

**Citation:** *R. v. ex-Private C.J. Thomas*, 2004CM64

**Docket:** S200464

**STANDING COURT MARTIAL  
CANADA  
MANITOBA  
SHILO**

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**Date:** 5 October 2004

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**PRESIDING: COMMANDER P.J. LAMONT, M.J.**

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**HER MAJESTY THE QUEEN  
v.  
EX-PRIVATE C.J. THOMAS  
(Accused)**

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**SENTENCE  
(Rendered orally)**

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[1] Mr Thomas, having accepted and recorded your plea of guilty to the second charge, the court now finds you guilty of the second charge and enters a stay of proceedings with respect to the first 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 7, the materials filed during the mitigation phase and 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, which includes, of course, the Canadian Forces, 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. 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 goals and objectives will inevitably predominate in arriving at a fit and just 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 and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[5] As I explained to you when you tendered your plea of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and is further limited to the jurisdiction that may be exercised by this court. 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 of the finding of guilt and the sentence I am about to impose.

[6] The offender has pleaded guilty to one charge of using provocative speech toward a person subject to the Code of Service Discipline that would tend to cause a quarrel.

[7] On the date alleged in the charge sheet, the offender was heard to utter the words "You want to dance" to then Private Fox, another member of his unit, in an apparent attempt to goad Private Fox into fighting. A physical altercation ensued in the course of which the offender suffered a very serious injury when he was stabbed in the lower back area with a service bayonet wielded by Private Fox. The wound required emergency treatment, surgery and almost two weeks of hospitalization.

[8] The offender joined the Canadian Forces as an Infantryman in November of 2000 and was released about one month after his hospitalization in November of

2003. His conduct sheet discloses four incidents of absence without leave for which he was fined and confined to barracks. The offender grew up on the Peguis First Nation. He is now age 22, engaged to be married, and looking after a very young child. He has limited financial means.

[9] In this case, both counsel submit that the appropriate sentence is one of a fine in the amount of \$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 great weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court, 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] Taking account of all the circumstances, both of the offence and of the offender, I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute and accordingly I accept the joint submission.

[11] Stand up, please, Mr Thomas. You are sentenced to a fine in the amount of \$500 to be paid in monthly installments of \$50 commencing December 1st, 2004 and continuing for the following nine months.

[12] The proceedings of this court martial in respect of ex-Private Thomas are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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Counsel for Her Majesty the Queen (Preliminary proceedings)  
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Counsel for ex-Private Thomas (Second preliminary proceeding and main trial)