



## **COURT MARTIAL**

**Citation:** *R. v. Stuart*, 2003 CM 270

**Date:** 20030812

**Docket:** S200327

Standing Court Martial

Canadian Forces Base Gagetown  
Oromocto, New Brunswick, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private D.J.M.S. Stuart, Offender**

**Before:** Lieutenant-Colonel M. Dutil, M.J.

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### **SENTENCE**

(Orally)

[1] Private Stuart, my reasons will be fairly lengthy so break off and sit with your counsel.

[2] The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily, and frequently punished more severely than would be the case of civilians engaged in similar conduct. However, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances of a case.

[3] In determining sentence today, the court has considered the circumstances surrounding the commission of the offence, mitigating and aggravating evidence in mitigation, including testimony of Private Stuart, and the admission made by the prosecution. The court also took into consideration, for the purposes of sentencing, five admissions made by Private Stuart that he committed offences similar in character to the offence for which he pleaded guilty, further to his request, and with the consent of the prosecution, when he made a demand or request to that effect pursuant to section 194 of the *National Defence Act*. These admissions have been introduced by the defence in a document marked as Exhibit 11 and they provide the general circumstances surrounding the commission of the offences that are similar in character.

[4] In a nutshell, the offences before this court constitute two offences of trafficking in cannabis marihuana, which is a substance included in Schedule II of the *Controlled Drugs and Substances Act (CDSA)*, and cannabis marihuana is a soft drug, and also three offences of trafficking in a substance held out to be Ecstasy which is one of the amphetamines included in Schedule III of the Act, and one offence of trafficking in a substance held out to be Dilaudid, which is a substance known as hydromorphone under Schedule I of the *CDSA*. The court considered, also, for the purposes of the sentence, the representations made by counsel, relevant case law provided to the court, and also the applicable principles of sentencing, including those listed in sections 718, 718.1, and 718.2 of the *Criminal Code*, and also of section 10 of the *CDSA*. The court has also considered any direct and indirect consequences that the finding and the sentence will have on you, Private Stuart.

[5] As stated by the prosecution, the principles to be used in considering what should be an appropriate sentence have been expressed a countless number of times in various ways. They relate to: the protection of the public, and that public includes the interest of the Canadian Forces (CF); they relate, also, to the punishment of the offender; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and also, the reformation and rehabilitation of the offender. The prime principle is the protection of the public, and that includes the protection of the CF.

[6] So it is upon the court to determine if that protection will be best achieved by deterrence, rehabilitation, or punishment. In matters such as trafficking in controlled drugs and other substances, a sentence which emphasizes general and specific deterrence should be considered, while making allowances, as necessary, for matters such as rehabilitation and reformation, especially when we're dealing with a person of a young age. How much room will be made for an offender's rehabilitation and reformation is case specific and generally based on the circumstances of the case and of the offender.

[7] In determining sentence, the court has considered several mitigating and aggravating factors. I will start with the aggravating factors:

First, the objective seriousness of these offences and their prescribed maximum punishment. These offences are serious. For example, the offence of trafficking in a substance included in Schedule II and VII carries with it a maximum period of five years' imprisonment, the offence of trafficking in a substance listed in Schedule III is punishable to imprisonment for a term not exceeding ten years, and the offence of trafficking in a substance listed in Schedule I carries a maximum punishment of imprisonment for life.

The second aggravating factor is the nature of the drugs involved, especially those related to Schedule I and III of the *CDSA*.

Third, the fact that you, Private Stuart, in your trafficking activities, those activities were made for a commercial purpose, even if the court can conceive and appreciate that some of your profits served to satisfy your own addiction to drugs.

And fourthly, the fact that a significant amount of money and significant quantity of substances were involved, unlike the situation of social trafficking of one or two joints of marihuana to a friend.

[8] Now, turning to the mitigating factors. I must tell you, Private Stuart, that this court finds very few mitigating factors in this case. However, the court considered the fact that you've pleaded guilty to the offence that is before this court, and that you formally admitted to five other offences of trafficking under section 194 of the *National Defence Act*, and that is the most significant mitigating factor in your case. This court considered these admissions of guilt as an acknowledgement of your misconduct and it is a factor that I certainly consider essential in the reformation and rehabilitation of any offender, but even more so in your case. These admissions have saved, in the prosecution's perspective, these admissions have saved the Crown with significant expenses in bringing the charge before the court to trial, but also in bringing those other offences to trial for which you admitted to have committed.

[9] The second mitigating factor is your age. The third one is the fact that you seem to be genuinely willing to rehabilitate yourself and that your unit is prepared to recommend to CF authorities that your upcoming release from the CF be postponed in order to provide you with an opportunity to attend a drug abuse rehabilitation program. I sincerely

hope that you will be able to find support in your battle against your drug problem, even when you're outside of the military and of the CF.

[10] It is unfortunate that you were not able to fulfil your own expectations of straightening up your personal life in joining the military a little more than a year ago. However, not only did you not stop using drugs once enrolled in the CF, you started to sell and offered to sell drugs to your comrades on a defence establishment. As stated at paragraph 1 of Exhibit 9 that was introduced by the defence, "trafficking of even a small amount of illicit drugs is considered completely unacceptable conduct for a CF member." And the court would add that it is also a serious criminal offence that carries with it a heavy price for military offenders.

[11] The prosecution recommends that this court sentences you to imprisonment for a period of four months, while your counsel suggests that a sentence of ninety days would satisfy the interests of justice. I must tell you that the punishment that this court will impose would have been significantly higher than the sentence recommended by the prosecution had you been charged and tried for all offences for which you admitted having committed today in addition to the offence that appears on the charge sheet. As I said earlier, your admission of guilt and your admissions made under section 194 of the *National Defence Act* are extremely important in the circumstances.

[12] Private Stuart, would you stand up. Having accepted and recorded your plea of guilty to the charge, the court finds you guilty of that charge and this court sentences you to imprisonment for a period of four months. You may be seated. In light of the unit's recommendation and support to Private Stuart for his attendance at a rehabilitation programme prior to his release from the CF, I direct the prosecution and the unit's Commanding Officer to inquire with the Canadian Forces Service Prison and Detention Barracks Commandant as to whether reasonable arrangements can be made locally to enlist or provide Private Stuart into a rehabilitation programme while serving his punishment. And should it be possible, I invite Private Stuart's chain of command to consider this avenue.

[13] This sentence was passed at 1645 hours on the 12th of August, 2003.

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**Counsel:**

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