



COURT MARTIAL

Citation: *R. v. Scott*, 2003 CM 291

Date: 20031113

Docket: S200329

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant(N) G.D. Scott, Offender

Before: Commander P. Lamont, M.J.

SENTENCE

(Orally)

[1] Lieutenant(N) Scott, having found you guilty of the charge laid in the charge sheet; being one charge contrary to section 83 of the *National Defence Act*, 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 as disclosed in the evidence that was heard in the course of the trial as well as the documents and testimony that were adduced in the course of the sentencing phase. And as well, I have taken account of 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. Nevertheless, in imposing sentence, the court takes account of the many factors 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] In the case before me, one deals, first of all, with the objective seriousness of the offence. Indeed, this is an offence that, under section 83 of the *National Defence Act*, is punishable by a maximum sentence of life in prison. This is a statutory recognition by Parliament that failure to obey orders strikes at the very foundation of a disciplined armed force.

[6] In this particular case, I find that the offender deliberated in advance with respect to the course of conduct that he elected to follow. And in so doing, deliberately flouted the authority of the parade commander in the presence of all the ranks on parade.

[7] I accept that the action of the accused in failing to obey the order to remove headress was a part of an expression of opinion so far as he is concerned. Indeed, his evidence, in cross-examination by the prosecutor, disclosed that as far as the accused was concerned he was leading by example by failing to follow the order to remove headress

in this particular case. In my view, the accused should have taken appropriate steps to consider alternative courses of action before resorting to the action that was displayed in this particular case.

[8] The mitigating circumstances in this case include the fact that the offender has almost 26 years of unblemished service in the Canadian Forces. He has no previous entry on a conduct sheet. He is described in the evidence, and I accept, that he is a good performer at work and he has obligations, of course, with respect to supporting a family.

[9] The unusual feature of the case, to my mind, is that it is clear that, at the time of the offence, the accused thought that he was exercising a constitutional right. In my view, this is a factor that distinguishes this case from the cases that have been put before me by counsel, and I'm referring in particular to the cases of *Major Delong* in 2002, *Captain Gray* in 1998, *Lieutenant-Colonel Creech* also in 1998, and *Captain McCallum* in 1996.

[10] In addition to the cases referred to by counsel, I've also considered the case of *Warrant Officer St-Onge* in October of 2000. In that case there were two charges, one under section 83, as in this case, and also a charge under section 90 of absence without leave. A severe reprimand was imposed on Warrant Officer St-Onge together with a fine of \$5000.

[11] These cases, as submitted by counsel, indicate a range of sentence that is appropriate in the disposition of a charge under section 83, but I must say that it would not be unusual, that if an offence such as this were committed in an operational setting, that the accused might well not leave the courtroom with his present rank.

[12] In this case, the offence was not committed in an operational setting, although, as I indicated, it was committed on parade in the presence of all ranks. It is not a mitigating factor, in my view, that many on parade or perhaps even most may not have seen the failure of the offender, at the time, to obey the order that was given.

[13] I have considered what I think is the minimum sentence necessary to restore discipline in this particular case. Having regard for the principles, I am especially concerned with the element of specific deterrence in this case. While the process of charge and conviction and sentence at court martial may well have a salutary effect on the behaviour of the individual, it remains a concern for me, in arriving at a fit sentence, that the accused, as an individual, must hear the message that the disobedience of a lawful order is a serious matter.

[14] Lieutenant(N) Scott, you are sentenced to a severe reprimand and a fine of \$3000. The fine is to be paid in monthly instalments of \$250 for 12 months commencing 30 November 2003.

Counsel:

Captain A. Litowski, Regional Military Prosecutions Western, Counsel for Her Majesty the Queen

Captain D. Berntsen, Area Judge Advocate General Pacific, Assistant Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Couture, Directorate of Defence Counsel Services, Counsel for Lieutenant(N) G.D. Scott