



## COURT MARTIAL

**Citation:** *R v Desgroseilliers*, 2013 CM 2014

**Date:** 20130523

**Docket:** 201330

Standing Court Martial

Canadian Forces Base Borden  
Borden, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private K. Desgroseilliers, Offender**

**Before:** Commander P.J. Lamont, MJ

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### SENTENCE

(Orally)

[1] Private Desgroseilliers having accepted and recorded your pleas of guilty to the two charges in the charge sheet and having considered the alleged and admitted facts in this case dealing with two charges of failing to comply with conditions in an undertaking given for your release under the Code of Service Discipline, this court now finds you guilty of the first and the second charges.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing I consider the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I as well consider the facts of the case as described in the statement of circumstances and the other materials submitted to me by both the prosecution and the defence, and I consider as well the submissions of counsel, both for the prosecution and the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in arriving at a fit sentence in each 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 ordinary sense of justice that similar cases should be treated in similar ways. Nevertheless, 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 higher punishment and the mitigating circumstances that may reduce the 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 Canadian 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 important to the maintenance of an effective 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 an appropriate blending of these goals, tailored to the particular circumstances of the 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 the 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 both the findings of guilt and the sentence I am about to pronounce.

[7] The facts of the case are as alleged in the two offences before the court. While bound by the provisions of an undertaking given under the *National Defence Act* to secure his release from custody on apparently serious charges, the offender was bound by a series of conditions which included that he abstain absolutely from the consumption of alcohol and that he be in his residence specified in the conditions; during the late evening hours and through to the early morning hours of the following morning each and every day.

[8] In violation of those two conditions the offender consumed alcohol at the residence of a relative. At some point late in the evening he expressed an intention to carry on consuming alcohol at the club at the base Petawawa and thereafter came to the attention of the military police who suspected that he had committed the criminal offence of consuming too much alcohol and operating a motor vehicle. I note that you have apparently since been found not guilty by His Honour Judge Selkirk of the drinking and driving offence and the charges upon which you were released from custody under the conditions, the violation of which brings you before me, have since been withdrawn by the prosecution.

[9] As I stated in the case of *Private Castle* in March of 2008, in a military context I consider that the offence of failing to comply with the conditions of release from custody is somewhat more serious than the analogous offence under the *Criminal Code* for failing to comply with the conditions imposed for release from custody on charges laid under the *Criminal Code*. And the reason, of course, is that the failure to comply with conditions in the military context means the failure to comply with conditions imposed by a military judge. Members of the Canadian Forces are trained from their earliest days in the importance of compliance with the orders of their military superiors.

[10] If you hadn't learned that important lesson at the time these offences were committed in August of last year I am confident that you are now aware of the importance of that lesson.

[11] On these facts the lawyers in this case jointly recommend a sentence of a fine in the amount of \$1500.

[12] As counsel have pointed out in this and many other cases the sentence that is to be pronounced is, of course, a matter for the court, but where, as in this case, both the lawyers agree on a recommended disposition, then that recommendation carries 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 sentencing court unless the recommended disposition would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

[13] I am mindful of the circumstances relating to the offender as an individual, he is a relatively junior member of the Canadian Forces and on the information that I have been provided with has every prospect of a long and successful career in the Canadian Forces.

[14] I infer from the fact of his guilty plea to these two charges tendered and accepted at the earliest stage in the proceedings at which such an indication can be given formally that the offender is indeed remorseful for the conduct that brings him before the court. In my view this kind of conduct is unlikely to be repeated in the future and the court is less concerned with the sentencing principle of specific denunciation and specific deterrence in this particular case.

[15] On all the circumstances both relating 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:**

[16] **FINDS** you guilty of the first charge, for an offence under section 101.1 of the *National Defence Act* and guilty of the second charge, for an offence under section 101.1 of the *National Defence Act*.

[17] **SENTENCES** you to a fine in the amount of \$1500. The fine is to be paid in equal monthly instalments of \$150 each commencing 30 June 2013 and continuing for the following nine months. In the event you are released from the Canadian Forces for any reason before the fine is discharged in its entirety the then outstanding unpaid balance is due and payable the day prior to your release.

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**Counsel:**

Major J.E. Carrier, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Lieutenant-Commander D. Liang, Directorate of Defence Counsel Services  
Counsel for Private Desgroseilliers

Major S. Collins, Directorate of Defence Counsel Services  
Counsel for Private Desgroseilliers