Citation: *R. v. Captain J.L. Camirand*, 2008 CM 4016

Docket: 200832

STANDING COURT MARTIAL
CANADA
ONTARIO
THUNDER BAY ARMOURY

Date: 20 October 2008

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY, THE QUEEN
v.
CAPTAIN J.L. CAMIRAND
(Offender)

SENTENCE
(Rendered Orally)

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[1] Captain Camirand, having accepted and recorded your plea of guilty to charge No. 1, as explained to you and as explained by you, the court now finds you guilty of this charge. The court must now impose a fit and just sentence.

[2] The statement of circumstances to which you formally admitted the facts as conclusive evidence of your guilt, along with your precision concerning the exact date of the offence, provides this court with the circumstances surrounding the commission of this offence. The documentary evidence presented by your counsel has also provided this court with evidence to assist it in the sentencing phase of this trial. I have also considered the evidence, the documents, presented by the prosecution. In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of this offence, the mitigating circumstances raised by the evidence presented by your defence counsel, the aggravating circumstances raised by the prosecutor, and the representations by the prosecution and by your defence counsel, and also the applicable principles of sentencing.

[3] Those principles 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, of course, 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. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[4] The court is required in imposing a sentence to follow the directions set out in paragraph 112.48(2) of the Queen's Regulations and Orders which obliges it, in determining a sentence, to take into consideration 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 has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code of Canada*. The purposes and principles enunciated at these sections serve 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 and acknowledgment of the harm done to victims and to the community. The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline.

[5] The ultimate aim of sentencing is the restoration of discipline in the offender and in military society. Discipline is that quality that every CF member must have which allows him or her to put the interests of Canada and the interests of the Canadian Forces before his or her personal interests. This is necessary because Canadian Forces members must willingly and promptly obey lawful orders that may have devastating personal consequences such as injury and death. I describe discipline as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training, and practice, it is an internal quality and it is one of the fundamental prerequisites to operational efficiency in any armed forces.

[6] The prosecution suggests that the principles of general deterrence and denunciation are the factors that apply in this case. The prosecution has provided this court with three cases in support of its submission of a sentence of a reprimand and a fine in the amount of $500. Your counsel has also proposed a sentence of a reprimand and a fine in the amount of $500.

[7] The Court Martial Appeal Court decision in *R. v. Captain Paquette*, 1998 CMAC 418, clearly stated 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.

[8] You have pled guilty to a charge laid under subsection 125(a) of the *National Defence Act*. More specifically, you have admitted that you willfully signed a Reserve pay sheet confirming that members of 736 Communications Squadron had worked on 9 October 2006 when you knew that they had not worked on that date. In September 2006 you had held an O group during which you stated that you would authorize one extra day's pay for each member of the unit who joined the unit fund. You also encouraged those members to donate to the unit fund $30 of that free day's pay. You instructed a master corporal to select a day on which the squadron had not paraded and that a pay sheet be prepared for that date. Exhibit 8 is the Reserve Force Basic Attendance Register, Unit Training, Class A Reserve Service, the pay sheet, that was prepared in accordance with your instructions. It contains the names of 27 members of 736 (Thunder Bay) Communications Squadron. Fifteen members of the squadron signed that 9 October '06 pay sheet. The CO of the unit at the time of the offence, two officers, a captain and a 2nd lieutenant, one master warrant officer, one warrant officer, seven corporals, and three privates signed that false document. You then certified in accordance with section 34 of the *Financial Administration Act* that the personnel listed in the pay sheet had undergone the authorized training.

[9] The Supreme Court of Canada touched on the concept of discipline within the Armed Forces at paragraph 60 of its 1992 seminal decision of *R. v. Généreux*, [1992] 1 S.C.R. 259. The court stated that:

> The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather than the ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military....

[10] I will now set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case.

[11] I consider the following to be aggravating circumstances:

As an officer with approximately 39 years of experience at the time of the offence, you knew clearly the importance of acting ethically and in accordance with the laws of our country. You had attended the presiding officer course, you knew that you were doing something that was totally unlawful.

Exhibit 8, the pay sheet, indicates that your CO had signed the pay sheet. I was not provided with evidence on that issue. The court is left wondering if you had received the explicit or tacit approval of your CO, but the court cannot come to a conclusion. The court knows from the evidence that you had used an O group as the forum to announce your scheme to the unit. It would appear from your personnel evaluation report covering the period of 1 April '06 to 31 March '07 that you were acting as the deputy commanding officer of the unit when you signed the pay sheet.

