

Citation: *R. v. Corporal J. Wells*, 2004CM10

Docket: S200410

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN**

Date: 14 January 2004

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

HER MAJESTY THE QUEEN

v.

CORPORAL J. WELLS

(Accused)

SENTENCE

(Rendered orally)

[1] Corporal Wells, you can have a seat beside your counsel.

[2] Corporal Wells, you have been found guilty of charge one in the charge sheet, an offence of negligently making a false entry in a document required for official purposes. 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 this case, the evidence led in mitigation and the submissions of counsel, both for the prosecution and for the defense.

[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. 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 a 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 behavior. 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.

[4] Section 139 of the National Defense 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 and is further limited to the jurisdiction that may be exercised by this court. I note that the maximum sentence for the offence for which you have been convicted is imprisonment for a period of three years. That, in itself, indicates the objective seriousness of the offence.

[5] 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 of the findings of guilt and the sentence I am about to impose.

[6] In this case, both counsel submit that a fit sentence would be a fine. In addition, the prosecutor asks the court to consider a reprimand. I have already referred to the facts of the offence in delivering my finding. It is suggested that an aggravating factor in this case is that Corporal Wells' failure to disclose his outstanding civilian charges at the time of his enrolment in the Regular Force was related to his duties in the MP profession. I cannot characterize the facts of the offence in this way. Certainly, the relationship between the offence and the context of the MP profession is distinguishable from the case of Corporal Brulé who made false statements in a document required to be made by him as part of his duties as an MP. I note that Corporal Brulé was fined \$500. The prosecutor also refers to the importance of the trustworthiness required of all members of the Canadian Forces, especially those in the MP profession, charged as they are with the maintenance and enforcement of the rule of law. I consider that Corporal Wells has demonstrated his trustworthiness, both prior to his enrolment in May of 2002 and during the months since his enrolment. In my view, Corporal Wells' zeal to rejoin

the CF in 2002 resulted in negligence in failing to disclose his civilian charges. This incident should properly be seen as isolated and, in my view, most unlikely to recur.

[7] Corporal Wells is 41 years of age, party to a common law marriage and supporting two young sons. In mitigation, it is pointed out that he is highly regarded as a conscientious and hardworking military policeman by his superior, Major Heck, who, as Provost Marshall for the Canadian Forces Support Training Group, has observed Corporal Wells over the last 18 months in his unit. In addition, the materials and correspondence filed with the court in the mitigation phase demonstrate that Corporal Wells pitches in well above and beyond the call of duty and that he is well regarded by his peers and his superiors in the military police and security community. Corporal Wells also appears to make a valuable contribution to the wider civilian community by way of volunteer work. This is Corporal Wells' first disciplinary proceeding under the National Defense Act despite the fact that his service in the Canadian Forces goes back to 1984. I am aware also that the fact of his conviction and sentence for an offence of impaired driving and the finding of guilty that has been made in this case may have serious career consequences for Corporal Wells. My own view is that by virtue of his training, experience and dedication to his military police duties, Corporal Wells could well continue to make a valuable contribution as a military policeman.

[8] Stand up, Corporal Wells.

[9] You are sentenced to a fine in the amount of \$300 to be paid on or before 28 February '04.

[10] March out Corporal Wells.

[11] The proceedings of this court martial in respect of Corporal Wells are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Captain A.J. Carswell, Regional Military Prosecutions Central
Counsel for Her Majesty the Queen
Major Boutin, Directorate of Defence Counsel Services
Counsel for Corporal Wells