

Citation: *R. v. Master Corporal S.A. Roach*, 2010cm3001

Docket: 200927

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE KINGSTON**

Date: 11 January 2010

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

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL S.A. ROACH
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Master Corporal Roach, please stand up. Master Corporal Roach, having accepted and recorded a plea of guilty in respect of the first and second charge on the charge sheet, the court finds you now guilty of both charges. Please be seated.

[2] It is now my duty as the military judge who is presiding at this Standing Court Martial to determine the sentence. 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, see the promotion of good conduct.

[3] It is through discipline that an armed force ensures that its members will accomplish, in a trusty and reliable manner, successful missions. It 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.

[5] 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:

"[I]mpose a sentence commensurate with the gravity of the offence and the previous character of the offender."

as stated at QR&O 112.48(2)(b).

[6] 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 to the amount of \$3,000. 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:

(2) 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.

[7] The court has considered the joint submission in light of the relevant facts set out in the Statement of Circumstances 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 the 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 and the documentation introduced.

[8] 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 on the principle of denunciation, specific, and 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 reason, in the same prohibited conduct.

[9] Here, the court is dealing with two specific military offences, one for ill-treating a person and the other one for destroying a good belonging to another person. Both offences involve Canadian Forces principles such as respect the dignity of all persons. The lack of respect for dignity of persons and goods belonging to others by Canadian Forces' members is a serious matter and may reflect on the trustworthy relationship and the reliability that must exist at all times among armed forces' members when performing any mission. 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 an appropriate sentence, the court has considered the following mitigating and aggravating factors.

[11] The court considers as aggravating:

The objective seriousness of the offences. The first offence you were charged with was laid in accordance with section 95 of the *National Defence Act* for ill-treating a person, who by reason of rank was subordinate to you; and the second offence you were charged with was laid in accordance with subsection 116(b) of the *National Defence Act* for destroying a good belonging to another person subject to the Code of Service Discipline. Both offences are punishable by imprisonment for a term for less than two years or to less punishment.

About the subjective seriousness of the offences, the court considered three things as aggravating factors. First, your rank and experience. At the time of the offences, you had some years of experience in the Canadian Forces, spent in various locations and conditions. Also, you were wearing the rank of master corporal for about a year, which means that you were seen by your peers as fulfilling a leadership position with a leadership role. You clearly knew that you could not act as you did, but you decided to put yourself in a position, despite your knowledge and experience, that made you do it.

Second, you did not show any respect for the person and the goods of Private Bolduc. Respect for the dignity, the physical and psychological integrity of people, is a fundamental value in the Canadian society that must be reflected at all times by Canadian Forces' members. Regrettably, you clearly failed on that issue, letting your emotions lead you another way on a defence establishment. Self-discipline is a key part of leadership, and people around you deserve better than that.

Finally, the existence of a conduct sheet disclosed that once in a while you need to be reminded by a tribunal that you shall not let your emotions take the lead for your decisions. Despite the fact that there is no similar offence as to the ones you have before this court, those entries on your conduct sheet must be considered.

[12] 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 you're taking full responsibility for what you did.

Your age and your career potential as a member of the Canadian Forces. Being 29 years old, you still have many years ahead to contribute positively to your unit and your trade. The reality is that your chain of command still has confidence in you. You were allowed, in 2009, to complete your PLQ course in order to confirm your appointment as a master corporal despite the incidents that led you to be before this court martial today.

The fact that your conduct did not have any permanent consequences on the complainant and did not impact on the operations of your unit. Because of the incidents, you were put apart from the complainant in your working environment and her. The unit and you seem, so far, to be satisfied by the way it is. I have no indication that career progression and unit operations were impacted by such thing. It is fortunate that it goes this way and I hope that you will continue to make it possible

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 martial for a similar or any offence in the future.

[13] Personal relationships between members in the Canadian Forces involve many aspects that require them to walk on a very thin line. It is also of a great concern for the chain of command because of the impact on operational effectiveness, on morale, and discipline of CF members. When a Canadian citizen enrolled himself or herself in the Canadian Forces, this person is submitted to more obligations than the average citizen in the Canadian society because of the nature of the commitment. Then, in this context, it becomes a day-to-day challenge to balance and reconcile properly personal issues with ethical principles such as serve Canada before self. These days, all sailors, soldiers and airmen in our country and abroad are facing this challenge in order to accomplish the mission, and they know that when they won't succeed anymore to reconcile properly those issues, it will be time for them to leave the CF because they don't want to jeopardize the accomplishment of the mission.

[14] I would suggest that you put some thoughts on that very specific issue in order for you to know to what extent you can respect and reconcile your own commitment as a member of the Canadian Forces because of your leadership rank and your own personal issues before something serious happens to you or to your peers because of you. As your chain of command, I am very confident that you have the capacity to succeed if you put the necessary effort. It is up to you to do so.

[15] 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 \$3,000, considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

[16] Master Corporal Roach, please stand up. Therefore, the court sentences you to a severe reprimand and a fine to the amount of \$3,000. The fine is to be paid in monthly installments of \$250 each commencing on 1 February 2010, and continuing for the following 11 months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, then the outstanding unpaid amount is due and payable the day prior to your release. In addition, considering the circumstances of the commission of the offences by the offender, the court considers that it is not in the interests of his safety and of any other person that a prohibition order be issued in accordance with section 147.1 of the *National Defence Act*. Please be seated.

[17] The proceedings of this Standing Court Martial in respect of Master Corporal Roach are terminated.

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

COUNSEL

Major A.T. Farris, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services
Counsel for Master Corporal S.A. Roach