

Citation: *R. v. ex-Officer Cadet C.H. and Officer Cadet T.M.J. Rivard*, 2009 CM 2002

Docket: 200871

**STANDING COURT MARTIAL
ROYAL MILITARY COLLEGE KINGSTON
ONTARIO
CANADA**

Date: 7 January 2009

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

HER MAJESTY THE QUEEN

v.

**EX-OFFICER CADET C.H AND OFFICER CADET T.M.J. RIVARD
(Offenders)**

SENTENCE

(Rendered Orally)

[1] Officer Cadets C.H. and Rivard, having accepted and recorded your pleas of guilty to the third charge, being one offence of an act to the prejudice of good order and discipline, this court now finds each of you guilty of the third 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 disclosed by the evidence I have heard and the materials submitted during the 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 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 told you when you both tendered your pleas 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. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offenders of the findings of guilt and the sentence I am about to impose.

[6] The facts of this offence are not complicated and are set out in Exhibit 8, the Statement of Circumstances. In brief, while investigating one Mark Jackson, civilian police officers discovered 55 counterfeit Canadian Forces identification cards. Investigation disclosed that Officer Cadet C.H., a friend of Jackson, had provided his own CF identification card to Jackson for the purpose of scanning the document into Jackson's computer in order to make what are described as high-quality forgeries. Over a three-month period in 2006, Officer Cadet C.H. gathered information and photos from 14 under aged fellow cadets in order to obtain, from Jackson, counterfeit identification cards showing them falsely to be 19 years of age. For this service Jackson charged \$50 each. On one occasion, Officer Cadet Rivard became involved and obtained a falsified CF identification card for a fellow cadet.

[7] In this case, counsel for the prosecution and counsel for each of the two offenders jointly submit that the appropriate sentence for Officer Cadet C.H. is a fine of \$200 and for Officer Cadet Rivard a minor punishment of a caution. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, all counsel agree on a recommended disposition, that recommendation carries great 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.

[8] Both offenders were eighteen years of age and first-year cadets at the Royal Military College at the time of the offence. Both are without any previous disciplinary history. Neither of them benefited financially from the forgeries. I accept the characterization of the offence by counsel as a youthful indiscretion. It is true that, as the prosecutor states, there was a potential for more serious harm resulting from the offence, but I doubt that those possible consequences were in the minds of either of the offenders at the time, and, in any event, on the information before me, none of those more serious consequences materialized.

[9] The disparity in sentence proposed for the two offenders is fully justified to my mind by the much more active role played by Officer Cadet C.H. in the commission of the offence in relation to the more minor involvement of Officer Cadet Rivard. Officer Cadet C.H. has since released from the Canadian Forces and Officer Cadet Rivard is in his fourth year of college at RMC. I accept that in both cases their plea of guilty is a genuine demonstration of remorse, and I am confident that the offence was out of character for both of these young men and will not be repeated.

[10] On all the circumstances, I cannot say that the sentence disposition proposed by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest and, accordingly, I accept the joint submission.

[11] Mr C.H., you are sentenced to a fine in the amount of \$200 to be paid by 6 February 2009.

[12] Officer Cadet Rivard, you are sentenced to a caution.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

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