

Citation: *R. v. Master Corporal K. Van Blerk*, 2007 CM 2005

Docket: 2006112

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

Date: 6 March 2007

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

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL K. VAN BLERK
(Offender)**

SENTENCE

(Rendered Orally)

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

[2] Master Corporal Van Blerk, having accepted and recorded your pleas of guilty to three charges under the *National Defence Act* of committing an act of a fraudulent nature, this court now finds you guilty of charges one through to three. 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 in the Statement of Circumstances, Exhibit 6, the evidence heard during the sentencing phase, 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, 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] As I explained to 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, and may be 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.

[6] 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 these offences are set out in Exhibit 6. In brief, over a period of some three months, the offender signed a series of four General Allowance Claims for separation expense, indicating that he ordinarily resided with his dependants, a spouse and three children, when in fact, he had previously signed a separation agreement with his spouse that was then in effect. During the same period, he received rations and quarters at public expense, knowing that he was not entitled to receive the same. The total amount of money obtained by these frauds is \$3,040.94, all of which was repaid to the Crown by the offender shortly following the discovery of the offences.

[8] In this case, both counsel submit that the appropriate sentence is one of a severe reprimand and a fine in the amount of \$2500. 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 great 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.

[9] Counsel have referred to the aggravating and mitigating circumstances. In order to commit the offences, the offender misrepresented his family situation to the Battery Clerk, both orally and in writing on a number of occasions, over a period of months. The amount of the loss is significant. I would add to these facts the observation that the offence was apparently discovered only when an audit was conducted and the offender provided a copy of his separation agreement. While the fraud was effected upon his employer, it was not facilitated by the duties of his employment.

[10] The offender is a mature man of 43 years' of age, with almost 25 years' of service in the Canadian Forces as a Meteorological Technician. Until the events giving rise to the charges, he was well thought of by his superiors, and enjoyed every prospect of promotion to sergeant. He has no record of previous disciplinary offences; he cooperated with the investigators; made full restitution; and pleaded guilty at the first opportunity to do so. He had to borrow money for the purpose of restitution and is presently in difficult financial circumstances, as well.

[11] I am satisfied that he is genuinely sorry for committing these offences. I accept his evidence that the offences were committed at a time when his personal family situation was in turmoil. Thus, the specific deterrence of this particular offender is not a large factor in arriving at a fit sentence. I am also satisfied that the offender suffers a chronic major depressive disorder and that this condition was likely affecting his behaviour at the time of the offences. As well, he suffers from other medical conditions and all this will likely support his medical release from the Canadian Forces in the near future.

[12] Considering the circumstances, both of the offences and of the offender, I am satisfied that the joint submission of counsel is well within the appropriate range. The suggested sentence would not bring the administration of justice into disrepute, nor is it otherwise contrary to the public interest and, accordingly, I accept the joint submission.

[13] Stand up, Master Corporal Van Blerk. You are sentenced to a severe reprimand and a fine in the amount of \$2500, to be paid in monthly installments of \$50

each, commencing 31 March 2007 and continuing for the following for the following 49 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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