

Citation: *R. v. Corporal Q.A. Stevenson*, 2005CM13

Docket: S200513

**STANDING COURT MARTIAL
CANADA
ALBERTA
MILITARY FAMILY RESOURCE CENTRE, 4 WING COLD LAKE**

Date: 24 February 2005

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL Q.A. STEVENSON
(Accused)**

**SENTENCE
(Rendered Orally)**

[1] Corporal Stevenson, please stand up. Having accepted and recorded a plea of guilty in respect of the first charge, this court finds you guilty of that charge.

[2] 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, in appropriate circumstances, justify, and at times require a sentence that will promote military objectives. That being said, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence, the court has considered the totality of the circumstances surrounding the commission of the offence as revealed by the statement of circumstances that you have accepted as conclusive evidence. The court has also considered the documentary evidence filed before the court which consists of the following exhibits: Exhibit 3, Statement as to Particulars of Service of Accused, dated 25 January 2005; Exhibit 4, Member's Personnel Record Résumé, MPRR, reviewed by the offender on 8 February 2005; Exhibit 5, View Pay Entitlement for February 2005; Exhibit 6, 1 Canadian Air Division Commander's Commendation to Private Quinn Alexander Stevenson, dated 27 February 2004, in recognition of his remarkable sense of good citizenship in providing assistance to the police during a sequence of events

surrounding a car accident where the driver had fled the scene; and Exhibit 7, a letter from A.G. Bouzane, Chief Warrant Officer, dated 3 February 2005, entitled Character Reference Corporal Stevenson, Q.A.

[4] In addition, the court has reviewed the testimonies of Corporal Brewer and Master Corporal Howitt, as well as the representations made by counsel and the case law provided to the court. The court then reviewed all the evidence in light of the sentencing principles and objectives, and taking into account any direct and indirect consequences that the finding and sentence will have on you.

[5] The objectives and principles to be used in considering what should be an appropriate sentence generally relate to one or more of the following: the protection of the public, and the public includes the interests of the Canadian Forces; the denunciation of the offender; the punishment of the offender; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; the reformation and rehabilitation of the offender; the punishment imposed for a particular offence must be proportionate to the crime and the offender; and the parity of sentence; i.e., a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[6] In *R. v. St. Jean*, [2000] CMAJ No.2, Justice Létourneau, speaking for the Court Martial Appeal 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. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. 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] Although this case does not involve the offence of fraud, it is nonetheless an offence in relation to the stealing of public property, and the commission of such an offence, in this context, must be punished with a particular emphasis on the principle of

general deterrence. The court believes that denunciation is also a significant factor for this type of misconduct. It is accepted that rehabilitation and specific deterrence are not primary factors in this case.

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

One, the objective gravity of the offence. A person found guilty of the offence of stealing under section 114 of the *National Defence Act* is liable to imprisonment for a term not exceeding seven years, or less punishment. It is a serious offence;

Second, the particular context of this case as revealed by the Statement of Circumstances. The offence took place on a military establishment. The material that you have stolen had been left unprotected in the forebed of a military vehicle like if it had been abandoned. Material such as night-vision scopes and global positioning systems are very attractive and they can be used to commit serious criminal offences. In addition, this type of equipment could easily be used for the benefit or in relation to activities conducted by criminal organizations. There is no such evidence before this court, but it is useful to highlight the objective significance of this kind of material. The Canadian Forces have a duty to protect their equipment, but military authorities should stress out, at the earliest stage of their members' career, the general and individual responsibility of service members to do so;

Third, the fact that you have acknowledged responsibility for your actions by pleading guilty before this court, but also that you intended to do so at the earliest opportunity as it was recognized by Mr Prosecutor. The court also knows that you have voluntarily returned the material that you had stolen, and that you had made special efforts to locate part of the equipment stolen. Therefore, this court considers your admission of guilt as a genuine acknowledgement of your misconduct, and it is a factor that I consider essential in the reformation and rehabilitation of any offender;

Fourth, the court considered, also, the rank you held at the time. Also your age, as well as your current financial, economic, social, and family situation. You were 19 years old and freshly recruited. In the Standing Court Martial of Corporal Keller held on 22 February, 2005, in Edmonton, I emphasized that many young teenagers and young adults who enrol in the Canadian Forces find military equipment, such as the items described in Annex A, to be very attractive, but I also noted that it was not an excuse to commit such wrongful acts;

Fifth, the fact that you are considered by your peers and your superiors to be a very good serviceperson with unlimited potential. According to the evidence, you are also a mature and trustworthy individual. I have closely watched your behaviour in court today, and I must say that I have the same opinion; and

Sixth, the court has considered the absence of a conduct sheet or a criminal record.

[9] I agree with counsel that incarceration is not required in this case. Much like in the case of your accomplice, Corporal Keller, the court is convinced, that in retrospect, your decision to steal was the result of your total lack of judgement and maturity the night in question, and that is almost six years ago. The theft was encouraged, if I may use that expression, by the absence of security measures designed to protect sensitive military equipment. There is no doubt that your lack of maturity was a significant factor in your decision making that led to the stealing of this equipment in the unsecured cargo area of a military vehicle left unprotected. It was a blank invitation to anyone who could be interested to possess that equipment.

