

**Citation:** *R. v. Officer Cadet S.R.M. Warren*, 2008 CM 2005

**Docket:** 200757

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
ROYAL MILITARY COLLEGE OF CANADA, KINGSTON**

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**Date:** 12 March 2008

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**PRESIDING: COMMANDER P.J. LAMONT, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**OFFICER CADET S.R.M. WARREN  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Officer Cadet Warren, having accepted and recorded your pleas of guilty to charge No. 1, a charge of assault causing bodily harm, and charge No. 3, a charge of drunkenness, this court now finds you guilty of charges No. 1 and 3.

[2] It now falls to me to determine and to pass a sentence upon you. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts of the case as disclosed by the evidence heard during these proceedings as well as the submissions of counsel, both for the prosecution and for the defence.

[3] The principles of sentencing guide the court in the exercise of its discretion in determining a fit and proper sentence in an individual case. The sentence should be broadly commensurate with the gravity of the offence and the blameworthiness or degree of responsibility and character of the offender. The court is guided by the sentences imposed by other courts in previous similar cases, not out of a slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways. Nevertheless, in imposing sentence the court takes account of the many factors that distinguish the particular case it is dealing with, both the aggravating circumstances that may call for a more severe punishment and the mitigating circumstances that may reduce a sentence.

[4] The goals and objectives of sentencing have been expressed in different ways in many previous cases. Generally, they relate to the protection of society, which includes, of course, the Canadian Forces, by fostering and maintaining a just, a peaceful, a safe, and a law-abiding community. Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is so necessary to the effectiveness of an armed force. The goals and objectives also include deterrence of the individual so that the conduct of the offender is not repeated, and general deterrence so that others will not be led to follow the example of the offender. Other goals include the rehabilitation of the offender, the promotion of a sense of responsibility in the offender, and the denunciation of unlawful behaviour.

[5] One or more of these goals and objectives will inevitably predominate in arriving at a fit and just sentence in an individual case. Yet it should not be lost sight of that each of these goals calls for the attention of the sentencing court, and a fit and just sentence should be a wise blending of these goals, tailored to the particular circumstances of the case.

[6] As I told you when you tendered your pleas of guilty, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment, and are further limited to the jurisdiction that may be exercised by this court. Only one sentence is imposed upon an offender, whether the offender is found guilty of one or more different offences, but the sentence may consist of more than one punishment. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences for the offender of the findings of guilt and the sentence I am about to impose.

[7] The facts of these offences are set out in Exhibit 6, the Statement of Circumstances, and were amplified in oral evidence before me. In brief, the offender is an officer cadet attending the Royal Military College, Kingston. On the date alleged in the charge sheet, and following a social occasion where he became intoxicated by alcohol, the offender approached two of his fellow cadets to whom he was not known. In the course of a short conversation, the offender said something to the effect that he hated French and offered insulting language to the complainant, Officer Cadet Cyr. The complainant laughed off the remarks and the offender repeated something like, "I hate Francos." Officer Cadet Cyr turned to face the offender, and the offender immediately punched him in the chin area, breaking his jaw in three places. To his credit, the complainant did not retaliate, and, in fact, prevented his friends from retaliating against the offender. The offender immediately left the scene without offering any assistance. The complainant suffered a very painful injury, requiring repeated hospital visits, mouth

surgery, and braces. The injury interfered with his studies and sporting activities, and his medication prevented him from driving for some period of time.

[8] The prosecutor has pointed to a number of aggravating circumstances in support of his position that a fit sentence in this case is a period of imprisonment of 30 to 45 days. As well, the prosecutor seeks an order that the offender provide DNA samples. The offence of assault causing bodily harm is objectively a serious offence, carrying a maximum penalty under the *Criminal Code* of 10 years' imprisonment. This assault was entirely unprovoked and was committed against someone the offender did not personally know, but who he must have known to be a fellow cadet. The consequences of the attack for Officer Cadet Cyr were very serious from a medical point of view and had repercussions for Officer Cadet Cyr's studies. The offence was committed on a military establishment in the presence of other cadets. The attack was preceded by objectionable remarks by the offender which themselves were unprovoked and indeed unexplained, suggesting a bias or prejudice on the part of the offender against French-speaking Canadians.

[9] It is suggested by counsel on behalf of the offender that the bigoted remarks of the offender are out of character and can only be explained by the excessive consumption of alcohol on this occasion. The offender has since sought counselling and has apparently been assured that he does not have a problem with alcohol. Nonetheless, he has voluntarily changed his alcohol consumption habits as a result of these offences. Counsel for the offender submits that a fine would be an appropriate sentence in this case, but if imprisonment is imposed, suggests that a period of 7 days is fit, and that if imprisonment is imposed, the carrying into effect of the punishment should be suspended under section 215 of the *National Defence Act*.

[10] I accept the evidence of the offender that he truly regrets his behaviour. He was shocked when he realized what he had done and apologized to Officer Cadet Cyr within a day or so of the offence. He cooperated with the police investigation and indicated at an early stage that he would plead guilty to these offences. He has no record of previous disciplinary infractions. He was aged 19 at the time of the offence and was expecting to graduate as a naval combat systems engineer in the spring of 2009, but now acknowledges that his short career, approaching three years in the Canadian Forces, will probably end, in part at least, as a result of the conduct for which he has been found guilty.

[11] In arriving at a sentence in this case, I have been troubled by evidence of bigotry as a motivation for the crime of assault. Section 718.2 of the *Criminal Code* provides that evidence that an offence was motivated by bias, prejudice, or hate based on any of a number of personal characteristics, including language and ethnic origin, shall be deemed to be an aggravating circumstance on sentence. I accept the evidence of the offender that he does not consider himself intolerant, and I accept the evidence of

the offender's friend, Officer Cadet Gosselin, that the offender is always polite and interacts well with other people. On the basis of this evidence, confirmed to some extent by the letter from the offender's mother, Exhibit 7, I find that although the offender did indeed express anti-French sentiment at the time of the offence, I do not find that this is a sufficient basis upon which to conclude that the offence itself was motivated by bias, prejudice, or hate. Nevertheless, there is simply no room in the Canadian Forces for the expression of bigoted sentiment such as the offender expressed. I am not persuaded that these were simply the ravings of an intoxicated individual, and I tend to the view that these remarks are examples of a general lack of self-discipline exhibited by the offender on the occasion in question.

[12] Considering all the circumstances of the offences as well as of the offender, I am satisfied that the sentencing principle of general deterrence requires that the offences be met with a punishment of imprisonment. No lesser punishment, including a fine in any reasonable amount, would adequately address the sentencing principle of deterrence. I am mindful of course that as a first offender a jail term should be as short as necessary to properly vindicate that principle. On all the circumstances, I do not consider this to be a proper case to suspend the period of imprisonment. I am also satisfied that this is a proper case for an order to provide suitable DNA samples under section 196.14 of the *National Defence Act* as the offence of assault causing bodily harm is a primary designated offence and the defence has not attempted to demonstrate disproportionality. I have considered whether to make a weapons prohibition order, but in the absence of an application from the prosecution I decline to make such an order.

[13] Stand up, Officer Cadet Warren. You are sentenced to imprisonment for a period of 21 days. I order that you provide samples for DNA identification. The sentence is pronounced at 1058 hours, 12 March 2008.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J.L.J. Caron, Regional Military Prosecutor Eastern Region  
Counsel for Her Majesty the Queen  
Lieutenant(N) P.D. Desbiens, Directorate of Defence Counsel Services  
Counsel for Officer Cadet Warren