



COURT MARTIAL

Citation: *R. v. Embaye*, 2015 CM 1017

Date: 20151210

Docket: 201568

Standing Court Martial

4 Wing Cold Lake
Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal D. Embaye, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Embaye has pleaded guilty to one count of being absent without leave, contrary to section 90 of the *National Defence Act*. The particulars of the charge read as follows:

In that he, at 0715 hours on 25 June 2015, at building 7, Wing Construction Engineering, 4 Wing, Canadian Forces Base Cold Lake, Alberta, without authority, was absent, and remained absent until 0730 hours.

[3] The circumstances surrounding the commission of the offence reveal that on 25 June 2015, he was not present with the rest of his unit for a 0715 morning safety briefing at Building 7. He was aware that he had been ordered by Captain Hartwig to be present at that time and place. Corporal Embaye phoned his immediate supervisor, Master Corporal Filiatreault, at 0719 hours to report his absence. Master Corporal Filiatreault told Corporal Embaye to get to work as soon as possible and he arrived at his place of duty at 0730 hours.

He had no lawful authority to be absent from the safety briefing and he was charged for being absent without leave on 15 July 2015.

[4] The fundamental purpose of sentencing at courts martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender, but also on others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[5] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) the court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; however, the court must act with restraint in determining its sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.

[6] In this particular case, the predominant objectives of sentencing are specific deterrence, general deterrence and rehabilitation.

[7] In this case, the prosecution and defence have made a joint submission on sentence; namely, a fine in the amount of \$1,250, payable in five monthly instalments. Although the court is not bound by this joint submission, it can only reject it if it is contrary to the public interest and if the sentence would bring the administration of justice into disrepute.

[8] The only aggravating factor in this case relates to the three previous convictions of the offender for similar offences committed in less than three years.

[9] The mitigating circumstances are the following:

- (a) The plea of guilty that was entered at the earliest opportunity, combined with the fact that the offender cooperated with the investigation into the matter, admitted his unauthorized absence to his chain of command and also admitted to having been aware of his duty to be present for the briefing.
- (b) There is also the fact that he indicated his willingness to enter a plea of guilty as early as four days after receiving disclosure of the evidence that would be presented at the trial in his case. In that context, the court considers this plea of guilty as a true indication of remorse and the acceptance of responsibility.
- (c) The other significant mitigating circumstance relates to the strong support from the chain of command based on his good past performance. According to the evidence before the court, the offender does retain the confidence of his chain of command as a valuable member of the Canadian Forces and they also retain confidence in his technical abilities. I'm informed that the chain of command intends to send the offender on his Qualification Level 5 course in 2016, so that is a very significant mitigating factor as well.

[10] Therefore, the court accepts that the proposed sentence is the minimal sentence in the circumstances to achieve specific deterrence, general deterrence and rehabilitation. It also respects the step principle. It is not contrary to public interest and the acceptance by the court of the joint submission would not bring the administration of military justice into disrepute. Therefore, I accept the joint submission.

FOR THESE REASONS, THE COURT:

[11] **FINDS** you guilty of the first charge for absence without leave, contrary to section 90 of the *National Defence Act*.

[12] **SENTENCES** you to a fine in the amount of \$1,250, payable in five monthly instalments beginning on 15 December 2015.

Counsel:

The Director of Military Prosecutions, as represented by Captain A.P. Watson

Major A. Gelinas-Proulx, Defence Counsel Services, Counsel for Corporal D. Embaye