Citation:*R. v. ex-Corporal J.L. Samson,*2004CM60

Docket:S200460

STANDING COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE GATINEAU

Date: 23 March 2004

PRESIDING: COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN
v.
EX-CORPORAL J.L. SAMSON
(Accused)

SENTENCE
(Rendered orally)

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[1] Ex-Corporal Samson, the court, having accepted and recorded your plea of guilty to the first charge on the charge sheet, now finds you guilty of that charge.

[2] Let me begin by thanking both counsel for their submissions, which were of assistance. In determining the appropriate sentence, the court has considered the limited information that it has received on the circumstances surrounding the commission of this offence, your background and your current circumstances, as well as the submissions of counsel and the principles of sentencing. The court must and does follow certain principles in determining what is an appropriate sentence, and these are principles that are applied not only in courts martial, but also in criminal trials in Canada. They have been expressed in many ways, but in essence they include: protection of the public; punishment of the offender; deterrence, both general and specific; and reformation and rehabilitation.

[3] The protection of the public encompasses both the public interest that is in the context of courts martial, the protection of the interests of the Canadian Forces, and the protection of individual members of the public, including Canadian Forces members. In the context of a court martial, the primary interest of the Canadian Forces is the maintenance or restoration of discipline, and that is applicable even when we are dealing with ex-members of the Canadian Forces. Discipline is a fundamental

requirement of any military force and is a prerequisite for operational efficiency. Discipline has been described as a willing and prompt obedience to lawful orders and it has to be kept in mind that lawful orders may have a detrimental or even fatal consequence for CF members. Nevertheless, their prompt and willing compliance is of fundamental importance not only for the success of a mission, but for the safety and well-being of other Canadian Forces members.

[4] Discipline is necessary to ensure that there is compliance with lawful commands in the stressful and critical situations that Canadian Forces members are put into, such as disasters, deployments, and in combat. In essence, members of the Canadian Forces, as you are well aware, given what I see from your history, members of the Canadian Forces must obey the rules. They do dangerous tasks and operate dangerous equipment and the rules they have to obey include ones that say they cannot absent without authority. The heart of discipline is not unthinking action, but rather conscious, immediate and automatic response developed through practice, but ultimately resting on choice. If discipline in an individual member fails, if it falls below an acceptable level, then there may be recourse to counselling, to other administrative measures, and ultimately to disciplinary action. Fortunately, in the Regular and Reserve Force there are approximately 1500 summary trials a year and less than a hundred courts martial.

[5] I've talked about the various principles that apply to punishment and, clearly, some are more important than others. In this particular case, it has been suggested by both counsel that general deterrence is very important. General deterrence is a principle that the sentence imposed should deter not only the offender from re-offending, but also others in similar situations from engaging, for whatever reason, in the same prohibited conduct. The principle that applies to deter the offender, personally, from re-offending; that is, to deter you from re-offending, is called specific deterrence. That means that its sentence should deter you from re-offending, not just from committing the same offence or similar offence again, but from committing any offences. Consequently, I must say, that unlike counsel, I do not take the position that specific deterrence is no longer a consideration in this matter.

[6] You are no longer a member of the Canadian Forces, that is true. Consequently, you can no longer commit the offence of absence without leave; however, respect for the law and deterrence from re-offending is applicable and beneficial to all Canadians. The aim is not simply to deter you from committing a specific offence such as absence without leave again, or a military offence, but from re-offending. In that regard, reform and rehabilitation, though they are the last principles I'm going to speak about, are of vital importance. This is because society is ultimately only protected through an individual reforming and rehabilitating him- or herself. Like discipline, reformation and rehabilitation are an individual choice. Society and the Canadian Forces can facilitate this choice by both positive and negative incentives, but

only the individual can make the necessary choices and take the necessary action. So those are the applicable considerations which this court has considered.

[7] In addition, the court must, and has, taken into account some other factors: the first is proportionality, which on the one hand argues that sentences for similar offences by similar offenders committed in similar circumstances should not be significantly different; on the other hand, proportionality requires, as does QR&O 112.48, that any sentence take into account not only the nature of the offence, but also the background; that is, the previous character of the convicted person, to the extent it is presented in evidence before the court. And I would, again, comment that the court has very little evidence about your background and your current circumstances. It does not have any PERs, testimony from supervisors, or even from peers. QR&O 112.48 also requires that this court take into account any direct or indirect consequences of any finding, and what is most applicable here, of any sentence it imposes upon you; and finally, punishment imposed should be the minimum required to restore discipline.

[8] The court, as it has indicated, after considering the nature of the offence; that is, absence without leave, has decided that the predominant principle to be applied is general deterrence. However, it has taken into account specific deterrence and rehabilitation. What is the evidence before the court with regard to the gravity of the offence and the circumstances surrounding its commission? Again, the court will comment, there is, in fact, very little. This was an absence of approximately 23 1/2 hours on a Wednesday, last November. It followed a series of shorter periods of absence without leave in June, July, and September which were tried summarily and dealt with by sentences of 14 and 21 days' confinement to barracks respectively. The last confinement to barracks, running from, apparently, the 18th of September to approximately the 8th of October, would have, therefore, terminated some six or seven weeks before the offence for which you are now before this court martial. There is no evidence before the court as to your contributions to the Canadian Forces or your current economic, employment or other circumstances. The court, therefore, cannot derive any conclusions from the absence of evidence.

