

**Citation:** *R. v. Corporal M.J. Ballard*, 2005CM28

**Docket:** S200528

**STANDING COURT MARTIAL  
CANADA  
ALBERTA  
3RD BATTALION PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY**

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**Date:** 22 June 2005

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**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL BALLARD**

**(Accused)**

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**SENTENCE**

**(Rendered orally)**

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[1] The purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to the discipline, efficiency, and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily and frequently punished more severely than would be the case of a civilian engaged in similar conduct. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[2] In determining sentence today, the court has considered the circumstances surrounding the commission of the offences as revealed by the evidence heard during the trial, the documentary evidence provided to the court, as well as the testimonies heard during the sentencing procedure. This court has examined the evidence in light of the applicable principles of sentencing, including those set out in sections 718, 718.1, and 718.2 of the *Criminal Code* when those are not incompatible with the sentencing regime provided under the *National Defence Act*. The court has also considered the representations made by counsel including the case law provided to the court.

[3] Corporal Ballard was found guilty of three charges under the *National Defence Act*, and the charges relate to offences punishable under section 130 of that *Act*, for trafficking in substances contrary to subsection 5(1) of the *Controlled Drugs and Substances Act*. The first charge related to the giving a joint of marihuana to an undercover police officer in his residence on 15 June 2004. The third and fourth charges referred to the sale of a quantity of 28—or approximately 28 grams of Cannabis (marihuana) and four pills of Ecstasy on 17 June 2004 to the same person at the same location.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to one of the essential objective of military discipline; that is, the maintenance of a professional and disciplined armed force that is operational, effective and efficient, within a free and democratic society, the sentencing principles and objectives could be listed as:

Forces; Firstly, the protection of the public and this includes the Canadian

Secondly, the punishment and the denunciation of the unlawful conduct;

Thirdly, the deterrence of the offender and other persons from committing similar offences;

Fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary;

Fifthly, the rehabilitation of offenders;

Sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

Seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

Eighthly, an offender should not be deprived of liberty if less restrictive punishment or combination of punishments may be appropriate in the circumstances; and

Finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[5] In this case, the protection of the public must be achieved by a sentence that will emphasize general deterrence, punishment and denunciation, as well as specific deterrence. The sentence must also assist, but to a lesser degree, to rehabilitate the offender.

[6] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating:

- a. The objective seriousness of these offences and their prescribed maximum punishment. These offences are serious. For example, the offence of trafficking in a substance included in Schedule II and VII; that is, Cannabis (marihuana) for a quantity not exceeding three kilos, it carries with it a maximum period of five years imprisonment. The offence of trafficking in a substance listed in Schedule III, such as Ecstasy, is punishable to imprisonment for a term not exceeding ten years;
- b. The quantity involved, and the court makes special reference to third charge where the sale of Cannabis (marihuana) did amount to 28.8 grams;
- c. The nature of the drugs involved in the fourth charge; that is, a substance included in Schedule III, which is not considered a soft drug;
- d. The fact that not only you sold drugs, but you did it when you believed that your buyer had a connection with a colleague from your Regiment; and
- e. The fact that you committed the offence listed in the first charge; that is, where you committed the offence of traffic by giving a joint to the undercover police officer, when a child was present in your house.

The court considers that the following circumstances mitigate the sentence:

- a. Your record of service in the Canadian Forces. You have served your country with dedication and courage so far. That includes a

difficult deployment in Afghanistan during which you and your comrades had to live in dangerous situations. You lost a close friend during that deployment and the court believes that you remain highly affected by this period of your young life;

- b. Your financial situation. The evidence before this court establishes that you have been struggling financially in the recent years. It is likely that your financial situation is not to improve very much in a near future;
- c. Your age. Although you are 27 years old, you have many years ahead to improve and contribute positively to the society in general, if not in the Canadian Forces;
- d. The fact that you did not have a conduct sheet or criminal record related to similar offences; and
- e. The delay since the laying of the charges.

The court also recognized the direct and indirect consequences that the findings and the sentence will likely have on you, especially in light of the fact that your commanding officer has already served you with a Notice of Intent to Recommend Release on 14 April 2005.

[7] It must be stated that the court did not consider your prior drug use as an aggravating factor when determining sentencing for offences of trafficking as this would constitute, in the court's view, an error in principle. In addition, the court has reviewed once again the circumstances related to the police conduct in this case. Although that conduct fell short of constituting entrapment, the court examined that conduct to determine if it would warrant some sentence mitigation as it has been previously recognized in various appellate decisions, although on a case by case basis. After careful review, the court concluded that it had no mitigating effect.

[8] Trafficking in drugs is a very serious offence, but it is far more serious in the military context because of the pervasive and deleterious effects that are associated with the drug culture. This is exactly why the Canadian Forces adopted a severe drug policy as set out in Chapter 20 of the Queen's Regulations and Orders for the Canadian Forces. It has long been established before courts martial that the drug subculture affects morale and cohesion of units. This has a direct impact on operational effectiveness and it is imperative that the working environment as well as the institution of the Canadian Forces be protected from the devastating effects that illicit drugs may have on their resources.

[9] The court agrees with your counsel that the circumstances of this case are not as serious as in the Standing Court Martial of *Stewart*, but the court believes that a fair punishment should include a significant period of imprisonment in order to achieve the maintenance of discipline. The court believes that an accompanying fine is not appropriate in the circumstances of this case.

[10] Corporal Ballard, please, stand. For these reasons, the court sentences you to imprisonment for a period of 65 days. You may be seated.

[11] This sentence is pronounced on 22 June 2005, at 1410 hours.

LIEUTENANT-COLONEL M. DUTIL, M.J

Counsel:

Major K.A. Reichert, Regional Military Prosecutions Western  
Counsel for Her Majesty The Queen  
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Counsel for Corporal M.J. Ballard