



COURT MARTIAL

Citation: *R. v. Pratte*, 2011 CM 4001

Date: 20110111

Docket: 201051

Standing Court Martial

Academy of Valcartier Garrison
Quebec, Canada

Between:

Her Majesty the Queen

- and -

Ex-Private S. Pratte, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Rendered orally)

[1] Ex-Private Pratte, having accepted and recorded your plea of guilty to the 1st, 3rd and 4th charges, I now find you guilty of these three charges of absence without leave. You have also requested, pursuant to section 194 of the *National Defence Act*, that I take into consideration for the purposes of the sentence another service offence similar in character to the offences of which you have been found guilty. In this case, the offence is one of absence without leave from Building 314 of Valcartier Garrison on February 25, 2010, from 7:30 to 11:00 am. I will take this absence without leave into consideration for the purposes of the sentence. Counsel for the prosecution and your counsel presented me with a joint sentencing submission and recommended imposing a severe reprimand with a fine of \$1,000, payable in 10 certified cheques of \$100 each. The final decision in determining an appropriate sentence lies with the judge, who has the right to dismiss counsel's joint submission. However, I must accept the joint submission of counsel unless it is found to be inadequate, unreasonable or contrary to public order or would bring the administration of justice into disrepute.

[2] 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:

first, the protection of the public, and the public includes the Canadian Forces;

second, the punishment and denunciation of the offender;

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

fourth, the separation of the offender from society, including from members of the Canadian Forces;

fifth, the rehabilitation and reform of the offender;

sixth, the proportionality and seriousness of the offences and the degree of responsibility of the offender;

seventh, consistency in sentencing;

eighth, 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 factors in the circumstances relating to the offence and the personal situation of the offender.

[3] 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 have acknowledged to be true. I also considered the evidence that was filed, the case law and the submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable in sentencing.

[4] You have pleaded guilty to having been absent without leave on three occasions. On January 12, 2010, you were absent from the place of your duty at the 1st Battalion, Royal 22nd Regiment, for a period of 6 hours and 26 minutes. On May 8, 2010, you were absent from the place of your duty, again at the 1st Battalion, Royal 22nd Regiment, for a period of approximately 6 hours. Finally, on April 20, 2010, you were absent for a medical appointment. The statement of circumstances indicates that you did not inform your superiors that you were required to go to a police station with your counsel on January 12, 2010, to deal with certain problems. There is nothing in the statement of circumstances or the evidence before this court to explain your other absences without leave. Your absences without leave and other problems seem to have been the grounds for your release in July 2010 under item 5(f), unsuitable for further service.

[6] Having summarized the main facts of this case, I will now concentrate on sentencing. Therefore, in considering what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow:

The nature of the offence and the punishment provided for by Parliament. The maximum sentence is imprisonment for less than two years. As such, this is not an offence I would describe as being objectively of the most serious kind. I say this because the maximum penalty is not among the most serious sentences provided for by the *Code of Service Discipline*. I consider this a neutral factor rather than an aggravating factor.

You have a conduct sheet listing five offences of absence without leave preceding the charges before the court and two offences following the charges before the court. I may take into consideration only the offences preceding those before this court. These offences are therefore an aggravating factor. Your conduct sheet also suggests that you have a serious problem with personal discipline.

You have admitted your guilt. An admission of guilt, usually, shows certain remorse. Moreover, your plea saves the State large amounts of money and eliminates the need to call upon more witnesses. You indicated your intention to plead guilty at the outset of these disciplinary proceedings. This is therefore a mitigating factor.

You are currently enrolled in a training program to become a mechanic. The course should begin soon. It appears, therefore, that you are trying to improve your circumstances and become a productive member of society. This is also a mitigating factor.

Your capacity to pay a fine is limited. You have been receiving employment insurance benefits since your release. Your net monthly income is approximately \$1580, with approximately \$100 remaining after you have paid your monthly expenses and debts.

[7] Having closely examined the parties' joint submission, I am of the opinion that, given the particular facts of this case, it properly incorporates the sentencing principles and that the choice of sentence is the lightest possible sentence to ensure the protection of the public and the maintenance of discipline in the circumstances of this case.

FOR THESE REASONS, THE COURT:

[8] **FINDS** the accused guilty with respect to the 1st, 3rd and 4th charges.

[9] **CONFIRMS** that the court has taken into consideration the absence without leave of February 25, 2010, for the purposes of the sentence.

[10] **SENTENCES** Ex-Private Pratte to a severe reprimand and a fine of \$1,000. This fine shall be payable in 10 instalments of \$100, in the form of certified cheques dated the first day of each month from February to November 2011.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Captain H. Bernatchez, Directorate of Defence Counsel Services
Counsel for Offender, Ex-Private Pratte