

Citation: *R. v. Corporal Dove*, 2006 CM 44

Docket:S200644

**DISCIPLINARY COURT MARTIAL
CANADA
ALBERTA
4 WING COLD LAKE**

Date: 21 August 2006

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

HER MAJESTY THE QUEEN

v.

**CORPORAL A.G. DOVE
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Corporal Dove, please standup. Having accepted and recorded a plea of guilty in respect of the second charge under paragraph 187(b) of the *National Defence Act*, I find you guilty of that charge. It must be said that after I had received your plea of guilty, the prosecution withdrew the first charge, and, as there was no remaining charge, the presiding judge must determine sentence.

[2] This is a case where the prosecutor and counsel for the defence have made a joint submission on sentence. They have recommended that this presiding judge sentence you to a fine in the amount of \$200. Although this court is not bound by this joint recommendation, it is generally accepted that a joint submission should be departed only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute, and this is not the case here.

[3] It has been long recognized that the purpose of a separate system of military justice and tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify, and, at times, require a sentence that will promote military objectives. That being said, the

punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[4] In determining sentence, I have considered the totality of the circumstances surrounding the commission of the offence as revealed by the Statement of Circumstances that you have accepted as conclusive evidence. I have also considered the documentary evidence filed before me as well as the testimony from Sergeant Sorensen during the sentencing hearing. This evidence was reviewed in light of the sentencing principles and objectives. Finally, I have taken into account any direct and indirect consequence that the finding and the sentence will have on you.

[5] The objectives and principles to be used in considering what should be an appropriate sentence generally relate to one or more of the following: The protection of the public, and, of course, the public includes the interests of the Canadian Forces; the denunciation of the offender; the punishment of the offender; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; the reformation and rehabilitation of the offender; the punishment imposed for a particular offence that must be also proportionate to the crime and the offender; and the parity of sentence, i.e., a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Therefore, I have considered the joint submission in light of the relevant facts set out in the Statement of Circumstances and their significance, and I have also considered a joint submission after applying the relevant sentencing principles.

[6] I must say that I agree with counsel for the defence when he expressed the view that the protection of the public here must be ensured by a sentence that would emphasize general deterrence; however, the circumstances of this case are at the lower end of the spectrum for this category of offence. Nevertheless, it remains objectively a serious offence because it undermines the basics of military discipline. It may be that you had mainly good intentions in breaking out of barracks in order to obtain shoe polish to comply with the conditions included in your punishment of confinement to barracks, but what you did is simple: You committed an offence in order not to commit another. I hope that you now have a better understanding of the core values of military discipline. If not, it may be your last chance to learn about them and abide by them, because it is doubtful, I would say very doubtful, that a service tribunal will be as lenient should you be faced with disciplinary charges in the future.

[7] Corporal Dove, I see no substantive reasons to reject the joint submission made by counsel. Therefore, I accept that recommendation, and I sentence you to a fine in the amount of \$200.

COLONEL M. DUTIL, C.M.J.

Counsel:

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