

Citation: *R. v. Corporal M. Sarganas*, 2008 CM 2003

Docket: 200743

**DISCIPLINARY COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN**

Date: 5 February 2008

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

HER MAJESTY THE QUEEN

v.

CORPORAL M. SARGANAS

(Offender)

SENTENCE

(Rendered orally)

[1] Corporal Sarganas, you have been found guilty by this panel of this Disciplinary Court Martial on four charges of disobeying a lawful command, one charge of absenting yourself without leave, one charge of using insulting language to a superior, and one charge of using provoking speeches toward a person tending to cause a quarrel.

[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 taken on the trial, the evidence heard and received during the sentencing phase of the proceedings, and 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. But in imposing sentence, the court takes account of the many factual matters 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 inevitable 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] 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 may be 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.

[7] 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.

[8] The facts of the offences, as shown by the evidence which the panel must have accepted, are that on four occasions in September and October of 2006, you, Corporal Sarganas, flagrantly defied the authority of senior non-commissioned members in your chain of command in 2 Battalion Royal Canadian Regiment, by not only not doing what you were ordered to do, but indeed refusing, both in words and by your actions, to do your duty as a soldier. In so doing, you demonstrated, by your words, that you were fully aware of the nature of the orders and of the disciplinary consequences that would flow from your misconduct. As a result, you failed, on one occasion, to exercise with your unit, and later, on two occasions separated by nine days, failed to join

your unit to assist in training responsibilities in Wainwright for a rotation to Afghanistan.

[9] Despite repeated requests, orders, and warnings of the consequences, you simply refused to do your plain duty for reasons that, on all the evidence, are not apparent to me. In the course of these repeated instances of insubordination, you were absent from your place of duty for a period of hours, until you were located and arrested, by which time your unit had left without you. Finally, two days after the last occasion you were to leave for Wainwright, you orally insulted Sergeant Simmons, and by words attempted to provoke a quarrel with Warrant Officer Collins.

[10] The prosecution seeks a sentence ranging from reduction in rank up to detention for a period of 30 days. Defence counsel, on behalf of Corporal Sarganas, suggests a severe reprimand and a fine would be appropriate, but if detention is imposed asks that the carrying into effect of the punishment of detention be suspended.

[11] Apart from the fact that the offences were not committed in a theatre of operations, I can find little in the evidence to mitigate the seriousness of these offences. As regards the personal circumstances of the offender, he is in his mid-twenties and has six full years of service in the Canadian Forces. He is divorced and without dependents. I attach virtually no weight to the entries on his conduct sheet as they appear to have nothing to do with his service. I accept the evidence of the addictions counsellor, Mr Jones, but I do not accept the submission of counsel that Corporal Sarganas has Post-Traumatic Stress Disorder as a result of his service. In my view, neither the diagnosis nor the conclusion are supported by the documentary material filed, which suggests only that, as far as Mr Jones is concerned, Corporal Sarganas should be assessed for PTSD, and Dr Rogers may have a similar concern.

[12] I do accept that Corporal Sarganas has a major problem with his anger, depression, and substance abuse, perhaps as a result of his experience of childhood. I agree that the successful completion of a programme like Homewood would benefit the offender, if he is diagnosed as post-traumatic stressed, but I am also satisfied that the sentence I have arrived at will not adversely affect his ability to follow that programme, or any other treatment his professional advisors may suggest.

[13] In my view, a disposition by way of a severe reprimand and a fine, in any reasonable amount, is simply insufficient to reflect the gravity of these offences. I am aware, of course, that a disposition involving any form of incarceration should only be resorted to when no other punishment or combination of punishments would achieve the sentencing goals that are appropriate to the particular case. Nevertheless, I am satisfied that a period of detention is clearly called for, considering not only the circumstances of the offences, but also the circumstances of the offender. I am not persuaded that the carrying into effect of the punishment of detention should be suspended.

[14] Stand up, Corporal Sarganas. You are sentenced to detention for a period of 21 days. The sentence is pronounced at 1025 hours, 5 February 2008.

COMMANDER P.J. LAMONT, M.J.

COUNSEL

Captain T.D. Bussey, Regional Military Prosecutions Western
Counsel for Her Majesty the Queen

Lieutenant-Colonel D.T. Sweet, Directorate of Defence Counsel Services
Counsel for Corporal M. Sarganas