



COURT MARTIAL

Citation: *R. v. Bell*, 1992 CM 492

Date: 19921210
Docket: 49/92

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Captain K.E.J. Bell, Offender

Before: Lieutenant-Colonel A. Ménard, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Captain Bell, in determining the sentence, the Court has considered the circumstances surrounding the commission of the offences, the mitigating circumstances raised by the evidence in mitigation, including the representations made by your defence attorney, and also the applicable principles of sentencing.

[2] The principles to be used in considering an appropriate sentence have been expressed a countless number of times in various ways. Generally, they relate to the following. Firstly, the protection of the public, and the public includes the interest of the Canadian Forces (CF). 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. Fourthly, the reformation and rehabilitation of the accused. The prime principle is the protection of the public, including the CF.

[3] The Court must determine if that protection would be best achieved by deterrence, rehabilitation or punishment. The Court has also given consideration to the factor of proportionality of the sentence in relation to the accused and the accountability of the accused for his actions. While the accused should be accountable for his actions, the sentence shall not, on the other hand, be disproportionate in relation to the offences.

[4] In determining the sentence, the Court has specifically considered the following. Firstly, the evidence heard in mitigation of sentence and the documents that were produced to the Court. Such evidence is to the effect that you are an officer very supportive to your seniors and to the CF. You are considered as a hard worker who has excellent, professional knowledge and a dedicated officer who would make a positive addition to any unit. Secondly, your conduct sheet, on 19 April 1990, you were sentenced to a reduction to the rank of lieutenant after having pled guilty to two charges under section 129 of the *National Defence Act (NDA)*. Thirdly, the nature of the offences to which you have been found guilty today. Fourthly, the relatively short period of time between your two sets of offences. In less than three years you have been tried twice by court martial and have been found guilty of four offences. When we compare your previous convictions with the second charge at Exhibit "A" for which you have been found guilty today, we find the presence of the same element of dishonesty.

[5] Honesty together with integrity and loyalty is a professional attribute required from an officer of the CF. As mentioned by the prosecutor in his address on sentence, the sentence that was awarded to you in April 1990 did not deter you from committing other offences. It is an unfortunate fact. Although I agree with both counsel that incarceration would not be an appropriate punishment in the present case, the Court is relatively limited in its powers of punishment under section 139 of the *NDA* when it considers your previous convictions and the circumstances of this present case.

[6] Your defence counsel submits that a sentence of dismissal from Her Majesty's Service would be inappropriate in these circumstances as some people still believe in your rehabilitation. Although I have some difficulty to understand why, I will give you the benefit of the doubt and I will leave to other authorities the responsibility of deciding on your military career.

[7] This Court does not believe that in this particular case the protection of the public, including the CF, would be best achieved by rehabilitation. To the contrary, this Court is of the opinion that such protection of the public would be best achieved by general and individual deterrence.

[8] Leadership is a major quality required from any officer of the CF. Leadership is based on trustworthiness. Military tribunals must take that into consideration when they impose sentences and the message sent to the troops should be that offences of this nature will not be tolerated from any service member, more specially from an officer of the CF.

[9] As your last sentence did not teach you any lesson, I must therefore find a more appropriate one that will deter you and others from committing the same type of offences.

FOR THESE REASONS, THE COURT:

[10] **SENTENCES** you to reduction in rank to the rank of second-lieutenant and to a fine in the amount of \$5,000.

Counsel:

The Director of Military Prosecutions as represented by Captain V. Joshi

Mr D.J. Bright, Boyne Clark, suite 700, Belmont House, 33 Alderney Drive, Dartmouth, Nova Scotia, counsel for the accused, Captain K.E.J. Bell