

Citation: *R. v. ex-Private S.D. Robbins*, 2006 CM 29

Docket: S200629

**STANDING COURT MARTIAL
CANADA
MANITOBA
CANADIAN FORCES BASE SHILO**

Date: 31 October 2006

PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

**HER MAJESTY THE QUEEN
v.
EX-PRIVATE S.D. ROBBINS
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Ex-Private Robbins, having accepted and recorded a plea of guilty in respect of the first charge, the court finds you now guilty of this charge.

[2] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct, or, in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions.

[3] As stated by Major Jean-Bruno Cloutier in his thesis, *L'Utilisation de l'article 129 de la Loi sur la Défense nationale dans la système de justice militaire canadien*, "The military justice system [and I translate] has for purpose, to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions for the success of the military mission." The military justice system also ensures that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has long been recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that pertain

to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at QR&O article 112.48(2)(b).

[5] The court has considered the counsel's submissions in light of the relevant facts set out in the statement of circumstances and their significance, and I've also considered their submissions in light of the relevant sentencing principles, including those set out in section 718, 718.1 and 718.2 of the *Criminal Code* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following: Firstly, protection of the public, and public includes the interests of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. The court has also considered the representations made by counsels, including the case law provided to the court and the documentation introduced.

[6] I must say that I agree with the prosecutor when she expressed the view that the protection of the public must be answered by a sentence that would emphasize general deterrence. It is important to see that general deterrence means that the sentence imposed should deter not simply the offender from re-offending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. Here, the court is dealing with an offence that occurred while ex-Private Robbins was undergoing confinement to barracks punishment. It is a serious offence, in this context.

[7] The court also considers denunciation as a significant principle to consider in this case.

[8] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

[9] The court considers as aggravating:

- a. firstly, the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 129 of the *National Defence Act*, for an act to the prejudice of good order and discipline. This offence is punishable by dismissal with disgrace from Her Majesty's service, or to less punishment. It is a serious offence;

b. secondly, the subjective seriousness of the offence. While you were undergoing punishment of 14 days' confinement to barracks further to a conviction for absence without leave, and that you were briefed, specifically, about not bringing anybody in your quarters during that time, you were found in the presence of your girlfriend in your quarters. You showed, at that time, complete and total disrespect to the chain of command and to your unit; and

c. thirdly, your conduct sheet discloses clearly that you had serious difficulties with basic military discipline. Even though these previous convictions are not similar to the actual offence, they are a clear indication of your state of mind while you were in the Canadian Forces. As stated by you in your testimony, military life was not for you.

[10]
sentence:

The court considers that the following circumstances mitigate the

a. the fact that you acknowledge responsibility for your actions by pleading guilty before this court. It looks like you're accepting the consequences of your act and that you are trying to turn yourself to a different career in the Canadian community;

b. your record of service in the Canadian Forces;

c. the rank you held at that time; your age, as well as your current financial, economic, social, and family situation; the court also acknowledges the fact that you recently started college in the area of power engineering;

d. the fact that you decided to become a positive asset in Canadian society. Even though military life was not for you, when you were released, it appears that you did not waste time to find jobs that would secure your personal and family situation rapidly; and

e. the delay to deal with this matter. The court does not want to blame anybody in this case, but the closest the disciplinary matter is dealt with, the more relevant and efficient is the punishment on the morale and the cohesion of the unit members, especially when somebody discloses an attitude problem as you did. On the other hand, you had to wait to a point that this court martial became, indirectly, a reason for an employer to not consider your request for leave in order to attend this court, and to take that opportunity to fire you. It might have not happened if the court martial took place earlier. However, the court does not consider that this

court martial is the very reason why you lost your job. It initiated a request for leave to your employer and could not be considered for more than that.

[11] The prosecution has recommended that this court impose a severe reprimand and a fine between \$700 and \$1200. Your counsel argued that a severe reprimand and a fine not exceeding \$200 would be appropriate in the circumstances.

[12] The court finds that the recommendation made by the prosecution represents the minimum necessary intervention that is adequate in the particular circumstances of this case, but would have been lenient in a different context. Should you not already have been released from the Canadian Forces and still struggling with the values and the requirements for military discipline, this court would have seriously considered sentencing you to a minimum of 30 days' detention, as it is oriented mostly towards specific deterrence and the rehabilitation of an offender. That is not necessary here.

[13] Therefore, the court sentences you to a severe reprimand and a fine in the amount of \$800. The fine is to be paid in monthly installments of \$100 each commencing in November, 2006 and continuing to the following seven months. The first payment will be payable by certified cheque or money order to the Receiver General for Canada, no later than the 18th of November, 2006. All other payments will have to be paid in the same way before the 18th day of the month. These payments will be sent by registered mail to:

National Defence Headquarters
Director of Law/Claims and Civil Litigation
10th Floor, Constitution Building
305 Rideau Street, Ottawa, ON K1A 0K2.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

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