Citation: *R. v. Captain I.D. Thornton,* 2007 CM 4028

Docket: 200723

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date: 11 October 2007

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

HER MAJESTY THE QUEEN
v.
CAPTAIN I.D. THORNTON
(Offender)

SENTENCE
(Rendered orally)

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[1] Captain Thornton, having accepted and recorded your plea of guilty to charges No. 1, No. 5, No. 6, No. 10, and No. 11, the court now finds you guilty of these charges. More specifically, you have pled guilty to three charges of defrauding the University of Western Ontario and two charges of having committed an act to the prejudice of good order and discipline.

[2] 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 these offences. You defrauded the University of Western Ontario on two occasions in 2001 and 2002 of the amounts of $5,000 and $7,000 respectively. And you attempted on a third occasion in 2003 to defraud the university of the amount of $8,500. You also pled guilty twice to having accepted a payment contrary to paragraph 29(a) of CFAO 9-63.

[3] The principles of sentencing, 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.

[4] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[5] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada.*

[6] The court is also required, in imposing a sentence, to follow the directions set out in QR&O article 112.48, 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.

[7] The court has also 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. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[8] The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of $2,000. Your defence counsel has recommended that this fine be paid over a 12-month period. The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[9] The prosecutor suggests that the principle of general deterrence is the most important sentencing principle in this case. The prosecutor asserts that specific deterrence is not an issue today. Your defence counsel disagrees with this position and asserts that general deterrence has been accomplished by the serious financial and career consequences of your unlawful acts. The prosecution and defence counsel have jointly submitted a book of authorities.

[10] I will first address the aggravating factors of this case.

[11] The amounts that were defrauded were significant. There is also a repetition of these frauds over a three-year period. Although you were an officer at the time of the offences, I do not consider this factor as a serious aggravating factor since you were only in your first years in the Canadian Forces and had only completed your

basic officer course, and as such you were still a student at the time of the offences. Having said this, I hope that you now understand that you are an officer in the Canadian Forces and as such you are expected to respect the law and to promote the welfare, efficiency, and good discipline of all subordinates. One can only do that by providing the proper example.

MITIGATION

[12] I will now deal with the evidence in mitigation of sentence. You are a first-time offender. Your plea of guilty is usually considered a tangible demonstration of the offender's remorse for his or her actions. Canadian jurisprudence generally considers an early plea of guilty and cooperation with the police as tangible signs that the offender feels remorse for his or her actions, and that he or she takes responsibility for his or her illegal actions and the harm done as a consequence of these actions.

[13] Therefore, cooperation with the police and an early plea of guilty will usually be considered as mitigating factors. Although the doctrine might be divided on this topic, this approach is generally not seen as a contradiction of the right to silence and of the right to have the Crown prove beyond a reasonable doubt the charges laid against the accused, but is seen as a means for the courts to impose a more lenient sentence because the plea of guilty usually means that witnesses do not have to testify and that it greatly reduces the costs associated with the judicial proceeding. It is also usually interpreted to mean that the accused wants to take responsibility for his or her unlawful actions.

[14] There is no evidence before me that you would have cooperated with the police investigation, other than being present for an interview on 6 July 2004. Also, although your plea of guilty has alleviated the prosecution's burden significantly, it cannot be described as an early plea of guilty since your intention to plead guilty appears to have been made known in the past few days or week after this court was provided with *Charter* applications by your defence counsel.

[15] As is your right, you chose not to testify during these proceedings and you chose to convey to the court through your counsel and through Exhibit 6, the agreed statement of facts, your regret and remorse for your actions as well as the explanations for your actions. Although the court would probably have put more weight to such explanations and statements of remorse had they come directly from your mouth, this court does, nonetheless, consider your plea of guilty as a mitigating factor.

[16] You have made full restitution, plus 6 per cent interest to the University of Western Ontario, although I note this was as a result of a hearing under the Student Code of Conduct. One can easily surmise that this restitution was surely in your best interests if you wished to graduate from that school of dentistry or any other such

school. Nonetheless, restitution of the defrauded amounts was made and must be considered as a mitigating factor, although I must indicate that I would give it less weight than in a case where such restitution was made where the offender was not practically forced to make it or had to make it for obvious self-serving reasons. But let's be clear, I do take it as a mitigating factor.

