

Citation: *R. v. Lieutenant-Colonel R.V. Smith*, 2006 CM 35

Docket:S200635

**STANDING COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE, GATINEAU**

Date: 7 November 2006

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

HER MAJESTY THE QUEEN

v.

**LIEUTENANT-COLONEL R.V. SMITH
(Offender)**

SENTENCE

(Rendered orally)

[1] Lieutenant-Colonel Smith, having accepted and recorded a plea of guilty

in respect of the first charge, the court finds you, now, guilty of this charge. Please dismiss and have a seat beside your defence counsel.

[2] [2] The military justice system constitutes the ultimate mean 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 trusty and reliable manner, successful missions.

[3] [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 le système de justice militaire canadien, the military justice system, and I quote and translate, "has for purpose to control and influence the behaviour 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 the 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]

[4] It has been long 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 offences and the previous character of the offender, as stated at QR&O article 112.48 (2)(b). Here, in this case, the prosecutor and the counsel for the defence have made a joint submission on sentence. They have recommended that this court sentence you to a fine in the amount of \$200.

[5] [5] Although this court is not bound by this joint recommendation, it is

generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute.

[6] [6] The court has considered the joint submission in light of the relevant

facts set out in the Statement of Circumstances and their significance, and I've also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 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, the protection of the public, and the 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 counsel, including the case law provided to the court and the documentation introduced.

[7] [7] I must say that I agree with the prosecutor when he expressed the view

that the protection of the public must be ensured by a sentence that would emphasize general deterrence. It is important to say 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 involving the basic rules for safety handling of a weapon by military members of Canadian Forces during a major exercise. It is a serious offence; however, the court will impose what it considers to be the necessary minimum punishment in the circumstances.

[8] [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 a neglect 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; secondly

b. Secondly, the subjective seriousness of the offence. The fact that you were experimented, previously trained, and that you were serving in the capacity of Deputy Commanding Officer 3 Close

Support Battalion, put on you the additional burden to lead by example, which you did not at that time.

[9] [10] The court considers that the following circumstances mitigate the

sentence:

a. through Through the facts presented to this court, the court also considers that this plea of guilty by Lieutenant-Colonel Smith is a clear genuine sign of remorse and that he is very sincere in his pursuit of staying a valid asset to the Canadian Forces and the Canadian community. The court would not want to jeopardize his chances of success because rehabilitation is always a key element when sentencing a person. Moreover, the very cooperative attitude of Lieutenant-Colonel Smith during the investigation process demonstrates a clear state of mind to accept, right away, responsibility for what he did;

the

b. The facts and the circumstances of this case, including the fact that your neglect did not result in any regrettable circumstances; your

c. Your excellent record of service in the Canadian Forces; the

d. The fact that you did not have a conduct sheet or criminal record related to similar offences;

e. Except for this incident, your service in the Canadian Forces has been excellent. It looks like you're accepting the consequences of your acts;

f.

[10] Article 112.48(2) (a), QR&O, imposes to the court the duty to consider

any indirect consequences of the sentence. According to counsel, in the context of your excellent record of service in the Canadian Forces, there is no need to keep this conviction under the Code of Service Discipline on your conduct sheet for more than a year, as provided in DAOD 7006-1; otherwise, it would go beyond the sentential effect that the military justice system looks for in the circumstances;

g.

[11] The fact that the incident occurred in a secured clearing bay during an exercise and involved blank ammunition, contrary to the context described in my decision concerning the court martial of Commander Agnew, and the;

h. 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, more relevant and efficient is the punishment on the morale and the cohesion of the unit members, especially when you are a deputy commander, as you were at the time of the incident. As one of the factors considered here, the time lapse since the incident makes it less relevant to give consideration to a stronger or higher punishment.

[12] [11] Considering the unique factors and circumstances of this case, the court

believes that the joint submission is not unreasonable. In consequence, the court will accept the joint submission made by counsel to sentence you to the punishment of a fine in the amount of \$200, considering that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[13] Lieutenant-Colonel Smith, please stand up. [12] Therefore, the court sentences you to a fine in the amount of \$200. In

the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

[14] [13] The proceedings of this Standing Court Martial in respect of Lieutenant-

Colonel Smith are terminated.

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

Counsel:

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Counsel for Her Majesty the Queen
Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services
Counsel for Lieutenant-Colonel R.V. Smith