



COURT MARTIAL

Citation: *R v Amirault*, 2011 CM 2017

Date: 20110908

Docket: 201127

Standing Court Martial

Pembroke Armoury
Pembroke, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Captain (Retired) T.W. Amirault, Offender

Before: Commander P. Lamont, M.J.

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in the judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] Captain Amirault you have been found guilty, contrary to your plea, of one offence of sexual assault.

[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 disclosed by the evidence taken both during the trial and in the course of this sentencing phase, 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 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 similar 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, of which the Canadian Forces is, of course, 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. 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 reflect a wise blending of these goals tailored to the particular circumstances of the case.

[5] 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. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the finding of guilt and the sentence I am about to impose.

[6] The facts of this case were described yesterday in my reasons for finding and I will not repeat what I said on that occasion. In all the circumstances the prosecution submits that a fit disposition in this case would involve a severe reprimand and a fine in the region of \$6,000. Counsel on behalf of the offender agrees that a severe reprimand is called for and submits that an appropriate fine would be in the region of 3,000 to 3,500 dollars.

[7] There are seriously aggravating factors for the courts consideration in this particular case; principally, I'm referring to the difference in rank between the offender and

the complainant at the time of the offence. The complainant held the rank of bombardier, or corporal, in a Reserve Force unit which she serves with distinction. The offender held the rank of captain, having served with distinction, I am sure, since he joined the Canadian Forces in 1972. He rose through the ranks and was commissioned as an officer from the rank of master warrant officer. He has no previous entries on his conduct sheet.

[8] The second seriously aggravating circumstance in this case is that the offence was committed on a military establishment; that is, the training area at Canadian Forces Base Petawawa, in the course of a military exercise in which both the complainant and the offender were participating at the time.

[9] I wish to repeat what I said in the case of *Master Corporal Hopkins* some years ago in 2004 because the circumstances apply equally in the present case in my view:

This case is an example of the terrible harm occasioned, usually to women members of the Canadian Forces, by male members who fail to respect the sexual integrity of others. This behaviour is utterly destructive of the relationship between members of the Canadian Forces that must be characterized by trust and mutual respect. For this reason, this court is especially concerned, in this case, with the principle of general deterrence.

[10] Captain Amirault, this behaviour is a serious offence in a civilian context. It is aggravated in a military context by the breach of the confidence that soldiers are entitled and expected to place in their officers.

[11] As I indicated there will be an order for sex offender registration and for substances for DNA analysis.

FOR THESE REASONS, THE COURT:

[12] **SENTENCES** you to a severe reprimand and a fine in the amount of \$8,000. The fine is to be paid in monthly instalments of \$500 each commencing 15 October 2011 and continuing for the following 15 months.

Counsel:

Captain R.D. Kerr, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Captain D.M. Hodson Directorate of Defence Counsel Services
Counsel for Captain (Retired) T.W. Amirault