Citation: *R. v. Major I.D. Sweet*, 2007 CM 4015

Docket: 2006108

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date: 29 May 2007

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

HER MAJESTY THE QUEEN
v.
MAJOR I.D. SWEET
(Offender)

SENTENCE
(Rendered Orally)

---

[1] Major Sweet, please stand up. Having accepted and recorded your pleas of guilty to charges number two and number three, the court now finds you guilty of these charges. You may sit down.

[2] The Statement of Circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of the offences. The documentary evidence presented by your counsel has also provided this court with evidence to assist it in the sentencing phase of this trial. In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of these offences, the mitigating circumstances raised by the evidence presented by your defence counsel, the aggravating circumstances raised by the prosecutor, and the representations by the prosecution and by your defence counsel, and also the applicable principles of sentencing.

[3] Those principles which are common to both military courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public, of course, includes the Canadian Forces. The primary principles are the principles of deterrence; that includes specific deterrence in the sense of deterrent effect on you personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar

offences. The principles also include the principle of denunciation of the conduct and, last but not least, the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[4] The court is required in imposing a sentence to follow the directions set out in QR&O article 112.48, which obliges it in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[5] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. Those purposes are to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community. The court has also given consideration to the fact that sentences of offenders who commit similar offenses in similar circumstances should not be disproportionately different. The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline.

[6] We must remember that the ultimate aim of sentencing at court martial is the restoration of discipline in the offender and in military society. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences such as injury and death. Discipline can be described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training, and practice, it is an internal quality that is one of the fundamental prerequisites to operational efficiency in any armed force.

[7] The Court Martial Appeal Court decision in *R. v. L.P.*, (1998) CMAC-418 stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest. The prosecution and your defence counsel have presented this court with a joint submission on sentencing. They recommend I impose a sentence of a severe reprimand and a fine in the amount of $4,000. The prosecution has provided this court with two cases in support of this joint submission.

[8] You have pled guilty to a charge of abusing a subordinate and to a charge of drunkenness. More specifically, you have admitted that you were drunk on 14 June 2005 and that, at that time, you did grab Lieutenant Hanna by the throat when you were at the officers' mess.

[9] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. I consider the following to be aggravating factors: Your rank and years in the Canadian Forces and the resulting expectations that you were to be an example as a senior officer of the conduct one expects from officers in the Canadian Forces.

[10] I consider the following to be mitigating factors: The absence of a conduct sheet makes you a first-time offender; you have pled guilty and demonstrate that you recognize the errors you committed and take full responsibility for them. In itself, your present conduct in accepting fully the consequences of your acts is an example for other officers and non-commissioned members. You are also ending a 25-year career on a sad note. Although you are the architect of this sad note, it does appear from my review of the documentation provided by your defence counsel this is an error in judgement. This error in judgement is partly caused by your intoxication at the time, but it appears to be out of character for you. I hope I am not under the wrong impression.

[11] Although I have been informed that you are in the process of being released from the Canadian Forces, I have not been informed of the specific release item or the reason for the release, therefore, I have not put much weight on this information in determining the sentence.

[12] The court believes this sentence must focus primarily on general deterrence and denunciation since you have demonstrated there is no need for specific deterrence in this case and you do appear to have been rehabilitated by your own approach to this incident.

[13] Having reviewed the jurisprudence presented by counsel, and keeping in mind the direction given by the Court Martial Appeal Court in *R. v. L.P.*, I concur with the joint submission that an appropriate sentence in this matter is a severe reprimand and a fine in the amount of $4,000. The fine shall be paid in monthly installments of $200 commencing on the first day of June 2007. If you are released from the Canadian Forces the entire amount then outstanding shall become due and payable the day before your effective date of release from the Canadian Forces.

[14] The proceedings in the matter of Major Sweet are closed.

Lieutenant-Colonel J -G Perron, M.J.

Counsel:

Major S.A. MacLeod, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen
Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services
Counsel for Major Sweet