



COURT MARTIAL

Citation: R v Miller, 2012 CM 2014

Date: 20121022

Docket: 201263

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Lieutenant-Colonel D.L. Miller, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Lieutenant-Colonel Miller, having accepted and recorded your pleas of guilty to three charges; in the first charge, an offence of wilfully making a false statement in a document required for official purposes; and in the third and fourth charges two offences of conduct to the prejudice of good order and discipline and having considered the alleged and admitted facts this court now finds you guilty on charges one, three and four. Charge number two is stayed.

[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 other 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, of which of course the Canadian Forces is a part, 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 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 proper blending of these goals, tailored to the circumstances of each case.

[5] As I told you when you tendered your pleas 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.

[6] In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to pronounce.

[7] The facts of these offences are set out in Exhibit 6, after failing a required physical fitness test on 22 June 2011, Lieutenant-Colonel Miller attended the Canadian Forces Support Unit orderly room in Ottawa on 20 July 2011 and presented a clerk with a photocopy of a CF Express programme form signed by her and dated 16 June 2011 that falsely stated that she had successfully completed the fitness test. Then in September of 2011 she attended the orderly room of the Canadian Forces Language School and again claimed falsely that she had successfully completed the Express test on 16 June 2011 and asked that the fail result be deleted from her personnel file.

[8] On these facts counsel before me jointly recommend a sentence of a severe reprimand and a fine in the amount of \$3,000.

[9] The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation car-

ries considerable weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

[10] The offender has a long and distinguished military career since her commissioning on 3 April 1981. The personnel evaluation reports submitted in evidence are among the most glowing assessments I have ever read. In addition to her accomplishments those same assessments also disclose that Lieutenant-Colonel Miller has maintained a high level of physical fitness for many years. She successfully passed a fitness test less than two months ago.

[11] On the materials I have read I do not know why she was unsuccessful in the test of 22 June 2011, but more importantly I do not know why she misrepresented her fitness level to the clerks in two different orderly rooms.

[12] I do know that she has pleaded guilty to these charges at an early stage and I conclude that she genuinely regrets what I would call these regrettable lapses in judgement.

[13] The conduct underlying these offences is entirely out of character for this offender who is described in a recent PER as being "driven by strong moral compass." And one "who lives the service before self ethos."

[14] Considering all the circumstances related both to the offences and to the offender I cannot say that the disposition proposed jointly by counsel would either bring the administration of justice into disrepute or is otherwise contrary to the public interest and I therefore accept the joint submission.

FOR THESE REASONS, THE COURT:

[15] **FINDS** you guilty of the first charge, for an offence under section 125(a) of the *National Defence Act* and guilty of the third and fourth charges, for offences under section 129 of the *National Defence Act*.

[16] **DIRECTS** that the proceedings be stayed on the second charge.

[17] **SENTENCES** you to a severe reprimand and a fine in the amount of \$3,000. The fine is to be paid forthwith.

Counsel:

Major E. Carrier, Canadian Military Prosecutions Service

Counsel for Her Majesty the Queen

Major Collins, Directorate of Defence Counsel Services
Counsel for LCol Miller