

Citation: *R. v. Corporal Hillier*, 2007 CM 2002

Docket:200676

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE EDMONTON**

Date:31 January 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL J.D. HILLIER
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Corporal Hillier, having accepted and recorded your plea of guilty to the first charge, a charge of using violence against a superior officer, 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 Statement of Circumstances, Exhibit PP1-7, the evidence, both documentary and testimonial, received in the course of the mitigation phase, 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. 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 are not 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.

[5] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in a particular 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 explained to 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 offence and provides for a maximum punishment, and is further limited to the jurisdiction that may be exercised by this court.

[7] 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 of the finding of guilt and the sentence I am about to impose.

[8] The facts of the offence are set out in Exhibit PP1-7. Briefly, the offender was in the company of his fellow soldiers in the junior ranks mess following the annual regimental Christmas dinner. Master Corporal Hoth, the acting regimental orderly sergeant, entered the mess and announced that all members of the unit were required to go to the singles quarters to help with the clean up. Apparently a number of soldiers resisted the order. Some, not including the offender, shouted obscenities at the master corporal, and some simply refused to move. Some responded to Master Corporal Hoth in a belligerent manner. The offender pushed Master Corporal Hoth in the chest area. The master corporal, in my view wisely, withdrew from the situation, reported the

event and returned in the company of Sergeant Swards and dealt individually with the offender and one other soldier.

[9] It is agreed by counsel that the actions of the offender amount to violence within the meaning of that term in the *National Defence Act*, although it is common ground that the violence actually employed in this case was relatively minor.

[10] The prosecution submits that a fine would be an appropriate disposition in this case. Defence counsel on behalf of the offender urges the court to impose the minor punishment of a stoppage of leave for a period of 21 days.

[11] On the view I take of the facts of this offence, I consider that a minor punishment is wholly insufficient to meet the sentencing objective of deterrence.

[12] The offence of using violence toward a superior officer in section 84 of the *National Defence Act* is one of a number of purely military offences falling under the general rubric of insubordination. There are no similar offences for civilians or persons not bound to comply with military law but these kinds of offences go to the very heart of military discipline. The degree of harm or injury caused to Master Corporal Hoth is not the gravamen of this offence. The important aspect of this kind of conduct is its effects on the maintenance of overall discipline among soldiers.

[13] The surrounding circumstances make this more than a minor case of insubordination. The act of the accused was part of a pattern of insubordination demonstrated toward Master Corporal Hoth by the offender and by other junior members who were present in the mess. In my view, the action of the offender in pushing Master Corporal Hoth, in the volatile situation that Master Corporal Hoth faced at the time, posed a risk of escalating the insubordinate behaviour of others.

[14] A sentencing court must have regard not only for the circumstances of the offence but also the circumstances of the offender. He is 24 years of age, and at the time of the offence had been serving as a tank crewman in the Canadian Forces for less than four years. This is his first disciplinary infraction. He has pleaded guilty to the offence thereby admitting his responsibility and avoiding an inconvenience to witnesses. He has publicly apologized to his fellow soldiers for his conduct.

[15] He is well regarded by his officers as a skilled tank crewman, and was promoted to his current rank of corporal while awaiting the disposition of this charge.

[16] Pursuant to section 147.1 of the *National Defence Act*, I have considered

whether a weapons prohibition order would be appropriate. But in view especially of the minimal violence involved in this offence, I do not consider such an order to be desirable in the interests of safety.

[17] I have also considered whether to order the taking of DNA samples pursuant to section 196.14 of the *National Defence Act*. In the absence of an application by the prosecution, I decline to make such an order.

[18] I accept the submission of the prosecution that a fine is a proper disposition in the present case. I hope, Corporal Hillier, that you clearly understand that if you are involved again in any similar insubordinate behaviour of the kind you showed on this occasion in December of 2005, a sentencing court would be giving serious consideration to a disposition that would deprive you of your liberty.

[19] Stand up Corporal Hillier. You are sentenced to a fine in the amount of \$900 payable in monthly installments of \$150 each commencing 1 March 2007 and continuing for the following five months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding amount is due and payable the day before your release. March out Corporal Hillier.

[20] The proceedings of this Standing Court Martial in respect of Corporal Hillier J.D. are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel :

Major S.D. Richards, Regional Military Prosecutions (Atlantic)
Counsel for Her Majesty The Queen
Lieutenant-Commander M. Reesink, Director of Defence Counsel Services
Counsel for Corporal Hillier