

**Citation:** *R. v. ex-Private Real*, 2007 CM 1018

**Docket:** 200695

**DISCIPLINARY COURT MARTIAL  
CANADA  
QUEBEC  
ASTICOU CENTRE**

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**Date:** 28 August 2007

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

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**HER MAJESTY THE QUEEN**

**v.**

**EX-PRIVATE D.J.A. REAL**

**(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Ex-Sapper Real, please standup. Having accepted and recorded a plea of guilty in respect of the second charge under paragraph 187(b) of the *National Defence Act*, this court finds you guilty of that charge. You may be seated. It must be said that I had received your plea of guilty after the prosecution had withdrawn the first and third charge, and as there was no remaining charge, the presiding judge must determine sentence.

[2] This is a case where the prosecutor and defence have made a joint submission on sentence. They have recommended that this court sentence you to a fine in the amount of \$700. Although this court is not bound by this joint recommendation, 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] In determining sentence, I have considered the totality of the circumstances surrounding the commission of the offence as described by the Statement of Circumstances. I have also considered the documentary evidence filed at the sentencing procedure, as well as your testimony. I have reviewed that submission in light of the applicable sentencing principles and objectives, and, of course, I have taken

into account the effect of this sentence and finding on you, and the direct and indirect consequences, including the fact that you have been released from the Canadian Forces for reasons other than those related to this incident.

[4] Very briefly and very quickly, the objectives and principles to be used in considering what should be an appropriate sentence generally relate to the following: The protection of the public, and that includes, of course, the interests of the Canadian Forces; the denunciation of the conduct of the offender; the punishment of the offender; the deterrent effect of the punishment not only on the offender, but also on others who might be tempted to commit similar offences. On the other hand, we have to look at the reformation and rehabilitation of the offender; as mentioned by the prosecutor, the proportionality and parity are also relevant objectives and principles; and sometimes we have to look at separation of the offender from society and incarceration—or look at that as a last resort—but that is not applicable here.

[5] I agree with the prosecutor when he says that the general deterrence objective is the key here, as well as the denunciation of that conduct, which is not acceptable. General deterrence is relevant, because mainly this kind of offence, in the circumstances of this case, is a very simple example of breach of basic military discipline. You had been told by Lieutenant Morin, at the time, to drive that vehicle home in Valcartier. So there was certainly no misunderstanding. There was no authority to go to Ottawa with it and use it as a personal vehicle to visit your family. So that's a breach of basic military discipline and I think that is why general deterrence is tantamount here as a prime principle. But other than that, of course, there is no case law, a list of cases, of a similar nature, as explained by Mr Prosecutor.

[6] So basically the sentence, I think, is fit, proper, and, of course, would not bring the administration of justice into disrepute. It is a sentence that both counsel came up with as a fair sentence. And also looking at what you are doing with your life as a result of your release for medical reasons, I understand, it is certainly to be commended, and I certainly encourage you to continue on that road. And the sentence has to reflect that as well. So I think the joint submission certainly serves that as well.

[7] So in a few words, I see no substantive reason to reject the joint submission made by counsel; therefore, I accept that recommendation, and I now find you guilty of that charge, the second charge, and I sentence you to a fine in the amount of \$700.

[8] So that concludes the proceedings in this matter. And before I let you go, I have to instruct, on the record, the Court Martial Administrator to immediately advise every member of the panel of that Disciplinary Court Martial, as well as the alternate members that appear on the convening order filed in this application, that they will not be required to perform their duties as members of the Court Martial Panel in the

Disciplinary Court Martial of ex-Sapper Real as if they had been discharged under QR&O 112.05(8)(b).

[9] I thank you, both counsel, for the conduct of these proceedings, and the court martial proceedings in respect of ex-Sapper Real are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Major J. Caron, Regional Military Prosecutor, Eastern Region  
Counsel for Her Majesty The Queen  
Major C.E. Thomas, Directorate of Defence Counsel Services  
Counsel for ex-Sapper Real