

Citation: *R. v. Ex-Private M. Maguire*, 2005 CM 20

Docket:S200520

**STANDING COURT MARTIAL
CANADA
ALBERTA
GARRISON EDMONTON**

Date: 10 May 2005

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

**HER MAJESTY THE QUEEN
v.
EX-PRIVATE M. MAGUIRE
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Mr Maguire, having accepted and recorded your plea of guilty to a charge of possession of cannabis, marihuana, the court now finds you guilty of the 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 3, and 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. Nonetheless, 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 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 behaviour.

[5] 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.

[6] 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 are further limited to the jurisdiction that may be exercised by this court. 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 finding of guilt and the sentence I'm about to impose.

[7] Briefly put, the facts disclosed that, on the date alleged, the offender was in possession of approximately one ounce of marihuana. He sold the marihuana to an undercover police officer who was a member of the National Investigation Service and a police agent, for the sum of \$150. The police agent was a friend and co-worker of the offender and was also a member of the Canadian Forces. The offender was not aware that his friend was cooperating with police authorities.

[8] In this case, both counsel submit that the appropriate sentence is a term of imprisonment of 14 days, to be suspended, and a fine in the amount of \$1,000. 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 carries substantial weight with the court.

[9] 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 joint sentencing recommendation of counsel carries even more weight in a case such as the present case, where it appears the offender has not only pleaded guilty, but has also foregone the right to raise a reasonable defence to the charge, as laid, that might have been open to him. The Manitoba Court of Appeal has referred to this and other similar circumstances as amounting to a genuine *quid pro quo* which weighs heavily with a sentencing court in its consideration of a joint sentencing recommendation.

[11] Both counsel have referred to the factors the court should consider in arriving at a proper sentence in this case. The use of illegal drugs is taken very seriously by the Canadian Forces because their use directly affects the abilities of members of the Canadian Forces to discharge their duties. So far, as offences of simple possession of marihuana are concerned, the quantity of one ounce is not insignificant. The offence involved the participation of another member of the Canadian Forces. On the other hand, the offender has pleaded guilty to the offence, and I take this to be a genuine indication of remorse on his part. The offence took place almost one year ago, when the offender was 21 years of age, and he has since been released from the Canadian Forces as a direct result of the conduct giving rise to the charge. The release date was 7 January 2005, following the completion of three years of service. His release item is not a favourable one, but he has successfully reintegrated himself into civilian life, and he's employed as an apprentice carpenter.

[12] Taking account of all the circumstances, both of the offence and of the offender, I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute, and, accordingly, I accept the joint submission.

[13] Stand up, Mr Maguire. You are sentenced to imprisonment for a period of 14 days, and a fine in the amount of \$1,000. Pursuant to section 215 of the *National Defence Act* the carrying into effect of the punishment of imprisonment is suspended. The fine is to be paid forthwith.

[14] The proceedings of this court martial in respect of ex-Private Maguire, M, are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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