Citation: *R. v. ex- Corporal P.J. Prince*, 2007 CM 4020

Docket: 2006107

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE TRENTON

Date: 4 July 2007

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

HER MAJESTY THE QUEEN
v.
ex-CORPORAL P.J. PRINCE
(Offender)

SENTENCE
(Rendered orally)

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[1] Ex-Corporal Prince, having accepted and recorded your pleas of guilty to charges No. 1, No. 2, and No. 3, the court now finds you guilty of these charges.

[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.

[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, which 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 or 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.

[4] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. Those purposes are set out to denounce unlawful conduct, to deter the offender and other persons from committing offences, to

separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[5] The court is also required in imposing a sentence to follow the directions set out in QR&O 112.48 which obliges it in determining a sentence to take into account any indirect consequence 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 offender 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.

[6] The Court Martial Appeal Court decision in *R. v. L.P.*, (1998) CMAC-418, 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. The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of $2,000.

[7] 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 such as injury or death. 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.

[8] The Supreme Court of Canada touched on the concept of discipline within the armed forces at paragraph 60 of its 1992 decision in *R. v. Généreux*, [1992] 1 S.C.R. 259. The court stated that:

> The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. 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....

[9] The Supreme Court of Canada then quoted the comments from a previous Federal Court decision in *MacKay v. Rippon*, [1978] 1 F.C. 233. At page 235 of that decision the Federal Court had stated:

> Without a code of service discipline the armed forces could not discharge the function for which they were created. In all likelihood those who join the armed forces do so in time of war for motives of patriotism and in time of peace against the eventuality of war. To function efficiently as a force there must be prompt obedience to all lawful orders of superiors, concern, support for and concerted action with their comrades and a reverence for and a pride in the traditions of the service. All members embark upon rigours training to fit themselves physically and mentally for the fulfilment of the role they have chosen and paramount in that there must be rigid adherence to discipline.
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> Many offences which are punishable under civil law take on a much more serious connotation as a service offence and as such warrant more severe punishment. Examples of such are manifold such as theft from a comrade. In the service that is more reprehensible since it detracts from the essential esprit de corps, mutual respect, and trust in comrades and the exigencies of the barrack room life style. Again, for a citizen to strike another a blow is assault punishable as such but for a soldier to strike a superior officer is much more serious detracting from discipline and in some circumstances may amount to mutiny. The converse, that is for an officer to strike soldier is also a serious service offence. In civilian life it is the right of the citizen to refuse to work but for a soldier to do so is mutiny, a [more] serious offence, in some instances punishable by death under the previous *National Defence Act*. Similarly, a citizen may leave his employment at any time and the only liability he may incur is for breach of contract but for a soldier to do so is a serious offence of absence without leave and if he does not intend to return the offence is desertion.

I would include the possession of illegal drugs as another example of offences that must be dealt with more harshly in the military justice system than in the civil system.

Mitigation

[10] I will first deal with the evidence in mitigation. The prosecution has commented favourably on your willingness to accept responsibility for your actions. You cooperated immediately with the police and your early guilty plea reduced considerably the amount of work and expense required to prepare for a trial. These offences did not occur on a defence establishment and did not involve other CF members.

[11] Your plea of guilty is also a tangible reflection of your acceptance of responsibility for your actions. The evidence reveals that after your arrest you felt you had let your team down. Although your conduct sheet contains an entry for an absence without leave and for an act to the prejudice of good order and discipline on 6 June 2000, these entries are seven years old and have nothing to do with the present offences.

[12] The evidence concerning your attendance to what appears to be an addiction clinic reflects favourably on your efforts to deal with your possession of illegal drugs. Although the evidence does not tell me the exact quantity of marijuana you had in your possession at the time of these offences, it appears that we are dealing with a relatively small quantity. The court also takes into account the delay in bringing these charges to trial.

