Citation: *R. v. ex-Private A.F. Legresley, 2006 CM 39*

Docket: S200639

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date: 15 December 2006

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN
v.
EX-PRIVATE A.F. LEGRESLEY
(Offender)

SENTENCE
(Rendered orally)

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[1] Mr Legresley, having found you guilty of two charges of trafficking cocaine, it now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case, the evidence heard and received during these proceedings, and the submissions of counsel, both for the prosecution and for the defence.

[2] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. But in imposing sentence, the court takes account of the many factual matters that distinguish the particular case it is dealing with, both the aggravating circumstances that may

call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[3] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour.

[4] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[5] Section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and may be further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to impose.

[6] The facts of these offences were discussed in my reasons for finding, delivered earlier today, and I will not repeat what I said at that time.

[7] The prosecution submits that a fit sentence would be between six and eight months' imprisonment. The defence asks the court to impose a sentence of between 60 and 90 days, and asks the court to consider the suspension of that sentence. In the case of *Ordinary Seaman Ennis,* I stated:

> Over 20 years ago, the Court Martial Appeal Court, speaking through Mr Justice Addy, stated the following, in the case of *R. v. MacEachern* (1986), 24 C.C.C. (3d) 439:

> [Because] of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform and because of the teamwork required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating its use may be more pressing than that of civilian authorities.

And I carry on with my quote from *Ennis*:

> Those statements are certainly as true today as they were when they were made.

[8] The aggravating circumstances in the present case include the fact that the narcotic involved was cocaine, a highly addictive substance that can often ruin the lives of people afflicted by it. It is a serious matter that the offender should be involved in the supply of this material to someone he understood to be a fellow member of the Canadian Forces. He engaged in this conduct on two separate occasions. The amounts involved suggest to me that the offences are towards the lower end of street trafficking in this substance.

[9] There are many mitigating circumstances in this case, relating primarily to the personal circumstances of the offender. At the time of the offences, he was dealing with his own problems of substance abuse that appear to have begun after he suffered a knee injury that required medication. In the intervening period since the offences, of some 20 months, he has made exceptional progress in trying to defeat this problem. He testified that he has told the investigators he is grateful that they intervened at the time of his arrest, and he extended a formal apology. I accept that he has demonstrated genuine remorse, not only for destroying his own military career, but also, I am sure, for the obvious grief he has caused to his family by his involvement in drug trafficking. He has been released from the Canadian Forces on an unfavourable release category. Finally, both counsel and the offender are aware of unusual factors peculiar to this case that demonstrate to my satisfaction that the court need not attach much weight to the concern about specific deterrence of the offender.

[10] In my view though, the importance of general deterrence in this case requires that the court impose a sentence of incarceration. I am guided in this determination by the ruling of the Court Martial Appeal Court in the case of *Master Seaman Dominie*, CMAC-448, decided 30 May 2002. In that case, the court upheld the sentence at trial of eight months' imprisonment for trafficking in a substance held out to be crack cocaine. The

sentence I have arrived at in this case is well below the sentence I would have imposed, but for the most unusual extenuating circumstances here present.

[11] Stand up, please, Mr Legresley. You are sentenced to imprisonment for a period of 60 days. The sentence is pronounced at 1815 hours, 15 December 2006.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J. Caron, Regional Military Prosecutions Eastern
Counsel for Her Majesty The Queen
Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services
Counsel for ex-Private Legresley