



COURT MARTIAL

Citation: *R. v. Nadeau*, 2003 CM 510

Date: 20031210

Docket: S200351

Standing Court Martial

Her Majesty's Canadian Ship *Tecumseh*, Calgary
Calgary, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Sergeant R.J.L. Nadeau, Offender

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

SENTENCE

(Orally)

[1] Sergeant Nadeau, in determining sentence, the court has considered the circumstances surrounding the commission of the offence, mitigating and aggravating evidence presented during the sentencing procedure; that is, the testimonies of your Commanding Officer, Master Warrant Officer Gagnon, and that of yourself, as well as the documentary evidence which consists of Exhibits 8 to 22, and are all related to your medical condition that indicates severe depression and pathological gambling addiction.

[2] With regard to these documents, the court is of the view that they must be read together in order for the court to properly appreciate the extent of your condition and how that condition may have had an impact on the commission of the offence. The

court has also considered the submissions made by counsel, the case law provided by counsel, and also the applicable principles of sentencing.

[3] The principles to be used in considering what is an appropriate sentence have been expressed a countless number of times and in various ways. Generally, they relate to the following: firstly, the protection of the public, and that public includes the Canadian Forces; secondly, the punishment of the offender; 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 fourthly, the reformation and rehabilitation of the offender. However, the punishment imposed by any tribunal, be it military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[4] The prime principle is the protection of the public, and the court must determine if that protection would be best achieved by deterrence, rehabilitation, or punishment. As stated by counsel for the prosecution, in *R. v. St. Jean*, a decision of the Court Martial Appeal Court reported as (2000) C.M.A.J. No. 2, Letourneau, J.A. speaking for the court, did put in perspective the impact of fraudulent acts in a public organization such as the Canadian Forces. Counsel for the prosecution read Letourneau's J.A. comments at paragraph 22, and they are worth repeating.

After a review of the sentence imposed, the principles applicable and the jurisprudence of this Court, I cannot say that the sentencing President erred or acted unreasonably when he asserted the need to emphasize deterrence. In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

[5] Although the case before this court does not deal with the offence of fraud, it deals with someone who directly used his or her position of trust to commit the offence of stealing, and the illegal taking of property that is done fraudulently and without colour of right. In this case, the illegal act is one where the offender used his position to express his dishonesty and lack of integrity in abusing the faith and confidence vested in

him by the Canadian Forces. In such matters, the courts have, for a number of years, taken the position that these persons are to be dealt with by sentences which emphasize general, as opposed to specific deterrence or rehabilitation, while making allowances, as necessary, for matters of rehabilitation. It is abundantly clear that there is no hard and fast rule that requires incarceration for crimes dealing with acts of fraudulent nature. Each case should be examined on its own merit in order to make sure that a fair and just sentence is imposed that would reflect the appropriate sentencing principles and ensure the maintenance of discipline in the Canadian Forces.

[6] In determining the sentence, the court has specifically considered the following mitigating and aggravating factors, I will start with the mitigating factors:

- (a) the fact, first, that you, Sergeant Nadeau, have pleaded guilty to the offence before this court is a significant mitigating factor. This court considers this admission of guilt as an acknowledgment of your misconduct, and it is a factor that I also consider essential in the reformation and rehabilitation of any offender;
- (b) second, your rank and equity in the Canadian Forces. As indicated by the evidence, you have been a valuable asset for the Canadian Forces for more than 21 years;
- (c) third, the absence of previous convictions;
- (d) fourth, your age, as well as your financial, economic, social, and family situation, including the fact that you will likely be released from the Canadian Forces, and that you are, for all intents and purposes, financially ruined. Your actions have not only had a serious impact on your mental health, but have already caused significant damages to the health and well-being of your wife and children;
- (e) next, your medical situation that has been described to the court as being of suffering from a recurring severe depression and a very severe gambling addiction. Although this court accepts that it should be viewed as an important mitigating factor overall in this case, this condition, as I have previously mentioned in another case, cannot be used as a license or an excuse to commit illegal acts in order to fulfil an addiction to gambling;

- (f) there's also the fact that your medical problems were known to the Canadian Forces, including the fact that you suffered from a severe gambling addiction, for which you had received in-house treatment in the United States in 2001. Despite that fact, the Canadian Forces willingly chose to post you as a head cashier of ASU Calgary. In doing so, the Canadian Forces put, to use an expression, "the fox in the henhouse." The court appreciates that it is of the utmost importance that medical information be protected using the highest standard in order to protect the privacy interests of members of the Canadian Forces. However, common sense should have allowed the Commanding Officer to be in a better situation or in a better position to appreciate the risk of employing a diagnosed, severely addicted gambler as the head cashier of a unit dealing with large sums of money;
- (g) reliance on the normal audit process to police the actions of such a person is not enough, in these circumstances, to protect the interests of the institution and to ensure the well-being of our personnel when we are aware of their medical situation, especially during a period so critical; that is, less than a year after treatment. You may have underestimated how chronic was your own medical condition, but the court would say that you cannot fault a medical patient for not posing the right diagnosis on his own condition. This is a very significant factor in this case;
- (h) there's also the lack of sophistication in committing your thefts that led to the easy discovery of your criminal acts. This fact illustrates how severely out of control you were at the time;
- (i) next, the fact that you have indicated your sincere willingness to make restitution; and
- (j) finally, the fact that you will likely be released from the Canadian Forces, not only by reason of your misconduct, but as a result of your medical condition, according to the medical experts, as it appears from Exhibit 6, that precludes you from being fully fit in the military.

