



COURT MARTIAL

Citation: *R v Frizell*, 2011 CM 2019

Date: 20111012

Docket: 201144

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Ex-Captain J.D. Frizell, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Mr Frizell, having accepted and recorded your pleas of guilty to the fourth and fifth charges in the charge sheet; that is, a charge of using provoking speeches toward a person subject to the Code of Service Discipline, tending to cause a quarrel and drunkenness, and having considered the alleged and admitted facts underlining these offences, this court now finds you guilty of the fourth charge and of the fifth charge.

[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 7, and the other materials submitted during the course of this hearing, 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, of course, the Canadian Forces is 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 so necessary to the effectiveness of an armed force.

[5] 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 objectives will inevitably predominate in crafting a fit 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 sentence should reflect an appropriate blending of these goals tailored to the particular circumstances of the case.

[6] As I told you when you tendered your pleas of guilty, 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.

[7] 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 pronounce.

[8] The facts of these offences are not complicated as set out in Exhibit 7, the Statement of Circumstances. On the date alleged in both charges, the offender had way too much to drink at the officers' mess at Canadian Forces Base Petawawa. He behaved improperly as a result of his consumption of alcohol, both to the mess staff, which I take it included civilian members, and to his fellow officers in attendance at the time, and in particular towards Captain Plummer. His improper behaviour included the uttering of the remarks specified and particularized in the fourth charge, containing as they did, a

vile statement about members of a group within Canadian society. There is simply no room in the Canadian Forces for the expression of such a sentiment.

[9] Counsel before me, on these facts, jointly recommend a sentence of a severe reprimand and a fine in the amount of \$3,000. As counsel have pointed out, the sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court in the case of *Private Chadwick Taylor*, 2008 CMAC 1, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[10] In this case I have considered the aggravating and mitigating circumstances referred to by counsel in the course of their addresses. In particular, I note that this behaviour occurred in the presence of other serving members of the Canadian Forces present in the officers' mess at the time. I note also that the offender has an entry on his conduct sheet for an offence of drunkenness that was disposed of some years ago by the award of a reprimand.

[11] I am also mindful of the mitigating circumstances in this case, which include the guilty plea offered by the offender at the earliest stage in the process in which he can do that. I take it as a genuine indication of remorse on his part and note in particular the expression of an apology the following day to Captain Plummer. I have every reason to suppose that the apology was accepted. I have no information as to whether an apology was offered to other people present at the time of the commission of these offences, both members and civilians. It is clear to me as it is to the offender that at the time of these offences he had a difficulty with alcohol. I note also that the offender appears to recognize this problem and is taking steps to deal with it with the assistance of professional advice.

[12] Considering all the circumstances, both the circumstances of the offender and the circumstances of the offences, I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest, and I, therefore, accept the joint submission.

FOR THESE REASONS, THE COURT:

[13] **SENTENCES** the offender, ex-Captain Frizell, to a severe reprimand and a fine in the amount of \$3,000. The fine is to be paid in equal monthly instalments of \$250 each, commencing 15 November 2011 and continuing for the following 11 months.

Counsel:

Major J.E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major S.L. Collins, Directorate of Defence Counsel Services
Counsel for ex-Captain J.D. Frizell