

**Citation:** *R. v. Ex-Corporal T.R. Osmond*, 2009 CM 2003

**Docket:** 200847

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

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**Date:** 26 January 2009

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

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**HER MAJESTY THE QUEEN**

**v.**

**EX-CORPORAL T.R. OSMOND**

**(Offender)**

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**SENTENCE**

**(Rendered Orally)**

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[1] Mr Osmond, having accepted and recorded your plea of guilty to the first charge, a charge of absence without leave, the court now finds you guilty of the charge of absence without leave.

[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, as well as the material that was introduced before me in the course of the mitigation phase, and I have heard, as well, 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 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 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.

[5] 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 courts 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 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 impose.

[7] The facts of this case are not complicated. They involve the offender not appearing as he was required to, out of town on temporary duty in Toronto, for a period of one day until, I understand or infer, he eventually appeared for his required duty away from his usual place of duty. There is no evidence before me as to what, if any, effect the lack of attendance by the offender for one day had on the receiving unit; that is, at Canadian Forces Base Toronto, Downsview. However, there is evidence before me of the effect of the offender's absence from duty on the sending unit; that is, his home unit.

[8] Counsel before me are agreed that a fit disposition in this particular case is a severe reprimand and a fine in the amount of \$750. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries substantial weight with the

court. The courts of appeal across Canada, including the Court Martial Appeal Court, 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] In this case I have considered not only the facts of the offence, but also the individual circumstances of the offender. He is a mature man of 35 years of age with family responsibilities. He has discharged his duties to his country, both as a member of the Reserve Force and as a member of the Regular Force, and in that capacity rose to the rank of corporal. I have not been provided with information with respect to how he has performed his duties apart from the offence with which the court is concerned. I should say that, in arriving at a fit sentence in this case, I attach virtually no weight to the suggestion in the evidence before me that in the course of his duties the offender became an administrative burden to the unit. I do, however, accept the evidence that he was released from the Canadian Forces on what might be described as an unfavourable release item.

[10] Taking all of the circumstances, both of the offence and of the offender, into account, I cannot say that the sentence jointly recommended by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, accordingly, I accept the joint recommendation of counsel.

[11] Mr Osmond, you are sentenced to a severe reprimand and a fine in the amount of \$750 to be paid forthwith.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

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