[9] What the court has been able to derive is from the exhibits that have been put before it, and those disclose: that you are 26 years old; you have a spouse, from whom you are separated, and a three-year old child here in Edmonton; you joined the Canadian Forces in 1996, apparently in Nova Scotia, after graduating from highschool, and served with the Armoured Corps, and in particular the Lord Strathcona's, until January 2004, approximately 7 1/2 years. Though as a former CF member you appear before this court in jeans and short sleeved shirt rather than a uniform with medals, the documents which the court has reviewed make it clear that you saw overseas service in both Bosnia and Kosovo.

[10] The prosecution has submitted that an appropriate sentence in this case is a reprimand and a fine in the amount of 750 to $1000. It says that this would serve as a necessary deterrence for others who might be tempted to decide to take the day off without seeking leave. The defence also stressed, that had you still been a member, and given your conduct sheet, he would have been submitting that detention was an appropriate sentence. Your defence counsel submitted, that although general deterrence required a punishment, the fact that you are no longer a member should be taken into account as a mitigating factor and that an appropriate sentence would be a fine of no more than $500.

[11] Three cases were presented to the court by counsel, all relate to convictions of single charges of absence without leave, and the court has reviewed those cases. The case of *Private Bailey* is dated in 1999. Private Bailey was on a training course, he was absent without leave for 15 minutes, he pleaded guilty, he had a conduct sheet. However, there was a joint submission by counsel that the appropriate sentence was $350, and he was in a situation where his release had been recommended. And I would refer to a comment of the court from that case where the court said:

> ... were it not for what the prosecutor had to say, this court would sentence you to a time of reflection behind bars ...

[12] The 2001 case of *Lieutenant-Colonel Popowych,* again, was an absent without leave from place of work, was perhaps an unusual situation because he was absent for three months. And it wasn't a situation where they just hadn't realized he wasn't coming in for three months, it was, rather, not noticed because there was a certain amount of paperwork done that concealed the fact that he wasn't actually entitled to something he was taking as leave. He had no conduct sheet. It was a guilty plea. He'd already been released as he had reached compulsory retirement age. He had a promise to repay the pay he had received during the time, which is about $13,500, and there had been some significant delay in bringing the matter to court martial. He received a reprimand and a $3,000 fine.

[13] And finally, the 2002 case of *Sergeant Fischer* was one where he was absent from shift as the Range Control NCO for a period of 7.5 hours. He had a conduct sheet for three alcohol related offences, and clearly, at the time he committed the offence, had an alcohol problem. He pleaded guilty and he was sentenced to a reprimand and a $2500 fine.

[14] As your defence counsel has said, these cases can really only be used to illustrate the general principles and ranges. This case is not more like one or the other. What the cases do, however, is satisfy the court that a reprimand and a fine is the appropriate range to look at. The first issue the court has addressed is, is a reprimand useful in this case? And the court has concluded that it is not. Certainly, there are punitive and rehabilitative aspects to a reprimand which may well be useful for people

who are still serving in the Canadian Forces. It is less evident that it is useful for those who are not in the Canadian Forces, and the court has considered that it can address the issue of general deterrence with simply a fine, not necessarily a reprimand and a fine. So the court believes both a general and specific deterrence is addressed by a fine; however, it has to be an amount that it is significant enough to not only deter you, but to deter others. And so the court has determined that the minimum punishment is a fine in the amount of $1,000.

[15] Now, there is some talk of a return of contributions, and the court will order that any such fine be paid out of any return of contributions that has not yet been received by you. But in the event that, through some administrative circumstances, there are no funds remaining that are owed to you, Major Côté, does your client require time to pay? Because if he doesn't, then it will all be due and owing immediately. Do you wish to take a couple of minutes to speak to your client?

[16] DEFENCE COUNSEL: My client would require a month, Your Honour, to pay for it.

[17] MILITARY JUDGE: Can it be set up to pay some now and some at the end of the month, and can we arrange to have $250 paid now and 750 at the end, or 500 and 500?

[18] DEFENCE COUNSEL: My client, Your Honour, advises me, that at this point in time he doesn't have any money to pay the fine. He's going to be receiving his employment insurance cheque at the end of the month, and he is going to be able, at that time, to start paying off the amount.

[19] MILITARY JUDGE: Okay. Well, if he starts paying it off, of course, presumably he's not planning on spending the entire amount. And if we don't have a term of payment, he'll owe the entire 1,000 immediately. What is a reasonable amount, per month, for him to pay? $200?

[20] DEFENCE COUNSEL: $200, Your Honour.

[21] MILITARY JUDGE: Okay. Then the court will, as I said, order that the money be paid from any contribution that is owing to your client. But as I've said, it's been the experience of the court that sometimes there are administrative disconnects. The court will direct the prosecutor to advise the appropriate authorities in NDHQ, forthwith, of this sentence. But in addition, if the money is not recovered in that—by that means, then the money is due and owing at the rate of $200 a month. And it will be due at the end of the last day of each month and it will start with the first $200 owing on the 31st of March. And I'm sure, Major Côté, as you will advise your client, if he falls

into arrears, then, of course, he may be sued for the entire amount immediately. So the proceedings in this matter are now terminated.

COLONEL K.S. CARTER, M.J.

Counsel:

Major B.J. Wakeham, Regional Military Prosecutions Western
Counsel for Her Majesty the Queen
Major J.A.M. Côté, Directorate of Defence Counsel Services
Counsel for ex-Corporal Samson