

Citation: *R. v. Master Corporal J.M. Bolter*, 2009 CM 2007

Docket: 200903

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

Date: 6 April 2009

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

HER MAJESTY, THE QUEEN

v.

**MASTER CORPORAL J.M. BOLTER
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Master Corporal Bolter, having accepted and recorded your pleas of guilty to three charges, one of absence without leave, a second charge of stealing, and a third charge of an act to the prejudice of good order and discipline; that is, use of cocaine, this court now finds you guilty of charges one, two, and three.

[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, the evidence heard and received during these proceedings, and 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. But in imposing sentence, the court takes account of the many factual matters 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 reflect a wise blending of these goals tailored to the particular circumstances of the case.

[5] Section 139 of the *National Defence Act*, as I told you after your pleas of guilty, 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 findings of guilt and the sentence I am about to impose.

[7] The facts surrounding the commission of these offences are set out in Exhibit 7, the Statement of Circumstances. On 24 September 2008 the offender failed to appear for work at 0730 hours. He showed up at 1015 hours the same day stating that he overslept his alarm. On 11 October 2008 he was serving a sentence of 14 days confinement to barracks arising out of previous offences of absence without leave when he persuaded the garrison duty sergeant to permit him to meet an unknown individual in the parking lot of the Canex. The offender obtained from the unknown individual and consumed a small quantity of cocaine which he purchased with \$20 he took from a petty cash box kept by the duty sergeant.

[8] The prosecution submits that a fit disposition in this case is a period of detention of 7 to 14 days. Defence counsel for the offender agrees that a period of

detention is appropriate and asks the court to use its discretion in arriving at a suitable length.

[9] I accept the evidence of the offender as to the extraordinary personal difficulties he encountered as a child growing up. I accept his evidence as to how and why he became addicted to cocaine and came to use other drugs. I also accept his evidence as to the effects addiction and personal difficulties have had in the breakup of his marriage and the difficulties his daughter is dealing with. Despite many challenges, he appears to have been a productive member of the Canadian Forces since his Regular Force service began in 1991. It appears those personal challenges started getting the better of him around 2005 when he was diagnosed with depression.

[10] I do not accept the submission of the prosecution that specific deterrence of this offender should be the primary focus of the sentence in this case. In my view, the offender has demonstrated his remorse not only by his prompt guilty pleas, but also by his cooperation with the military police investigators in admitting to his offences and with the prosecution authorities in bringing matters to a relatively prompt disposition in court. But general deterrence remains a concern when dealing with offences that involve the deception of a military superior in order to facilitate the use of a highly addictive drug on a military base.

[11] The rehabilitation of this offender is also a compelling consideration. This is a case that, in my view, unambiguously calls for a period of supervised probation as part of a fit sentence in order to foster the rehabilitation of the offender. Under the *National Defence Act*, this court does not have the authority to impose a term of probation. But I also consider that a sentence involving the deprivation of liberty can also have a rehabilitative effect. I expect that it will have such an effect in this case.

[12] Master Corporal Bolter, you are sentenced to detention for a period of 14 days.

Commander P.J. Lamont, M.J.

COUNSEL:

Lieutenant-Commander S.C. Leonard, Regional Military Prosecutions Western
Counsel for Her Majesty The Queen

Captain B. Tremblay, Directorate of Defence Counsel Services
Counsel for Master Corporal J.M. Bolter