[7] Now, turning to the aggravating factors:

- (a) firstly, the nature of the offence and the prescribed punishment. The offence for which you have pleaded guilty is punishable by imprisonment to a maximum of 14 years. This is a very, very serious offence;
- (b) second, the position of trust that you occupied at the time; in other words, the fact that, in your capacity as head cashier ASU Calgary, you were responsible for the safeguard of the very property that you stole from Her Majesty;
- (c) third, the degree of premeditation involved in committing your thefts, even though they were committed within a relatively short period;
- (d) fourth, the importance of the sums of money involved; that is, a total of \$20,000, and the repeated actions that led to this amount;
- (e) fifth, your rank, experience, and privileged position as an RMS Clerk, as the person in charge and entrusted with the stolen funds. Also, the circumstances surrounding the commission of the offences as described by the Summary of Circumstances; and
- (f) finally, to a lesser degree, the effect on the unit in light of the fact that it is a very small unit and your behaviour caused significant disruption.

[8] In sentencing you today, Sergeant Nadeau, this court is hopeful that by pleading guilty to this offence you have been specifically deterred to commit similar offences in the future. The court is hopeful that your rehabilitation is well under way, however, you are certainly far from complete recovery with regard to your demons. The next months will prove crucial to your recovery, but you already know that each day is extremely important. For the time being your conduct and your conviction will have brought humiliation and disgrace upon yourself. You held a position of faith, a position of trust and respect, but you decided to throw that out of the window to satisfy your addiction. This will mark you for a very long period of time. You said, in direct examination, that you could have sold your mother. You did not hesitate to steal from your employer after it entrusted you with a large amount of money.

[9] In arriving at a just and fair sentence, this court has carefully reviewed the case law provided by counsel and their submissions as to sentence. In addition to the decisions from the Court Martial Appeal Court provided by counsel, the court found that the most relevant cases are those of *Warrant Officer Gallagher* and *Captain*

Loughrie. That is not to say that all other cases were found to be irrelevant by this court. The court has also considered the principles laid out by the Supreme Court of Canada in *Gladue*, to the effect that imprisonment should be the penal sanction of last resort.

[10] It is abundantly clear that imprisonment should be used only where no other sanction or combination of sanctions is appropriate to the offence and to the offender. Therefore, the court has closely examined the other punishments and combinations of those punishments set out under section 139 of the *National Defence Act*, and that, in order to craft a sentence that will ensure general and specific deterrence and take into account your particular circumstances as the offender.

[11] Whether the court looks at a sentence composed of punishments that would include a reduction in rank, a severe reprimand and a fine, the court believes that a proper and fit sentence in this case must include a period of incarceration as one of the punishments. The objective seriousness of this offence and the circumstances in which it was committed is such that only a sentence composed of a period of imprisonment, not detention, can effectively ensure general deterrence and maintenance of discipline. The issue is whether, in the particular circumstances of this case, reduction in rank should be an accompanying punishment.

[12] Like in *Gallagher*, you used your position of trust to commit your offence. However, your severe medical condition and the inability of the Canadian Forces to deal effectively with your case mitigates, to some extent, the drastic and warranted approach taken by the Chief Military Judge in the case of *Gallagher* where he had consistently acted dishonestly on promotion to his rank of warrant officer. Your counsel has put convincing evidence before this court, in terms of medical evidence, to establish the compassionate circumstances of this case. It is not simply a case of gambling addiction with episodes of depression.

[13] The medical evidence filed in this case is way more compelling and indicative of the seriousness of your profound mental condition. The same evidence contains, also, references to the fragility of some members of your immediate family that could have unwarranted consequences in the long term, and therefore impact negatively on your rehabilitation if you were to be serving a lengthy period of incarceration. However, the court strongly believes that a firm period of incarceration is necessary to ensure the protection of the public, general deterrence, and the maintenance of discipline. But the court believes that your punishment would be unduly severe if you were ordered to spend the Christmas holidays in cells away from your family.

[14] Sergeant Nadeau, having accepted and recorded your plea of guilty to the first charge, the court now finds you guilty of that charge, and the court sentences you to imprisonment for a period of 14 days and reduction in rank to the rank of corporal.

Counsel:

Major B. MacGregor, Regional Military Prosecutions Central, Counsel for Her Majesty the Queen

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