COURT MARTIAL

Citation: *R. v. Sarmiento,* 2003 CM 360

Date: 20031104
Docket: S200336

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and –

Ex-Private J.A. Sarmiento, Offender

Before: Commander P. Lamont, M.J.

SENTENCE

(Orally)

[1] Mr Sarmiento, having accepted and recorded your pleas of guilty to charges number one and two, the court now finds you guilty of charge number one and charge number two.

[2] 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 described in the Statement of Circumstances and the submissions of counsel, both for the prosecution and for the defence.

[3] 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.

[4] 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. 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] As I explained to you when you tendered your pleas of guilty, 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 is 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 of the findings of guilt and the sentence I am about to impose.

[6] The facts of this case are set out in Exhibit 8, the Statement of Circumstances, the circumstances which have been formally admitted by the accused, and in the submissions of counsel, both for the prosecution and for the defence. In summary, on the date alleged

in charge number one, being 4 March 2003, the accused offered an insulting, if somewhat common expletive directed towards his superior, Corporal Beemer, while the two of them were, together with other military members, engaged in the task of loading military vehicles onto railcars for transportation from Pembroke, Ontario to Wainwright, Alberta. Corporal Beemer was a member of another unit involved with the same tasking as the accused. I infer that the remark by the accused was prompted by an initial use of the same expletive by Corporal Beemer directed toward the accused.

[7] Over a week later, on 13 March 2003, the date alleged in charge number two, the accused failed to appear at 0800 hours for a work party that was tasked to remove military vehicles from the rail cars at the railhead in Wainwright. The accused eventually reported for duty at 1000 hours the same day, advising that he had been drinking the previous evening and had slept in.

[8] The accused enrolled in the Canadian Forces on 29 June 2000. Since the commission of these offences, the accused has been released from the Canadian Forces on 9 July 2003. He is 23 years of age, single, without dependants, and employed as a painter in Calgary. Both the prosecutor and the defence counsel recommend a fine as a fit sentence in this case. The prosecutor points to a previous sentence of 7 days' confined to barracks imposed upon the accused for an offence of absenting himself without leave which was awarded at summary trial on 11 February 2003, a scant month before the offences currently before the court. The prosecutor submits that the size of the fine should be between $800 and $1200.

[9] Defence counsel characterizes the facts in support of the charge number one as less serious than many that come before this court, and I agree. He points to the mitigating factor of a guilty plea that was entered at the first available opportunity, once the accused became aware of the date of his court martial very recently. The defence recommends a fine not exceeding $500.

[10] I have taken account of all the circumstances surrounding the offences and also the character and antecedents of the accused. Although I would characterize the offence charged in charge number one as less serious, I cannot say the same for the offence of absenting one's self without leave charged in charge number two. I am satisfied that the accused is simply not amenable to military discipline as demonstrated by his offences in this case and by his conduct sheet, which he has accumulated over a short period of service. Because he is no longer a member of the Canadian Forces, the objective of individual deterrence is not a concern. Had you remained a member of the Canadian Forces, Mr Sarmiento, I can tell you that the court would be giving serious consideration to a sentence involving incarceration.

[11] Having said that, however, the example the accused has set for others is not to be emulated, and I agree with the prosecutor that general deterrence remains a concern. I sentence you to a fine in the amount of $700 to be paid by 2 December, 2003.

Counsel:

Captain A.J. Carswell, Regional Military Prosecutions Central, Counsel for Her Majesty the Queen

Captain R.J. McGowan, Deputy Judge Advocate Petawawa, Assistant Counsel for Her Majesty the Queen

Lieutenant-Colonel D. Couture, Directorate of Defence Counsel Services, Counsel for Ex-Private J.A. Sarmiento