

Citation: *R. v. Corporal H.L. Gibbons*, 2007 CM 1022

Docket: 200711

**STANDING COURT MARTIAL
CANADA
REGINA, SASKATCHEWAN
16 (SASKATCHEWAN) SERVICE BATTALION**

Date: 25 August 2007

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

**HER MAJESTY THE QUEEN
v.
CORPORAL H.L. GIBBONS
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Corporal Gibbons, having accepted and recorded a plea of guilty in respect of charge one, this court finds you guilty of that charge. This is a case where the prosecutor and defence counsel have made a joint submission on sentence, they recommend that this court imposes on you the punishment of reduction in rank to the rank of private. 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, this is not the case here.

[2] It has been long recognized that the purpose of a separate system of military justice or tribunal 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 dictate a sentence more severe than if committed in a purely civilian context in order to promote proper 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. As your counsel stated, sentencing is an individualized process.

[3] In determining sentence today, the court has 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. The court considered also the representations made by counsel and the case law provided to the court. The court also considered any direct and indirect consequences that the finding and sentence will have on you. When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender.

[4] In order to contribute to military discipline, the sentencing principles and objectives could be listed as:

Firstly, the protection of the public, and this includes the Canadian Forces;

secondly, the punishment and the denunciation of the unlawful conduct;

thirdly, the deterrence of the offender and other persons from committing similar offences;

fourthly, the separation of offenders from society, including from members of the Canadian Forces where necessary;

fifthly, the rehabilitation of offenders;

sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

eighthly, an offender should not be deprived of liberty if less restrictive punishment or a combination of punishments may be appropriate in the circumstances; and

finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[5] The court concludes that the sentence in this case should emphasize the need to protect the public, the denunciation of the conduct and general deterrence. The sentence must also allow for rehabilitation considering the young age of the offender. In arriving at what the court considers to be a fair and appropriate sentence, the court has

considered the following factors to aggravate the sentence:

1. The objective gravity of this offence. A person found guilty of the offence of stealing under s. 114 of the *National Defence Act* is at least liable to imprisonment for a term not exceeding seven years or less punishment. It is a serious offence.
2. The particular context of this case as revealed by the statement of circumstances. On Remembrance Day 2005, you went to a local nightclub in Regina wearing your CF tunic—or in the afternoon. After discussing with the manager, he agreed to welcome 50 or 60 of your friends and colleagues for a Remembrance Day party later that night. Later that evening a large group of people arrived at the bar, many of them wearing their military uniform including yourself, including you. During that evening, you stole the caddy cash belonging to one of the waitress who immediately had a suspicion on you, noting that you had left the premises without a young lady with whom you had been noticed during that evening. The amount stolen was approximately \$890. Most of the money was returned the next day by using false and deceiving information to ensure that you could not be identified as the thief. In addition, the owner of the nightclub was given false assurance that the culprit had been already disciplined and fined by the Canadian Forces, as well as being removed from an operational deployment in Afghanistan. The remaining amount was returned a few days later with an unsigned letter of apology put in an envelope.
3. In committing this offence, you have breached the trust of Mr Fagan, the bar manager, who welcomed you and your friends for a Remembrance Day party. The agreement was made in order to support you and your military friends, but mostly in recognition for what veterans have done in the past. You not only betrayed Mr Fagan's trust, you betrayed your brothers in arms and the memory of all those veterans that Mr Fagan honoured and respected, in allowing you and your friends to celebrate their day in his premises.
4. Your actions have brought discredit upon the Canadian Forces, your unit and your fellow soldiers, especially in light of the evidence clearly showing that the thief was wearing a Canadian Forces uniform when the offence was committed.

[6] The court considers the following factors to mitigate the sentence:

1. The fact that you have acknowledged full responsibility for your actions by pleading guilty before the court. Based on the statement of circumstances, I accept the comment made by your counsel that this offence was committed showing a profound lack of judgement and maturity. I also acknowledge that your application to ascertain your s. 11 b) rights under the *Charter* does not diminish this acceptance of responsibility by pleading guilty before the court today.
2. The fact that restitution has been made. Although it could be argued that this restitution was deceitful, the incident as a whole demonstrates clearly that all your actions were not sophisticated, to the contrary, they were a series of foolish actions and reactions.
3. The fact that you have now gained a very good employment with a public corporation and have significant opportunities of employment within that corporation.
4. The absence of a criminal record and conduct sheet.
5. The lengthy delay to bring this matter to trial.

For all these reasons, the court accepts the joint submission made by counsel which is adequate in the circumstances to achieve the need for discipline, ensure the protection of the public and it does not or would not bring the administration of justice into disrepute.

[7] I hope that you have gained enough in maturity to avoid problems in the future. In the meantime, you will now have a conduct sheet for which you will require a pardon under the *Criminal Records Act*. Therefore, this court sentences you to reduction in rank to the rank of private.

COLONEL M. DUTIL, C.M.J.

Counsel:

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