

Citation: *R v Corporal Priemus*, 2006cm2013

Docket: 200640

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE PETAWAWA**

Date: 13 June 2006

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL J. PRIEMUS
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Priemus, having accepted and recorded your pleas of guilty to charges No. 2, No. 4, and No. 6, being three charges of an act to the prejudice of good order and discipline, the court now finds you guilty of charges 2, 4, and 6. The proceedings on the alternative charges, No. 1, No. 3, and No. 5 are hereby stayed.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have, as well, considered the facts of the case as disclosed by the evidence heard, and the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is

dealing with, both the aggravating circumstances that may call for a more severe punishment, and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour.

[5] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[6] As I stated when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and may be further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to impose.

[7] The facts of the offences are set out in the Agreed Statement of Facts, Exhibit 3. In brief, on three occasions, between 26 May 2004 and 7 August 2004, while travelling to Canadian Forces Station Alert, or while in Alert, the offender engaged in unwanted touching of three female members of the Canadian Forces. The touching was of a sexual nature, involving, in one case, a kiss on the lips; in another case, an attempted kiss on the lips; and in the third instance, putting his hand on the buttocks and vaginal area, over the clothing, of the other member as she resumed a seat beside the offender. I am satisfied that the conduct of the offender amounts to sexual harassment on all three occasions, and that this behaviour was prejudicial to good order and to discipline.

[8] The prosecution submits that a fit sentence in this case is a severe reprimand and fine in the amount of \$1700. Defence counsel, on behalf of Corporal Priemus, recommends a reprimand and joins the prosecution in suggesting a fine, but in the amount of \$1500. In my view, the respective positions of counsel do not amount to a joint submission as that term is understood in the authorities, such as the judgement of the Court Martial Appeal Court in *R. v. Castillo*, 2003CMAC6.

[9] Counsel have referred to the aggravating and mitigating factors the court should consider in this case. This was not an isolated act, but occurred on three occasions over a period of some months while the offender and the three complainants were at, or on their way to, an isolated post. The victims are fellow members of the Canadian Forces who have earned, and are entitled to, the respect of the offender. I will repeat what I said in the case of *Cpl Griffith*, in Edmonton on 3 May 2005, in a somewhat similar case involving two charges of conduct to the prejudice of good order and discipline; that is, sexual harassment:

... but the court must also be concerned with general deterrence. Members of the Canadian Forces and especially women members who are much more frequently the [victims] of this kind of behaviour, must have the assurance that their dignity is respected by fellow members.

[10] There are certain mitigating factors with respect to the offences in this case. They do not appear to involve the offender taking advantage of a position of higher rank or authority than the complainants. The unwanted contact was brief and was not repeated in respect of any of the three complainants. Against this, I must consider the effects of this behaviour upon the victims as described in the Agreed Statement of Facts.

[11] I agree with both counsel that these offences should be regarded as amongst the less serious of these kinds of cases that come before this court. There are also mitigating circumstances that relate to the offender, himself: He has pleaded guilty to these offences, thereby dispensing with necessity of hearing evidence from the victims; he has been a productive soldier in his trade as a cook since his enrolment in April of 1987; he is married and supporting two young children.

[12] I have considered, as well, that as a result of severe physical injuries suffered in a fall since the commission of the offences, and the other medical problems that were referred to in the evidence of Dr Crouzat, the offender will shortly be released from the Canadian Forces on medical grounds. His prospects of civilian employment are limited, to some degree, by his medical condition. Significantly, he has suffered from alcoholism for some time and was intoxicated at the time he committed each of the offences in question. I agree with defence counsel that his state of intoxication at the time does not excuse his behaviour, but his subsequent attempts to deal with his

alcoholism appear to me to be having some success, and this is a factor the court considers in its assessment of the importance of specific deterrence of this offender.

[13] Considering all the circumstances, both of the offences and of the offender, I am satisfied that a fit sentence is as follows: Stand up, Corporal Priemus.

[14] You are sentenced to a reprimand and a fine in the amount of \$1,000 to be paid forthwith.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Lieutenant-Commander G.W. Thomson, Regional Military Prosecutions Central
Counsel for Her Majesty The Queen
Major S.E. Turner, Directorate of Defence Counsel Services
Counsel for Corporal Priemus