Notwithstanding the fact that you did not initiate this illegal scheme for your own purposes, your words and actions are inexcusable. I do not agree with your counsel when he asserts that your illegal action had minimal impact on your unit. You occupied a position of trust and respect within the unit. You had an important role to play in the good order and discipline of that unit. You had been promoted to the rank of captain in March 2005 from the rank of chief warrant officer. As an officer, occupying a senior position within the unit, you were supposed to be an example for junior officers as well as for non-commissioned members. What were they then supposed to think ? How were they supposed to respect the principles and ethics that the CF strives to impress upon each of its members when they are encouraged by the deputy commanding officer of the unit to lie and to defraud the Crown in exchange of a contribution to the unit fund?

Your act, although not very subtle, was premeditated.

[12] I will now address the mitigating factors of this case:

You are a first-time offender. You cooperated completely with the military police investigation and you fully admitted your actions to them. A guilty plea is an admission of guilt and can be considered and is considered a show of remorse. You indicated at the earliest opportunity that you wished to plead guilty. These actions clearly demonstrate that you are willing to take full responsibility for your actions.

> Your personnel evaluation reports, found at Exhibit 10, denote an officer who has consistently contributed to the success of his unit and has consistently been assessed as having potential to progress to a higher rank. This in itself provides you some equity and is to be considered a mitigating factor. You also have behind you a career spanning five decades of otherwise unblemished service. You have twice deployed overseas to the Golan Heights and to Bosnia-Herzegovina, and you have also served on nine different occasions at CFS Alert. It would appear that this offence is a lack of judgement that is out of character when one examines your personnel evaluation reports and considers the testimony of your present commanding officer.
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> You did not benefit personally from your illegal endeavour; your intention was to increase the membership in the unit fund and the resulting monetary contributions to that fund. Twelve of the fifteen members have since returned the money that they had obtained unlawfully.

[13] This following section is an aggravating factor. You have pled guilty to and have been found guilty of one charge laid under subsection 125(a) of the *National Defence Act*. The Code of Service Discipline contains 58 distinctive military offences that may be found at sections 73 to 129 of the *National Defence Act*. A review of the maximum sentences prescribed by these different offences indicates that for 25 of the 58 offences the punishment of imprisonment for less than two years is the maximum punishment that may be imposed by the court. The maximum punishment for all of the other offences are punishments that are higher in the scale of punishments than the punishment of imprisonment for less than two years. Section 125 is one of the 33 other offences. Therefore, based on the maximum punishment a court martial may impose for this offence, the offence to which you have pled guilty is objectively one of the more serious offences in the Code of Service Discipline. This factor is an aggravating factor.

[14] I will now return to the mitigating factors. Section 162 of the *National Defence Act* stipulates that charges laid under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit. The Supreme Court of Canada, in *Généreux*, emphasized that the military must be in a position to enforce internal discipline effectively and efficiently to maintain the Armed Forces in a state of readiness. Breaches of military discipline must be dealt with speedily. Although I have not been presented with any evidence to explain the delay in bringing this matter to trial, I will give this factor some weight and include it as a mitigating factor.

[15] Before I pass sentence, as I said it appears that what you did was out of character and a lack of judgement. You have no conduct sheet, so it appears to have been the first time. You have indicated through counsel that you will retire from the

Forces at the end of March '09. You still have a few months left to serve. The example that you gave to your subordinates, in enticing them and encouraging them to break the law, you now have a few more months to work within the unit to reverse that example, to help them understand that that is not what they should try and do in the future.

[16] Captain Camirand, I agree that general deterrence and denunciation are the main factors to be considered in this case.

[17] Having taken into account the specific facts surrounding the commission of this offence, the previous character of the offender, and having considered the cases as presented by prosecution, I have determined that the minimum necessary sentence to maintain discipline for this type of offence committed by this type of offender is reflected in the joint submission presented by counsel. I find that this jointly proposed sentence does not bring the administration of justice into disrepute and is in the public interest.

[18] Captain Camirand, I sentence you to a reprimand and a fine in the amount of $500.

Lieutenant-Colonel J-G Perron, M.J.

COUNSEL:

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