Citation: *R. v. Corporal J. Springer*, 2008 CM 3027

Docket: 200827

STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN

Date: 20 November 2008

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

HER MAJESTY, THE QUEEN
v.
CORPORAL J. SPRINGER
(Offender)

SENTENCE
(Rendered Orally)

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[1] Corporal Springer, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the court finds you, now, guilty of that charge.

[2] The military justice system constitutes the ultimate means 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 to see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. As stated by a legal officer, Lieutenant-Colonel Jean-Bruno Clouthier, in his thesis on the use of section 129 *NDA* offences, the military justice system, and I quote:

> "Has for a purpose 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.

[3] 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, and I quote, "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).

[4] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence. They recommended that this court sentence you to a severe reprimand and a fine in the amount of $1,000. 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 the decision of *R. v. Sinclair* at paragraph 17, 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

[5] The court has considered the joint submission in light of the relevant facts set out in the Statement of Circumstances and the Agreed Statement of Facts, 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*.

[6] 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 mainly general deterrence. It is importance 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. It is also important to say that some consideration must be given to specific deterrence and rehabilitation in this case.

[8] Here, the court is dealing with an offence for possessing 1.4 grams of marihuana. It is a serious offence in a military context, as I will explain later, however, the court will impose what it considers to be the necessary minimum punishment in the circumstances. As a matter of context, it is important to remember that the Court Martial Appeal Court articulated clear reasons, to which I agree, to explain why the presence and use of drugs in a military environment must be treated as a very serious matter. In the decision of *MacEachern v. J.*, 4 CMAR 447, Judge Addy said:

> ... Because of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform and because of the team work [*sic*] required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern in and interest in seeing that no member of the forces use or distributes drugs and in ultimately eliminating their use, may be more pressing than that of civilian authorities....

[9] 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 130 of the *National Defence Act* for possessing 1.4 grams of marihuana contrary to subsection 4(1) of the *Controlled Drugs and Substances Act*. This offence is punishable by a fine not exceeding $1,000 or to imprisonment for a term not exceeding six months, or to both, or to less punishment because of the application of subsection 4(5) of the *Controlled Drugs and Substances Act*; and

- The fact that the drug was possessed in the proximity of a military establishment and in plain view of another military member.

The court considers that the following circumstances mitigate the sentence 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 disclosed the fact that your are taking full responsibility for what you did.

- Your record of service in the Canadian Forces. It appears from the evidence produced before this court that you have excellent skills and that you are performing very well in the tasks and responsibilities given to you to the extend that your commanding officer is ready to recommend your retention in the Canadian Forces despite what you did. Moreover, there is a clear indication that the chain of command has trust in you by supporting your appointment to the rank of master corporal.

- Your age and your career potential as a member of the Canadian Forces. Being 32 years old, you have many years ahead to contribute positively to the society in general, as well as in the Canadian Forces.

- The fact that you did not have a conduct sheet or criminal record related to similar offences.

- The fact that it is an isolated incident and that no such similar conduct occurred after the commission of the offence. Reality is that your conduct did not impact on the operation of your unit and that you continue to maintain and improve your level of performance despite the fact that disciplinary procedures were engaged against you.

- The fact that you had to face this court martial. It has had already some deterrent effect 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.

- The fact that you will be put under counseling and probation for a period up to one year. I recognize clearly that this administrative measure do not constitute a disciplinary sanction in itself, however, it has some specific deterrent effect on you and

may have limited general deterrent effect on others. It also reflects some kind of denunciation in relation to your conduct.

[10] In consequence, the court will accept the joint submission made by counsel to sentence you to a severe reprimand and a fine to the amount of $1,000 considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[11] Corporal Springer, therefore, the court sentences you to a severe reprimand and a fine to the amount of $1,000. The fine is to be paid in monthly installments of $250 each commencing on the 1st of December, 2008, and continuing for the following three 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.

Lieutenant-Colonel L-V. d'Auteuil, M.J.

COUNSEL

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

Lieutenant-Colonel D. Sweet, Directorate of Defence Counsel Services
Counsel for Corporal J. Springer