[10] The prosecution recommends that this court impose a sentence that would be similar to the one imposed on Corporal Keller; that is, a reprimand and a fine in the amount of \$1400. In *Keller*, the court authorized the offender to pay the fine in two equal payments. The prosecution suggests that the difference in your family and financial situation may justify that this court adopt a more lenient approach with regard to the terms of payment of the fine.

[11] This case is not a case where the offender planned his criminal activity, and this court agrees with your counsel when he says that it would be very unlikely that you will ever appear in court again. However, the sentence that this court will impose must emphasize the principle of general deterrence and denunciation.

[12] Your defence counsel suggests that this court should not impose a sentence similar to that of Corporal Keller because a reprimand would stigmatize you for the rest of your military career, or at the very least would require that you seek a pardon after five years, unlike if this court would only impose a fine of \$1400. Your counsel also suggests that this court should use its discretion in authorizing that the fine be paid over a period of 24 months in light of your capacity to pay. The defence has provided this court with various case law in support of its approach.

[13] The court recognizes that sentencing is, and ought to be individualized, and that perfect parity is unattainable, and perhaps undesirable. The court stated earlier that one of the sentencing principles was that of proportionality. Inevitably, the principle of proportionality requires individualized sentencing so that there will be inevitable variations in sentences imposed for particular crimes. Although this court is

not bound to impose a similar sentence to that imposed on Corporal Keller, it is strongly believed that the sentence in this case should not be so disparate as to cause bitterness or resentment on the part of your then partner, particularly when you were both very young adults when you committed the offence. The court does not accept the views of your defence counsel where he suggests that this court should not impose a sentence similar to that of Corporal Keller because a reprimand would stigmatize you for the rest of your military career, or at the very least would require that you seek a pardon after five years, unlike if this court would only impose a fine in the amount of \$1400.

[14] Firstly, there's no evidence before this court in support of that proposition. Secondly, whether or not this court imposes a sentence that would consist of a reprimand and a fine, it would have no impact in granting of a pardon under the *Criminal Records Act*. Sections 4 and 4.1 of the *Criminal Records Act* provide:

4. Before an application for a pardon may be considered, the following period must have elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence, namely,

(a) five years, in the case of

(i) an offence prosecuted by indictment, or

(ii) a service offence within the meaning of the *National Defence Act* for which the offender was punished by a fine of more than two thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of that Act; or

(b) three years, in the case of

(i) an offence punishable [under] summary conviction, or

(ii) a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in subparagraph (a)(ii).

4.1 reads as follows:

... (1) The Board may grant a pardon for an offence prosecuted by indictment or a service offence referred to in subparagraph 4(a)(ii) if the Board is satisfied that the applicant, during the period of five years referred to in paragraph 4(a),

(a) has been of good conduct; and

(b) has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament.

4.1 (2) says:

... A pardon for an offence punishable on summary conviction or a service offence referred to in subparagraph 4(b)(ii) shall be issued if the offender has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament during the period of three years referred to in paragraph 4(b).

[15] A sentence imposed by a service tribunal composed of a reprimand and a fine not exceeding \$2,000 would trigger the application of subparagraph 4(b)(ii). The fact that a sentence composed of a reprimand and a fine is objectively more serious than a sentence composed of a fine has no effect on the granting of a pardon. The *Criminal Records Act* does not use the words, five years, in the case of a service offence, within the meaning of the *National Defence Act*, for which the offender was punished by a sentence composed of a punishment higher in the scale of punishment than a fine of more than \$2,000. It rather states, five years in the case of a service offence within the meaning of the *National Defence Act* for which the offender was punished by a fine of more than \$2,000. In other words, only the quantum of the fine would have the effect on whether a person can be granted a pardon after three or five years.

[16] The exhaustive review of all sentencing principles, as well as the circumstances of this case and your personal situation, do not support that general deterrence would be achieved by a sentence composed only of a fine. The objective seriousness of this offence and the particular circumstances of this case, including the nature of the material stolen, amplify the requirement to denounce your behaviour with a sentence composed of a reprimand and a fine. However, this court is sensitive to the particularities of your personal situation, and it acknowledges that you have demonstrated excellent professional and personal qualities; therefore, I find that the accompanying punishment, that consists of a fine, should be reduced in comparison with the sentence imposed on Corporal Keller.

[17] For all these reasons, this court sentences you to a reprimand and a fine in the amount of \$1,000, payable in 20 equal monthly payments of \$50 effective today. Should you be released from the Canadian Forces prior to the full payment of the fine it will be due immediately prior to the date of release. March out Corporal Stevenson.

[18] The proceedings of this court martial in respect of Corporal Stevenson are terminated. Thank you.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major B.J. Wakeham, Regional Military Prosecutions Western
Counsel for Her Majesty the Queen

Major A. Appolloni, Directorate of Defence Counsel Services
Counsel for Corporal Q.A. Stevenson