Citation: *R. v. Private B.L.R. Billingsley,* 2009 CM 2016

Docket: 200947

STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
GAGETOWN

Date: 24 October 2009

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

HER MAJESTY THE QUEEN
v.
PRIVATE B.L.R. BILLINGSLEY
(Offender)

SENTENCE
(Rendered Orally)

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[1] Private Billingsley, having accepted and recorded your pleas of guilty to charges No. 1, 3, 5, 6, 7, 8, and 9 in the charge sheet dated 28 July 2009, and the charges No. 1, 2, 3, and 5 in the charge sheet dated 24 September 2009, this court now finds you guilty of those charges.

[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 8, 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 our common sense of justice that like cases should be treated in similar ways. Nevertheless, the court takes account of the

many factors that distinguish the particular case it is dealing with, both the aggravating factors 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 vital to the effectiveness of an armed force.

[5] The goals and objectives also include deterrence of an 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.

[6] 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 courts martial. Those possible punishments are limited by the provision of the law that 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. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to impose.

[7] The facts of the offences are set out in Exhibit 8, the Statement of Circumstances. In brief:

> On 29 August 2008, the offender drank alcohol and became very drunk. He and other individuals, with the encouragement of the offender, then trashed the room of another private on the base in Gagetown.
>
> On 6 January of 2009, the offender got drunk again at Dooley's Bar in Oromocto during the evening, in violation of a curfew and the order or directive of the warrant officer. Upon returning to his quarters, he disobeyed orders of the warrant officer to go to bed and leave his door

> open. At about the same time, he used abusive language to the master corporal, using an odious slur.
>
> On two occasions in August of 2009, the offender was absent without leave, on the second occasion, for a period of 21 days until he surrendered himself to the Ontario Provincial Police Detachment in Hawkesbury, Ontario, and was arrested by them on the authority of a warrant issued by Major Dove under the *National Defence Act*. He has been retained in military custody since that time.
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> Prior to this most recent absence without authority, and while at liberty on conditions imposed by a custody review officer, the offender failed to comply with conditions by failing to report as required on both 28 June and 2 July 2009.

[8] I was told by counsel that they jointly recommend a sentence of 60 days' imprisonment and dismissal from the Canadian Forces. As counsel have pointed out, the sentence to be pronounced is, of course, a matter for the court, but where both parties agree on a recommended disposition, that recommendation carries considerable weight with the court.

[9] The Courts of Appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor* 2008 CMAC 1, decided 15 January 2008, 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.

[10] Counsel disagreed, however, in their positions as to how the court should credit, for sentencing purposes, the time period of 34 days that the offender has spent in military custody since his surrender on 21 September. Counsel on behalf of the offender argues for a two for one discount in accordance with the widespread practice in civilian courts across Canada, a practice which I followed in the case of *ex-Private Vautier*, decided 1 February 2005. Counsel for the prosecution concedes that some credit should be given to reduce what would otherwise be a fit sentence of 60 days' imprisonment, but argues that the credit should be only one day for each day already spent in custody, or at most, 1.25 days.

[11] I have some difficulty with the suggestion of both counsel that they are advancing a joint submission. It seems to me that when the parties disagree on the actual sentence the court should impose that that cannot amount to a joint submission even though counsel may have agreed that a particular period should be considered by the court in arriving at a fit sentence. For example, in a hypothetical case, if counsel were agreed that a fit sentence for an offence under the *Criminal Code* was 90 days in

jail, but disagreed as to whether the sentence should be served in the community as a conditional sentence or on weekends as an intermittent sentence, their positions would not amount to a joint submission as that term is properly understood.

[12] Subsection 719.(3) of the *Criminal Code* provides that:

> In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

Canadian sentencing courts have applied this provision and have typically credited offenders on a two for one basis, recognizing that the circumstances and conditions of pre-sentence custody are often very onerous when compared to the conditions under which a sentence is served in a provincial correctional facility or a penitentiary. As well, the time that an individual spends on remand awaiting trial or a sentence does not count towards statutory programmes of sentence remission or parole.

[13] Bill C-25 is Parliament's response to this widespread practice. Although the bill has passed Parliament, as of today, the statute is not proclaimed in force.

[14] This court has an area of discretion as to how pre-sentence custody is to be credited in arriving at a sentence. In my view, a two for one credit is not appropriate in this particular case considering that the offender was in breach of the conditions of his release at the time he surrendered and the fact that, on the evidence before me, the conditions under which the dead time was served by the offender are not as onerous as the conditions that are typically found in remand facilities. I consider that the offender should be credited with one day for each day of pre-sentence custody.

[15] I have, of course, considered the other mitigating circumstances, including especially, the pleas of guilty and the relative youth of the offender. By his already lengthy record of previous disciplinary infractions, including offences of absence without leave for periods as long as 36 days, together with the offences before me today, all accumulated or committed over a relatively short period of service that began in October of 2007, the offender has amply demonstrated that he is wholly unsuited to further military service of any kind and I agree with both counsel that dismissal is appropriate.

[16] Stand up, Private Billingsley. You are sentenced to imprisonment for a period of 21 days and to dismissal from Her Majesty's service. The sentence is pronounced at 1330 hours, 24 October 2009. You may be seated.

[17] Subject only to the timely presentation of an application under section 248.1 of the *National Defence Act*, the proceedings of the Standing Court Martial with respect to Private Billingsley are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

Major J.J. Samson, Canadian Military Prosecution Service
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Counsel for Private B.L.R. Billingsley