

Citation: *R. v. Captain J.M. Hall*, 2007 CM 2010

Docket:200691

**STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
CANADIAN FORCES BASE ESQUIMALT**

Date:11 June 2007

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

HER MAJESTY THE QUEEN

v.

**CAPTAIN J.M. HALL
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Captain Hall, having accepted and recorded your plea of guilty to the first charge, a charge of drunkenness, this court now finds you guilty of the first charge.

[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 disclosed by the evidence heard and 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, 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.

[5] 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 goals and objectives will inevitably predominate in arriving at 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 be a wise blending of these goals tailored to the particular circumstances of the case.

[6] As I told you when you tendered your plea 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 offense and provides for a maximum punishment, and are further limited to the jurisdiction that may be exercised by this court. 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.

[7] 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 impose.

[8] The facts of the offence are described in the Statement of Circumstances, Exhibit 6. In brief, the offender was in the company of his cousin, a non-commissioned member, following Remembrance Day ceremonies on the date alleged in the charge. Both consumed alcohol over the course of the day to the point of being highly intoxicated. They were seen by a more senior officer on the streets of downtown Victoria, in uniform, but without headdress, acting in a boisterous manner. Both acted abusively toward the more senior officer, who identified himself to them and required their identification. The more senior officer called the military police who attended and brought the offender and his cousin to the base.

[9] In this case both counsel for the prosecution and for the defence agree that a fit and proper disposition is a fine in the amount of \$900. 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 substantial weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court, 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] I have considered all of the aggravating and mitigating circumstances identified by counsel in the course of their addresses. I accept that the behaviour of the offender at the time could have adversely affected the public image of the Canadian Forces. A commissioned officer has a special responsibility to avoid the risk that his or her behaviour in a public place might have such an effect. I consider as well that the fact that the offender's abusive behaviour toward a more senior officer occurred in the presence of a more junior non-commissioned member is also an aggravating circumstance. It is no part of the order of this court, but I trust that if he has not done so already then following these proceedings the offender will consider the advisability of a personal apology to the more senior officer for his behaviour.

[11] In my view, the sentence jointly proposed by counsel is well within the range of sentence imposed for this kind of offence in other cases. Taking account of all the circumstances both of the offences and of the offender I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute, and accordingly I accept the joint submission.

[12] Stand up, Captain Hall. You are sentenced to a fine in the amount of \$900 payable forthwith.

[13] March out Captain Hall.

[14] The proceedings of this court martial in respect of Captain Hall, J.M., are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J.L.J. Caron, Regional Military Prosecutions Eastern
Counsel for Her Majesty the Queen
Lieutenant-Commander J.C.P. Lévesque, Directorate of Defence Counsel Services
Counsel for Captain Hall