

Citation: *R. v. Corporal T.J. Desjarlais*, 2006 CM 48

Docket: S200648

**STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
AREA SUPPORT UNIT CHILLIWACK**

Date: 5 October 2006

PRESIDING: COLONEL M. DUTIL, C.M.J.

**HER MAJESTY THE QUEEN
v.
CORPORAL T.J. DESJARLAIS
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Please stand up. Having accepted and recorded your pleas of guilty to the first and second charge, this court finds you guilty of these charges.

[2] It is well established that the purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily, and frequently punished more severely, than would be the case of a civilian engaged in similar conduct; however, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[3] In determining sentence, the court has considered the circumstances surrounding the commission of the offences, as revealed by the evidence heard during the trial, as well as the statement of circumstances that you accepted as conclusive evidence. The court has also considered the testimonies heard during the sentencing

procedure, including your own testimony, as well as the documentary evidence filed with the court and the representations made by counsel, including the case law provided to the court. The court found these cases to be of very little assistance as the circumstances of these cases were all more serious and many of the offenders had previous records, some of them for offences of similar nature.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to military discipline, the sentencing principles and objectives could be listed as: Firstly, the protection of the public, and this includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender and other persons from committing similar offences; fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary; fifthly, the rehabilitation of offenders; sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; seventhly, the sentence should be similar to sentences imposed on similar offenders, for similar offences, committed in similar circumstances; eighthly, an offender should not be deprived of liberty if less restrictive punishment, or combination of punishments, may be appropriate in the circumstances; and, finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[5] In this case, I agree with counsel that the protection of the public must be achieved by a sentence that will emphasize general deterrence, but it must also reflect the principle of proportionality to the gravity of the offences and the degree of responsibility of the offender. This is particularly important when offenders are members of smaller units.

[6] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating the fact that the offences were committed at a public event organized by your unit to promote and foster the links between the Canadian Forces, through your unit, and the local community. And the court considers that the following circumstances mitigate the sentence: First, the facts and circumstances of this case. The evidence heard during the proceedings indicate that you were mostly upset at the fact that a co-worker had revealed sensitive information about your medical condition to other co-workers to the effect that you had been placed on sick leave for specific reasons. This violation of your right to privacy in the context of your physical and mental condition at the time, is believed, according to the evidence, to have acted as a catalyst in the events that led to the commission of the offences; secondly, the fact that you have decided to change your plea of not guilty before the end of the prosecution's case and plead guilty to both offences against, according to your testimony, the advice

of your own counsel. That is not to say that offenders should be encouraged not to follow their counsel's advice, but it highlights your genuine signs of remorse which accompany your decision to publicly take responsibility for your actions and apologize to the Canadian Forces and the members of your unit for your inappropriate conduct; thirdly, your record of service in the Canadian Forces; fourthly, the fact that you are a good asset to the Canadian Forces. You have been described as a strong, competent, dedicated, hardworking, and reliable clerk who, unfortunately, was going through difficult times when the offences were committed; fifth, the fact that you did not have a conduct sheet or criminal record related to similar offences; sixth, the fact that these events are, according to your supervisor Warrant Officer Bride, totally out of character; and, finally, the court has considered your family situation.

[7] The court disagrees with the recommendation made by the prosecution to sentence you to a reprimand, accompanied with a fine of \$1000, as much as it does not consider that the sentence proposed by your counsel would meet the need to emphasize general deterrence.

[8] The court considers that the fact that you had to face this court martial in the presence of many of your co-workers has already had a very significant deterrent effect on you, but also on others. It means that this kind of conduct is taken very seriously and will be dealt with accordingly, notwithstanding that the offenders may have been unfairly provoked. Having had the benefit of listening to your testimony, I am satisfied that you should not appear before a court for a similar, or any offence, in the future. I may have had a different view if you had not testified. The court is, at least, inclined to impose a sentence that reflects that conclusion.

[9] A fair and just punishment should recognize the gravity of the offences and the responsibility of the offender in the context of this case, therefore, Corporal Desjarlais, the court sentences you to a fine of \$600. You may be seated.

COLONEL M. DUTIL, C.M.J.

Counsel:

Captain T. Bussey, Regional Military Prosecutions Western
Counsel for Her Majesty The Queen
Lieutenant-Commander M. Reesink, Directorate of Defence Counsel Services
Counsel for Corporal T.J. Desjarlais