Citation:*R. v. ex-Ordinary Seaman S.D. Ennis,* 2005CM47

Docket:S200547

STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX

Date:16 December 2005

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

HER MAJESTY THE QUEEN
v.
ex-ORDINARY SEAMAN S.D. ENNIS
(Accused)

SENTENCE
(Rendered orally)

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[1] Mr Ennis, you have been found guilty of three charges of trafficking in controlled substances. 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 disclosed by the evidence taken on the trial, the evidence heard during the sentencing phase and the submissions of counsel, both for the prosecution and for the defence.

[2] 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. 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.

[3] 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. 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.

[4] Section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment and is further limited to the jurisdiction that may be exercised by this court. 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. In arriving at the sentence in this case, I have considered the direct and indirect consequences of the findings of guilt and the sentence I am about to impose.

[5] The facts of these offences were set-out in my reasons delivered on 4 November 2005, and I will not repeat what I said on that occasion. Counsel for the prosecution has pointed to several aggravating factors in this case, relating both to the offences and to the offender in support of his submission that a sentence of 18-months imprisonment ought to be imposed. These offences involved two separate transactions and the second incident involved two separate controlled substances. The quantities involved were not large but were certainly more than minimal with a clearly commercial aspect to the transactions. I accept the characterization of these offences by the prosecutor as higher street-level trafficking.

[6] The offender has a conduct sheet for a series of offences of absence without leave and one offence of drunkenness acquired during a short career in the Canadian Forces which began in May of 2003.

[7] The offender was dealt with administratively by the imposition of a period of counselling and probation, a mere two days before the first trafficking offence. He had been specifically warned in writing of the consequences of failing to adhere to the Canadian Forces Drug Control Programme set-out in Queen's Regulations and Orders, chapter 20, including release from the Canadian Forces, and yet he ignored the warning.

[8] Counsel on behalf of Mr Ennis urges the court to consider a sentence of imprisonment of four months. The offender was but 21 years of age at the time of the offences. He took active steps to deal with his drug problem before the offences but was not successful. He has since changed his lifestyle substantially, has extricated himself from the drug milieu and has not used drugs for many months now. He was released from the Canadian Forces in July of this year and has suffered a marked reduction in income. Although he has worked as a painter, he is presently unemployed. He has relatives who look to him for support and regularly attends bible study and public worship as well as narcotics anonymous. Importantly, he was of some assistance to the authorities in identifying other individuals involved in drug use, including his own supplier.

[9] I note as well that the profit to offender from these transactions was not large. Twenty years ago, the Court Martial Appeal Court, speaking through Mr Justice Addy stated the following in the case of *R. v. MacEachern* (1986), 24 C.C.C. (3d) 439, and I quote:

> [Because] of the particularly important and perilous tasks which the military may at any time, on short notice, be called upon to perform and because of the teamwork required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that the military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating its use may be more pressing than that of civilian authorities.

I close the quote. Those statements are certainly as true today as they were when they were made.

[10] Within the class of substances of which Justice Addy spoke in the present case the court is dealing with particularly dangerous substances. The addictive qualities of cocain are a matter of common knowledge and its deleterious effects on individuals are demonstrated by the behaviour of the offender himself. He has told the court how the use of this drug affected his work in the navy and has ultimately ruined his military career.

That he should have willingly exposed others to the risk of such harm by trafficking, in return for such modest reward as a small amount of the drug and a small amount of money, I regard, as a very serious matter.

[11] The deleterious effects of ecstasy are less well known, but the fact remains that trafficking in these substances must be met with a significant sentence involving incarceration in order that the principle of general deterrence can be properly vindicated.

[12] I have considered the evidence of Major Santerre, who testified for the prosecution during the sentencing phase of this case. I accept his evidence as to the reports of drug use in the Canadian Forces that have come to the attention of the military police authorities. I also accept the conclusion the statistics point to, that drug use, generally, in the Canadian Forces, has increased substantially since 2001, however I have found this evidence to be of little assistance in arriving at a fit sentence in this case. The prosecutor has not argued that sentences at courts martial have been insufficiently high to deter the increasing use of drugs. There is simply no evidence upon which such a conclusion could be drawn in this case.

[13] Mr Ennis, in arriving at a fit sentence in this case, I have not lost sight of the importance of your individual rehabilitation. I am confident that one day you will consider that your arrest on these charges on 6 December, 2004, was the best thing that could have happened to you. To be frank, I have doubts that you are at that stage now and it is possible that it may yet be some time before you come to that realization, but over time I believe that you will.

[14] Stand up, Mr Ennis. You are sentenced to imprisonment for a period of 12-months. The sentence is imposed at 1917 hours, 16 December 2005. You may be seated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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