Citation: *R. v. Leading Seaman M. Wilkinson*,2005CM29

Docket: S200529

STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
CANADIAN FORCES BASE ESQUIMALT

Date: 15 June 2005

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

HER MAJESTY THE QUEEN
v.
LEADING SEAMAN M. WILKINSON
(Accused)

SENTENCE
(Rendered Orally)

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[1] Leading Seaman Wilkinson, you may break off and be seated beside your defence counsel.

[2] Leading Seaman Wilkinson, having accepted and recorded your pleas of guilty to charges No. 3 and 7, two charges of committing an act of a fraudulent nature, this court now finds you guilty of charges No. 3 and 7, and directs a stay of proceedings with respect to charge No. 6.

[3] 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 disclosed in the statement of circumstances, Exhibit 6; the evidence heard during the sentencing phase; as well as the submissions of counsel, both for the prosecution and for the defence.

[4] 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.

[5] 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. 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 goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case.

[6] 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. 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 court 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.

[7] 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 for the offender of the findings of guilt and the sentence I am about to impose.

[8] The facts of these two offences are set out in the statement of circumstances, Exhibit 6.

[9] In summary, in the summer of 2003, Leading Seaman Oamil arranged with his friend, the offender, Leading Seaman Wilkinson to look after his mail while Leading Seaman Oamil sailed with his ship to the Persian Gulf. As a result, Leading Seaman Wilkinson came into possession of a pre-approved CIBC credit card application in the name of Leading Seaman Oamil which Leading Seaman Wilkinson completed and signed in the name of Leading Seaman Oamil. Over the course of about six weeks, between 20 September, and 12 November 2003, Leading Seaman Wilkinson ran up debt

on the card of about $4300. When confronted by Leading Seaman Oamil on his return from the Gulf, Leading Seaman Wilkinson admitted his fraud upon his friend and promised to pay him back.

[10] Also during the summer of 2003, Leading Seaman Wilkinson arranged with another friend, Leading Seaman Hartman, to obtain a TD VISA credit card for the purpose of a joint business venture. Leading Seaman Hartman was the primary card holder on the account and a second card was issued in the name of Leading Seaman Wilkinson. Leading Seaman Hartman simply gave the cards to Leading Seaman Wilkinson, indicating that he did not wish to have another credit card. Between 25 August 2003, and 21 May 2004, Leading Seaman Wilkinson ran up approximately $4800 in debt on the TD VISA account. When Leading Seaman Hartman received the statement showing purchases by Leading Seaman Wilkinson he confronted him. Leading Seaman Wilkinson apologized, assumed the financial obligation, and agreed to make full restitution.

[11] The prosecution points to the breach of trust between comrades-in-arms involved in the commission of the offences before the court in support of a recommended sentence of 14 days' detention. The defence submits that an appropriate disposition in the present case is a severe reprimand and a fine of between one and two thousand dollars.

[12] The prosecution submits that these offences are analogous to stealing the property of a fellow soldier in barracks, a kind of offence that often attracts a sentence of incarceration. But stealing is objectively a more serious offence, punishable by a maximum of 14 years' imprisonment when committed by a person entrusted with the stolen property. The offences before the court in the present case are offences of committing an act of a fraudulent nature and are punishable by imprisonment for a maximum of two years, less one day.

[13] In my view, the position taken by the prosecution is not supported by the authorities to which I have been referred.

[14] Indeed, in the cases of *Gunner Doucet* in January of 2003, and *Corporal Kelly* in May of 2003, both relied upon by the prosecution here, the prosecution in those cases submitted that a severe reprimand and a fine would be appropriate. Gunner Doucet pleaded guilty to one charge of stealing a credit card in a barrack room theft and two charges of using a credit card obtained by the commission of an offence. The total amount of money lost was approximately $800 worth of car repairs.

