

Citation: *R. v. Corporal M.S.W. Russell*, 2007 CM 1016

Docket: 200731

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE EDMONTON**

Date: 13 July 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL M.S.W. RUSSELL
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Russell, having accepted and recorded a plea of guilty in respect of the first charge, the court finds you guilty of that charge.

[2] As we had earlier this morning in another case, another Standing Court Martial, the one of *Corporal Hutchison*, this is a case where the prosecutor and counsel for the defence have made a joint submission on sentence. In this case, they recommend that the court sentences you to a reprimand and a fine in the amount of \$800. Although this court is not bound by the joint recommendation on sentence, 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 as I said earlier this morning, I presided over the Standing Court Martial of *Corporal Hutchison*, and I must say that those two cases are very similar, although I consider this one to be much more serious, or more serious subjectively, and this is properly reflected in the sentence proposed by counsel in this joint submission.

[3] It has been long 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 is also recognized that the military context may and will, in appropriate circumstances, justify a sentence that is more

severe than if the same offence had been committed in a purely civilian context, and that in order to promote military objectives and military discipline. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the circumstances.

[4] In determining sentence today, I have considered the totality of the circumstances surrounding the commission of the offence presented during the sentencing procedure, as well as the documentary evidence filed with the court. I have also considered, for the purposes of sentencing, the representations made by counsel. I have also considered the case law that were provided to me this morning in the case of *Hutchison*, and I have also considered the cases of both *Keller* and *Stevenson*. I have also considered the direct and indirect consequences that the finding and the sentence will have on you.

[5] As in the case of *Corporal Hutchison*, the factors and principles of sentencing that must be emphasized in this case are the general deterrence and the punishment and denunciation of the offender. But I must also say that rehabilitation should not be compromised by the sentence that this court will impose.

[6] And that is in line with the guidance provided by the Court Martial Appeal Court in the case of *R. v. St-Jean*, [2000] C.M.A.J. No. 2, where Justice Létourneau, speaking for the court, did put in perspective the impact of fraudulent acts in a public organization such as the Canadian Forces. He stated at paragraph 22:

After a review of the sentence imposed, the principles applicable and the jurisprudence of this Court, I cannot say that the sentencing President erred or acted unreasonably when he asserted the need to emphasize deterrence. In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. ... It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence

vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

[7] As in the case of *Hutchison*, although this case does not involve the offence of fraud, it is, nonetheless, an offence in relation to property, public property, and the offence of stealing in this context must be punished with a particular emphasis on the principle of general deterrence and denunciation.

[8] In arriving at what the court considers to be a fair and appropriate sentence, I have considered the following factors:

First, the objective gravity of this offence. And as you have been told this morning, this is a very serious offence that is punishable either for a term of 14 years, or not exceeding 7 years, depending whether or not the person had the custody, control or distribution of the--or was the custodian of the property.

Second, I have considered the particular context of the case as revealed by the Statement of Circumstances, and here again, as in *Hutchison*, the offence took place in your own work place, and this is an aggravating factor.

I have also considered the fact that you have acknowledged responsibility for your actions by pleading guilty before this court, but this has to be put in context in relation to the case of *Corporal Hutchison*. In comparing the two cases, I do not consider your conduct with the police authorities during the investigation phase to demonstrate the same level of acceptance and remorse as that of *Corporal Hutchison*. You admitted only when confronted with the evidence showed to you by the police, after having lied on different occasions as to how you obtained the property. So certainly this is not to the same level than that demonstrated by *Corporal Hutchison* at the time.

I have also considered the facts that you have voluntarily returned the material that you had stolen and, therefore, the court, nonetheless, considers your admission of guilt as a genuine acknowledgement of your misconduct.

Also considered: the rank that you held at the time; your relatively young age; as well as your current financial and economic situation; as well as your social and family situation.

It seems that you are considered to be a good soldier, and that the unit authorities are still willing to continue to trust you and deploy you to Afghanistan in 2008 after having just returned from a first tour in Kandahar in 2006. I hope that you will understand that there is maybe a limit to that trust.

Finally, I consider that the lengthy delay to bring this matter to trial which prevented your Commanding Officer to try this offence summarily if you could have elected that mode of service tribunal, but for the application of paragraph 69(b) of the *National Defence Act*, is also a mitigating factor in this case.

However, I must consider that your conduct sheet discloses an offence of dishonesty and trust, and this must be reflected in the sentence that the court will impose on you. Again, as I said before, I'm satisfied that the difference in the stated amount takes that into consideration.

[9] For these reasons I will accept the joint recommendation as it does not bring the administration of military justice into disrepute considering the circumstances of the case and that it would still serve the interests and the objectives of military discipline.

[10] Therefore, the court sentences you to a reprimand and a fine in the amount of \$800, payable in two equal instalments. The first one to be paid immediately and the second on 14 August 2007. The second instalment will be sent by registered mail to the address that the prosecutor will provide to you, or in person at the address and place that the prosecutor will provide to you and to your counsel immediately after this court terminates proceedings.

[11] I hope that you will be smart enough to understand that this is your last chance, because if you don't understand the importance of the core values such as trust, honesty, and integrity in the Canadian Forces, you may be on your way out. I hope the message is clear and that you are taking this opportunity to spread those values: trust; honesty; and integrity starting today. March out Corporal Russell.

[12] The proceedings of this court martial in respect of Corporal Russell are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Captain R.J. Henderson, Regional Military Prosecutions Western
Counsel for Her Majesty The Queen
Lieutenant(N) M.P. Létourneau, Directorate of Defence Counsel Services
Counsel for Corporal M.S.W. Russell