

**Citation:** *R. v. Able Seaman S.A. Fenwick-Wilson*, 2007 CM 4023

**Docket:** 200673

**STANDING COURT MARTIAL  
CANADA  
BRITISH COLUMBIA  
CANADIAN FORCES BASE ESQUIMALT**

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**Date:** 1 August 2007

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

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**HER MAJESTY THE QUEEN**

**v.**

**LEADING SEAMAN S.A. FENWICK-WILSON  
(Offender)**

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**SENTENCE  
(Rendered orally)**

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[1] Able Seaman Fenwick-Wilson, having found you guilty of the charge, the court must now impose a fair and just sentence.

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

[3] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. The court is 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. 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 impose a sentence that should be the minimum necessary sentence to maintain discipline.

[4] The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is the quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have very devastating personal consequences. Although discipline is a quality that is developed and encouraged by the Canadian Forces through instruction, training, and practice, it is ultimately an internal quality that is one of the fundamental prerequisites that ensure the operational efficiency of any armed force.

[5] The prosecution has submitted that the court should stress the principle of general deterrence in its determination of the sentence in this case, and it suggests that a sentence of a fine in the amount of \$700 is appropriate. Your defence counsel has recommended that the court impose a fine in the amount of 200 to 300 dollars.

### **Aggravation**

[6] I will first deal with the aggravating factors. The prosecutor recommends that this sentence must be serious enough to deter others from committing this type of offence. The prosecutor has argued that the statistics concerning summary trials on the West Coast dealing with drug offences demonstrate that such offences have steadily increased in the last few years. The prosecutor has also provided the court with two cases from Standing Courts Martial pertaining to use of marijuana while the exact subject matter of the third case is relatively unknown.

[7] You, like any other member of the Canadian Forces, were fully aware of the Canadian Forces' strict policy on the use of illegal drugs. The use of these drugs is a serious breach of the Code of Service Discipline and cannot be tolerated in the Canadian Forces.

[8] The Canadian Forces perform a fundamental role in Canadian society; we are authorized to use violence to defend our country and to accomplish the tasks given to us by our democratically elected government. With such power and duty also come great responsibilities and obligations. The men and women who are ordered to place themselves in dangerous situations in Canada and abroad must be of sound mind and of sound body. We are trained to perform our duties and are expected to execute those duties to the best of our abilities. We must also trust our comrades-in-arms to be up to the task to ensure mission success and the security of our troops.

### **Mitigation**

[9] I will now deal with the evidence in mitigation of sentence. You cooperated immediately with the CFNIS investigator and admitted your use of marijuana. This offence did not occur on a defence establishment; you were not on duty; and it did not involve other CF members; you would have smoked marijuana only once; thus, we are dealing with a small amount. You are a first-time offender. You were 20 years old at the time of the offence.

[10] Petty Officer 2nd Class Mason, your immediate supervisor, has provided this court with a glowing description of your performance on ship. She described you as an exceptional member of her section and one who performs at a much higher level than your present pay grade. She described that you will have successfully completed the counselling and probation monitoring period that was initiated in July 2006 when the results of your last urine test will be received by the unit. She has also testified that your promotion to leading seaman has been delayed because of this counselling and probation monitoring period.

[11] Although your defence counsel has commented on your willingness to accept responsibility for your actions, I have not been presented with such evidence other than your evidence during the preliminary motion as to what your intentions would have been had you been tried by your commanding officer. While a plea of guilty is understood to represent the remorse of the offender and the tangible demonstration of the willingness to accept responsibility for his or her acts, notwithstanding the representations made by your counsel, this is not the case here. Therefore, I do not consider remorse or acknowledgement as a mitigating factor in the present case.

[12] I have already provided you with my conclusions of the fact that the CFNIS investigator had laid the charge after the limitation period for a possible summary trial had expired. I found this to be unexplained and unjustified. I have already described the effects such action, or inaction to be precise, can have on discipline and on the military justice system. Had the charge been laid in late 2005 and a summary trial been held before 1 January 2006 your case would have been one of the statistics presented by Chief Petty Officer 1st Class Cookson. The evidence during the preliminary proceeding indicated that this could have happened if the charge had been laid at the appropriate time. The statistics would thus have shown four summary trials related to drugs and not three for the fiscal year 2005/2006. I will not use the statistics presented by the prosecutor in the manner she proposed they be used. This offence occurred in early 2005 and should have been dealt with in late 2005. I do not find that the summary trial statistics are useful in this specific case because of its particular facts.

[13] Able Seaman Fenwick-Wilson, please stand up. While this offence is a serious breach of the Code of Service Discipline, your excellent work performance and

your soon to be successful completion of your counselling and probation monitoring period are worthy of notice.

[14] I now wish to turn my attention to the period of time it has taken to bring this matter to trial. This offence is relatively straightforward when one considers you admitted your wrongdoing to the CFNIS investigator. I consider this time period, totalling approximately 16 months, and especially the reason for this time period as a strong mitigating factor in the present case.

[15] Having taken into account the specific facts surrounding the commission of this offence and the specific circumstances of the offender, as well as having considered the guidance found in Canadian case law and the case law presented by counsel, I have determined that the minimum necessary sentence to maintain discipline for this type of offence committed by this offender would be a fine in the amount of \$500 had there not been such an unacceptable delay in bringing this charge to trial. Accordingly, I consider that in this specific case this delay warrants that the amount of the fine be reduced.

[16] Able Seaman Fenwick-Wilson, I sentence you to a fine in the amount of \$200 to be paid immediately.

[17] The proceedings of this Standing Court Martial in respect of Able Seaman Fenwick-Wilson are terminated.

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

Counsel:

Captain T. Bussey, Regional Military Prosecutions Western  
Counsel for Her Majesty the Queen  
Captain N. Weigelt, Directorate of Defence Counsel Services  
Counsel for Able Seaman Fenwick-Wilson