

Citation: *R. v. Leading Seaman L.J. Rogers*, 2007 CM 3013

Docket: 200709

**DISCIPLINARY COURT MARTIAL
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX**

Date: 1 May 2007

PRESIDING: LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN

v.

**LEADING SEAMAN L.J. ROGERS
(Offender)**

SENTENCE

(Rendered Orally)

[1] Leading Seaman Rogers, having accepted and recorded a plea of guilty in respect of charges number 1 and 2, I find you now guilty of these charges. The members of the disciplinary court martial panel, including the alternates, are discharged and I order that the court martial administrator be informed as soon as possible in order to inform them about my decision.

[2] The military justice system constitutes the ultimate mean to enforce discipline in the Canadian Forces, which is a fundamental element of the military activity. The purpose of this system is to prevent misconduct, or in a more positive way, see the promotion of good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusty and reliable manner, successful missions.

[3] As stated by Major Jean-Bruno Cloutier in his thesis, the military justice system, and I quote, "has for purpose to control and influence the behaviours and ensure maintenance of discipline with the ultimate objective to create favourable conditions for the success of the military mission." The military justice system also ensure that public order is maintained and that those who are subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunals is to allow the Armed Forces to deal with matters that

pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale among the Canadian Forces. That being said, the punishment imposed by any tribunal, military or civilian should constitute the minimum necessary intervention that is adequate in the particular circumstances. It also goes directly to the duty imposed to the court to, and I quote, "impose a sentence commensurate with the gravity of the offences and the previous character of the offender" as stated at QR&O article 112.48(2)(b). Here, in this case, the prosecutor and the counsel for the defence made a joint submission on sentence. They recommended that this court sentences you to 30 days detention.

[5] I have considered the joint submission in light of the relevant facts set out in the statement of circumstances and their significance and I've also considered the joint submission in light of the relevant sentencing principles, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. These principles are the following: firstly, the protection of the public and the public includes the interest of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender but also upon other who might be tempted to commit such offences; and fourthly, the reformation and rehabilitation of the offender. I have also considered the representations made by counsel including the case law provided to me and the documentation introduced.

[6] I must say that I agree with the prosecutor when he expressed the view that the protection of the public must be ensured by a sentence that would emphasize denunciation and general deterrence. It is important to say that general deterrence means that the sentence imposed should deter not simply the offender from re-offending but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. As stated by Judge Létourneau at paragraph 22 of the Court Martial Appeal Court decision in *Private St-Jean and Her Majesty The Queen*, CMAC -429:

Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct.

[7] I also take into account that the main purpose of sentencing in the military justice system is the restoration of discipline and not only in the one who committed the offence but also in the military community.

[8] Here, I am dealing with an offence for stealing money and items from some non-public fund organizations and with an offence for damaging public fund property. They are both very serious offences. However, I will impose what it considers

to be the necessary minimum punishment in the circumstances in light of the recommendations made by counsel.

[9] In arriving at what I consider a fair and appropriate sentence, I have considered the following mitigating and aggravating factors.

[10] I consider as aggravating:

Firstly, the objective seriousness of the offences. The first offence you were charged with was laid in accordance with section 114 of the *National Defence Act* for stealing. This offence is punishable by seven years of imprisonment or to less punishment. The second offence you were charged with was laid in accordance with subsection 116(a) of the *National Defence Act* for damaging public property. This offence is punishable by an imprisonment for less than two years or to less punishment.

Secondly, the objective seriousness of the offence. You committed these offences on a defence establishment in various messes and canteen set out in order to be used for furthering and bolstering morale and *esprit de corps* among your peers and within your unit. Your lack of integrity, courage, honesty and loyalty was totally contrary to the obligations and principles of ethic you were taught as a soldier and a sailor in the Canadian Forces and resulted in a long deprivation of these funds for these non-public fund organizations.

Thirdly, the fact that you were an experienced sailor and supply technician, well trained and at the rank of leading seaman put on you the additional burden to lead by example, which you failed to do at the time the offences were committed.

Fourthly, the fact that you have a conduct sheet related to a similar offence. However, it is important to note that you were sentenced for that similar offence about a month after the commission of the one I am dealing with today.

Finally, the fact that these two offences were well premeditated. The meticulous planning you showed in committing these offences demonstrates clearly that you were selfish and that you did not really care about the consequences of your acts on others at the time of the commission of the offences.

[11] I consider that the following circumstances mitigate the sentence:

Through the facts presented to this court, I also consider that your plea of guilty is a genuine sign of remorse and that you are sincere in your pursuit of becoming again a valid asset to the Canadian Forces and the Canadian community.

Your record of service in the Canadian Forces since you decided to solve your gambling problems. It has to be noted that since the reporting period of the Performance Evaluation Report 04-05 through today, you made an impressive progression to the extent that you regained confidence from your chain of command concerning your professional skills and your potential for the next rank level. It is well expressed by the fact that in your last PER you were recommended for an immediate promotion.

The fact that you decided to solve your gambling problems in 2004 by seeking treatment with an addiction counsellor. You're still part of the Gambler's Anonymous and it seems that you have managed to control your problem so far. Also, as indicated by the prosecutor, your addiction counsellor has not received any sign from you or your chain of command that you still have gambling problems. I really encourage you to continue to do so and remind you that there won't be a second chance, considering your age and your time in the Canadian Forces.

The delay since the laying of the charges. It appears to me that the chain of command had some problems to deal with the charges in a prompt and expeditious manner. Not having an explanation for it, I have to consider this long delay to put things on track as a mitigating factor. However, on the other hand, it is important to note that this delay gave the offender a great opportunity to demonstrate that he could back and improve himself as a sailor and a supply technician in the Canadian Forces, which he did.

[12] Considering that the punishment of detention seeks to rehabilitate military members and that counselling programmes to deal with specific matters may be available if it is required, as indicated at note A of QR&O article 104.09, and that this punishment is the minimum necessary one, the Court believes that the joint submission is not unreasonable in the circumstances.

[13] In consequence, the Court will accept the joint submission made by counsel to sentence you to the punishment of detention for 30 days because I consider that it would not be contrary to the public interest and would not bring the administration of justice into disrepute.

[14] Leading Seaman Rogers, I want to tell you clearly that I hope that you see this court martial as an opportunity for a new start and to put things related to gambling behind you forever. I sincerely hope that you will meet the expectations that your peers and your chain of command have put in you. Integrity, courage, loyalty, honesty and responsibility are principles that you shall respect.

[15] Leading Seaman Rogers, please stand up. Therefore, the Court sentences you to 30 days detention. The sentence was passed at 1624 hours on 1 May 2007 Atlantic time. Please, be seated.

[16] Major D'Urbano, pursuant to QR&O article 118.03, do you have an application for release pending appeal to deliver to this court at this time?

DEFENCE COUNSEL: No, Your Honour.

Military Judge: Leading Seaman Rogers, if you intend to make an application for release pending appeal to this court, you must comply with QR&O article 118.03 within 24 hours and you can get more explanation from your defence counsel.

OFFENDER: I has already been explained, sir.

MILITARY JUDGE: So you have been briefed about this.

OFFENDER: Yes, sir.

MILITARY JUDGE: Okay. The proceedings of this disciplinary court martial in respect of Leading Seaman Rogers are terminated subject to an application for release pending appeal pursuant to QR&O article 118.03.

LIEUTENANT-COLONEL L.-V. D'AUTEUIL, M.J.

Counsel:

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