

Citation: *R. v. Master Corporal T.J. Mills*, 2008 CM 4013

Docket: 200819

**STANDING COURT MARTIAL
CANADA
ALBERTA
4 WING COLD LAKE**

Date: 25 September 2008

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, MILITARY JUDGE

HER MAJESTY, THE QUEEN

v.

**MASTER CORPORAL T.J. MILLS
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Master Corporal Mills, you have been found guilty of assault with a weapon. The court must now determine the just and appropriate sentence.

[2] The principles of sentencing which are common to both courts martial and civilian criminal trials in Canada have been expressed in various ways. Generally, they are founded on the need to protect the public and the public includes the Canadian Forces. The primary principles are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct, and, last but not least, the principle of reformation and rehabilitation of the offender.

[3] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors. The purposes of sentencing are to denounce unlawful conduct, to deter the offender and other persons from committing offences, to separate the offender from society where necessary, to assist in rehabilitating offenders, to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders in acknowledgment of the harm done to victims and to the community.

[4] The court is also required in imposing a sentence to follow the directions set out in article 112.48 of the Queen's Regulations and Orders which obliges it, in determining a sentence, to take into account any indirect consequences of the finding or of the sentence, and impose a sentence commensurate with the gravity of the offence and the previous character of the offender. The court must also give consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different.

[5] The court must also impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[6] The Court Martial Appeal Court decision in *R. v. Captain Paquette*, 1998 CMAC 418, stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest. The prosecution and your defence counsel have jointly proposed a sentence of detention for 30 days. They have also requested that I suspend that sentence.

[7] The prosecution and your defence counsel have presented two cases to support their position.

[8] The prosecutor suggests that the principle of deterrence is the most important sentencing principle in this case, closely followed by rehabilitation.

[9] You have been found guilty of assault with a weapon. On 25 December 2005, while you were deployed in Kandahar, Afghanistan, you cocked your C8 rifle when confronting a fellow soldier. You used your weapon in a threatening manner after a brief fight with that soldier. You did this because you were intoxicated and you were annoyed with him. You and the victim of this assault were both corporals at the time of the offence.

[10] I will examine the aggravating factors of this case. You used the weapon issued to you in a theatre of operations to threaten a fellow soldier while you were intoxicated. This is unacceptable behaviour on the part of a soldier. You showed a total lack of self-discipline. This lack of self-discipline seems to have been caused by your intoxication. You chose to drink to excess and you were thus the cause of your misconduct. Military personnel deployed in a theatre of operations where combat and threats to their lives is a daily occurrence must be treated like responsible adults, but they, in turn, must also act like responsible adults. Although the court understands that the stress one must endure while deployed in such a theatre of operations must be great, it cannot be used to excuse behaviour that is the antithesis to your training and experience.

[11] The comments made by Corporal Ngoviky and his lack of sympathy cannot be used to justify or explain your behaviour. Using a loaded weapon to threaten a fellow soldier is never acceptable or justifiable behaviour on the part of a soldier. This is a very serious offence, both subjectively and objectively, because of the circumstances surrounding the offence; namely, the location where the offence occurred and the exact context of this offence. Your actions have also affected the psychological well-being of the victim. Also, it has affected how other soldiers perceived you, some were concerned of a possible deployment with you in Afghanistan. This demonstrates that your misconduct had an impact on the operational effectiveness of your unit.

[12] I will now examine the mitigating factors of this case. This incident appears to have been the only blemish on an otherwise very promising career. You are a first-time offender. The character letters are quite glowing in their description of your performance and potential. Your personnel evaluation reports are excellent and demonstrate a consistent improvement in your performance and indicated that you were progressing more rapidly than your peers towards a promotion and that you were always ready for greater responsibilities.

[13] Although you did not plead guilty, you have shown remorse. You did apologize to Corporal Ngoviky on 26 December 2005, the day after the incident. You testified during the sentencing phase of this trial. The court finds you truthful when you say you are sorry for your actions and that you are embarrassed. The court accepts that you were under a great deal of stress during your tour, but, as I said, this stress cannot excuse your actions. You have the support of your chain of command, and your conduct and performance since the offence has been excellent to the point that you are considered a role model for subordinates and peers.

[14] I consider the delay in bringing this matter to trial as a mitigating factor. As stated by the prosecutor, this trial is occurring almost three years after the offence. Such a lengthy delay minimizes the impact that this trial may have on discipline.

[15] Although none of the two cases presented by counsel are identical to your case, I find that I may still use these cases to determine the adequate sentence in the present case.

[16] Having considered all of the evidence accepted by the court during the trial and during the sentencing phase of this trial, and having considered the sentencing decisions of the two cases presented to me, I have come to the conclusion that the sentencing principles of deterrence and rehabilitation, as well as a requirement to impose a sentence that should be the minimum necessary sentence to maintain discipline will be met by the following sentence.

[17] Having considered the facts, the mitigating and aggravating circumstances, and keeping in mind the direction given by the Court Martial Appeal Court in *R. v. Paquette*, I concur with the joint submission of counsel that the minimum necessary sentence to maintain discipline in this specific case is a suspended sentence of detention for 30 days.

[18] Master Corporal Mills, I sentence you to detention for a period of 30 days. I also suspend the sentence of detention.

[19] Pursuant to section 196.14 of the *National Defence Act*, I shall make an order authorizing the taking of DNA samples of the offender.

[20] Also, pursuant to section 147.1 of the *National Defence Act*, I shall make an order prohibiting you, for a period of two years, from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things.

LCol J-G Perron, M.J.

COUNSEL:

Major S. MacLeod, Directorate of Military Prosecutions 3-2
Counsel for Her Majesty, The Queen

Lieutenant-Commander P. Desbiens, Directorate of Defence Counsel Services
Counsel for Master Corporal T.J. Mills