

Citation: *R. v. Corporal C.P. Griffin*, 2007 CM 3008

Docket: 200702

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
HALIFAX**

Date: 1 March 2007

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

HER MAJESTY THE QUEEN

v.

**CORPORAL C.P. GRIFFIN
(Offender)**

SENTENCE

(Rendered orally)

[1] The military justice system constitutes the ultimate means 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.

[2] As stated by Major Jean-Bruno Cloutier in his thesis *L'utilisation de l'article 129 de la Loi sur la défense nationale dans le système de justice militaire canadien*, the military justice system, and I translate, "Has the purpose to control and influence the behaviour 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 ensures 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.

[3] 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 impose a sentence commensurate with the gravity of the offence and the previous character of the offender, as stated at QR&O article 112.48 (2)(b).

[4] In determining sentence, the court has considered the circumstances surrounding the commission of the offence as revealed by the evidence heard during the trial, and the applicable principles of sentencing, including those set out in section 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*. The court also considered Major Campbell's testimony, the representations made by counsel, including the case law provided to the court, and the documentation introduced.

[5] Corporal Griffin was found guilty of one charge under the *National Defence Act*. The charge relates to an offence punishable under section 83 of the *National Defence Act*, for disobeying an order given by a superior officer.

[6] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender.

[7] In order to contribute to one of the essential objectives of military discipline; that is, the maintenance of a professional and disciplined armed force that is operational, effective, and efficient, the sentencing principles and objectives could be listed as: Firstly, the protection of the public, and this, of course, includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender, and any other persons, from committing similar offences; fourthly, the rehabilitation of offender; fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender; sixthly, that sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[8] In this case, the protection of the public must be achieved by a sentence that will emphasize general deterrence. 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.

[9] In arriving at what the court considers a fair and appropriate sentence,

the court has considered the following mitigating and aggravating factors. The court considers as aggravating: the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 83 of the *National Defence Act*, for disobeying a lawful command of a superior officer. This offence is punishable by imprisonment for life or to less punishment; the fact that you demonstrated, at the time of the offence, a total lack of responsibility and integrity, even though you were given time to comply with the order; the fact that you were a trained and very experienced soldier at the rank of corporal for seven years put on you the additional burden to lead by example, which you failed to do so; the conduct sheet disclosed the fact that you were found guilty of an AWOL, absence without leave, that took place a short time after the incident that this court is dealing with. Even though it is not a similar offence in nature, it demonstrates that, at the time, you were going through some attitude problems while you were working on a full time basis at your unit.

[10] Mitigating factors. The court considers that the following circumstances mitigate this sentence: The fact and the circumstances of this case, including the fact that your disobedience did not result in any regrettable circumstances; your record of service in the Canadian Forces; your age and your career potential as a member of the Canadian Forces. Being 34 years old, you have many years ahead to contribute, positively, to the society in general, as well as in the Canadian Forces; the delay since the laying of the charges; the fact that some administrative actions were taken just after the incident in consideration of your conduct. This court recognizes clearly that the Recorded Warning that was given to you does not constitute a disciplinary sanction; however, it had some specific deterrence on you at the time.

[11] The court also recognizes the direct and indirect consequences that the finding and the sentence will likely have on you. Disobedience of a lawful order of a superior officer is a very serious military offence. Being ordered is at the heart of the profession of arms and of an armed force. The attitude toward orders is developed through different situations and training, which you clearly did not have.

[12] The appropriate range for an offence of this nature is from a severe reprimand, or reprimand and a fine, down to a fine. The court considers also that the fact that you had to face this court martial has already had some deterrent effect on you, but also on others. The court is satisfied that you will not appear before the court for a similar or any offence in the future. The court is convinced that you are a good soldier, and that you changed your attitude toward the obedience to lawful orders. You will have, probably shortly, an opportunity to apply what you have learned through this trial concerning the obedience to orders. It will be good for you to take it, in order to regain the total confidence of your chain of command, by demonstrating that you have found the proper line of work.

[13] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of this particular case. Corporal Griffin, stand up, please. This court sentences you to a reprimand and a fine of \$800. The fine is to be paid in monthly instalments of \$100 each, commencing on 1 April 2007, and continuing for the following seven months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid amount is due and payable the day prior to your release.

[14] The proceedings of this court martial in respect of Corporal Griffin are terminated.

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

Counsel:

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