

Citation: *R. v. Corporal M.D. Robertson*, 2008 CM 3008

Docket: 2007-73

**STANDING COURT MARTIAL
CANADA
MANITOBA
17 WING WINNIPEG**

Date: 15 April 2008

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

HER MAJESTY THE QUEEN

v.

**CORPORAL M.D. ROBERTSON
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Robertson, having accepted and recorded a plea of guilty in respect of the second charge, the court finds you now guilty of this charge. The court having granted leave to the prosecutor to withdraw the first charge in accordance with subsections 165.12 (2) and (3) of the *National Defence Act* before the reading of the charge sheet, the first charge has not to be considered by this court because it is not before it anymore.

[2] The military justice system constitutes the ultimate mean 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 trusty and reliable manner, successful missions.

[3] As stated by a legal officer, Major Jean-Bruno Cloutier, in his thesis on the use of section 129 *NDA* offences, the military justice system, "has for purposes to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions for the success of the military mission." The military justice system 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] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to "impose a sentence commensurate with the gravity of the offences and the previous character of the offender," as stated at QR&O article 112.48 (2)(b). Here, in this case, the prosecutor and the counsel for the offender have made a joint submission on sentence. They have recommended that this court sentences you to a fine in the amount of \$600.

[5] Although this court is not bound by this joint recommendation, it is generally accepted, as mentioned by the Court Martial Appeal Court at paragraph 21 in its decision of *Private Taylor v. R.*, 2008 CMAC 1, quoting *R. v. Sinclair*, [2004] M.J. No. 144; 185 C.C.C. (3d) 569, that:

The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.

[6] The court has considered the joint submission in light of the relevant facts set out in the statement of circumstances and the admissions and their significance, and I have also considered the joint submission in light of the relevant sentencing principles, 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*. These principles are the following:

Firstly, the protection of the public, and the public includes the interests of the Canadian Forces;

Secondly, the punishment of the offender;

Thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences;

Fourthly, the reformation and rehabilitation of the offender;

Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; and

Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The court has also considered the representations made by counsel, including the case law provided to the court and the documentation introduced.

[7] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that would emphasize general deterrence. It is important to say that 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.

[8] As stated by Judge Létourneau at paragraph 22 of the Court Martial Appeal Court decision in *Private St-Jean and Her Majesty the Queen*, CMAC 429:

.... Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

It is important to say that some consideration must also be given to specific deterrence and rehabilitation in this case.

[9] Here, the court is dealing with an offence linked to the process of fraud, i.e., making a false entry in a document required for official purposes. It is a very serious offence. However, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

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

[11] The court considers as aggravating:

a. The objective seriousness of the offence. The offence you were charged with was laid in accordance with section 125(a) of the *National Defence Act* for wilfully making a false statement in a document. This offence is punishable by a maximum of three years of imprisonment or to less punishment;

b. The subjective seriousness of the offence. This kind of offence requires very often some sort of premeditation. For committing the offence for which you pleaded guilty today, it was necessary to do so. You decided conscientiously to claim a reimbursement for expenses you were not entitled to. In order to do so, you claimed a status that you knew that you did not have. You clearly lied to your supervisor and your chain of command despite the fact that you were warned about the

consequences of doing so. You demonstrated a clear lack of integrity and reliability;

c. From the time you were reimbursed by the Canadian Forces to the time you made restitution, you benefited from the amount you received; and

d. The fact that you have a conduct sheet. It disclosed that you have some disciplinary issues. However, it is fair to say that nothing in it refers to a matter similar to the one for which you are before this court martial today.

[12]
sentence:

The court considers that the following circumstances mitigate the

a. Through the facts presented to this court, the court also considers that your plea of guilty is a clear genuine sign of remorse, and that you are very sincere in your pursuit of staying a valid asset to the Canadian Forces and the Canadian community. It discloses the fact that you are taking full responsibility for what you did. Also, the court would not want to jeopardize your chances of success because rehabilitation is always a key element when sentencing a person;

b. The fact that you were emotionally lead by events that caused you to think that you should do everything in order to come back home while you were deployed in order to support your girlfriend. Even though it does not constitute an excuse for what you did, it does explain why you did not pay attention to the consequences of your act. The objective was noble, but the way to reach it was totally illegal and inappropriate;

c. The fact that it was not directly related to the performance of your job in theatre, and that you were not in a position of trust at the time of the incident;

d. Your record of service in the Canadian Forces, your age and your career potential as a member of the Canadian Forces. Being 26 years old, you have many years ahead to contribute positively to the society in general as well as in the Canadian Forces;

e. The restitution process you are in for reimbursing in full the Canadian Forces;

f. The fact that you have to face this court martial. It has had already some deterrent effects on you and also on others. The court is satisfied

that you will not appear before a court for a similar or any offence in the future; and

g. The matter for which you are here today involves ethical obligations like honesty and responsibility. It results in trust, which is an essential ingredient of any military task and mission. I am sure that you will learn a lesson from all this, and that you know, now, being transparent and truthful is essential to succeed in a military mission and in life in general.

[13] In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a fine to the amount of \$600, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[14] Corporal Robertson, please stand up. Therefore, the court sentences you to a fine to the amount of \$600. The fine is to be paid in monthly installments of \$100 each, commencing on 1st May, 2008 and continuing for the following five 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.

[15] The proceedings of this Standing Court Martial in respect of Corporal Robertson are terminated.

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

Counsel:

Major J.J. Samson, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen

Lieutenant-Commander S.C. Leonard, Directorate of Defence Counsel Services
Counsel for Corporal M.D. Robertson