

Citation:R. v. Officer Cadet A. Welsh,2004CM66

Docket:S200466

**STANDING COURT MARTIAL
CANADA
ONTARIO
ROYAL MILITARY COLLEGE KINGSTON**

Date:9 Dec 2004

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

HER MAJESTY THE QUEEN

v.

**OFFICER CADET A. WELSH
(Accused)**

SENTENCE

(Rendered verbally)

[1] Officer Cadet Welsh, the court having accepted and recorded your plea of guilty to the second charge on the charge sheet, conduct to the prejudice of good order and discipline, the court now finds you guilty of that charge. The first charge being an alternative to the second charge, the court finds you not guilty on the first charge.

[2] In determining an appropriate sentence, the court has considered the evidence before it; that is, the Statement of Circumstances, the documents that were filed as Exhibits 4 through 8 and the testimony of Captain Greening as well as the submissions of counsel.

[3] The purpose of sentencing at court martial is the restoration of discipline. This is done through applying relevant principles of denunciation, deterrence; both general and specific, and reform and rehabilitation.

[4] Discipline is a prerequisite for operational effectiveness, and operational effectiveness is the primary obligation of a military force. Discipline requires obedience to lawful orders but it also requires much more than that. Discipline requires putting the interests of Canada and the Canadian Forces before personal interests when that is required.

[5] When the Canadian Forces needs to know the truth then a Canadian Forces member is legally obliged to tell the truth. The court would say here it is not a question or whether or not that truth is detrimental to the individual. The court is not talking about a situation where somebody is confessing to an offence and where they're told they do not have an obligation to speak. It is talking about a more general obligation.

[6] The Canadian Forces must be able to rely on all of its members to be honest, even if the consequences may be personally embarrassing or otherwise adverse. As a senior NCO or as an officer, a member has an even greater obligation towards honesty and integrity because the well-being of subordinates may well be dependant on these qualities. If a person lies to protect their interests, if they encourage or induce others to do so then they may jeopardize the success of a mission and the lives of others because decisions are based on truthfulness, and there is no sliding scale. An individual cannot assess the full importance of their own actions. It may seem to them a relatively minor or unimportant matter but, in fact, what they're being asked about may be an integral factor in a much larger decision making process.

[7] So the court has considered how discipline would best be restored by a sentence in this matter. In this case, which is one where you arranged to have another member of the Forces lie to military police authorities, the court believes that general deterrence is the predominant principle of sentencing which must be applied. The court, in coming to an appropriate sentence, also observes certain rules. These include that the sentence should be the minimum punishment that is required; that the sentence should be proportional to the nature and the circumstances of the offence, which includes the consequences of the offence; and pursuant to QR&O 112.48 the court must consider the offender, not just the offence and also the direct and indirect consequences of any sentence that is imposed.

[8] The court has already briefly mentioned the nature of the offence and the situation as set out in the Statement of Circumstances that was filed as Exhibit 3. The incident occurred in September 2003, some 15 months ago. It was, as set out there, a deliberate act. There was an opportunity to retract what was asked in the few days between the asking and when Officer Cadet Garrison was interviewed.

[9] The fact that an investigation was not actually misled seems to be as a result of either an attack of conscience on the part of Officer Cadet Garrison or as a result of the interviewing skill of Master Corporal Provost. The lie and the retraction occurred in the same interview so there was apparently no expenditure of unnecessary resources as a consequence, no proceeding down the wrong investigative path, no endangerment of somebody who was innocent as a result of untruths that were told.

[10] The court has also considered you, the offender. You are currently 21 years old and as set out in the exhibits, specifically Exhibit 5, you joined the Canadian Forces at

the age of 17. As your birth date is the 4th of October, you were apparently 19 years old when this occurred. You are in your second year at RMC but you had six years prior exposure to military society and the military ethos; five years as an army cadet and one year in St-Jean.

[11] It appears that the time frame 2002 to 2004 was a period of change for you. You changed your course of studies, you changed your service, you were recuperating from an injury. Your performance suffered in many areas as set out in Exhibit 7. You were put on counseling and probation and perhaps, somewhat unusually, given your previous experience, it was the military pillar that was causing you the most problems.

