

Citation: *R. v. Corporal T.M. Khadr*, 2007 CM 2028

Docket: 200707

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

Date: 21 September 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL T.M. KHADR
(Accused)**

**SENTENCE
(Rendered orally)**

[1] Corporal Khadr, you've been found guilty of one charge, the first charge in the charge sheet, of an offence of behaving with contempt toward a superior officer. 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 evidence taken on the trial, and the evidence and materials received in the course of the mitigation phase, as well as the submissions of counsel, both for the prosecution and for the defence.

[2] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. A 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.

[3] 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 absolutely indispensable 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.

[5] 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] 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 for the offender of the finding of guilt and the sentence I am about to impose.

[8] The facts of the offence in this case were set out in the course of my finding and I do not intend to repeat what I said on that occasion. The prosecution recommends a sentence as follows: a reprimand; a fine in the range of \$800 to \$1200; and a period of confinement to barracks of 14 to 21 days. Defence counsel suggests a fine in the area of \$600 to \$800.

[9] I have, as I said, considered both the aggravating and the mitigating circumstances urged upon me by both counsel in the course of their addresses. With respect to some of the aggravating features, they relate primarily to the circumstances of the offence. The offence created by section 85 of the *National Defence Act* is

objectively serious, carrying with it a very high maximum punishment. This is an indication to the Canadian Forces that Parliament intends that offences of this nature be treated seriously. One of the factors involved in the commission of the offence was that it was, apparently, an outburst in the presence of several other members of the offender's unit. In addition, I have considered the conduct sheet of the offender, disclosing, as it does, two previous offences which were dealt with on the very day of the offence for which the offender is to be sentenced. One of those, again, was a charge of behaving with contempt toward a superior.

[10] I have also considered many mitigating circumstances, related primarily to the personal circumstances of the offender. He is age 27 and I consider him, therefore, still young. He is newly married, and his wife is expecting a baby in a matter of weeks. I note that he has successfully completed a period of six months' counselling and probation, which was imposed, in part, in respect of the matter giving rise to this court martial. He has also successfully completed an anger management course, as required by his chain of command, which appears to have been followed immediately after the commission of the offence for which I have found him guilty. I am also told that the offender has extended an apology. The terms of the apology, to whom it was extended, and the timing of the apology have not been clarified before me, but all these circumstances lead me to conclude that the evidence in this case shows that the offender has, indeed, turned a corner in his young life.

[11] In addition to being a young man, he's also a young soldier, having joined the Canadian Forces in June of 2003. I have also considered the evidence of the offender's medical condition, as disclosed both in his evidence and in the evidence of Dr Hurley. Having considered that evidence, I do not believe that the offence was precipitated simply by the offender failing to take a dose of the prescribed medication on the day in question. I believe, on the other hand, that the offender is aware that there were a number of circumstances in his life leading to the outburst giving rise to the offence on 1 August 2006, at least some of which he has come to grips with in the intervening period of some 13 months.

[12] Taking these factors into consideration, I conclude that the individual deterrence of the offender is not a particularly weighty concern in arriving at a fit sentence in this case. I do consider, however, that the rehabilitation of the offender, and general deterrence in particular, are very weighty concerns resting with this court in the determination of a fit sentence. It is a well-understood point, but it bears repetition, that discipline is critical to the success of an armed force. Ultimately, the discipline of the Canadian Forces is nothing more nor less than the self-discipline of each of its members. Bearing these factors in mind, I have arrived at a sentence which I believe will properly vindicate the principles of individual rehabilitation and general deterrence.

[13] The offender is about to assume the responsibilities of young fatherhood. In particular recognition of that factor, I have reduced the fine that I would otherwise have imposed, in view of his changing financial circumstances. Stand up, Corporal Khadr.

[14] You are sentenced to a reprimand and to a fine in the amount of \$500, and to confinement to barracks for a period of 14 days. The fine is to be paid in monthly installments of \$100 each commencing 15 October 2007 and continuing for the following four 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. March out Corporal Khadr.

[15] The proceedings of this court martial in respect of Corporal Khadr, Tamer Mahmoud, are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

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Major G.K. Duncan, Directorate of Defence Counsel Services
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