



COURT MARTIAL

Citation: *R v Westcott*, 2013 CM 1014

Date: 20131029

Docket: 201361

Standing Court Martial

Canadian Forces Base Greenwood
Greenwood, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Corporal D.R. Westcott, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

INTRODUCTION

[1] Corporal Westcott has pleaded guilty to two charges of possession of property obtained by crime, both offences punishable under section 130 of the *National Defence Act* contrary to subsection 354(1) of the *Criminal Code of Canada*. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that the court impose a severe reprimand accompanied by a fine in the amount of \$1,500 payable in 10 equal payments. The court is not bound by this joint proposal but it cannot reject it unless it is unfit, contrary to public interest or it would deconsider the administration of military justice.

[2] The circumstances surrounding the commission of the offences reveal that in June of 2012, Corporal Westcott was an aerospace telecommunication and information systems technician working at 14 Air Combat Service Support Squadron at Canadian Forces Base Greenwood who had access to the secure storage for laptop computers

maintained by the squadron as replacements and backups to laptops issued to Canadian Forces Base Greenwood personnel. In June of 2012 he signed out a loan card for an HP Elitebook 8504P laptop computer, serial number CND0511T1V, property of the Government of Canada and took the laptop from where it was maintained in a secure storage to his home. The value of the HP laptop was approximately \$932. A few days later he removed a Lenovo ThinkPad T520 computer, serial number R9-MR47X, property of the Government of Canada, from the secure storage during the working day and took it to his home. The value of that second laptop was approximately \$928. In July of 2012 he shredded the loan card for the HP laptop, but kept the laptop computer. In the summer of 2012 Corporal Westcott placed an add on the Internet to sell the HP laptop and shortly thereafter sold the HP laptop for \$250 to a civilian living in the area. That person was somewhat suspicious of the origin of the laptop computer and spoke to a personal friend and Regular Force member posted to Canadian Forces Base Greenwood, however that person did not make further inquiries at that time. In January of 2013 Corporal Westcott asked his partner to place an online add in the Greenwood Yard Sale Facebook Group for the Lenovo laptop. On 27 January 2013 he sold the laptop to an officer posted to 404 Squadron at Canadian Forces Base Greenwood for \$150. This officer was suspicious that it might be a military laptop and on 31 January 2013 he brought it to the military police. The military police investigators quickly determined that the Lenovo laptop had been stolen from the secure storage at 14 Air Combat Service Support Squadron and that the HP laptop was in fact property of the Government of Canada and had also been taken from the secure storage without authority.

[3] In sentencing an offender under the Code of Service Discipline, a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and
- (d) finally, the reformation and rehabilitation of the offender.

[4] The sentence must also take into consideration the following principles: it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; a court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; finally, the sentence will be increased or reduced to account for any relevant aggravating or mitigating

circumstances relating to both the offence and the offender. However, the court must always act with restraint in determining sentence in imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline. In this case, the sentence must emphasize the objectives of denunciation as well as general and specific deterrence as proposed by counsel before the court.

[5] The aggravating factors in this case are the following:

- (a) the breach of trust of the offender who had access to the secure storage for laptop computers at the squadron;
- (b) the premeditation and the planning involved to obtain the computers and their improper disposal through the use of the Internet for personal gain, even if the offender's poor financial situation was the motive behind his crime; and
- (c) the objective seriousness of this offence which provides that a person guilty of an offence under section 354 of the *Criminal Code* is liable to imprisonment for a term not exceeding two years where the value of the subject-matter does not exceed \$5,000.

[6] The mitigating circumstances are the following:

- (a) Corporal Westcott has accepted full responsibility for his conduct by pleading guilty but also in expressing his regrets publically in this courtroom today;
- (b) restitution was made to the third parties who had purchased the property obtained by crime;
- (c) the computes were ultimately retrieved by the owner; that is, the Government of Canada; and
- (d) finally, the family and financial situation of the offender. He has provided the court with a document listing his monthly cash flow and budget that reveal a free monthly balance of \$267 per month. He is married and the sole provider for his family. He has four children, including one from a previous relationship for whom he pays monthly support in the amount of \$250.

[7] The court finds that the proposed sentence is the minimal sentence in the circumstances. The proposed sentence is adequate to meet the objectives sought; namely, denunciation, general and specific deterrence.

FOR THESE REASONS, THE COURT:

[8] **FINDS** the offender, Corporal Westcott, guilty of the second and fourth charges for the offences punishable under section 130 of the *National Defence Act* contrary to section 354(1) of the *Criminal Code*.

[9] **DIRECTS** that the proceedings on the first and third charges be stayed.

[10] **SENTENCES** the offender, Corporal Westcott, to a severe reprimand and a fine in the amount of \$1,500 payable in 10 equal and consecutive monthly instalments beginning 15 November 2013.

Counsel:

Lieutenant-Commander D.T. Reeves Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services
Counsel for Corporal D.R. Westcott