Citation: *R. v. ex-Captain P.D. Young*, 2006 CM 33

Docket:S200633

STANDING COURT MARTIAL
CANADA
QUÉBEC
ASTICOU CENTRE, GATINEAU

Date:6 December 2006

PRESIDING:COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN
v.
EX-CAPTAIN P.D. YOUNG
(Offender)

SENTENCE
(Rendered orally)

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[1] Mr Young, having accepted and recorded your plea of guilty to charge number 2, a charge of improperly selling property of Her Majesty's forces, this court now finds you guilty of charge number 2, and directs a stay of proceedings with respect to charge number 1.

[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 3, the evidence heard and received during these proceedings, and the submissions of counsel both for the prosecution and for the defence.

PRINCIPLES OF SENTENCING

[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 like cases should be treated in similar ways. But in imposing sentence the court takes account of the many factual matters 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, which includes of course, the Canadian Forces, 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. 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.

[5] 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 be a wise blending of these goals, tailored to the particular circumstances of the case.

SENTENCING AT COURT MARTIAL

[6] As I explained to you when you tendered your plea 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, and may be further limited to the jurisdiction that may be exercised by this court.

[7] 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.

[8] It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[9] 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.

[10] The facts of this offence are that during the period 1 June 2003 to 30 October 2004, the offender was the acting G4 Operations in the Headquarters of 38 Canadian Brigade Group in Winnipeg. During this time period on nine different occasions he sold items of computer equipment belonging to the Canadian Forces to various pawn shops in Winnipeg for varying amounts of money of a few hundred dollars for each item. The facts came to light during a routine check of pawning activity by the Winnipeg Police Service who alerted the Winnipeg MP Detachment. Following an extensive investigation the offender was charged with the offence on 23 August 2005. The authorities were able to recover three of the laptop computers that had not yet been sold by the pawnbrokers. The investigation disclosed that two of the recovered laptops had been issued to 38 Brigade.

[11] Both counsel jointly submit that the sentence of the court should be three months imprisonment suspended.

[12] To my mind the aggravating factors in this case are principally the number of occasions and the length of time over which the offence was committed, and the position of the offender as a commissioned officer at the time of the improper sales. As well, the offender has a record of previous guilty findings for offences of dishonesty for which he was sentenced at court martial in November of 2001 to a severe reprimand and a fine in the amount of $7000.

[13] Mitigating factors have been referred to by both counsel. The offender has pleaded guilty to the offence, and this has saved the substantial time, effort and expense involved in proving the offence by trial. Counsel submit that the plea is also a demonstration of remorse. I note though that there is nothing before me indicating any attempt, or even a willingness on the part of the offender, to reimburse the pawnbrokers for the value of the laptop computers that were recovered, or the Crown for the value of items the offender sold that were not subsequently recovered.

[14] Both counsel have emphasized the fact that the offender suffers a gambling addiction that was diagnosed by a registered psychologist, Dr. Prober, some time after November 8, 2005 when she first met the offender. He began casino gambling some months after his return from deployment to Bosnia in 1993. Under the care of Dr. Prober he has made progress, and his desire to gamble has decreased over the past year. In his evidence before me the offender stated that it is still a daily struggle to avoid gambling. He states that his gambling activity has had serious consequences for his family situation.

[15] Both counsel urge that the gambling addiction was a contributing factor to the commission of this offence. I have given this submission anxious consideration and have come to the conclusion that I cannot accept this submission. The offender testified, and while he gave evidence concerning his gambling addiction, I did not

understand him to assign any particular reason for committing the offence. When the same issue was put to Dr. Prober, she was unable to give an unconditional opinion as to whether the gambling addiction was a causal factor, or whether there were some other unspecified unconscious motivations at play. In my view, it is simply speculative to conclude that the motivation to commit this offence was a pathological need for money to feed a gambling habit.

[16] I do accept however, that the offender suffered a mental breakdown, which he characterized as a "meltdown", in September of 2005 likely as a result of being charged with this offence some days earlier, and that he suffers a major depressive disorder diagnosed by Dr. Prober. I also accept that the offender has suffered shame and suicidal ideation as a result of the charge. And I also accept that the offender has made genuine progress in dealing with his gambling addiction.

[17] The offender was released from the Canadian Forces on medical grounds in March of 2006 after 20 years of service.

[18] The nature and gravity of an offence such as this committed but a couple of years following his court martial for other offences of theft and fraud fully supports the joint submission of both counsel that the offender go to prison for a period of three months.

[19] 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 substantial weight with the court. The courts of appeal across Canada, including the court martial appeal court, 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.

[20] As well, counsel jointly submit that the sentence of imprisonment should be suspended. Section 215 of the *National Defence Act* provides:

> Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

[21] To my knowledge, the principles that govern the suspension of a sentence of imprisonment by a court martial have never been extensively considered by a Canadian military court. But given the fact that the power so to do long pre-dates the changes to the military justice system effected by extensive amendments to the *National Defence Act* in 1999, and that the power to suspend, and to revoke a suspension, is also given to authorities within the chain-of-command, it might be thought that this power should be used sparingly, and only where the operational demands of the Canadian

Forces imperatively require that an offender who is sentenced to imprisonment or detention should continue to serve but outside a custodial setting.

[22] In the case of *R. v. Matthews* (1993) 5 CMAR 140, the Court Martial Appeal Court approved of the suspension by the trial court of a sentence of imprisonment imposed in that case in order to permit the offender to continue to receive an income. Thus it seems to me that the CMAC considers that the severity of a sentence of actual imprisonment may properly be attenuated by the exercise of the power of suspension.

[23] The test is not whether counsel have jointly submitted a disposition that the sentencing judge would have imposed in the absence of the joint recommendation of the parties. The legal test rather, is whether the jointly recommended sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest. In my view it cannot be said that the recommended sentence in this case would bring the administration of justice into disrepute, or is otherwise contrary to the public interest, and accordingly I accept the joint submission.

[24] Stand up Mr Young. You are sentenced to imprisonment for a period of three months. Pursuant to section 215 of the *National Defence Act*, the carrying into effect of the punishment is suspended.

[25] The proceedings of this court martial in respect of former Captain Young are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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