



COURT MARTIAL

Citation: *R. v. Preece*, 2003 CM 211

Date: 20030730

Docket: S200321

Standing Court Martial

Canadian Forces Base Petawawa

Petawawa, Ontario, Canada

Between

Her Majesty the Queen

- and -

Private S. Preece, Offender

Before: Colonel K.S. Carter, C.M.J.

SENTENCE

(Orally)

[1] Private Preece, the court has had to determine what is an appropriate sentence in light of your conviction on these offences.

[2] In determining the sentence, the court has considered the circumstances surrounding the commission of the offences and this was information that was provided during the trial as well as the evidence it heard during the sentencing phase. The court has also considered the arguments of both the prosecution and the defence made during the sentencing stage as well as the applicable principles of sentencing.

[3] The court would like to thank counsel for their assistance in what is usually the most difficult part of any court martial process; that is, determining an appropriate sentence.

[4] The principles of sentencing are what the court uses to determine a sentence and they can be described in different ways, but they usually take into account a series of very logical factors. Firstly, the protection of the public, which of course includes the interests and protection of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment not only on the individual involved, which is called specific deterrence, but also the deterrent effect on others who might be inclined to commit similar offences, and that is called general deterrence; and finally and equally importantly, there is the issue of the reformation and rehabilitation of the offender.

[5] *Queen's Regulations and Orders for the Canadian Forces* 112.48 imposes on the court the obligation in determining an appropriate sentence, to take into account any indirect consequence of the finding of guilty or of the sentence imposed, and impose a sentence which reflects not only the gravity of the offence but the previous character of the offender. The ultimate purpose of a court martial is to ensure, through the application of justice, that the necessary discipline is maintained in the Canadian Forces.

[6] Ultimately, discipline is maintained for the most part through self-discipline, which individual members of the Canadian Forces develop through training and through experience.

[7] External disciplinary mechanisms, like summary trials or courts martial, come into play only when that self-discipline has broken down. Fortunately, in a force of approximately 75,000 regular and reserve force members, there are only about 1,000 summary trials a year and less than 10 per cent of that number of courts martial.

[8] Disobedience of a lawful command is objectively a serious offence. It strikes at the foundation of military effectiveness. Everyone has to be able to rely on lawful commands being followed, whether those be ones from a chief warrant officer to a master corporal, from a master corporal to a private, or from a lieutenant-colonel to a captain.

[9] The military cannot operate without prompt and reliable reaction. Many orders have unpleasant personal consequences. Some of them may be perceived putting an unfair burden on certain individuals, but the spirit of service before self is called upon in those situations. So as the court has said, disobedience of a lawful command is objectively a serious offence.

[10] There is, however, a wide range of seriousness in this situation. At the top of the range, that is, the most serious kinds of disobedience, a disobedience which ultimately results in the failure of a mission or the death and injury of Canadian Forces personnel.

[11] Other examples of disobedience at middle level are ones, perhaps, resulting in loss and destruction of property or the hindering of operations. Even refusal to undergo training can be serious. For example, when such refusal is done to avoid becoming properly qualified for deployments or for tasks.

[12] That, however, is not the case here. This disobedience on the scale of disobedience of lawful command is at the lower level of seriousness, and the court says that notwithstanding the difference in rank between yourself and the individuals giving you those lawful commands.

[13] The prosecution has brought to the attention and suggested to the court that the protection of the public is a serious consideration here. The events before the court is that you have trained twice on the gas hut during your three years of previous service. There was no indication that, as a result of this particular refusal, you were incapable of doing any duty that you were called upon to do.

[14] In regard to the issues of punishment and specific deterrence, with regard to punishment, your counsel has certainly submitted that the most effective aspect of punishment is the fact that this court martial has been held; that is, that a disobedience of a lawful command will not be ignored and will not be tolerated, but rather, will result in firm action by military authorities.

[15] With regard to specific deterrence, it is clear that you immediately expressed remorse for your actions. You offered apologies to the two people, Captain Wallace and Captain Jonasson, whose commands you disobeyed, and these apologies were accepted by them.

[16] The court also has observed your demeanour throughout the trial and it is clear that you regret the incidents that occurred on the 19th of November.

[17] In regard to reform and rehabilitation, the court has considered very carefully Exhibits 9 and 10 which have been put in by your counsel, and the court is going to read from these exhibits because it has had a great deal of impact of the court's decision on an appropriate sentence. In Exhibit 9, which is your annual letter of assessment from 2001/2002, it says:

“Pte Preece displays outstanding organizational abilities. She is able to take charge of the task while keeping in mind when to get direction. She can be relied upon to complete any assigned task to a high standard with little or no supervision.”

It goes on to say:

“She also showed initiative when she identified Pharmacy overstock items, utilizing the computer in/out analysis to determine usage and implement lower ordering levels.... This ability to manage resources and

her willingness to accept additional work contributed to increased overall effectiveness of the section.”

