

Citation: *R. v. Corporal S.J. Wells*, 2007 CM 2006

Docket: 200688

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN**

Date: 11 April 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL S.J. WELLS
(Offender)**

SENTENCE

(Rendered Orally)

[1] Corporal Wells, you may break off and be seated beside your counsel.

[2] Corporal Wells, having accepted and recorded your pleas of guilty to two charges: A charge of assaulting a peace officer and a charge of drunkenness, this court now finds you guilty of both charges. 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] Corporal Wells, I know you have heard this before because I was the judge who sentenced you on an earlier occasion. Nevertheless, I will repeat. 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. 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.

[5] 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, 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. 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.

[6] The facts of the offences are set out in the Summary of Circumstances, Exhibit 7. In brief, the offender and another, one Corporal Burry, were drinking in the mess and became belligerent and aggressive toward other patrons. The military police were summoned to assist the staff in removing both of them from the mess. As he was being escorted out, and without warning or provocation, the offender struck Master Corporal McGill, a military police member, in the chin with a closed fist. He was immediately subdued and arrested. The military police member was not injured.

[7] The prosecution points to several aggravating circumstances in support of their submission that a fit sentence in this case is one of detention for a period of between 21 and 45 days and a fine of \$2,000. Assaulting a peace officer engaged in the execution of his or her duty is an objectively serious offence, punishable under the *Criminal Code* by a maximum of five years' imprisonment.

[8] The offender is a mature man of 44 years' of age, who himself, served for some period as a military police member. He has two previous entries on his conduct sheet for one offence of impaired driving and one offence of making a false entry in an official document.

[9] Defence counsel, on behalf of Corporal Wells, submits that a fit sentence would be seven days' detention, to be suspended, and agrees that a fine of \$2,000 is appropriate.

[10] I accept the submission of the prosecutor that the offence of assaulting a peace officer is objectively serious. Those whose public duties require them to deal with volatile, or potentially explosive, situations are entitled to such protection as the sentencing court can properly extend to them by punishing criminal acts committed against them when they are in the course of properly performing their duty. In my view, a sentence involving detention is fully justified for an offence such as this in order, mainly to, meet the demands of the sentencing principle of general deterrence.

[11] The prosecution points to the sentence awarded to Corporal Burry, arising out of these same events. Burry was charged with obstructing a peace officer and drunkenness, and at a summary trial, was sentenced to 14 days' detention and a fine of \$1,000. It is submitted that the sentence for Corporal Wells should be more severe than the sentence given to Burry, but the sentence to be imposed must be tailored to the individual circumstances of the offender. There is evidence before me that the charges against both individuals arose out of the same events, but I have no evidence of the individual circumstances of Corporal Burry that were considered by the presiding officer at his summary trial. As well, the military police had to resort to the use of disabling pepper spray in order to deal with the persistent and obstructive aggressiveness of Master Corporal Burry. These factors distinguish the case of the present offender from that of Master Corporal Burry.

[12] In my view, however, a period of detention is warranted in this case, but I consider the length of the period of detention suggested by the prosecution to be excessive, having regard especially for the isolated nature of the punch and the fact that no injury was caused.

[13] Defence counsel has pointed to several mitigating factors. The offender has pleaded guilty at the first opportunity. When considered together with the apology the offender has apparently made to the complainant, Master Corporal McGill, I am satisfied that the offender has shown real remorse for his actions on the night of 29/30 July, 2005. It is also true that there has been substantial unexplained delay from the time of the offences to trial by court martial, including a period of just over four months from the date of the offences until the offender was originally charged.

[14] I accept that the delays have been unusually stressful for the offender, who was diagnosed with a major depressive disorder shortly after the offences were committed. I am also impressed with the progress made by the offender in dealing with his mental health and substance abuse difficulties that appear to me to have come to a head at the time of the offences. I was impressed with the evidence of the psychiatrist, Dr Labonte, who has been treating the offender since 2004. I accept her evidence that a custodial disposition could have adverse consequences for the continued recovery of the offender. I find that the deteriorating mental health of the offender contributed in some measure to the commission by him of the assault offence. In these circumstances, the sentencing principles of general and specific deterrence assume less significance and the rehabilitation of the offender assumes more significance in crafting a fit sentence.

[15] In the absence of an application by the prosecution, I decline to make an order for the provision of samples for DNA analysis. As well, I have considered whether this is a proper case in which to make a weapons prohibition order under section 147.1 of the *National Defence Act*. In the absence of an application by the prosecution, I decline to make such an order.

[16] Stand up, Corporal Wells. You are sentenced to detention for a period of seven days and to a fine in the amount of \$2,000. Pursuant to section 215 of the *National Defence Act*, the carrying into effect of the punishment of detention is suspended. The fine is to be paid in monthly amounts of \$100 each, commencing 15 May, 2007 and continuing for the following 19 months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is to be paid the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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