Citation:*R. v. Private J.A. Martin*, 2005CM19

Docket:S200519

STANDING COURT MARTIAL
CANADA
ALBERTA
LAND FORCES WESTERN AREA TRAINING CENTRE WAINWRIGHT

Date:8 March 2005

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

HER MAJESTY THE QUEEN
v.
PRIVATE J.A. MARTIN
(Accused)

SENTENCE
(Rendered orally)

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[1] Private Martin, having accepted and recorded your pleas of guilty to charges number two, three and four, the court now finds you guilty of charges two, three and four. 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 during the mitigation 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. 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 absolutely indispensable 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 behavior. 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.

[3] As I explained to you when you tendered your pleas of guilty, 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 may be further limited to the jurisdiction that may be exercised by this court.

[4] 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] Briefly put, the facts of this case disclose that while on parade on the date alleged, 29 September 2004, the offender became agitated, lunged in the direction of Sergeant McLean and uttered a threat in vulgar terms as particularized in the charge. A brief struggle ensued and the accused was restrained, pending the arrival of the military police. He continued to struggle and then calmed down. He became agitated again and offered an insult to Warrant Officer Catterall, in the terms particularized in charge number three. When ordered by Warrant Officer Catterall to remain where he was, the offender attempted to leave but was restrained.

[6] In this case, the prosecution recommends a sentence by way of detention for a duration of five days. Defence counsel on behalf of the offender recommends a disposition by way of a severe reprimand and a fine and in the alternative, pleads that if a sentence of detention is imposed, that service of the sentence should be suspended.

[7] There are aggravating factors to which I have been referred by the prosecutor that have weighed with the court in this case. First of all, there is the inherent gravity of the offences involved in this case. I have regard especially for the offence of disobedience of a lawful command contrary to section 83 of the *National Defence Act*, which provides for a maximum punishment for this particular offence of life in prison. This very severe maximum punishment indicates the seriousness with which Parliament views the conduct of disobedience of a lawful command.

[8] The prosecutor also points out that the event occurred on parade, in plain sight of other members who were present at the time. The prosecutor also points to the conduct sheet of the offender in this case, which has been marked as an exhibit, Exhibit I-1, for identification purposes. The conduct sheet discloses that the offender has been convicted on two previous occasions of offences under the *National Defence Act*. One charge, the first charge, involved a charge of absence without leave, which occurred in May of 2004, for which he was sentenced to four days confined to barracks on 10 June 2004. The second charge on the conduct sheet discloses an offence of failing to appear before a service tribunal having been duly ordered so to do, which occurred on 3 June 2004, for which the offender was sentenced at summary trial to six days in detention which was imposed on 14 July 2004.

[9] It is argued by counsel on behalf of the offender that in arriving at a fit sentence in this case, the court should not have regard for the first entry on the conduct sheet; that is, the offence of absence without leave, which was disposed of by way of a sentence of four days confinement to barracks. In support of his submission, counsel on behalf of the accused has directed the court to DAOD 7006-1, entitled "Preparation and maintenance of conduct sheets". Counsel says, shortly put, that this particular conduct sheet has not been properly maintained in accordance with DAOD 7006-1, and that the first charge should have been removed from the conduct sheet.

[10] DAOD 7006-1 provides for the circumstances under which an entry on a conduct sheet is to be removed. Under the rubric "removal of an entry", this Defence administrative order provides that an entry on a conduct sheet shall be removed from a member's conduct sheet when a pardon of the offence to which the entry relates is granted under a federal statute; or when on review or appeal, the finding of guilty has been quashed; and lastly, when the Chief of Defence Staff determines that the entry should no longer be maintained in respect of a conviction by a foreign court or tribunal.

[11] The DAOD goes on to provide in the same paragraph with respect to offences which may generally be characterized as of a less serious nature which appear on a conduct sheet. It provides that an entry relating to a conviction which has resulted in a fine of $200 or less or a minor punishment, for example, seven days confinement to barracks, shall be removed from a member's conduct sheet, and there follow, four sets of circumstances to which this direction would apply.

[12] The first is upon completion of the later of six months service from the date of enrolment or re-enrolment or the member's initial military occupation training. It is not suggested that that item applies in this case. These kinds of entries on conduct sheets for relatively minor offences are also to be removed, we read, upon completion of any period of 12 months during which no conviction has been entered, or upon promotion to sergeant, or when an officer cadet or a non-commissioned member attains commissioned rank. Again, these items are not relied upon by counsel in support of his submission.