[18] Exhibit 10, which is your annual letter of assessment for the period from 1 April 2002 to 3 March, as the court understands it, 2003, is, in fact, even more impressive, and it begins with:

“Pte Preece's performance for this reporting period is rated as Mastered.... Pte Preece has become very comfortable with the MEDIS ordering program.... Over this reporting period, she has also been responsible for the enthusiastic instruction of several CS Med Coy personnel, to a solid level of theory knowledge, in preparation for employment within the Pharm Sect. Pte Preece is, without a doubt, the SME for the Bde Pharm position. Acknowledging her limitations without fault, seeking assistance from supervisors as needed, she was able to deal with most issues that arose throughout the year.”

It goes on to give several examples of your initiative, and it makes it clear at the end that:

“Pte Preece is presently working in a Cpl's position, without difficulties, and is deserving of promotion to that rank.”

[19] There is in the exhibit one mention of the incident that occurred and that mention is under "NARRATIVE OF AREAS FOR DEVELOPMENT" where it says:

“Pte Preece was involved in an incident of refusing an order. This incident is presently in the process of being adjudicated.”

and this document is, amongst other people, signed by Captain Wallace.

[20] So the court accepts that Exhibits 9 and 10 showed that you are already rehabilitated and reformed, and this indeed is complemented by the testimony of both Captain Jonasson and Captain Wallace. So the court agrees the only issue that is really of concern is general deterrence and both counsel have submitted that that is the primary principle here.

[21] This court, like any other court martial, indeed, any summary trial, looks to the minimum punishment necessary in order to ensure that discipline is restored and maintained. The court has considered the two cases presented by the prosecution and after some consideration, concludes that they deal with situations that are more serious than the situation before the court.

[22] The court would also indicate that it is going to treat this matter as one incident, even though there are two acts and two charges which result, it is clear this all occurred in the same brief train of events, that it was a result of an impulsive act which was quickly regretted, and the evidence before the court is that it was born of frustration, not necessarily an acceptable reason for the action but perhaps an understandable underpinning for it.

[23] In terms of mitigating factors, the court has considered that you are in your first few years of service. You are, however, relatively mature at 31 years old, and indeed, your maturity and perhaps your education with a psychology degree are an explanation of why you have proved so valuable to the unit overall.

[24] This is your first offence. You were in a situation where you were subject to adverse personal circumstances, and this occurred immediately after what was considered by you as significantly bad news that your military career could no longer continue. As the court has indicated, the matter before it is one that is the result of impulsive action, not premeditated action, and regret was expressed.

[25] In terms of aggravating factors, the court agrees that an aggravating factor is that you did this in the presence of another service member, Private Graham, who was there for part of this incident.

[26] The court accepts as set out in the testimony of Lieutenant-Colonel Grondin that training is important and a primary duty of all Canadian Forces members. There is, however,

no indication before the court that disobedience, in this particular case, is reflective of a general standard or a general problem with disobedience of lawful commands within the unit.

[27] Now, this may well be something that is to the credit of the unit authorities who seem to take great care to be inclusive and respectful of everyone in the unit, nevertheless, their actions, in essence, are something that benefits you ultimately because there is no indication that this particular case is anything other than an isolated incident, not only for you, but for the unit.

[28] It is a situation where you allowed personal frustration and personal concerns to come before your duty for a brief period of time, but as the court has indicated, there is clear evidence before it that is not normal for you.

[29] You are clearly intelligent and dedicated, and it seems evident from the testimony and from the documents the court has received that it is very regrettable that it looks like you're unlikely to be able to stay with the Canadian Forces, although the court does note that the indication on your letters of assessment is that your medical category is still temporary.

[30] The prosecution and defence are not that far apart in their recommendations for a sentence. In essence, the real issue appears to be, does general deterrence require a permanent mark on your record?

[31] The defence has suggested a \$200 fine would be sufficient. There is perhaps more than one reason behind that. A punishment of \$200 or less is expunged from an individual's charge report after a year if no other convictions are recorded during that time. In other words, it is not a permanent mark against an individual, and the court would point out as there was a very brief mention of something called a criminal record that is something that is not relevant here.

[32] There is no criminal record for offences of this nature. As indicated, it is strictly a military offence and any record of it is kept on military documents.

[33] This is a very unfortunate set of circumstances. What you did, Private Preece, was wrong, but it appears that the consequences are not consequences that are irredeemable; that is, they were short-term consequences, not long-term consequences.

[34] As I have indicated, in Exhibit 10, under "Areas for Development," this item is mentioned and the court is prepared to consider a sentence from that perspective; that is, what can be done that will allow you and others to develop into better soldiers as a result of this?

[35] The court believes that persons in similar situations would be deterred, as the court has indicated, by the knowledge that disobedience of lawful commands is not ignored or tolerated, followed up by disciplinary action, and that when there is evidence, this results in conviction and consequences.

[36] The court, therefore, is satisfied that a \$200 fine is sufficient to meet the requirements of general deterrence. The court, therefore, sentences you, Private Preece, to a \$200 fine to be paid in two equal payments, next pay and the following pay. If, for any reason, Private Preece, you do leave the Canadian Forces within that short period of time, the full amount unpaid is due and owing the day before your departure from the Canadian Forces.

Counsel:

Major J-B. Cloutier, Regional Military Prosecutions Central, Counsel for Her Majesty the Queen

Captain S.E. Vichnevetskaia, Directorate of Law Training, Assistant Counsel for Her Majesty the Queen

Major J.D.M. Côté, Directorate of Defence Counsel Services, Counsel for Private S. Preece