



COURT MARTIAL

Citation: *R v Agnew*, 2012 CM 2003

Date: 20120305

Docket: 201211

Standing Court Martial

Canadian Forces Base North Bay
North Bay, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal C.J.S. Agnew, Offender

Before: Commander P. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Agnew, having accepted and recorded your plea of guilty to the second charge in the charge sheet; a charge of neglect to the prejudice of good order and discipline, the court finds you guilty in respect of the second charge.

[2] It now falls to me to determine and to pass a sentence upon you. And in so doing I have considered the principles of sentencing that apply in ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as described in the Statement of Circumstances, Exhibit 6, and the other materials submitted in the course of this hearing, as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentenc-

es imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that similar cases should be treated in similar ways. But the court also takes account of the many factors that distinguish the particular case that it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just and a peaceful and a safe and a law-abiding community. In the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated and general deterrence so that others will not be led to follow the example of the offender. Other goals, in the mind of the court, include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour. One or more of these objectives will inevitably predominate in crafting a sentence in an individual case, but the court does not lose sight of each of each of these goals. Each of them calls for the attention of the sentencing court, and a fit sentence should reflect a proper blending of these goals tailored to the circumstances of the particular case.

[5] As I told you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[6] In arriving at the sentence in this case I have considered the direct and indirect consequences for the offender of the finding of guilt and the sentence I am about to pronounce.

[7] The facts of this case are not complicated. While on duty at the airport in Rabat, Morocco, guarding the plane transporting the Prime Minister, in the early morning hours of the date alleged in the charge, the offender was charged with the responsibility of guarding the plane. It is not clear on the material before me whether he was assisted in that endeavour by others or whether he was on that particular duty by himself. In any event, when the new shift came aboard to take over the responsibilities they discovered that the offender was apparently asleep in the vehicle. He was awakened after about a minute of observation.

[8] On these facts counsel before me jointly recommend a sentence of a fine in the amount of \$500. The sentence to be pronounced, of course, is a matter for the court, but

where as in this case both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*, 2008, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[9] I am mindful of the circumstances of the offender; he enrolled in the Canadian Forces in 1985 and has served continuously since that time, rising to his present rank and position of master corporal. I have every reason to suppose that throughout his long career in the Canadian Forces he has discharged his duties with vigour and effectiveness. I have every reason to suppose that what happened on the date alleged in this offence is a single incident out of character for this offender. He has no record of previous incidents of a disciplinary nature that have been brought to my attention. He is a married man with responsibilities for dependants.

[10] I'm mindful also of the delay in this case from the time of the offence until it was first made the subject of charges in a record of disciplinary proceedings. I am asked by counsel to consider the delays in bringing this case to trial as a mitigating circumstance. I accept the position advanced by counsel, there is simply no reason on the material put before me as to why a charge of this simple nature should have taken many months before disciplinary proceedings were instituted

[11] Considering all the circumstances of the case, not only of the offence, but also of the offender, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest and I therefore accept the joint submission

FOR THESE REASONS, THE COURT:

[12] **FINDS** you guilty of the second charge, for an offence under section 129 of the *National Defence Act* and orders a stay of the first charge, for an offence under section 124 of the *National Defence Act*.

[13] **SENTENCES** you to a fine in the amount of \$500. The fine is to be paid in equal monthly instalments of \$100 each commencing on 1 April 2012 and continuing for the following four months.

Counsel:

Major R.D. Kerr, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major E. Thomas, Directorate of Defence Counsel Services
Counsel for Master Corporal C.J.S Agnew