

Citation: *R. v. ex-Corporal T.J. Bricker*, 2006 CM 63

Docket:S200663

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE EDMONTON**

Date:28 November 2006

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

**HER MAJESTY THE QUEEN
v.
EX-CORPORAL T.J. BRICKER
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Ex-corporal Bricker, having accepted and recorded a plea of guilty in respect of the first charge, the court finds you now guilty of this charge.

[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 than an armed forces ensures that its members will accomplish, in a trusty and reliable manner, successful missions and that is applicable even when this court is dealing with former members of the Canadian Forces who were subject to the Code of Service Discipline at the time of the commission of the offence.

[3] As stated by Major Jean-Bruno Cloutier in his thesis on the use of the section 129 of the *National Defence Act*, the military justice system, and I quote and translate: "has for purpose to control and influence the behaviors and ensure maintenance of discipline with the ultimate objective to create favorable conditions for the success of the military mission". The military justice system also ensure 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 goes also directly to the duty imposed to the court to impose a sentence commensurate with the gravity of the offence or 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 defence have made a joint submission on sentence. They have recommended that this court sentence you to a fine in the amount of \$400.

[5] Although this court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute.

[6] 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*. These principles are the following: firstly, the protection of the public and the public includes the interest 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; and fourthly, the reformation and rehabilitation of the offender. 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 denunciation 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 reasons, in the same prohibited conduct. Here, the court is dealing with an offence involving the unauthorized absence of ex-corporal Bricker to a Recce Squadron muster parade that lasted from 10 to 15 minutes. It is not a serious offence *per se* as defined in the *National Defence Act*. Additionally, it may be considered a minor offence if it falls in the parameters described at QR&O article 108.17(1). However, it is a purely military offence that goes to the heart of military discipline. Then, the court will still impose what it considers to be the necessary minimum punishment in the circumstances.

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

[9] The court considers as aggravating:

- a. Firstly, the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 90 of the *National Defence Act* for being absented without leave. This offence is punishable by an imprisonment for less than two years or to less punishment.
- b. Secondly, the subjective seriousness of the offence. The fact that you were an experienced soldier, well trained and at the rank of corporal put on you the additional burden to lead by example, which you did not at the time.

[10] The court considers that the following circumstances mitigate the sentence:

- a. Through the facts presented to this court, the court considers that your plea of guilty is a clear genuine sign of remorse and that you are very sincere in your pursuit of stay a valid asset to the Canadian community. The court would not want to jeopardize your chances of success because rehabilitation is always a key element when sentencing a person.
- b. The facts and the circumstances of this case, including your personal situation and your steps to find support in order to go through some personal challenges. The court encourages you to continue to do so.
- c. Your record of service in the Canadian Forces. Except for this incident that occurred after your return from Afghanistan during the summer of 2005, your service in the Canadian Forces was excellent.
- d. The fact that you did not have a conduct sheet or criminal record related to similar offences.
- e. Article 112.48(2)(a), QR&O, imposes to the court the duty to consider any indirect consequences of the sentence. According to counsel, most of the problems concerning your conduct in the CF were dealt with through administrative actions that finally

resulted in releasing you from the Canadian Forces in August 2006. Additionally, being out of the Canadian Forces, the court shall consider any impact that would result from the sentence imposed on you as the sole provider for your family.

- f. The delay to deal with this matter. The court does not want to blame anybody in this case, but the closest the disciplinary matter is dealt with, the more relevant and efficient is the punishment on the morale and the cohesion of the unit members. Additionally, military justice would have been probably more expeditious if some consideration would have been given to deal with this charge as a minor one. As one of the factor considered here, the time elapsed since the incident occurred makes it less relevant to give consideration to a stronger or higher punishment.

[11] Considering the factors and circumstances of this case, the court believes that the joint submission is not unreasonable.

[12] In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a fine in the amount of \$400 considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[13] Therefore, the court sentences you to a fine in the amount of \$400. The fine is to be paid in monthly installments of \$50 each commencing on 15 January 2007 and continuing for the following seven months.

[14] The proceedings of this standing court martial in respect of ex-corporal Bricker are terminated.

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

Counsel :

Major S.D. Richards, Regional Military Prosecutions (Atlantic)
Captain R.J. Henderson, Regional Military Prosecutions (Western)
Counsel for Her Majesty The Queen
Major L. D'Urbano, Director of Defence Counsel Services
Counsel for ex-Corporal Bricker