

Citation: *R. v. Ex-Sergeant Desmeules*, 2007 CM 4009

Docket: 2006111

**DISCIPLINARY COURT MARTIAL
5 AREA SUPPORT GROUP
SIGNAL SQUADRON
AREA SUPPORT UNIT VALCARTIER
COURCELETTE, QUEBEC**

Date: 27 March 2007

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**FORMER SERGEANT J.C.A. DESMEULES
(Offender)**

SENTENCE

(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Former Sergeant Desmeules, having accepted and recorded your plea of guilty to the second charge under paragraph 187(b) of the *National Defence Act*, I now find you guilty of this charge. The first charge was withdrawn by the prosecution before your guilty plea. Since you did not plead not guilty to one or more other charges, I must now decide on your sentence. Counsel for the prosecution and your counsel made a joint submission to me on sentencing and recommended that I impose a severe reprimand with a fine of \$7,000. The judge has the ultimate responsibility for deciding on an appropriate sentence and is entitled to reject the joint submission made by counsel. However, I ought to accept the joint submission of counsel unless it is found by me to be inappropriate or unreasonable, contrary to public order, or likely to bring the administration of justice into disrepute.

[2] To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offence as revealed in the statement of circumstances, which you accepted as true. I also considered the documentary evidence tendered and the submissions by counsel. I analysed these various

factors in the light of the objectives and principles applicable in sentencing. As indicated in subsection (2) of section 112.48 of The Queen's Regulations and Orders for the Canadian Forces, I also took into consideration any indirect consequence of the finding or of the sentence and the need to impose a sentence commensurate with the seriousness of the offence and the previous character of the offender.

[3] It is recognized that, in order to contribute to one of the key objectives of military discipline, the sentencing objectives and principles are the following:

firstly, the protection of the public, and the public in this case includes the Canadian Forces;

secondly, the punishment and denunciation of the offender;

thirdly, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences;

fourthly, the separation of the offender from society;

fifthly, the rehabilitation and reform of the offender;

sixthly, the proportionality of the sentence to the seriousness of the offences and the degree of responsibility of the offender;

seventhly, consistency in sentencing;

eighthly, the imposition of a custodial sentence, either detention or imprisonment, only once the court is satisfied that this is in fact the sentence of last resort applicable in the circumstances of the case; and

finally, the court shall consider any relevant aggravating or mitigating circumstances in the circumstances relating to the offence and the personal situation of the offender.

In this case, the protection of the public will be ensured by a sentence that primarily focuses on collective deterrence. It is also important to emphasize the punishment of the offender and the denunciation of the offender's act.

[4] Therefore, in considering what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I consider the following as aggravating factors:

The nature of the offence and the punishment provided for by Parliament. You are guilty of an act prejudicial to good order and discipline and punishable by dismissal with disgrace from Her Majesty's service. Objectively, this is a very serious offence.

Second, I consider aggravating the fact that you abused your situation of authority by using the corporals for your own purposes during unit working hours.

Third, the fact that your abuse of authority was committed knowingly and deliberately for your personal gain and that you involved a subordinate supervisor in this swindle.

And, fourth, I consider as aggravating your age and your level of experience in the Canadian Forces.

[5] Concerning the mitigating factors, I note the following:

You admitted your guilt before the judge presiding over this proceeding. This is particularly important in the context of a disciplinary court martial. Not only has it been unnecessary to call witnesses but also the members of the court martial panel will not be required for a one- or a two-week trial. Therefore, your guilty plea in this context allows the state to save a significant amount of money and avoids disrupting the work schedule of panel members and witnesses.

The period between the commission of the offence and now, i.e., approximately 31 months, must be taken into consideration as a mitigating factor.

Finally, the fact that you do not have a conduct sheet or civilian record are factors in your favour.

[6] Former Sergeant Desmeules, please stand up. A fair and appropriate sentence in a case like this of abuse of trust and authority must reflect the seriousness of this kind of offence. Having carefully reviewed the joint submission, I am of the opinion that it adequately incorporates the sentencing principles and is the lightest possible sentence in the circumstances to ensure the protection of the public and the maintenance of discipline.

[7] Former Sergeant Demeules, I sentence you to a severe reprimand and a fine of \$7,000.

LIEUTENANT-COLONEL J-G PERRON, M.J.

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