

Citation: *R. v. Gunner V. Pejanovic*, 2006 CM 20

Docket: S200620

**STANDING COURT MARTIAL
CANADA
ONTARIO
2ND REGIMENT, ROYAL CANADIAN HORSE ARTILLERY
CANADIAN FORCES BASE PETAWAWA**

Date: 14 December 2006

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**GUNNER V. PEJANOVIC
(Accused)**

SENTENCE

(Rendered orally)

[1] Gunner Pejanovic having found you guilty of charges number 2 and number 3, the court must now impose a fit and just sentence.

[2] In determining the appropriate sentence the court has considered the circumstances surrounding the commission of these offences, the mitigating circumstances raised by the evidence in mitigation, the aggravating circumstances raised by the Prosecutor and the representations by the Prosecutor and by your Defence Counsel and also the applicable principles of sentencing.

[3] The Agreed Statement of Facts - Sentence you have provided as well as your testimony during the trial provide this court with the information to be used to determine the appropriate sentence in this case.

General principles of sentencing

[4] Those principles which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public and the public in this case includes the Canadian Forces. The primary principles are the principles of deterrence that includes

specific deterrence in the sense of deterrent effect on your personally as well as general deterrence; that is deterrence for others who might be tempted to commit similar acts. The principles also include the principle of denunciation of the conduct and last but not least the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would be best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[5] The court is required, in imposing a sentence, to follow the directions set out in paragraph 112.48(2) of the *Queen's Regulations and Orders for the Canadian Forces* which obliges it in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[6] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. I hasten to add that these sections of the *Criminal Code* are used as guidance since they are not binding upon the court for the purposes of sentencing. The purposes and principles enunciated at these sections of the *Criminal Code* serve to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[7] The court has also considered the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[8] The court must also remember that the ultimate aim of sentencing is the restoration of discipline in the offender and in the Canadian Forces. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury or death. I describe discipline as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice; it is an internal quality that is one of the fundamental prerequisites of operational efficiency of any armed force.

Sentencing Recommendations of the Court

[9] The prosecution suggests that the principles of general and specific deterrence and the maintenance of discipline are the prime factors that apply in this case.

The prosecution has provided this court with one case in support of its submission of a sentence of a reprimand and a fine in the range of 1200 to 1500 dollars to be paid at a monthly rate of a 100 dollars per month. Your defence counsel proposes a sentence of a reprimand and a fine in the range of 1000 to 1200 dollars. Your counsel suggests that this fine should be over a 15 to 18-month period.

Mitigating Factors

[10] The prosecution has commented quite favourably on the fact that your numerous admissions had obviated the need to call a fair number of prosecution witnesses. The prosecution has also explained that your admission of these facts has greatly reduced the costs associated with this court martial as well as, and more importantly, the hardships on these individuals. These hardships could have resulted in serious repercussions for these individuals as well as hardship for their unit. I also note that you are a first time offender.

[11] Your counsel submits that you would have plead guilty to charge number 3 but did not based on his advice to conserve your right of appeal. He points out that you did admit to every element of the offence of charge number 3 by making the judicial admissions pursuant to MRE 37(b).

[12] Your counsel suggests that there was no element of premeditation for the 1st charge of absence without leave. Your counsel has also mentioned that the court should consider the delay in bringing this matter to trial, your present temporary medical category and the added stress and anxiety this causes you. Finally, your counsel emphasized that you are the only income earner of your young family and that you are supporting a common law wife and two small children.

Aggravating Factors

[13] Your counsel quite rightly submits that you are entitled to plead not guilty and be considered innocent until proven guilty. This plea of not guilty should not be considered an aggravating factor.

[14] The prosecution stressed the fact that you as a member of the Army Gun Race Team failed to meet your commitment by missing your flight to Calgary. This team was an important tool for public relations and recruiting purposes for the Canadian Forces. That being said, the court did not hear any evidence on the impact of your absence on the performance of the gun team. The prosecution refers to the *Thompson* case and distinguishes your case from it. The prosecution states that Thompson showed remorse in pleading guilty but that you did not, that in fact you attempted to justify your absence.

Decision

[15] Canadian case law provides that the primary objectives in sentencing a first offender are individual deterrence and rehabilitation. I agree this sentence must focus primarily on specific deterrence.

[16] I have taken into consideration the fact that you have admitted numerous facts which in itself assisted the prosecution in making its case and minimized greatly the impact of these procedures on numerous individuals. I also take into consideration what your counsel has said concerning charge number 3 and the effect of admitting every element of that offence. I also take into consideration that you must provide for a young family.

[17] Although you are entitled to plead not guilty and this cannot be held against you, your explanations for your first absence were at times confusing. I have already indicated in my main decision my conclusions on the discrepancy concerning the timing of the first call to Master Bombardier Dalton. I will now add that during your testimony when you were trying to explain why you had left CFB Petawawa on 6 July, the second absence without leave charge, you indicated that you could not go to the field because you had a medical condition, a "stress fracture" in your leg that would restrict you from going into the field. I find it odd that this stress fracture was not an inconvenience to you as a member of the gun team but now was a reason for not going into the field.

[18] You have not left me with the impression that you realize or accept the error that you have made or realize the consequences of your behaviour. As I have already mentioned, you do not seem to grasp the concepts of discipline and obeying orders. Therefore, while remorse is a mitigating factor and that your failure to express remorse is not an aggravating factor, your admission of the facts pertaining to charge number 3 are somewhat counterbalanced by your acceptance of responsibility for these two charges as gathered by your testimony.

[19] Gunner Thompson has pleaded guilty to the charges and had thus simplified the disciplinary procedures in that no witnesses had to be called. A guilty plea is also usually considered a true show of acceptance of one's action and an acceptance of responsibility. I hope that today's sentence will promote a sense of responsibility in you.

[20] Gunner Pejanovic, having found you guilty of the two charges of being absent without leave, I now sentence you to a reprimand and a fine in the amount of 1200 dollars. The fine shall be paid in monthly instalments of 100 dollars commencing on

the first day of January 2007. If you're released from the Canadian Forces, the entire amount then outstanding shall become due and payable the day before your effective date of release from the Canadian Forces.

LIEUTENANT-COLONEL J-G PERRON, M.J.

COUNSEL:

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Counsel for Her Majesty The Queen
Lieutenant-Commander J.C.P. Lévesque, Directorate of Defence Counsel Services
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