[13] Rather, he points to the last bullet, which reads that such relatively minor convictions are to be removed from a conduct sheet "prior to release from the CF of a member who is to be released without having completed initial military occupation training".

[14] I accept, for purposes of this ruling, although it appears to me the evidence on the point is scant, that indeed, the offender is an individual who is to be released without having completed initial military occupation training. However, the clear terms of this rubric provide that the entry relating to the relatively less serious offence is to be removed from the conduct sheet "prior to release from the CF of a member".

[15] In the present case, the offender before this court appears to be in the process of being released from the Canadian Forces, but he is not as of today's date, released from the Canadian Forces. Therefore, it appears to me that this particular Canadian Forces Conduct Sheet has, indeed, been maintained in accordance with DAOD 7006-1, and I decline to accept the submission of counsel on behalf of the offender that the first entry on the conduct sheet should be ignored. In these circumstances, therefore, the conduct sheet which was previously marked as an exhibit for identification I-1, will become the next exhibit in this proceeding.

[16] There are several mitigating factors which weigh with the court in determining sentence in this particular case. As has been pointed out by counsel, the accused has entered a guilty plea to the three offences with which the court is concerned. This is often an indication of genuine remorse on the part of the offender for the conduct that has given rise to the charges. I accept that the guilty pleas, in this particular case, indicate the remorse of the offender. Indeed, a guilty plea is frequently regarded as the first step on the road to successful rehabilitation, as I indicated, one of the objectives of the sentencing process.

[17] Also, this particular offender is a junior member of the Canadian Forces, having joined only in 2002. As well, as I indicated before, it appears that release proceeding for administrative reasons are underway in respect of the offender at the present time. He is 32 years of age and supports a daughter of some 10 years of age

financially to the extent of $300 per month plus other amounts which are, no doubt, advanced from time to time.

[18] In this case, I regard the mental condition of the accused as a significant mitigating factor. It appears from the evidence that I have heard that the offender suffered and continues to suffer from a physical condition of knee pain which led to a reduced function on his part as an infantryman. He appears to have experienced coping difficulties while assigned to the personnel awaiting training platoon and these have led, according to the medical evidence I have heard and read, to panic attacks, frustration, insomnia, and frequent headaches.

[19] In August of 2004, the month prior to the offences under consideration, Dr. Girvin, a lieutenant-colonel in the Canadian Forces, diagnosed the offender with borderline hypertension, adjustment disorder with a depressed mood.

[20] The previous month; that is, in July of 2004, the offender was seen by the psychiatric department at the Royal Alexandra Hospital in Edmonton because of disruptive behaviour while incarcerated. This refers to the sentence of six days detention imposed for the offence of failing to appear before a service tribunal, which on the evidence I have heard, was served and was intended to be served at the Canadian Forces Detention Barracks in Edmonton. Because of his apparent inability to cope with the circumstances of his incarceration, it appears that the offender was brought to the hospital. In his report, the doctor at the Royal Alexandra Hospital notes the adjustment disorder and what he refers to as "cluster B personality". Dr. Ramsahoye explained in his evidence that the term "cluster B personality" refers to emotional or expressive traits of the offender's behaviour.

[21] I accept the evidence of Dr. Ramsahoye. I found it balanced and insightful. In particular, I accept his evidence that a sentence involving incarceration would likely aggravate the existing adjustment disorder. His evidence on this point is borne out by the circumstances surrounding the offender's attendance, on the Royal Alexandra Hospital as I indicated.

[22] I also accept Dr. Ramsahoye's evidence of a relationship between the offender's psychiatric condition and his behaviour on 29 September 2004, that resulted in the charges before the court.

[23] The primary concern of the court in arriving at sentence in this particular case is deterrence. Considering all the circumstances, both of the offences and of the offender, I consider that the court's concern with respect to the principle of deterrence can be met, in this case, by a sentence that does not involve incarceration.

[24] Stand up, Private Martin. You are sentenced to a severe reprimand and a fine in the amount of $1200, payable $100 per month commencing 31 March 2005, and continuing for the following 11 months. In the event you are released from the Canadian Forces before the fine is paid in full, the entire amount of the then outstanding balance is to be paid the day before your release. March out Private Martin.

[25] The proceedings of this court martial in respect of Private Martin are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Captain K.A. Reichert, Regional Military Prosecutor Western
Counsel for Her Majesty the Queen
Lieutenant(N) M. Reesink, Directorate of Defence Counsel Services Ottawa
Counsel for Private J.A. Martin