



COURT MARTIAL

Citation: *R. v. Lotfa*, 2010 CM 4012

Date: 20101118

Docket: 201054

Standing Court Martial

Régiment de Maisonneuve
Montréal, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Private S. Lotfa, Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Rendered orally)

[1] Private Lotfa, please stand up. Having accepted and recorded your admission of guilt in respect of the only charge before this Court, I now find you guilty of this charge. You may be seated.

[2] The prosecution and your defence counsel have submitted a joint sentencing submission and recommend imposing a reprimand and a \$500 fine. The final decision in sentence determination lies with the judge, who has the right to dismiss counsels' joint submission. However, I must accept the joint submission unless it is found to be inadequate or unreasonable, contrary to public order or would bring the administration of justice into disrepute.

[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:

First, the protection of the public, which 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.

[4] 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 analysed these various factors in light of the objectives and principles applicable in sentencing.

[5] You have pleaded guilty to having knowingly made a false answer to a question set out in a document in relation to your enrolment in the Canadian Forces contrary to section 122 of the *National Defence Act*. On January 24, 2007, at your selection interview at the Canadian Forces Recruiting Centre in Montreal, you answered “No” to the following question: “Do you currently have any outstanding obligations to the legal system; such as a court appearance, jury duty, witness for a trial, unpaid traffic tickets or fines?” This question was in the Standardized Interview Guide. You answered “No”, knowing that you were to appear before the Court of Québec, Criminal and Penal Division, in La Tuque on February 12, 2007, to face charges brought against you on November 26, 2006.

[6] You were enrolled on March 9, 2007. On October 11, 2009, you were arrested for failing to appear before the court on February 12, 2007, and in September 2010, you were found guilty of driving under the influence of alcohol; you were fined \$600 and your driver’s licence was revoked for a year. If you had answered the questions honestly during your enrolment interview, your enrolment would have been delayed by two years following your conviction, according to policies issued by the Canadian Forces Recruiting Group.

[7] 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 penalty is imprisonment for less than two years. As such, this is not an offence I would objectively describe as being of the most serious kind. I say this because this maximum penalty is not among the most serious sentences provided for by the *Criminal Code* of Canada; to the contrary, it is among the least severe. I do not consider this to be an aggravating factor.

You have a conduct sheet; however the offence under section 129 of the *National Defence Act* occurred in 2010. Although I do not consider your conduct sheet to be an aggravating factor, your conduct sheet and the letter from your commanding officer indicate that you have a serious self-discipline problem and that you have not mastered the notion of honesty. This often happens with people who are unable to assume their responsibilities.

You have admitted your guilt. An admission of guilt is usually a sign of some remorse and is therefore considered to be a mitigating factor. Moreover, this plea allows the state to save large sums of money in addition to making it unnecessary to call many witnesses.

[8] Private Lotfa, please stand up. Because of your lie, you obtained a financial benefit, your employment in the Canadian Forces. Your initial three years' service end on March 8, 2011, and your commanding officer does not intend to recommend that you be re-engaged since you are an administrative burden on your unit. It appears therefore that you will soon lose your source of income and the privilege of serving for the Canadian Forces.

[9] Your service for the Canadian Forces gave you an opportunity to improve your life both personally and financially. Unfortunately, you failed to use the tools you were given to reach these goals. It seems that your days with the Canadian Forces are numbered. I hope, for your sake, that you will begin to realize that one has to assume one's responsibilities, accept one's mistakes and face up to the consequences of one's actions instead of trying to avoid them. It's the only way you'll be able to succeed in life.

[10] 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.

[11] Private Lotfa, please stand up. I sentence you to a reprimand and a fine of \$500. This fine shall be paid by a first instalment of \$200 on December 1, 2010, another instalment of \$200 on January 1, 2011, and an instalment of \$100 on February 1, 2011. You may be seated.

Counsel

Major St-Amant, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services
Defence counsel for Private S. Lotfa