



COURT MARTIAL

Citation: *R. v. Pattullo*, 2003 CM 311

Date: 20030925

Docket: S200331

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal D.A. Pattullo, Offender

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

SENTENCE

(Orally)

[1] 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.

[2] 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 a civilian engaged in a 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.

[3] In determining sentence, the court has considered the circumstances surrounding the commission of the offence, the mitigating and aggravating evidence presented during the sentencing hearing, including the testimony of four witnesses.

[4] The court considered also, for the purposes of the sentence, the representations made by counsel and relevant case law provided to the court. The court has also considered any direct and indirect consequences that the finding and the sentence will

have on you, and I must say that the evidence before the court strongly suggests that these consequences may be very significant in your case, being a member of the military police found guilty of having wilfully made a false entry or statement in a Military Police Daily Occurrence Book.

[5] The principles to be used in considering what should be an appropriate sentence generally relate to the following:

- (a) firstly, the protection of the public and, of course, the public includes the Canadian Forces;
- (b) secondly, the punishment of the offender;
- (c) thirdly, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and
- (d) fourthly, the reformation and rehabilitation of the offender.

[6] The prime principle is the protection of the public and that includes, of course, the protection of the Canadian Forces, and then the court must determine if that protection would be best achieved by deterrence, rehabilitation, or punishment.

[7] Counsel before the court agree that the court should impose a sentence that will emphasize general and, to a much lesser degree, specific deterrence. I agree. This case involves a breach of trust by a military police person in the performance of his duties and breaches of trust in these circumstances are always serious.

[8] In determining sentence, the court has considered several mitigating and aggravating factors, and I will start with the aggravating factors. The first one is the objective seriousness of this offence and the prescribed maximum punishment. This offence is serious. Section 125 of the *National Defence Act* provides that a person found guilty of that offence is liable to imprisonment for a term not exceeding three years or to less punishment.

[9] Second, the position of trust that you occupied when you committed the offence, that of a peace officer invested with the authority to enforce the laws of Canada and to protect the public. A police person is expected to be beyond reproach and obey the law when performing his or her duties.

[10] Third, the fact not only that you withheld information from your chain of command and the contingent chain of command concerning the discovery of a prohibited weapon in a young service member's unaccompanied baggage, but you made a false statement in official documents by making up a story to hide the truth from the military police and the Canadian Forces authorities responsible in matters of discipline. By doing so, you prevented the chain of command from playing their necessary role in the

disciplinary process and the military justice process. You had no right to usurp the role of the chain of command. You had no right to presume or to assume that the chain of command would not exercise their discretion in a fair and just manner towards Corporal Demers.

[11] And fourth, the fact that your actions not only caused embarrassment to the Military Police Detachment in VK, but that they impaired the level of trust and confidence that was vested in the military police detachment by the Canadian contingent authorities in Bosnia.

[12] Now, turning to the mitigating factors. The court would like to first put emphasis on the particular circumstances of this case. You did not make a false statement in order to gain anything personally or with intent to subvert the course of justice. The evidence before this court leaves no doubt that you sincerely believed that Corporal Demers was telling you the truth when he told you that he did not know that his butterfly knife was illegal. He had used his knife as a tool for five months, in the open, and this instrument was legally on sale or was in the normal commerce in Croatia.

[13] By taking the knife away from him, you made sure that this knife would not be used to commit a criminal offence. This was commendable and a good exercise of judgement as an experienced member of the military police. Unfortunately, you willingly took steps to hide what had happened. You made up a story in the discovery of that knife and recorded it in making a false entry in the Military Police Daily Occurrence Book. That last part is where you made a serious error in judgement.

[14] The court considers also as a significant mitigating factor your rank and your equity in the Canadian Forces and also your work performance, before and after the incident, leading to the finding of guilt.

[15] Corporal Pattullo, you have been a valuable member of the Canadian Forces for 24 years, the last 12 years as a member of the military police. The witnesses were unanimous in describing you as an experienced and reliable member of the military police. Although you have seriously disappointed your superiors, they still consider you as an excellent constable. They all think very highly of you and as Major Wilson testified to the court, of course, Major Wilson being your current Commanding Officer and being the witness who has had the opportunity to know you professionally for years, Major Wilson said that your actions are definitely out of character.

[16] From what the court has been able to know from you, the court concurs with that evaluation. Your actions were definitely out of character.

[17] Your credentials were suspended in May 2003 pending the outcome of these proceedings and you have been employed as a custodian at the Canadian Forces Service Prison and Detention Barracks since then and you have continued to perform extremely well. The court is satisfied that this is an isolated incident caused by a complete lack of judgement.

[18] Third, the court considered the administrative consequences that will flow from your conviction. The court does not know the outcome of those administrative consequences, but your case will certainly be reviewed by the Military Police Credential Board to determine if you should be allowed to continue to serve as a military police or even as a CF member. This factor is important in the circumstances of this case.

[19] The court considers also your age, your family, and financial situation, and the fact that you have no disciplinary or criminal record.

[20] The court sentences you to a reprimand and a fine in the amount of \$1,200 to be paid in equal payments over a period of six months. Should you be released from the Canadian Forces prior to the full payment of this fine, the unpaid balance will become due and payable in full prior to the effective date of release. This last condition shall not be viewed by the Canadian Forces authorities as an indication or recommendation from this court that the offender, Corporal Pattullo, should be released from the Canadian Forces as a consequence of this conviction.

Counsel :

Major B. MacGregor, Directorate of Military Prosecutions, Counsel for Her Majesty the Queen

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