

Citation: *R.v. Corporal R.A. Hollingsworth*, 2004 CM 68

Docket: S200468

**STANDING COURT MARTIAL
CANADA
ALBERTA
1ST BATTALION PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY**

Date: 14 December 2004

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

HER MAJESTY THE QUEEN

v.

**CORPORAL HOLLINGSWORTH
(Accused)**

SENTENCE

(Rendered orally)

[1] Corporal Hollingsworth, having accepted and recorded your plea of guilty to the second charge on the charge sheet, the court now finds you guilty of the second charge and directs a stay of proceedings with respect to charge number 1.

[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 3, the evidence I heard 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.

[4] 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. 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 punishment and the mitigating circumstances that may reduce a sentence.

[5] 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.

[6] 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. 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.

[7] 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.

[8] 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 may be 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.

[9] It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[10] 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.

[11] The facts of this case are set out in the Statement of Circumstances, Exhibit 3. In brief, and by way of summary, those facts disclosed that the accused was tasked with the responsibilities of transport representative of the Signals Platoon in his company. Part of the duties of the transport representative involve what were referred to as computer-related duties. For this purpose, the accused was briefed with respect to those duties. Nonetheless, the accused refused to perform those aspects of the role of transport representative, which involved a computer.

[12] His conduct was reported up the chain of command and whereupon the accused was counselled by the warrant officer as to the performance of the duties of the transport representative including, of course, the computer-related duties. Nonetheless, the accused continued to fail to perform those duties whereupon he was given a verbal warning.

[13] In the course of the evidence and the submissions I have heard, I have not been told in any detail of a reason why the accused failed to comply and discharge all of his duties in connection with his responsibilities as the transport representative.

[14] I do have material before me indicating that some months prior to the offence before the court, it was determined that the accused was in need of computer training. I understand and I accept that the computer training was offered to the accused but he has failed to take advantage of that opportunity to improve his military skills.

[15] In this case, both the prosecution and defence agree that a fit sentence would include a fine in the amount of \$600. There is, however, a disagreement between the prosecution and the defence as to whether or not the fine should be accompanied by a reprimand. The prosecution urges the court to couple a reprimand with the suggested fine and the defence submits that in all the circumstances of this case, a fine is sufficient and there's no need to impose a reprimand in addition to that fine.

[16] I have taken account of the mitigating circumstances in this case. They include the following: the accused is a mature soldier of 42 years of age with almost 23 years of service in the Canadian Forces. On the basis of the information with which I have been provided, I have every reason to conclude that he has performed his duties in an admirable respect throughout his lengthy career in the Canadian Forces with the exception of the matter that comes before the court today.

[17] As well, the accused suffers from a medical condition that appears to be attributable to his service. Of particular importance, so far as mitigating circumstances is concerned, is that the accused has pleaded guilty to the offence for which he is about to be sentenced. In many cases, a plea of guilty is treated by the court as an indication from the accused of genuine remorse on his part for the commission of the offence. It is the starting point on the road to the rehabilitation of an accused. This particular circumstance can weigh very heavily with a sentencing court.

[18] There are aggravating circumstances as well with which this court is particularly concerned. They include the fact that the conduct of the offender on this particular occasion was repeated not only in the face of requests and orders by his warrant officer, but also the second in command of the company and the platoon commander. His refusal to perform his duties continued over a lengthy period of time alleged in the charge. The gravamen of the offence here is a failure to perform his

duties over that period of time and particularly, the effect of that failure to perform his duties on good order and discipline in the platoon and the unit.

[19] I have come to the conclusion in this case that a reprimand is particularly appropriate in the case before the court. A reprimand is nothing more nor less than a formal expression of the disapproval by the court of the behaviour with which the offender is charged. In some cases, and this case is not one of them, but in some cases where the offence is perhaps of a more technical or minor nature, I have considered that a reprimand is not an appropriate part of a fit sentence. A reprimand, of course, is a distinctively military punishment. There is no civil court in Canada that imposes a reprimand as part of a sentence for criminal conduct, but it is a peculiarly appropriate method of punishment for military offences.

[20] As I indicated in this particular case, I consider that the conduct of the accused merits that formal expression of disapproval on the part of the court.

[21] Stand up, Corporal Hollingsworth.

[22] You are sentenced to a reprimand and a fine in the amount of \$600, to be paid at a rate of \$100 per month starting 15 January 2005, and continuing for the following five months. In the event you are released from the Canadian Forces, for any reason, before the fine is paid in full, the full amount of the unpaid balance owing is to be paid the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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