

Citation: *R. v. Petty Officer 2nd Class K.C.S. Melchior*, 2007 CM 1009

Docket:200706

**DISCIPLINARY COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX**

Date:27 March 2007

PRESIDING:COLONEL M. DUTIL, C.M.J.

HER MAJESTY THE QUEEN

v.

**PETTY OFFICER 2ND CLASS K.C.S. MELCHIOR
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Petty Officer 2nd Class Melchior, having accepted and recorded a plea of guilty in respect of the first and second charges under paragraph 187(b) of the *National Defence Act*, I now find you guilty of these charges. As the prosecution has previously withdrawn the third and fourth charges there is no remaining charge and the *Act* provides that the judge determines a sentence.

[2] This is a case where the prosecution and counsel for the defence have made a joint submission on sentence. They recommend that you be sentenced to a reprimand and a fine in the amount of \$1500 at a rate of \$100 a month. Although this court is not bound by this joint submission, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute, and this is not the case here.

[3] It has long been recognized that the purpose of a separate system of military justice is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military. It's also recognized that the military context may, in appropriate circumstances, justify and, at times, require a sentence that will promote military objectives. That being said, the punishment imposed by any

tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[4] In determining sentence I have considered the totality of the circumstances surrounding the offences as revealed by the Statement of Circumstances that you have accepted as conclusive evidence, as well as the Agreed Statement of Facts. In a nutshell, the facts and the circumstances surrounding the offences are as follows: At approximately eight o'clock on 17 October 2005, aboard HMCS MONTREAL, while alongside Ireland Island, Bermuda, the ship's company mustered to the flight deck in order for Sea Training staff to be introduced and conduct a safety briefing; this briefing was part of Work Ups which was a critical evaluation of the ship, its personnel, and their effectiveness at sea; during this muster your appearance was rough and disorganized, you stood with your hands in your pockets, and you paid little or no attention to the briefing, even, at one point, leaning on the flight deck netting; during that Work Up you were to operate and supervise personnel operating power tools and equipment onboard the vessel. As the second in command of the After Section Base, you were in charge of a multi-trade firefighting and repair section; during that period of time your superior noticed a strong smell of alcohol coming from you, your speech was slurred, you had glossy eyes, and you were unsteady on your feet. As a result you were ordered to attend a physician's assistant, and, of course, they easily determined that you were drunk and unfit for duty. This incident obviously placed an additional burden on the other members of the unit that had to make up for your inability to perform your duties at the time.

[5] On 1 December 2005, this time alongside Norfolk, in Virginia, United States of America, you were also unfit for duty as a result of ingestion of alcohol. At that time, at nine o'clock in the morning, you were in your bunk and again intoxicated. At approximately 1010 hours you reported to the coxswain and, then again, you smelled of alcohol, were unsteady on your feet, incoherent, glassy eyes, slurred speech, unshaven, and a wrinkled NCD uniform. You were escorted to the unit's physician assistant where, as it happened previously a few months before, you were again drunk and unfit for duty.

[6] This information and the circumstances of this case have been considered along with all the documentary evidence that was filed before me, and I have also considered the submissions presented by both counsel. I have reviewed this information in light of the sentencing principles and objectives, and I have also taken into account any direct and indirect consequence that the finding and the sentence will have on you.

[7] As stated by Mr Prosecutor, the objectives and principles to be used in considering what should be an appropriate sentence generally relate to one or more of the following: The protection of the public, and the public includes the Canadian Forces; the denunciation of the offender; the punishment of the offender; the deterrent

effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; the reformation and rehabilitation of the offender; the punishment imposed for a particular offence also must be proportionate to the crime and the offender; and the parity of sentence, i.e., a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Therefore, I have considered the joint submission in light of the relevant facts set out in the Statement of Circumstances and their significance, and I have also considered the joint submission after applying all those relevant sentencing principles. It is my view that this sentence should emphasize the need for general deterrence, specific deterrence, but also a clear denunciation of the conduct, but also afford the necessary room for rehabilitation.

[8] The primary mitigating factors in this case are the following: First, your early admissions and assumed responsibility for your actions at the earliest stage and your pleas of guilty, which is a sign of your genuine remorse for your actions; second, the delay since the commission and the laying of the original charges, which amount to about 15 months for a matter that appears to be a simple matter. It doesn't mean that it's not a serious matter, but it was certainly a simple matter to investigate and take appropriate actions; third, your excellent record of service; fourth, the fact that, in retrospect, the fact that this or these incidents related to your misuse of alcohol, appear to be symptomatic of a more serious problem, i.e., your alcoholism, for which you have received successful medical treatment and for which you have now stayed—have been sober for over a year. And I strongly encourage you to pursue in that fashion, which is, I think, in the circumstances of this case, a key element in accepting the joint submission. And also I consider to be of some mitigation the fact that these incidents took place at a time where you were emotionally fragile because of long separations with your family and work related tensions with your Coxswain which caused you to feel belittled.

[9] However, the following aspects are aggravating: Firstly, the objective gravity of the offence when committed on duty; that is, imprisonment for less than two years; secondly, your rank and experience at the time of the alleged offence; thirdly, the fact that the offences occurred while you were on duty in a deployed setting; fourthly, the fact that your conduct undermined your authority and respect, and that of the ship's chain of command, of which you were part of, with regard to the sailors under your command. This type of behaviour by officers and non-commissioned members in leadership positions undermines the basics of military discipline and can irreversibly affect morale and cohesion that are necessary to fulfil the unit's mission and objectives.

[10] In consequence, and based on the evidence before me, I have no substantive reasons to reject the joint submission made by counsel which I accept. Therefore, I sentence you to a reprimand and a fine in the amount of \$1500, payable in 15 monthly installments of \$100 commencing today. And should you be released from the Cana-

dian Forces prior to the full payment of the fine it will be due and payable in full on the day prior to your effective date of release.

[11] The proceedings of this Disciplinary Court Martial in respect of Petty Officer 2nd Class Melchior are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J.J. Samson, Regional Military Prosecution Atlantic
Counsel for Her Majesty The Queen
Lieutenant-Colonel D. Couture, Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class K.C.S. Melchior