[15] Corporal Kelly pleaded guilty to two charges of misuse of credit card data, by which goods to a value in excess of $1400 were obtained over a period of four and one-half months. The offender in that case had a significant record of previous convictions for offences which were not related to fraud. The sentencing judge

characterized the credit card offences committed by Corporal Kelly as being on a par with stealing money.

[16] The case of *Corporal Parsons* in October 2002, like the present case, involved two charges of committing fraudulent acts; that is, misappropriating funds from the platoon canteen fund in a total amount of about $5,000. The prosecution in that case joined with the defence in recommending a severe reprimand and a substantial fine. And the sentencing judge accepted the joint recommendation and fixed the amount of the fine at $2850.

[17] The prosecution, in the present case, submits that a reprimand and a fine would not be appropriate, but I have not been given any reasons, either in the evidence or in the course of the addresses of counsel, to suppose that these previous cases were unusual cases that should not guide the court in arriving at a fit sentence in the present case. The Court Martial Appeal Court has recently reaffirmed the importance of the principle of parity in sentencing in the case of *Trooper Nathan Lui*, CMAC 482, 8 March 2005.

> The sentence to be imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[18] There are several mitigating circumstances that weigh with the court in this case, relating both to the circumstances of the offences and of the offender. He is 37 years of age with 19 and 1/2 years of otherwise unblemished service as a cook in the Canadian Forces. He has no previous record of disciplinary infractions. By February 2003, some months prior to these offences, he had been admitted to hospital for the second time for treatment of depression, having been diagnosed with an adjustment disorder.

[19] I accept the evidence of Dr Pickersgill that while the offender would have realised his actions were wrong, by reason of his mental condition he would have difficulty seeing beyond the immediate impacts of his actions to appreciate their long term consequences. In this way, I consider that the deteriorating mental health of the offender contributed to the commission of these offences.

[20] He has pleaded guilty to these offences. The offences were committed at a time in his life when the stresses of a failed marriage resulting in divorce, a failed property investment resulting in personal bankruptcy, the death of his mother, and his deteriorating mental health were leading to alcohol addiction, suicidal intentions, and a general inability to cope. He is currently in the process of release from the Canadian Forces on medical grounds.

[21] I accept the uncontradicted evidence of the offender that one of the reasons he committed these offences was to get money to pay for medical procedures

required for the benefit of his mother-in-law in Russia. Once the offences came to the attention of the police investigators, the offender cooperated with them. He has been making restitution of the amounts owing since that time. I have not been informed as to the total amount of money still owing. There is no suggestion that either of Leading Seaman Oamil or Leader Seaman Hartman suffered financial loss as a result of these offences.

[22] I agree with the prosecution that in cases of this kind, where a Canadian Forces member has dishonestly taken advantage of his comrades, the court must be particularly concerned with the principle of deterrence. Those concerns are attenuated, to some degree, by the evidence of the mental condition of the offender at the time of the offences, and my finding that his mental condition was a contributing factor in the commission of the offences. In my view, the court's concerns about deterrence can be met, in this case, with a sentence that does not involve incarceration.

[23] Stand up, Leading Seaman Wilkinson.

[24] You are sentenced to a severe reprimand and a fine in the amount of $1800 payable in monthly instalments of $50 each for four months commencing 15 July 2005, to and including 15 October 2005, and, thereafter, in monthly instalments of $200 commencing 15 November 2005, and continuing for the following seven months. In the event you are released from the Canadian Forces for any reason before the payment of the fine in full, the full amount of the unpaid balance then owing is payable the day before your release.

[25] March out Leading Seaman Wilkinson.

[26] The proceedings of this court martial in respect of Leading Seaman Wilkinson, Murray are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major B.J. Wakeham, Regional Military Prosecutions Western
Counsel for Her Majesty the Queen
Lieutenant(N) D. Reeves, Deputy Judge Advocate General Pacific
Assistant Counsel for Her Majesty the Queen
Lieutenant-Colonel J.M. Dugas, Directorate of Defence Counsel Services
Counsel for Leading Seaman M. Wilkinson