiander renewed the request after a decision in the Towessnute case in 2020.

The Washington Supreme Court in July 2020 reversed and repudiated its 1916 ruling ordering Alec Towessnute to be charged with illegally fishing with a gaff hook after a Benton County judge said the Yakama Nation citizen was acting within his rights as outlined in the Treaty of 1855. Towessnute was criminally charged for fishing on traditional tribal grounds on the Yakima River.

Justices heard the Wallahee case "en banc," a special procedure in which all judges of a particular court hear a case when it's believed matters are especially complex or important.

### **Arguments**

Justices Barbara A. Madsen and Justice Debra L. Stephens dissented. They agreed that the court's earlier decision in Wallahee is no longer good law, nor is Wallahee's underlying conviction, but questioned the parties' standing. "But ignoring binding precedent and erasing the case from our history is not the way we review and overrule past cases," Madsen wrote.

In her written opinion, Madsen said "the parties and the record do not identify the criminal statute Wallahee was convicted of violating." She noted there's a law that allows family members or a tribe to seek to vacate convictions of deceased individuals for fishing violations protected by treaty right, but there's no law that allows that for a hunting conviction.

"Rather than wiping away the discomfort and shame of past decisions, allowing the case to exist (disavowed and without authority) helps ensure that future generations can see the documented history of discrimination and disenfranchisement of a people. It is our history. We cannot forget it," the dissent said.

Chief Justice Steven C. González, Associate Chief Justice Charles W. Johnson and Justices Susan Owens, Sheryl Gordon McCloud, Mary I. Yu, Raquel Montoya-Lewis G. Helen Whitener concurred with the majority opinion.

González wrote the earlier decision was legally incorrect, harmful and an injustice.

"Our nation's history is rife with such injustices. It is no victory to sanitize the past, but there is a difference between erasing history and redressing harm. This court's wrongful decision can be characterized as an instructive feature of the past only by those who do not feel its sting in the present," González wrote.

### **Promises not kept**

Thursday's opinion follows modern decisions in the cases of Towessnute, George Meninock and other Indigenous people who have been wrongly charged and convicted in exercising their treaty rights.

In 1917, George Meninock was convicted of illegally fishing at his family's traditional site near the just-built Prosser Dam. Meninock allowed himself to be arrested for fishing at the dam in protest.

The Washington Supreme Court heard the appeal of his case in 1921. Meninock argued through a translator that his right to fish there was protected by the 1855 treaty. He had watched 14 chiefs, including his father, sign the treaty with Washington Territory Gov. Issac Stevens.

Meninock failed to convince the justices and was convicted and fined \$10.

His 81-year-old great-nephew Johnson Meninick, who died in April 2020, sought to have his long-deceased great-uncle's record cleared as another step in the long fight to have the Yakama's treaty rights recognized.

Meninock's record was among the first cleared under a 2014 state law giving judges the power to overturn convictions that contradicted treaty agreements. It followed the landmark 1974 case, known as the Boldt Decision, which affirmed that treaty rights entitled Northwest tribes to half the harvest on all traditional fishing grounds, not just on reservations.

In 1927, the state Supreme Court ruled that tribes in Washington forfeited their treaty rights after Washington became a state in 1889. In the opinion released Thursday, justices admitted that opinion was incorrect.

"Our 1927 opinion was incorrect on the law. That opinion asserted that the treaty between the United States and the Yakama Nation was terminated at statehood," the opinion said. "But treaties between the United States and Native Tribes are 'the supreme law of the land and (are) binding on the State' no less than on the federal government.

"Our holding further suggested that treaty rights are a privilege granted by the United States government, when they are in fact fundamental rights reserved by sovereign tribes."