

**Citation:** *R. v. Master Corporal C. A. Matusheskie*, 2008 CM 3015

**Docket:** 200770

**STANDING COURT MARTIAL  
CANADA  
CFB PETAWAWA  
ONTARIO**

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**Date:** 2 April 2008

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**PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.**

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**HER MAJESTY THE QUEEN  
v.  
MASTER CORPORAL C. A. MATUSHESKIE  
(Offender)**

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**SENTENCE  
(Rendered orally)**

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[1] 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 Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily, and frequently punished more severely, than would be the case of a civilian engaged in a similar conduct. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances. The primary interest of a court martial is still the maintenance or restoration of discipline, which has been described as a willing and prompt obedience to lawful orders.

[2] In determining sentence, the court has considered the circumstances surrounding the commission of the offence as revealed by the evidence heard during the trial, and the applicable principles of sentencing, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code*, when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. The court also considered the representations made by counsel including the case law provided to the court and the documentation introduced.

[3] Master Corporal Matusheskie was found guilty of one charge under the *National Defence Act*. The charge relates to an offence punishable under section 83 of the

*National Defence Act* for disobeying an order given by a superior officer. When a court sentences an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender in order to contribute to one of the essential objectives of military discipline, that is the maintenance of a professional and disciplined armed force that is operational, effective, and efficient.

[4] The sentencing principles and objectives could be listed as: firstly, the protection of the public, and this, of course, includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender and any other persons from committing similar offences; fourthly, the rehabilitation of offenders; fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[5] In this case the protection of the public must be achieved by a sentence that will emphasize the principle of general deterrence, and, at a lower degree, the denunciation of Master Corporal Matusheskie's conduct. General deterrence means that the sentence imposed should deter not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[6] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. 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*, for disobeying a lawful command of a superior officer. This offence is punishable by imprisonment for life or less punishment; the high degree of responsibility and confidence that you hold as a weapons technician in the rank of master corporal; the fact that you were on duty, in uniform, at the time of the commission of the offence; the modification you made to weapons involved a high security risk for soldiers who were, very shortly after the incident, involved in combat; however, it is fair to say that no significant consequences resulted from your conduct; the fact that you totally disregarded the order given to you by your direct supervisor, and that you used the opportunity given to you by Warrant Officer Green to proceed with what you thought to be the right thing to do; the use of human and material resources from your unit without any authority in order to perform a task that your immediate supervisor ordered you to put on hold.

[7] The court considers that the following circumstances mitigate the sentence: the fact that you don't have a conduct sheet or criminal record related to similar offences; the facts and the circumstances of this case, including the fact that your act did not result, as I mentioned earlier, in any other regrettable consequences. So far, the court has no indication that it did have any permanent repercussions; your record of service in the Canadian Forces. It is clear from the documents introduced and the testimonies of

various witnesses in this trial that you are a very competent and knowledgeable weapons technician and master corporal. I hope that you will continue to deserve such reputation; the absence of any impact on discipline within the 3 RCR Maintenance Platoon or any other 3 RCR unit organization; your age and your career potential as a member of the Canadian Forces. Being 35 years old, you have many years ahead to contribute positively to society in general, as well as in the Canadian Forces; the fact that it is an isolated incident and that no such similar conduct occurred after the commission of the offence. Basically, it appears to the court that you don't have any problem to comply with orders in general.

[8] The court also considers that the fact that you had to face this court martial has already had some deterrent effect on you, but also on others. The court is satisfied that you will not appear before a court for a similar or any offence in the future. I am convinced that you are an excellent soldier and that you understand well the necessity to obey orders. You still have confidence of your chain of command in that matter, and I do not see the necessity for you to review the soldier's basic values and abilities.

[9] The appropriate range for an offence of this nature is from a severe reprimand or reprimand and a fine, down to a fine. The court reiterates that reprimands must be seen as a serious punishment in the military context. It is higher on the scale of punishments than a fine, whatever the amount of the fine. It reflects that there is some reason to have doubts about somebody's commitment at the time of the offence, and it reflects consideration given to the seriousness of the offence committed, but it also means that there is good hope for rehabilitation.

[10] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of this particular case. Master Corporal Matusheskie, stand up, please. This court sentences you to a reprimand and a fine of \$750. The fine is to be paid in monthly installments of \$250 each, commencing on 1st of May, 2008, and continuing for the following two months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

[11] The proceedings of this court martial in respect of Master Corporal Matusheskie are terminated.

LIEUTENANT-COLONEL L-V. D'AUTEUIL, M.J.

COUNSEL:

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