



COURT MARTIAL

Citation: *R v Crockatt*, 2008 CM 2004

Date: 20080316

Docket: 200754

Disciplinary Court Martial

Canadian Forces Base Gagetown
Gagetown, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Private Z. A. Crockatt, Offender

Before: Commander P.J. Lamont, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Private Crockatt, you have been found guilty on the finding of the panel of this Disciplinary Court Martial on one charge of disobeying a lawful order contrary to section 83 of the *National Defence Act*. 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 taken on the trial, the evidence received in the course of the sentencing phase, and considered as well the submissions of counsel both for the prosecution and for the defence.

[2] 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.

[3] 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. 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.

[4] Section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at courts martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment and is 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 finding of guilt and the sentence I am about to impose.

[5] The facts of this case were developed in the course of the evidence heard by the panel. They disclose that the offence occurred at Patrol Base Wilson, a forward operating base in Afghanistan. The offender was awakened in the early hours of 18 March 2006 and ordered at that time to take a shift at an observation post nearby. He immediately refused verbally to comply with the order of the master corporal.

[6] The position of the prosecution is that a fit disposition in this particular case would be a period of detention of 30 to 60 days. The position of the defence is that a fit disposition would be a severe reprimand coupled with a substantial fine, and the defence seeks that in the event detention is imposed that any period of detention be suspended.

[7] I should say that I accept the evidence of the witnesses who were heard in the course of the sentencing phase; that is, Master Corporal Dickin and Master Warrant Officer Jeans as to the effect of this particular offence on unit discipline and morale. I

consider as a serious aggravating circumstance in this case that the offence was committed in an active theatre of operations. It seems to me that the only circumstance of the offence that might have made it more severe, more serious, would be if it were committed while actually under fire. While that did not happen in this case, I consider that this is close to one of the most serious offences of its kind.

[8] As well, I've considered the importance to operations of the order that was given and the importance of complying with that order to maintain the security of the other personnel present at the time. A failure to properly man an observation post can have very serious consequences. It is not the role of the private receiving the order to make any kind of judgement as to whether or not the task he is assigned is to be carried out. There is simply no question that when a lawful order is given in theatre, of the importance of this one, it must be complied with immediately and without question.

[9] I also consider the circumstances of the offender, who at the time of this offence had almost four years of service in the Canadian Forces as a private infantryman. He can be taken to be aware, as a result of his training both at home and in preparation for deployment, of the importance of complying with lawful orders.

[10] I consider as one of the mitigating circumstances in this case, the health of the offender at the time of the offence. It is clear from the evidence heard in the course of the trial that in the days prior to the offence being committed he was diagnosed with viral gastro-enteritis, and it is likely that he was suffering the effects of that condition even after the successful treatment of 15 March 2006 some three days prior to the offence. I also consider the arduous conditions of combat under which the offence was committed. There is no doubt on the evidence that the resources that were available to the chain of command to discharge their weighty responsibilities at the time were limited, everyone in the unit was contributing 110 per cent. In this way they distinguished themselves to the honour of themselves and the country they serve. The offender, as well, served under those arduous conditions of combat, but in the same conditions chose on this occasion to advance his individual interests rather than to comply with a lawful order.

[11] I also consider as mitigating circumstances that the offender has received a recorded warning, an administrative consequence for the conduct for which he has been found guilty by this court. And I consider, as well, that it appears to me that the offender has good career prospects to continue with a successful career in the Canadian Forces.

[12] When I consider in totality the circumstances of the offence and of the offender, I am satisfied that any penalty short of detention is simply inadequate in the circumstances to properly vindicate the sentencing principles of general and specific deterrence. Stand up Private Crockatt.

FOR THESE REASONS, THE COURT:

SENTENCES you to detention for a period of 15 days. You may sit down. The sentence is imposed at 1014 hours, 16 February 2008.

Counsel:

Captain S. MacLeod, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major L. D'Urbano, Directorate of Defence Counsel Services
Counsel for Private Z.A. Crockatt