



## COURT MARTIAL

**Citation:** *R v MacDonald*, 2012 CM 2005

**Date:** 20120326

**Docket:** 201163

Standing Court Martial

Canadian Forces Base Trenton  
Trenton, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal K.R. MacDonald, Offender**

**Before:** Commander P. Lamont, M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Corporal MacDonald, having accepted and recorded your plea of guilty to the charge in the charge sheet, a charge of disobeying a lawful command of a superior officer contrary to section 83 of the *National Defence Act*, this court now finds you guilty of the charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I have considered the principles of sentencing that apply in the 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, as well as the other materials submitted in the course of this hearing, and, of course, 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 de-

gree of responsibility and character of the offender. The court is guided by the sentences 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. Nevertheless in imposing sentence the court takes account of the many factors that distinguish the particular case 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 of which, of course, the Canadian Forces is a part, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, 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 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 fit sentence in an individual case, yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect a proper blending of these goals tailored to the particular circumstances of the 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 findings of guilt and the sentence I am about to pronounce.

[7] The facts of this case are not complicated, at least with regard to the offence. On the date alleged, in the charge, the offender reported to his workplace, to a particular office, and then was summoned by his master warrant officer who yelled at him from down the hall to come into his office. The offender expressed a need to have someone accompany him into the office of the MWO and apparently when that wasn't going to happen he expressed an intention not to comply with the order. The MWO repeated the order and again the offender refused to comply and instead walked away.

[8] On these facts the counsel before me are agreed that a fit disposition would be by way of a fine. The prosecution seeks a fine of \$1,800, the defence submits that a fine of \$200 would be sufficient in the circumstances.

[9] Obedience of lawful orders is central to the military ethos. In the Canadian Forces where the habit of instant obedience is not apparent in a new recruit it is quickly inculcated by training, by precept, and by example. All members of the Canadian Forces are aware of its importance. Parliament has signalled the importance to be attached to the prompt obedience of orders by attaching the highest level of punishment, a maximum of life imprisonment to the failure to obey a lawful order. That, of course, is a maximum punishment.

[10] There are varying degrees of seriousness of the offence created by section 83 of the *National Defence Act* as Military Judge Carter recognized in the 2003 case of *Private Preece*. In the present case and in the absence of evidence as to the direct effects, if any, on the operations of his unit or otherwise I consider this offence to be at the lower end of the range of seriousness.

[11] The offender has 20 years of service in the Canadian Forces, having enrolled in 1987 with two periods of broken service. He has no record of previous infractions and is slated for release on medical grounds in the future. I accept the evidence of all the defence witnesses from which I conclude that the offender in addition to his physical employment limitations was suffering stress attributable to his particular workplace at the time of the offence. The stress in turn might have been due to unfounded suggestions that the offender was shirking his duties. The strong Personal Evaluation Reports in evidence before me do not support the suggestion that the offender was underperforming his duties, in fact they demonstrate both in the performance appraisals prior to the offence date and in the appraisal subsequent to the offence date that the offender was a conscientious soldier who performed his duties to a high standard and on many occasions worked beyond usual working hours to accomplish his tasks. In any event, the stress may explain his behaviour to some extent on the occasion in question, but as the offender acknowledged in the course of his testimony it does not excuse the failure to follow an order. His evidence on this point and his plea of guilty satisfy me that he regrets his failure and is most unlikely to repeat this offence. As his counsel stated, the offence is out of character.

[12] In my view the position of the prosecution that a message needs to be sent to others by the imposition of a fine in the amount of \$1,800 is undercut by the actions or more properly inaction of the unit authorities who did not proceed with a charge in this case for over four and one half months from the time of the offence. In all the circumstances both of the offence and of the offender I consider that a fine towards the lower end of the range is appropriate.

**FOR THESE REASONS, THE COURT:**

[13] **FINDS** you guilty of the charge, for an offence under section 83 of the *National Defence Act*.

[14] **SENTENCES** you to a fine in the amount of \$500. The fine is to be paid in equal monthly instalments of \$50 each commencing 1 May 2012 and continuing for the following nine months.

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**Counsel:**

Major J.E. Carrier, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major E. Thomas, Directorate of Defence Counsel Services  
Counsel for Corporal K.R. MacDonald