[13] Your commanding officer, Major Boucher, described the important role you played in the Canadian Forces Joint Nuclear Biological Chemical Defence Company and he considered you a good soldier who could be relied upon to complete his assigned tasks. You were a valued team member who was well liked and trusted by your fellow unit members. You were a founding member of this unit; as such it appeared that more responsibilities were placed on your shoulders. The incidents at the heart of these charges had some immediate consequences for you; you were transferred to the maintenance section of the unit, but you continued to provide your unit with excellent work. You were ultimately released under item 5(f) of article 15.01 of QR&O. You are now employed and appear to actively pursue a new career.

Aggravation

[14] Now, for the aggravating factors. The prosecutor recommends that this sentence must be serious enough to deter others from committing this type of offence, thus the principles of general deterrence and denunciation should be applied in the determination of the appropriate sentence. Rehabilitation is not to be considered as an important factor since the evidence suggests you have made efforts to rehabilitate yourself through the use of the available addiction counselling services provided by the Canadian Forces.

[15] Although you were a valued team member of your unit, the incidents at the heart of these charges had some immediate consequences for the unit. Major Boucher felt compelled to remove you from your position of recognisance operator because of the nature of the allegations. He needed someone in that position that he felt he could trust 100 per cent because of the highly specialized and critical role the unit plays in the defence of Canada. Major Boucher also had to ensure that the trust and the reputation of the unit with the agencies who relied upon his unit, such as the RCMP and JTF-2, would remain at the high level required to ensure mission success. He also had

to assuage doubts emanating from higher headquarters and other units and agencies concerning the use of illegal drugs within the unit.

[16] Possession of illegal drugs is a serious offence under the *Controlled Drugs and Substance Act*. Possession of an illegal drug is a hybrid offence. This means that in a civilian prosecution, should the prosecution opt to follow the more serious mode of prosecution in the case of marijuana, the maximum punishment a court could impose is five years less a day. Therefore, it is clear from this sentencing scheme that Parliament views the possession of marijuana as a serious offence and wishes to punish offenders accordingly and to deter individuals from committing such offences.

[17] You, like any other member of the Canadian Forces, were fully aware of the Canadian Forces' strict policy on the possession of illegal drugs. The possession of illegal drugs is a serious breach of the Code of Service Discipline. The possession of illegal drugs cannot be tolerated in the Canadian Forces. Their possession, which logically leads either to use or trafficking in such drugs, attacks the core values of our military society.

[18] Earlier, I quoted a passage from a Supreme Court of Canada decision pertaining to discipline and the role of the Canadian Forces. We 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 to ensure the security of our troops. Anyone with any operational experience in the Canadian Forces realizes that drugs are a direct threat to the operational efficiency of our forces and a threat to the security of our personnel and our equipment.

[19] You were a member of high readiness unit that has no equivalent in Canada. Much was expected of you and of its other members because of the critical role it plays in the protection of Canadians. By your actions, you have tarnished the reputation of your unit and the reputation of the CF. I hope you have learned from this experience. Ex-Corporal Prince, please stand up.

[20] You have made efforts to rehabilitate yourself. Your efforts to deal with your use of drugs, or possession of drugs at least, your good work performance, your lack of recent entries on your conduct sheet, and your guilty plea indicate that there is no need for specific deterrence in this matter. While these offences are serious breaches of the Code of Service Discipline, your actions and efforts in relation to these offences are worthy of favourable notice.

[21] The court believes this sentence must focus primarily on general deterrence and denunciation. Considering the strong mitigating circumstances of this case, and keeping in mind the direction given by the Court Martial Appeal Court in *R. v. L.P.,* I concur with the joint submission that the minimum necessary sentence to maintain discipline in this specific case is a severe reprimand and a fine in the amount of $2,000.

[22] The proceedings of this Standing Court Martial in respect of ex-Corporal Prince are terminated.

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

Counsel:

Major S. MacLeod, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen
Lieutenant-Commander J. McMunagle, Directorate of Defence Counsel Services
Counsel for ex-Corporal Prince