Citation: *R. v. Master Corporal J.G. Blois,* 2009 CM 2018

Docket: 200928

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date. 9 November 2009

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN
v.
MASTER CORPORAL J.G. BLOIS
(Offender)

SENTENCE
(Rendered Orally)

---

[1] Master Corporal Blois, having accepted and recorded your pleas of guilty, first of all in respect of the first charge, to the related but less serious offence of ordinary assault, and in the third charge, a charge of conduct to the prejudice of good order and discipline, this court now finds you guilty of the offence of assault and also conduct to prejudice of good order and discipline.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as described in the statement of circumstances, Exhibit 3, and the other materials submitted during the course of this hearing as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to out common sense of justice that like

cases should be treated in similar ways. Nevertheless, in imposing sentence, the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society which includes, of course, the Canadian Forces by fostering and maintaining a just, a peaceful, a safe, and a law abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a fit and just sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should reflect a wise blending of these goals tailored to the particular circumstances of the case.

[5] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[6] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the finding of guilt and the sentence I am about to pronounce.

[7] The facts of this case are not complicated and are set out in Exhibit 3, the statement of circumstances. In brief, the offender, whose trade is Vehicle Technician, encountered, in the course of his employment in the Canadian Forces, a civilian woman with whom he does not appear to have had any relationship of supervisor and employee. It appears, on the information I've been given, that they became friends. Over the course of several weeks in February and March of 2008, the offender commenced making demands upon the employee, a civilian employee of the Department of National Defence, requesting from her hugs and kisses. This behaviour was repeated by the offender on a very frequent basis, perhaps as often as daily. This behaviour was unwanted by the complainant. As a result of this behaviour she was humiliated and embarrassed. The offender concedes, I infer, that he now realizes his actions were

wrong, and that it was perfectly reasonable for the complainant to react as she did to the unwanted advances of the offender.

[8] This conduct culminated on 29 March 2008, the date alleged in the offence, when, on the invitation of the offender, the complainant joined the offender in the workplace. At that point the offender appears to have grabbed the complainant by the foot and attempted in some manner to caress her foot. Again, this behaviour was unwanted by the complainant, it caused her embarrassment and humiliation, and I find that her reactions were entirely reasonable and that the offender should have known that his advances towards the complainant were unwanted.

[9] This behaviour, in sum, falls squarely within DAOD 5012-0, entitled "Harassment Prevention and Resolution." This instrument is intended to ensure that throughout the Canadian Forces, members of the Canadian Forces can live and work in an environment that is utterly free of unwanted advances or harassment of any kind. That guarantee applies equally to all civilian employees of the Department of National Defence.

[10] On these facts, counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of $2,000. As counsel have pointed out, the sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*, 2008 CMAC 1, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[11] Both counsel have referred, in the course of their submissions, to the aggravating and mitigating circumstances present in this case. I have already referred to the conduct of the offender and its expressed prohibition under DAOD 5012-0. As well, the offence of assault ranges in seriousness from relatively minor conduct to the most intrusive kinds of application of force. In this case I consider, on all the facts, the nature of the assault is towards the less severe end of the spectrum. Nonetheless, it is a criminal offence.

[12] There is one large mitigating circumstance in respect of the offence, and that is that this is not a case in which the offender has taken advantage of a supervisory position in relation to the complainant in order to commit the harassing behaviour. When this kind of circumstance is present, I regard the cases as particularly aggravated.

[13] The offender is a mature man of 45 years of age and party to a common law relationship. He appears, on the evidence and materials put before me, to be a valued

and productive member of the Canadian Forces since his enrollment in 1988. Throughout this lengthy period of service he is without any previous disciplinary infractions.

[14] He has pleaded guilty on what amounts to the first occasion on which he has been able to tender that plea and I find that to be a mitigating circumstance.

[15] I am unable to decide whether or not any delay in the prosecution of these charges amounts to a mitigating circumstance in this case as I have not been provided with information as to when the circumstances amounting to these offences came to the attention of the authorities.

[16] On all the circumstances, considering both the circumstances of the offence and of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I therefore accept the joint submission.

[17] Master Corporal Blois, you are sentenced to a reprimand and a fine in the amount of $2,000. The fine is to be paid in full by 9 December 2009.

COMMANDER P.J. LAMONT, M.J.

COUNSEL:

Major S. A. MaCleod, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander J. McMunagle, Directore of Defence Counsel Services
Counsel for Master Corporal J.G. Blois