



## COURT MARTIAL

**Citation:** *R v Khan*, 2013 CM 3020

**Date:** 20130828

**Docket:** 201341

Standing Court Martial

The Lieutenant-Colonel George Taylor Denison III Armoury  
Toronto, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal O. Khan, Offender**

**Before:** Lieutenant-Colonel L.-V. d'Auteuil, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal Khan, having accepted and recorded a plea of guilty in respect of the first charge and only charge on the charge sheet, the court now finds you guilty of this charge.

[2] It is now my duty as the military judge, who is presiding at this Standing Court Martial, to determine the sentence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct or, in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish in a trusting and reliable manner successful missions. It also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] As the Supreme Court of Canada recognized in *Généreux* (see *R v Généreux* [1992] 1 SCR 259 at 293):

... To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

It emphasizes that in the particular context of military justice in the same decision:

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.

However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[5] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- a. to protect the public, which includes the Canadian Forces;
- b. to denounce unlawful conduct;
- c. to deter the offender and other persons from committing the same offence;
- d. to separate offenders from society where necessary; and
- e. to rehabilitate and reform offenders.

[6] When imposing a sentence, the military court must also take into consideration the following principles:

- a. the sentence must be proportionate to the gravity of the offence;
- b. the sentence must be proportionate to the responsibility and previous character of the offender;
- c. the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- d. an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention

only as a last resort as it was established by the Court Martial Appeal Court and in the Supreme Court of Canada decisions; and

- e. lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[7] I came to the conclusion that in the particular circumstances of this case sentencing should place the focus on the objectives of denunciation and general deterrence.

[8] Here the court is dealing with a military offence about disobedience to a lawful command.

[9] During the April, May 2012 time frame, Corporal Khan had a number of medical employment limitations and had numerous medical appointments to attend. At that time he was with the 2 Military Police Regiment in the Regular Force.

[10] Corporal Khan was employed on Exercise READY WATCHDOG, held at Canadian Forces Base Borden. On 27 April and 4 May 2012, Captain Collings instructed Corporal Khan that he was to be driven by his unit to all his medical appointments considering that he was taking some medication and they had some concerns about him driving a car at that time, but he was not forbidden of driving anything.

[11] On 7 May 2012, Master Warrant Officer Ebel instructed Corporal Khan to notify him immediately of all his medical appointments and that transport would be provided for him to attend during the exercise. On 15 May 2012, Corporal Khan departed the location of Exercise READY WATCHDOG, Blackdown Park, CFB Borden and drove himself to a medical appointment in Toronto contrary to the order received. Corporal Khan had not previously informed, as instructed, his chain of command of his appointment.

[12] Orders are fundamental to any armed force and this type of offence involves Canadian Forces members' ethical obligations such as responsibility, so for a non-commissioned member, as it is for an officer, being reliable at all times and responsible is more than essential for the accomplishment of any task or mission in the Armed Forces, whatever is the function or role we have to perform, especially in those circumstances on exercise.

[13] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

- a. first, the court considers as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 83 of the *National Defence Act*, which is punishable by imprisonment for life or to less punishment;

- b. secondly, the subjective seriousness of the offence;
  - i. your experience and rank at the time should have told you better on that aspect and no matter what were your motivations for acting as you did, you clearly received instructions for some specific reasons and despite knowing how important it is to obey orders, you then decided on your own to drive and go to your medical appointment. In that context, your experience and rank should be considered as an aggravating factor; and
  - ii. also your function as a military police must be considered as an aggravating factor. Being a person allowed to enforce law, you're in a position to know that for most of the soldiers in the Canadian Forces how important it is to respect the law.

[14] Now, there are also mitigating factors that I considered:

- a. first, there's your guilty plea. Through the facts presented to this court, the court must consider your guilty plea as a clear, genuine sign of remorse and that you are very sincere in your pursuit to staying a valued asset to this society. And it also disclosed the fact that you are taking full responsibility for what you did;
- b. also I have to consider that there was no consequence whatsoever from your actions, so it ended up that there's no evidence that during the exercise it had any impact, so it's a mitigating factor too;
- c. there's the absence of any annotation on your conduct sheet in relation to any offence or similar offence;
- d. your career. My understanding from the evidence put before this court is that you have a good career so far as military police in the military police trade and that you were appreciated by your supervisor for the commitment and professionalism you demonstrated;
- e. there's the fact that you had to face this court martial and I'm sure it already had some deterring effect on you, but also on others; and
- f. as suggested there's some kind of delay in this matter to be brought to this court and I have also to consider this as a mitigating factor.

[15] As mentioned by your counsel, it is true that the context and circumstances of this case bring me to think that this offence is at the less serious end of the scale of punishment or as mentioned by Judge Lamont in *R v MacDonald*, 2012 CM 2005, at paragraph 10, he said:

... I consider this offence to be at the lower end of the range of seriousness.

[16] If I also accept the suggestion made by counsel, you have to know that this punishment will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. The reality is that your conviction will carry out a consequence that is often overlooked, which is that you will now have a criminal record and it is not insignificant.

[17] I am pretty sure that you have a good understanding of what you are doing today and what you did. I am pretty sure that you will keep it on your mind as an experience of life and you will use it. Considering your age, you still have a lot to do in this life and in this society so I don't have any fear that you won't be back before any court again. It was special circumstances; it is an isolated incident. I'm inclined to say that it was out of character considering what was said by your superiors and different reports and you will be able to turn the page after this court martial.

[18] Then I will accept this joint submission made by counsel to sentence you to a fine in the amount of \$500, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[19] **FINDS** you guilty of the first and only charge on the charge sheet for an offence under section 83 of the *National Defence Act*.

[20] **SENTENCES** you to a fine in the amount of \$500, payable in five monthly instalments of \$100 starting on 1 September 2013.

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**Counsel:**

Lieutenant-Colonel K.A. Lindstein, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Major S.L. Collins, Directorate of Defence Counsel Services  
Counsel for Corporal O. Khan