

Citation: *R. v. Master Seaman B.B.J. Willms*, 2007 CM 2022

Docket: 200748

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

Date: 15 November 2007

PRESIDING: COMMANDER P. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**MASTER SEAMAN B.B.J. WILLMS
(Accused)**

SENTENCE

(Rendered Orally)

[1] Master Seaman Willms, you have been found guilty of one offence of assault contrary to the *Criminal Code of Canada* which is made a service offence under section 130 of the *National Defence Act*.

[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 taken on the trial and the evidence and materials received and heard during the mitigation phase. I have as well considered 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 the 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.

[5] 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] 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 which creates the offence and provides for a maximum punishment and is 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 of the finding of guilt and the sentence I am about to impose; that is, the consequences for the offender of those two matters. The facts of the offence were set out in my reasons for finding earlier today and I will not add to the remarks that I had on that occasion except to observe that, in my view, this is one of the most minor cases of assault to come before a criminal court in Canada in my experience. This observation distinguishes the present case from the case of *Corporal Rondeau* where the facts, in my view, were a good deal more serious.

[8] The problem of sentencing in this particular case though is complicated because in addition to what I regard as the minor nature of the assault, I have to have regard for the position of the offender at the time of the offence as an instructor of recruits of whom the complainant was one.

[9] I have read and reread all the material that has been filed with me in the course of these proceedings. It is apparent from a review of that material that your behaviours as a member of the Reserve Force have deteriorated to some extent over time. I observed that in one of the reports you are said more recently to have difficulty with boundaries. The same report makes, what I feel to be, a particularly acutet comment in noticing that of more recent times you have appeared to have some difficulty distinguishing the concepts of leadership from authority.

[10] It is not uncommon for members of the Canadian Forces generally including, of course, members of the Naval Service to spend some time adrift and that, in my view, is what has happened to you in the more recent period. Prior to the '05/'06 performance evaluation, you were a no doubt rightly described in glowing terms by your superiors as an accomplished leader and an example to the students whose care you've had in a period over three years. The material illustrates that, at the time of the offence in May of 2006, you had just begun your third in a series of three engagements as a member Reserve Force teaching at the Naval Reserve Training Division here in Borden. As I said, it sometimes happens that a member goes adrift. The good news in my view is that the deficits that have been noted in the material before me are all matters that are trainable. With the benefit of the advice of your superiors, if you choose to follow that advice and pursue your naval career, I am confident that the deficits that have been observed can be overcome and that you will put this incident behind you and go on to a successful career in the Naval Reserve.

[11] Stand up, Master Seaman Willms. You are sentenced to a reprimand.

COMMANDER P. LAMONT

Counsel:

Major S.A. MacLeod, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen
Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services Ottawa
Counsel for Master Seaman B.B.J. Willms