



COURT MARTIAL

Citation: *R v Souka*, 2011 CM 2024

Date: 20111210

Docket: 201057

General Court Martial

Canadian Forces Base Winnipeg
Winnipeg, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Corporal D.J. Souka, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal Souka, you have been found guilty of two offences under the *National Defence Act*: one charge of assault contrary to section 266 of the *Criminal Code*, which is a service offence under section 130 of the *National Defence Act*; and in the second charge, a charge of drunkenness contrary to section 97 of the *National Defence Act*.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I consider the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I consider also the facts of the case as disclosed by the evidence heard by the court over the past week or so, as well as the materials put before me in the course of the sentencing 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 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 dealt with in similar ways. Nonetheless 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 sentence 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 absolutely indispensable 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] 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.

[7] 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.

[8] The facts of this case were described extensively in my address to the panel before they retired to consider their finding. This is a simple case. One night you had too much to drink in the mess and just outside the mess premises another member of the Canadian Forces was on the floor having apparently been bested in a fight and you kicked him once. It doesn't appear that he suffered any injury or ill effects as a result of the kick. Forthwith you did the right thing, you went back into the mess and you called the attention of others to the fact that there was someone outside that needed assistance.

[9] In this case counsel before me jointly recommend a sentence of a severe reprimand and a fine in the amount of \$2,000. 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.

[10] Counsel have referred to the aggravating and mitigating circumstances in this case. Of particular importance I note that the offender before me has 17 years unblemished service in the Canadian Forces. There is no conduct sheet. I have every reason to suppose that he is a valuable member of his unit and will continue to make a valuable contribution to the mission of the Canadian Forces.

[11] I am also mindful of the fact that these events took place almost two full years ago. I consider that the lapse of time to trial is a mitigating circumstance and has been properly reflected in the joint submission advanced by counsel. I am mindful, Corporal, of your personal circumstances, your family obligations continue. I am also mindful of the expression you made in the course of giving your evidence with respect to the kicking action and infer from that evidence, and more particularly from the way you gave that evidence, that you are remorseful for having administered that kick.

[12] Considering all the circumstances; that is, the circumstances of the offences, as well as the circumstances 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, therefore, I accept the joint submission.

FOR THESE REASONS, THE COURT:

[13] **SENTENCES** the offender, Corporal Souka, to a severe reprimand and a fine in the amount of \$2,000. The fine is to be paid in equal monthly instalments of \$200 each, commencing 1 January 2012 and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is due and payable the day prior to your release.

Counsel:

Lieutenant-Commander S.C. Leonard, Canadian Military Prosecution Services
Co-counsel for Her Majesty the Queen

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