



COURT MARTIAL

Citation: *R. v. Martinook*, 2011 CM 2001

Date: 20110113

Docket: 201032

Standing Court Martial

The North Saskatchewan Regiment
Saskatoon, Saskatchewan, Canada

Between:

Her Majesty the Queen

- and -

Sergeant K.J. Martinook, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Martinook, having accepted and recorded your plea of guilty to the first and only charge on the charge sheet, an offence of fraud contrary to section 380(1) of the *Criminal Code* and section 130 of the *National Defence Act*, this court now finds you guilty of this charge.

[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 6, and the evidence and materials submitted during the course of this hearing, as well as the submissions of counsel both for the prosecution and for the defence.

[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. 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.

[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.

[5] 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 objectives will inevitably predominate in crafting a fit 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 sentence should reflect a wise blending of these goals tailored to the particular circumstances of the case.

[6] As I told 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. 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.

[7] 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 pronounce.

[8] The circumstances surrounding the commission of this offence are described in Exhibit 6. Over the approximately ten-month period from 8 October 2008 to 31 July 2009 particularized in the charge, the offender was posted to The Essex and Kent Scottish Regiment in Windsor, Ontario as the chief clerk for the unit. During that period he wrote and signed a series of 15 cheques drawn in his favour on the unit non-public funds account and cashed the cheques. The amount of the cheques varied from a low of \$400 to a high of \$2650, and the total fraud amount is \$17,945.

[9] When some irregularities in the account came to the attention of the unit bookkeeper, Ms Parker, in May of 2009, she enlisted the aid of the commanding officer who instructed Sergeant Martinook to assist the bookkeeper in the preparation of year-end statements, prior to Sergeant Martinook taking up his new posting at his current unit, The North Saskatchewan Regiment. Sergeant Martinook failed to provide the required information to Ms Parker, although he falsely reported to the commanding officer that he had done so. He also failed to properly brief his successor as the chief clerk on the management of the non-public funds account. Within a few weeks of his leaving The Essex and Kent Scottish, the unit made enquiries with the bank and as a result the National Investigation Service was brought in to conduct an investigation.

[10] The prosecution submits that the overriding sentencing principle in play on these facts is the principle of deterrence and argues that the minimum sentencing response should be by way of imprisonment for at least 60 days. If the court finds a lesser period to be appropriate, then the prosecution suggests the sentence should include the punishment of reduction in rank to corporal.

[11] Counsel on behalf of the offender submits that a fit sentence in this case would be reduction in rank coupled with a severe reprimand and a monetary fine, and argues that if a punishment of incarceration is imposed, the carrying into effect of the punishment should be suspended.

[12] The offender is a mature man of 49 years of age. He joined the Canadian Forces Regular Force in 1985 after several years of service in the Reserve Force. He progressed successfully in the clerking trade and achieved the rank of sergeant with seniority from January of 2007. He has no conduct sheet. He is married with two grown children, one of whom still lives with her parents.

[13] The offender testified in these proceedings that he spent all the money he defrauded from the unit on gambling. For some years prior to the offence the offender engaged in what he characterized as gambling by the purchase of something called Nevada tickets. While posted to Halifax between 1993 and 2000, he attended the Halifax casino on a couple of occasions. Then when posted to Dundurn between 2000 and 2007, he played video lottery terminals, perhaps three to four times a week, spending a few hundred dollars each time. Then when he was posted to Windsor, he frequented the Windsor casino and the Windsor racetrack playing the slot machines at about the same frequency. In late 2008 his gambling came to the attention of his spouse and as he described it in his evidence, "it wasn't very good."

[14] He and his spouse sought counselling through the Windsor Mental Health Addiction Services and he followed a series of group meetings for 12 weeks between January and July of 2009. I note that this was the time period during which the offender was cashing nearly all of the cheques he drew on the unit funds. On his posting to The North Saskatchewan Regiment the offender sought and received a referral to the Saskatoon Health Region, Mental Health and Addiction Services, where he has followed

counselling sessions. He states, and his counsellor Mr Pollock appears to confirm, that as of the time he moved to Saskatchewan he has not gone back to gambling.

