Citation: *R. v. Captain (ret'd) R.M. Taylor*, 2007 CM 4012

Docket: 200674

STANDING COURT MARTIAL
CANADA
ONTARIO
LIEUTENANT-COLONEL GEORGE TAYLOR DENISON III ARMOURY
TORONTO

Date: 3 May 2007

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

HER MAJESTY THE QUEEN
v.
CAPTAIN (ret'd) R.M. TAYLOR
(Offender)

Sentence
(Rendered Orally)

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[1] Captain (ret'd) Taylor, having accepted and recorded your plea of guilty to charge No. 2, the court now finds you guilty of charge No. 2 and directs the proceedings under charge No. 1 be stayed.

[2] The court must now impose a fit and just sentence. 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 this offence. Your testimony and the documentary evidence presented by your counsel have also provided this court with evidence to assist it in the sentencing phase of this trial.

[3] In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of this offence, the mitigating circumstances raised by the evidence presented by your defence counsel, the aggravating circumstances raised by the prosecutor, and the representations made by the prosecution and by your defence counsel, and also the applicable principles of sentencing.

[4] Those principles, which are common to both 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 these factors.

[5] The court is also required, in imposing a sentence, to follow the directions set out in subsection 112.48(2) of the *Queen's Regulations and Orders*, 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. The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. The purposes and principles enunciated at these sections serve 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 given consideration to the fact that sentences of offenders who commit similar offences 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 also remember that the ultimate aim of sentencing 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 devastating personal consequences such as injury and death. Discipline is 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 of any armed forces.

[7] The prosecution suggests that the principles of general deterrence and denunciation are the factors that apply in this case. The prosecution has provided this court with six cases in support of its submission of a sentence of a severe reprimand and a fine in the amount of $5,000. Your defence counsel proposes a sentence of a reprimand and a fine in the amount of $500. Your counsel suggests that this fine should be paid over a four-month period, and he has also provided this court with four cases to support his recommendation.

[8] You have pled guilty to a charge laid under subsection 117(*f*) of the *National Defence Act*. More specifically, you have admitted that you did submit to Master Seaman Turcotte a letter dated 4 June 2003 purported to be from the Family Responsibility Office, knowing this letter was false with the intent of depriving Marilyn Louise Taylor. Your intention was to deprive Ms Taylor of the spousal support payment of $1,000 per month that you had already been ordered to pay to her by the family court.

[9] Although most of your PERs since 1996 consistently indicate that you are an intelligent and hardworking officer, your actions on 1 September 2004 clearly indicate the opposite. I would surmise that most officers who know you would likely say that this was out of character for you. You explained that you were frantically looking for some additional source of money because you had just been advised that you were not eligible to receive IPR payments you had expected based on your knowledge of the CF policy concerning IPR.

[10] You had entered into a contract to buy a house in June 2003 with a closing date of 1 September 2004. You had signed this purchase agreement on the assumption the money you would make during your six-month tour in Afghanistan in 2003/2004 and the money you would receive from the IPR would be sufficient to cover the expenses associated with the purchase of this new house. You understood that you could apply and receive these IPR benefits two years before your date of release from the Canadian Forces. You applied for these benefits on 10 August 2004 and confirmed that you would take your release from the Canadian Forces at the end of your terms of service, the effective date being 26 June 2006. You testified that, to your great surprise, the policy had changed during your deployment in Afghanistan and you learned in August 2004 that you were now not entitled to receive these benefits which would have totalled approximately ten to twelve thousand dollars in your case. You, therefore, had to quickly find another source for this amount.

[11] Although your PERs reflect an officer who is very efficient at planning operations or exercises, I find that you caused yourself a great amount of grief and stress because you chose to gamble. You took risks when buying a house by anchoring your future budgets or capabilities to afford a house on amounts of money that were not already in your pocket, but were only a potential source until the time you would actually be in possession of that money. An officer of your intellect and your experience in the Canadian Forces should have known that policies do change and that policies may change.

[12] I also found Captain Bossi's testimony to be revealing in this specific area of your capability to adequately plan your expenditures in accordance with your financial means. He described how you wanted him to co-sign a loan for a new car, but that he ultimately convinced you that buying a used car at a much more affordable price

was the better solution considering the financial predicament you were experiencing at the time. He even bought the car and you made payments to him.

[13] Simply put, you were the main cause of the financial difficulties that generated so much stress in your life during the months of August and September 2004. Instead of speaking to Ms Marilyn Louise Taylor about the $1,000 payments, you foolishly chose to submit the false letter in an attempt to have access to this money to compensate for the missing funds. It is quite obvious that Ms Taylor would have noticed that she was missing this money and would have alerted the competent authorities soonest. This was not the most subtle plan to commit a fraud. It is clear in this present case that your intent was to deprive Ms Taylor and not to deprive the Canadian Forces. The fact that she did agree in November 2005, some 14 months after the offence, to forego these payments does not excuse your behaviour or attenuate its consequences.

