

Citation: *R. v. Leading Seaman R.J. Houston*, 2009 CM 2004

Docket: 200907

**STANDING COURT MARTIAL
CANADA
NEWFOUNDLAND
CANADIAN FORCES STATION ST JOHN'S**

Date: 28 January 2009

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

HER MAJESTY THE QUEEN

v.

**LEADING SEAMAN R.J. HOUSTON
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Leading Seaman Houston, having accepted and recorded your plea of guilty to the charge in the charge sheet, a charge of stealing while entrusted, 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 described in the statement of circumstances, Exhibit 6, and the other materials submitted during the course of this hearing, 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 an 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 objectives will inevitably predominate in crafting 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 reflect a wise blending of these goals tailored to the particular circumstances of the case.

[5] As I told 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. 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 finding of guilt and the sentence I am about to pronounce.

[7] The facts of the offence are not complicated and are set out in Exhibit 6, the statement of circumstances. In brief, as a steward with responsibilities in connection with base accommodations at Canadian Forces Station St John's, the offender diverted small amounts of cash paid for accommodations to his own use over a period of many months until his offence was suspected and investigated. A total of \$500, more or less, appears to be unaccounted for. Leading Seaman Houston promptly admitted his responsibility in that amount in a statement to police investigators. I am told by his counsel that Leading Seaman Houston will make full restitution of the amount stolen today.

[8] Counsel before me jointly recommend a sentence of a reprimand and a fine in the amount of \$1,000. As counsel have pointed out, the sentence to be pro-

nounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the recent case of *Private Chadwick Taylor*, 2008 CMAC 1, 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 the present case. I am satisfied that Leading Seaman Houston has learned a very hard lesson about the importance of trust among members of the Canadian Forces, trust among peers, as well as trust between subordinates and superiors.

[10] I do not consider that specific deterrence of this offender is a weighty factor, but general deterrence is a pressing concern for this court in dealing with this kind of offence. I recognize, of course, that in some cases the principle of general deterrence can be adequately addressed by a punishment short of the deprivation of liberty by incarceration.

[11] I am mindful of the personal circumstances of the offender. He is 29 years of age with a spouse who is also in the service. In over 10 years of service in the Reserve Force and now the Regular Force, he has no record of previous disciplinary infractions. He has been the subject of administrative measures as a consequence of his criminal behaviour, but has continued to discharge his duties as a steward, and apparently is working well toward regaining the trust of his chain of command. He cooperated with the police investigation and has pleaded guilty to the charge at as early a stage as he could. As well, he has made a formal written apology to his commanding officer.

[12] Considering all the circumstances, both of the offence and of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I, therefore, accept the joint submission.

[13] Leading Seaman Houston, you are sentenced to a reprimand and a fine in the amount of \$1,000 to be paid in monthly instalments of \$250 each commencing 28 February 2009 and continuing for the following three 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 due and payable the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

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