[15] I do not consider the offender's gambling habit to be a mitigating circumstance in this case. Certainly nobody has diagnosed the offender as a pathological gambler, but more importantly I simply do not see, on all the evidence I have heard, that his gambling proclivity drove the offender to take the funds from the unit he served with. I heard very little evidence as to the offender's financial circumstances, either at the time the offence was committed or at the present time. I do not see any basis on which to reasonably conclude that the offender was desperate for money to feed a gambling addiction at the time of this offence.

[16] I agree with the submission of the prosecutor that the principle of deterrence is especially important in a case such as this. A senior non-commissioned member who is put in charge of the non-public funds account of a militia unit is in a position of special trust. The degree of that trust is amply demonstrated by the sentiments expressed in the letter penned by the CO of The Essex and Kent Scottish, Exhibit 7.

[17] The more difficult question though, is whether the principle of deterrence requires a sentence involving incarceration in this case. I have considered the alternative sentences open to this court, but have concluded that the circumstances both of the offence and of the offender require a custodial sentence.

[18] The aggravating and mitigating circumstances and evidence before me have been referred to by both counsel. I have already referred to the position of special trust reposed in the offender at the time of the offence. The offence involved repeated conduct over a long period of time resulting in a substantial loss of money. There were attempts made by the offender to avoid the discovery of his crime by failing to cooperate with the bookkeeper and by misleading his commanding officer. Generally, the amounts of the cheques increased over time and the largest amounts were cashed immediately prior to his new posting when the offender must have known he was expected to cooperate in the reconciliation of the non-public funds account.

[19] None of the money has been repaid, although the offender has very recently made arrangements to reimburse the unit for the financial loss. I note, though, that in June of 2010 when these proceedings were pending, the offender bought a house and assumed a mortgage debt. This suggests to me a misplaced sense of financial priorities. I am satisfied that his plea of guilty to this charge and heartfelt public apology to his former unit, delivered in the course of his testimony, demonstrate genuine remorse on the part of the offender for his actions. I'm also satisfied that he is a highly-valued member of his current unit and that he makes a substantial contribution to his larger community with his charitable work.

[20] Imprisonment is really a punishment of last resort, but this is a case where on all the circumstances, both of the offence and of the offender, I consider that alternative lesser sentences are simply inadequate to properly vindicate the principles of individual

and general deterrence. I have given consideration to the question of whether the carrying into execution of the punishment of imprisonment should be suspended. I am not persuaded that this is a proper case to order suspension.

[21] I do consider that this is a proper case to impose, as well, a punishment of reduction in rank. As I have observed in other cases, rank is a visible sign to other members of the Canadian Forces of the trust and confidence placed in that member by the CF and by the country he serves. Service before self is an important ethical principle that the CF attempts to instil in all of the members. As a senior non-commissioned member, the offender is expected to model that ethical principle to other members; not to violate it in the way he did in committing this offence. I recognize that a consequence of this punishment may well be the loss of his current position with his current unit. There are, as well, other financial implications of a reduction in rank as well as less tangible, but nonetheless significant, adverse consequences. But as rank is lost, it can also be regained when the offender has demonstrated to his superiors that he is again worthy of the trust of which rank is a symbol.

FOR THESE REASONS, THIS COURT:

[22] **FINDS** you guilty on charge number one for an offence contrary to section 380(1) of the *Criminal Code* and section 130 of the *National Defence Act*, and

[23] **SENTENCES** you to imprisonment for a period of 21 days and to reduction in rank to corporal. The sentence is pronounced at 1035 hours, 13 January 2011.

Counsel:

Lieutenant-Colonel M. Trudel and Captain R.D. Kerr, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Lieutenant-Commander P.D. Desbiens, Directorate Defence Counsel Services
Counsel for Sergeant K.J. Martinook