[12] Captain Greening has testified to an almost miraculous recovery from the brink on your part. And from the court's point of view, it is important that her testimony is not the testimony of someone who simply turns up in August of this year and assesses you for three months. The court has taken into account that she, herself, studied for four years at the Royal Military College and has had experience here. That she has four years work experience with the Canadian Forces including a deployment. The court has placed a great deal of weight on her assessment of you and that assessment is that you are a fit and active cadet, that you have, as set out in the exhibit that she provided, Exhibit 8, perhaps regained interest in the military aspects of the Royal Military College and, in particular, you were rated as 3rd among 21 in the military pillar. She has chosen you to be entrusted, and I use that word very specifically, as a leader and a mentor for younger cadets. This degree of trust and the responsibility that flows from it is remarkable.

[13] The court has considered direct and indirect consequences of any sentence and it would indicate that there's nothing that is mentioned before it in evidence that would seem to be inevitable; that is, there is no evidence before the court that, at this moment, you are being processed for release from the Canadian Forces.

[14] In terms of mitigating factors, the court has taken into account your age at the time of the offence, your plea of guilty, as evidence of an acceptance of responsibility on your part for your wrongdoing. The court has also taken into account that it has been 15 months since this incident occurred. The court has taken into account this is a first offence, but it would stress, this is not like civilian court, it is rare that a court martial sees a seasoned offender with a long conduct sheet.

[15] In terms of aggravating factors, the court has already mentioned that it considers this offence a deliberate one on your part and perhaps the most aggravating factor is that you involved another Canadian Forces member in your misconduct; that is, you seem to have taken advantage of a relationship for your personal benefit.

[16] Your counsel has argued that you have been reformed. The court would say, it does not know. In its view, it is too soon to judge. What the court does know is that you have been on counseling and probation and you have now been convicted of an offence. There are certainly consequences to that latter situation. For example, if you ever are in a position to apply for a job and somewhere on the application form it asks whether or not you have been convicted of an offence to which no pardon has been granted, until such time as you obtain a pardon for this offence, you will have to indicate, you have been convicted.

[17] Within the military, it would seem that you have used up all your chances. If you have been rehabilitated then that is excellent. If you have not then you will no longer be the Canadian Forces' problem very long.

[18] Let me just briefly mention the other offence that you were not convicted of, which is attempting to pervert the course of justice. The maximum punishment for that offence is 10 years imprisonment. That offence is seen as an attack against the rule of law. It violates society's basic code of values. It is an extremely serious offence. Conviction for such an offence would result in suitable punishments being matters such as dismissal and imprisonment. Denunciation would be the most important factor. You, however, have been convicted of the second offence on the charge sheet and the court sentences you for that offence.

[19] This is a serious matter. On the other hand, you are relatively young. You do, however, have a significant exposure to the military for a person of your age. The court would indicate as it has earlier that the time taken for this matter to come to trial is a significant—and it is rare that the court sees time taken to facilitate rehabilitation being done quite so effectively.

[20] You are an officer and you aspire to be a leader. Without integrity, that is impossible. Integrity calls for courage and strength of character, both of which are indispensable in being a leader and an officer. Your integrity has been seriously undermined by your own actions and you have adversely affected the integrity of another officer cadet. You may wish to ask yourself what qualities you have to teach less experienced cadets. If you stay in the Canadian Forces, you will find that your integrity and reputation is the most important qualification that you have.

[21] Captain Greening's testimony has convinced the court that you should be allowed, subject to any administrative decisions made by other authorities who may assess things differently from Captain Greening, to try and restore your reputation.

[22] The court, therefore, accepts a reprimand and a fine is an appropriate range of punishment. Since, however, you involved another officer cadet in this offence, the fine will be a significant one.

[23] The court sentences you to a reprimand and \$1,200 fine. The court will allow this fine to be paid off at the rate of \$100 a month while you are serving in the Canadian Forces. If, for any reason, you leave the Canadian Forces and any of the fine is outstanding then the full amount due and outstanding will be paid the day before your release.

COLONEL K.S. CARTER, M.J.

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