[17] Exhibit 9 indicates that you made a $1,000 donation to the United Way Campaign on 9 October 2007. You paid this amount by cheque, and an amount of $500 is for a women's shelter and the other amount of $500 is for Dentists Without Borders. Your counsel commented that you made these contributions even while suffering from a serious debt load to show that you wish to help less fortunate people. I will accept this gesture made the day before your court martial at face value and as a form of mitigation, and hope for these organizations' sake that you will honour your cheque.

[18] I fully agree with defence counsel that this case is surely not a model of expeditious justice. To the contrary, it is an example of practically everything that should not happen within the military justice system. Again, we are dealing with a case where the Canadian Forces National Investigation Service took an exceptionally long period of time to investigate and ultimately lay charges. This pre-charge delay was exacerbated by the fact that the CFNIS investigator told you when you were interviewed in July 2004 that you would be charged in the near future. You were ultimately charged in July of 2006.

[19] On 2 August 2006 the commanding officer of 1 Dental Unit forwarded to DDCS, Director Defence Counsel Services, the 109.4 application of Captain Thornton. Defence counsel was assigned in May 2007. This delay of approximately 10 months in assigning a defence counsel to Captain Thornton is not a shining example of expeditious representation on the part of DDCS. Such a delay does not assist the accused nor does it assist the military justice system in running as smoothly as possible.

[20] Therefore, although the inaction on the part of the CFNIS did cause considerable pre-charge delay, I also find that the inaction of DDCS contributed to post-charge delay and that the fact that Captain Thornton did not have a defence counsel assigned to him when he made such a request probably contributed to his anxiety as he was awaiting to find out when he could expect to be tried by court martial.

[21] I understand that the career and financial consequences are a direct consequence of the offences before this court. Although these consequences will probably have a deterrent effect on those individuals who will become aware of such consequences, I do not believe that they can overtake or act as a substitute to the necessary deterrent effect that a disciplinary proceeding and its sentence have on the offender and on the military community.

[22] Your defence counsel has commented on your precarious financial situation because you have a debt of approximately $176,127. After much questioning from this court, some explanations were given concerning this debt, but they were a far cry from being precise. As such, I have given some weight to this evidence, but not as much as I could have given it had I been given a better explanation of this debt and of your present budget. I do note from Exhibit 5, your View Pay Statement, that you have a net pay of $7,459.71 per month.

[23] I have reviewed Exhibits 7, 8, 10, and 11. These two character reference letters, your two personnel evaluation reports, and your course report are quite positive in their descriptions of your performance and of your potential to progress in the Canadian Forces.

[24] Captain Thornton, please stand up. Fraud is a serious offence, a fraud of an amount exceeding $5,000 is an indictable offence and carries a maximum sentence of imprisonment for 14 years. You did not commit this fraud against the Canadian Forces, your employer, but against the University of Western Ontario. Fraud or theft from an employer is considered a much more serious offence than fraud against another entity or a person.

[25] You made very foolish decisions while at the University of Western Ontario because of your difficult financial situation at that time. It would appear that these foolish decisions amplified what was already a very difficult period in your life. I hope that you have learned from this and that you will push on and become a better person and a good officer in the Canadian Forces.

[26] After reviewing the case law presented by counsel, and the totality of the evidence, I agree with the joint submission of the prosecutor and of your defence counsel. I will not allow for a protracted payment period since I believe that this sentence will have a better effect on you and others if it is served immediately. The request for a protracted period of payment was not part of the joint submission.

[27] Captain Thornton, I sentence you to a severe reprimand and a fine in the amount of $2,000. The fine is to be paid immediately. March out Captain Thornton. The proceedings of this Standing Court Martial in respect of Captain Thornton are terminated.

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

Counsel:

Major S. MacLeod, Regional Military Prosecutions Central
Counsel for Her Majesty The Queen
Lieutenant-Commander P. Desbiens, Directorate of Defence Counsel Services
Counsel for Captain Thornton