[14] The Supreme Court of Canada touched on the concept of discipline within the armed forces at paragraph 60 of its 1992 seminal decision *R. v. Généreux*, [1992] 1 S.C.R. 259. The court stated that:

> The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather than the ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military....

[15] 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: As an officer with some 18 years experience at the time of the offence you knew clearly the importance of acting ethically and in accordance with the laws of our country; you had been deployed with the Canadian task force into Kabul to help this country, help Afghanistan, regain its standing as a country where the rule of law is respected; you are also expected to provide junior members with the proper example.

[16] Master Seaman Turcotte accepted the letter as being genuine because an officer was presenting it to her. Now, the trust that this non-commissioned member holds for officers is surely somewhat shaken by your actions. Trust is a critical element

in the success of military operations. This trust does not only exist during operations, but it must be present in every aspect of our life as members of the Canadian Forces. Your actions on 1 September 2004 chipped away at that trust. Your act, although not very subtle or efficient, was premeditated, you prepared a false letter by using a previous letter from the Family Responsibility Office.

[17] Although you have a conduct sheet, the criminal offence it contains is unrelated to this offence and it occurred in 1996. Therefore, although you are not, strictly speaking, a first-time offender, the existence of the conduct sheet is considered an aggravating factor that bears very little weight.

[18] I will now address the mitigating factors of this case. You cooperated completely with the military police investigation and fully admitted your actions to them. A guilty plea is an admission of guilt and can be considered as a show of remorse. Your testimony leaves me with the opinion that your perception of reality is somewhat filtered by a strong impression of yourself. Throughout your testimony you point mostly to outside sources as causes for your stress, such as the partner you had at the time of the offence and during the purchase of the house, the change in CF policy, the change in the CF culture that has occurred since you first joined the CF, and the chain of command that, as you said, " was piling on." You indicated that you had no friends on whom you could rely, yet, Captain Bossi appears to have been a true and honest friend who invested considerable efforts in trying to help you in your time of need. When asked about the advice you could give to peers, you did not say do not do what I did or offered other ways of preventing such actions, but you indicated that they should seek the assistance of the medical system to shield them from the chain of command.

[19] In the present case it appears this guilty plea was offered at the end of a plea negotiation and not at an early stage, at least I have no indication it was offered at an early stage of the process. Therefore, this plea of guilty is considered a mitigating factor, but is somewhat tempered by the testimony of the offender who does not seem to be the type of person who is willing to take full responsibility for his actions and their inherent consequences. Except for the 2005/2006 PER which covered the period following this offence, your PERs denote an officer who had consistently contributed to the success of his unit or his headquarters, and has consistently been assessed as having potential to progress to a higher rank. This in itself provides you with some equity and is to be considered as a mitigating factor.

[20] You have pled guilty to, and have been found guilty of, one charge laid under subsection 117(*f*) of the *National Defence Act*. The Code of Service Discipline contains 58 distinctive military offences that may be found at sections 73 to 129 of the *National Defence Act*. A review of the maximum sentences—correction, maximum punishments prescribed by these different offences indicates that for 25 of the 58

offences the punishment of imprisonment for less than two years is the maximum punishment that may be imposed by the court. The maximum punishment for all of the other offences are punishments that are higher in the scale of punishment than the punishment of imprisonment for less than two years. Section 117 is one of these 25 offences. Therefore, based on the maximum punishment a court martial may impose for this offence, the offence to which you have pled guilty is objectively one of the less serious offences found in the Code of Service Discipline.

[21] I now wish to turn my attention to the period of time it is has taken to bring this matter to trial. This offence is a relatively straightforward offence when one considers you admitted your wrongdoing to the military police in the days following the offence, and that the military police report was completed on 21 October 2004. The court was not offered any explanations as to why it took until 30 August 2005 to charge you with this offence, or why you were not advised of your rights under article 109.04 of the Queen's Regulations and Orders before 27 February 2006. Although the evidence indicates that Director of Military Prosecutions preferred the charges to the Court Martial Administrator on 20 June 2006, it does not indicate the date the referral authority would have referred the charges to Director of Military Prosecutions. Section 162 of the *National Defence Act* stipulates that:

> Charges under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit....

The Supreme Court of Canada in the *Généreux* decision emphasised that the military must be in a position to enforce internal discipline effectively and efficiently to maintain the armed forces in a state of readiness. Breaches of military discipline must be dealt with speedily.

