



COURT MARTIAL

Citation: *R. v. Murphy*, 2003 CM 261

Date: 20030522

Docket: S200326

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Private T.F. Murphy, Offender

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

SENTENCE

(Orally)

[1] Private Murphy, having accepted and recorded your plea of guilty in respect of charge number three, this court finds you guilty of that charge.

[2] 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. However, the punishment imposed by any tribunal, whether it is a military tribunal or civilian tribunal, 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 as revealed in the Statement of Circumstances, the mitigating and aggravating evidence in mitigation and relevant evidence heard during the trial, the representations made by counsel, and also the applicable principles of sentencing. The principles to be used in considering what is an appropriate sentence relate to the following: firstly, the protection of the public, and public, of course,

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.

[4] The prime principle is the protection of the public, including the Canadian Forces, so the court must determine if that protection would be best achieved by deterrence, rehabilitation, or punishment. How much emphasis should be put on one or more of these principles will vary depending on the case and its circumstances. In some cases the dominant principle, if not the only principle, will be deterrence, either general or specific or both. In other cases the emphasis will be put on the offender's rehabilitation and reformation. In a case such as this one, in its particular circumstances, where we are dealing with primary military good order and discipline, primary discipline, the court believes that the emphasis should be put on general and specific deterrence.

[5] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following factors:

- a. First, the objective gravity of the offence. An offence under section 85 of the *National Defence Act*, because of the maximum punishment that is liable to be imposed, is a serious offence;
- b. Second, the particular context of this case as revealed by overwhelming evidence before the court concerning your behaviour with Sergeant Maranda;
- c. Third, the fact that you, Private Murphy, have acknowledged your responsibility for your actions by pleading guilty before the court. This court considers the admission of guilt, or this admission of guilt, as an acknowledgement of your misconduct, and it is a factor that I certainly consider essential in the reformation and rehabilitation of any offender;
- d. Fourth, based on the evidence before this court, I am prepared to accept that it is a regrettable incident where your conduct was largely attributable to your overwhelming frustration related to the handling, by Canadian Forces authorities, of your personal situation. But let me tell you something that is very important: this is the wrong approach in solving personnel problems in the Canadian Forces;
- e. The court has also considered your rank, your age, as well as your financial, economic, social, and family situation;
- f. The court also considered your conduct sheet. Although your conduct sheet does not disclose similar offences, it nevertheless contains three entries for core military discipline offences; that is two convictions for

being absent without leave, and one conviction for a conduct to the prejudice to good order and discipline. If one considers your date of enrolment, this is the fourth time you appear before a service tribunal in less than two and a half years. This is totally unacceptable and it demonstrates either your lack of understanding or your lack of accepting military discipline; and

- g. Seventh, the court has considered the fact that this incident occurred six months ago.

[6] Private Murphy, if you want to have a successful career in the Canadian Forces you will have to control your temper and your aggressiveness. The evidence before this court, including your conduct sheet, shows that you have serious difficulties with military discipline. You should know by now that there is effective ways and matters to deal with personnel issues in the Canadian Forces. Aggressive and abusive language and improper behaviour towards your superior officers are not effective and they impact seriously on military discipline. This cannot be tolerated. If you get the message this court is sending you today and take upon yourself to improve your personal discipline you will have a better understanding of the core values of military discipline. If not, it may be your last chance to learn about them and abide by them. Otherwise I sincerely invite you to consider your own future in the Canadian Forces and reflect on whether or not it is truly your place.

[7] At this stage of your career, a sentence that would be composed of a reprimand and a small fine would not serve the interests of military discipline, especially at your rank level and level of experience. The court believes that you need to go back to the basics of military discipline and the court is disposed to give you a second chance. You must not only understand, but also accept that Canadian Forces members shall treat their superiors with great respect, even when you are frustrated for any reasons, and whether those reasons are right or wrong. If you feel that you are treated or you are being treated unfairly, seek redress through your chain of command or use any avenue that is offered to you, but always do it in a respectful manner.

[8] This court sentences you to a fine in the amount of \$125 to be paid in two equal payments, and to the punishment of confinement to barracks for a period of 21 days.

Counsel:

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

Captain R.P. Frost, Directorate of Military Law/Training, Assistant Counsel for Her Majesty the Queen

Major J.A.M. Côté, Directorate of Defence Counsel Services, Counsel for Private T.F. Murphy