Citation: *R. v. Corporal J. Wells,* 2009 CM 1012

Docket: 200868

STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN

Date: 18 August 2009

PRESIDING: **COLONEL M. DUTIL, C.M.J.**

HER MAJESTY THE QUEEN
v.
CORPORAL J. WELLS
(Offender)

SENTENCE
(Rendered Orally)

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[1] Corporal Wells, having accepted and recorded your plea of guilty in respect to the first charge, the court finds you guilty of that first charge for an offence under section 129 of the *National Defence Act*.

[2] The prosecutor and defence counsel have made a joint submission on sentence. They recommended that this court sentence you to a severe reprimand and a fine in the amount of $2,000. The defence asks that the payment of the fine be made over installments of between 100 to 200 dollars per month.

[3] In support of their recommendation, I must say that counsel had provided this court with very extensive and most complete submissions, and therefore, that explains, in part, the reason why I was able to come back so rapidly this morning, and I thank both of them for their support for the court.

[4] It is true that the court is not bound by the joint recommendation on sentence, and counsel are also correct that it's generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest or if the recommendation would bring the administration of justice into disrepute. It's certainly not the case here as it was expressed by both counsel.

[5] It has long been recognized that the purpose of a separate system of military justice is to allow the Armed Forces to deal with matters that pertain directly to discipline, efficiency, and the morale of the military. Offences relating to the conduct of prejudice of good order and discipline dealing with harassment, be it of a sexual nature or not, have a direct impact on the discipline, efficiency, and morale of the military.

[6] That being said, the punishment that is imposed by a court, whether it's civilian court or military court, should always constitute the minimum necessary intervention that is adequate in the particular circumstances of a case, and this joint submission respects that principle as well.

[7] The objectives and the principles to be used in considering what should be an appropriate punishment or sentence relates to one or more of the following:

> The first one is the protection of the public and the public includes the interests of the Canadian Forces.
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> Another objective and principle or principles is denunciation of the conduct and of the offender.
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> It is also a principle that the sentence must ensure deterrence, not only on the offender, but also on others that might be tempted to commit similar offences.
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> A sentence must also assist in the reformation or the rehabilitation of the offender.
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> It is also generally accepted that the punishment imposed for an offence must be proportionate to the crime and to the offender.
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> The sentence also must respect the principle of parity, that is that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in mostly similar circumstances.
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> Finally, the court will also look at the relevant, aggravating and mitigating circumstances relating to the offender and to the offence.

[8] After looking at all those principles and objectives, the court must then consider the joint submission made by both counsel in order to assess if all those principles and objectives have been properly considered by counsel in making their submission. Therefore, I have considered that joint submission in light of those principles, objectives, and also, in light of the Statement of Circumstances that was provided to the court by the prosecutor.

[9] In a nutshell, the circumstances surrounding this case have to do with one isolated incident of inappropriate touching by a male on a female colleague that he knew previously. I agree with counsel that it is an isolated incident and there is no pattern. It was not on a repetitious period, so a simple incident, one touching which lasted a few seconds.

[10] I have also looked at the documentary evidence that was filed with the court. Not only the documents that related to the career and financial situation of Corporal Wells, but the extensive material provided by defence counsel in relation to his mental and physical condition, as well as all the reference letters and commendation that were provided by defence counsel, which definitely indicate that since the commission of the offence, he has preformed extremely well, but he has also behaved in the same fashion.

[11] I agree with Madame Prosecutor when she says that for these types of offences, general and specific deterrence are key factors, as well as, to some extent, the denunciation of the conduct and of the offender. And the court believes that, in this particular case, general deterrence and denunciation of the conduct are the two most critical elements.

[12] I will quickly review or mention the elements or the factors that I consider to be aggravating in this case:

> The first one is the objective seriousness of the offence. When someone looks at s. 129(1) of the *National Defence Act*, that provides for a maximum punishment of dismissal with disgrace from Her Majesty's service, it is objectively a very serious offence.
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> It is also a very serious offence when the conduct to the prejudice of good order and discipline relates to harassment and to the harassment policy in the Canadian Forces. When it takes place in the workplace, be it of a sexual nature or not, time and time again, courts martial have emphasized that these offences have a significant deleterious affect on unit morale and cohesion. So for those who do not understand, who have not caught the message yet, harassment does not belong in the workplace and it does not belong outside of the workplace, if it occurs with your colleagues. The Canadian Forces must be and remain a free harassment environment. This is why general deterrence and denunciations are critical for these types of offences. As I said, it affects trust and the morale of a unit.
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> I've also considered to be an aggravating factor in this case, the fact that the accused had a conduct sheet. Although the offences are not similar in

nature, it certainly is not the first encounter with the justice system, and therefore, I must take that into consideration.

[13] There are significant mitigating factors in this case as well:

The first one is the plea of guilty of the accused. I think in these circumstances, it highlights the fact that Corporal Wells has a genuine remorse for his conduct and it has to be put in context. Sometimes a person comes to court, pleads guilty, but besides that plea, there is nothing to capture that remorse. Sometimes the person pleads guilty because there is overwhelming evidence, so basically it's an easy case for the prosecution. And when I say that here I consider the plea as a genuine sign of remorse, the post-offence conduct of Corporal Wells has been exemplary for a period of almost of two years. So this is the context in which I consider that plea of guilty as a genuine sign of remorse.

The fact that it is an isolated incident, which only took a few seconds, and basically the manner in which the harassment took place is not a mitigating factor in my opinion, it's a neutral factor. It provides context to the harassment, but it does not mitigate the sentence. What is a mitigating factor is that the conduct appears to be out of character and is isolated.

Another significant mitigating factor is the medical condition of the offender. There is abundant and clear evidence that Corporal Wells suffers from extremely severe anxiety disorders which will lead, ultimately, to his release from the Canadian Forces in short term.

The next mitigating factor deals with the conduct of the offender since the commission of the offence. Again, it has been exemplary and it mitigates significantly the sentence.

I also consider the long and distinguished service of Corporal Wells, around 24 years of service in the Canadian Forces, to be mitigating the sentence.

Finally, we cannot ignore as a mitigating factor the family situation and financial situation of the offender. He has a spouse and two dependant sons. Financially, he has to pay support payments. Those are taken into account in the context of the amount of the fine to be imposed.

[14] Based on the evidence before the court, I consider that Corporal Wells sincerely regrets his actions. I have paid very close attention to his behaviour during the proceedings and I think he is sincere in offering his plea of guilty this morning. On the other hand, this kind of offence, as I said, attacks the trust and the necessary respect that must exist between comrades and colleagues in the workplace.

[15] Harassment is the kind of behaviour that undermines the basics of military discipline, and it is highly prejudicial to morale, cohesion, and effectiveness of any unit. So in consequence, I have looked and I have assessed all the principles, the objectives and I have reviewed that in the context of the submissions made by counsel. I must say that I fully endorse their recommendation this morning and I have no hesitation to accept it fully.

[16] Therefore, Corporal Wells please stand-up, the court sentences you to the following punishments: a severe reprimand and a fine in the amount of $2,000 at a rate of 100 dollars per month. Should you be released from the Canadian Forces before the completion or the full payment of that fine, it will be payable—the remaining will be immediately payable the date of your release.

[18] The court martial proceedings, with regards to Corporal Wells, are terminated.

COLONEL M. DUTIL, C.M.J.

COUNSEL

Major S. MacLeod, Canadian Military Prosecution Service
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