[22] I fail to see how section 162 of the *National Defence Act* and the generally accepted proposition that breaches of the Code of Service Discipline must be dealt with speedily were adhered to in the present case. How can we foster and maintain a proper respect for the military justice system and the required level of discipline within our armed forces if the key actors in the military justice system do not devote the necessary efforts to ensure that this system functions as efficiently as possible? It is their duty to do so, and the right of any member charged under the Code of Service Discipline. Likewise, a military member who has been investigated by the military police should not have to wait one year before finally being made aware of how his chain of command has decided to deal with a disciplinary matter that has been hanging over his or her head for such a long period of time.

[23] I find the unexplained period of time, between the time of the offence and the time Captain (ret'd) Taylor was charged, as well as the time it took to inform him of his Queen's Regulations and Orders article 109.04 rights, to be excessive. I consider these time periods, totalling approximately 18 months, as strong mitigating

factors in the present case. Although the prosecutor, in her address on sentencing, did indicate that she had taken into consideration the delay in brining this charge to trial, she did not expand further and explain what impact the delay on her initial sentence recommendation. I fail to see how her suggested sentence has been tempered by this consideration.

[24] I will now review the case law provided to the court by the prosecution and by defence counsel. I do not subscribe to the prosecution's position regarding this case law. In every case presented by the prosecution, except for the *Lévesque* matter, the victim of the fraudulent action was the Canadian Forces. The Court Martial Appeal Court's comments at paragraph 22 of the *St Jean* decision deals specifically with the breach of trust of an employee towards his or her employer in a case of fraud against the employer.

[25] None of these cases contains fact situations that are similar to the case at hand. Sergeant St Jean pled guilty to the much more serious fraud charge under the *Criminal Code of Canada*, although he was charged under section 130 of the *National Defence Act*. Colonel Vanier was found guilty of six charges laid under section 130 of the *National Defence Act* and of being awol. Commander Legaarden was found guilty of defrauding the Canadian Forces of US$2,400. Corporal Lévesque pled guilty to charges of attempted fraud and mischief under the *Criminal Code*, again charged under section 130 of the *National Defence Act,* and of submitting a false claim for compensation of $35,615.42 to an insurer with intent to defraud. This charge was laid under subsection 117(*f*) of the *National Defence Act*. Master Warrant Officer Aldridge defrauded the CF over a seventeen-month period for a value of $4,875. He pled guilty to one charge under 117(*f*) of the *National Defence Act*. Major Paradis also defrauded the Canadian Forces of an amount of $2,273.99 and pled guilty to charges laid under subsection 117(*f*) and 125(*a*) of the *National Defence Act*. Only the *Lévesque* case could be said to bear a certain resemblance to the present case since the intended victim of the deceitful practice is not the CF, but another entity; an insurance company in the *Lévesque* matter and Ms Taylor in our case, and the accused stood to benefit from the deceitful practice. The cases presented by the defence also do not contain fact situations that are similar to the case at hand. All three cases involved loss of money to the CF by the deceitful practice of the offender.

[26] In *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, Chief Justice Lamer, as he then was, wrote at paragraph 82:

> As a closing note to this discussion, it is important to stress that neither retribution nor denunciation alone provides an exhaustive justification for the imposition of criminal sanctions. Rather, in our system of justice, normative and utilitarian considerations operate in conjunction with one another to provide a coherent justification for criminal punishment. As Gonthier J. emphasized in *Goltz*, ... at page [495]: the goals of the penal section are both "broad and varied". Accordingly, the meaning of retribution must be considered in conjunction with the other legitimate objectives of

> sentencing, which include (but are not limited to) deterrence, denunciation, rehabilitation and the protection of society. Indeed, it is difficult to perfectly separate these interrelated principles. And as La Forest J. emphasized in *Lyons*, the relative weight and importance of these multiple factors will frequently vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the morale blameworthiness of the offender.

More recently, in *R. v. Angelillo*, [2006] SCJ No. 55, the Supreme Court of Canada stated at paragraph 22:

> The principles of sentencing are now codified in ss. 718 to 718.2 *Cr. C.* These provisions confirm that sentencing is an individualized process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender ...

[27] Captain (ret'd) Taylor, please stand up. I agree that general deterrence and denunciation are the main factors to be considered in this case. Having taken into account the specific facts surrounding the commission of this offence, and the specific circumstances of the offender, as well as having considered the guidance found in the Supreme Court of Canada decisions and the case law as presented by counsel, I have determined that the minimum necessary sentence to maintain discipline for this type of offence committed by this type of offender would be a reprimand and a fine in the amount of $1,500 had there not been such an unexplained and thus unacceptable lengthy delay in bringing this charge to trial. Accordingly, I consider that in this specific case this delay warrants that the amount of the fine be reduced by $500. Captain (ret'd) Taylor, I sentence you to a reprimand and a fine in the amount of $1,000. The fine shall be paid no later than 1 June 2007.

[28] The proceedings of this court martial concerning Captain (ret'd) Taylor are terminated. You may sit down.

Lieutenant-Colonel J.-G. Perron, MJ

Counsel:

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