



COURT MARTIAL

Citation: *R v Fredenburg*, 2012 CM 2007

Date: 20120718

Docket: 201233

Standing Court Martial

The Lieutenant-Colonel George Taylor Denison III Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Colonel P.W. Fredenburg, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel Fredenburg, having accepted and recorded your plea of guilty to the charge in the charge sheet, a charge that you negligently made a false statement in a document signed by you that was required for official purposes, and having considered the alleged and admitted facts in this case, this court now finds you guilty of the first charge.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I 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, and the materials submitted during the course of this hearing into evidence, 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 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 like 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.

[5] 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.

[6] I as 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. 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 the offence are set out in Exhibit 6, the Statement of Circumstances. While posted to Ottawa, away from his family in Toronto, the offender carried on an extramarital affair with another member of the Canadian Forces. At her request, he signed a statutory declaration stating that the two of them had been living in a common-law relationship for a period of a year. The offender knew this to be a false statement at the time he made it because he did not consider the other member to be his spouse and neither held themselves out to the public as spouses. I am not aware of the reason or possibly reasons why the other member requested the offender to sign the statutory

declaration, but I am told and I accept that the offender did not benefit financially from signing the false declaration.

[8] On these facts, counsel before me, jointly recommend a sentence of a fine in the amount of \$2,500. The sentence to be pronounced is, of course, 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 CMAC 1, 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. Counsel before me have referred to the aggravating and mitigating circumstances in the present case. In particular, I note that the offender tendered at an early stage his plea of guilty to the charge, I accept this as a genuine demonstration of contrition and remorse for his conduct in creating the false document. I know that by virtue of his leadership position in the Canadian Forces for many years, the offender was fully aware at the time he signed this document of the use that would be made of it by members of the Canadian Forces or officials of the Department of National Defence for the better administration of the Canadian Forces as a whole. It is much to be regretted that an officer with his exemplary record of service to his country and to the Canadian Forces should have succumbed in a moment of weakness and committed the offence. I am mindful of his personal circumstances, at the time and presently. In particular, I note that the offence was committed some substantial time ago, almost four years. I am also mindful of the fact that at the time the document was signed, the offender had recently suffered the loss of his father, an individual who is described to me as a confidant of the offender at the time of the offence—around about the time of the offence. And I have read the performance appraisal reports for the offender. They are, as counsel says, stellar.

[9] In all the circumstances of this case, the circumstances both of the offence and 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:

[10] **SENTENCES** you to a fine in the amount of \$2,500. The fine is to be paid in equal monthly instalments of \$500 each commencing 15 August 2012 and continuing for the following four months. In the event you are released from the Canadian Forces, for any reason, before the fine is discharged in its entirety, the then outstanding unpaid balance is to be paid the day prior to your release.

Counsel:

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

Lieutenant-Commander B. Walden, Directorate of Defence Counsel Services
Counsel for Lieutenant-Colonel P.W. Fredenburg