

Citation: *R. v. Petty Officer 1st Class G.A. Spellman*, 2008 CM 2002

Docket: 200750

**DISCIPLINARY COURT MARTIAL
CANADA
NOVA SCOTIA
HALIFAX**

Date: 15 January 2008

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

HER MAJESTY THE QUEEN

v.

**PETTY OFFICER 1ST CLASS G.A. SPELLMAN
(Offender)**

SENTENCE

(Rendered Orally)

[1] Petty Officer 1st Class Spellman, you have been found guilty on one charge of conduct to the prejudice to good order and discipline, and one charge of absence without leave.

[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 this trial in the presence of the panel of this Disciplinary Court Martial, as well as the submission I have heard from counsel in the course of the mitigation phase, both on behalf of 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] 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 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. In arriving at the sentence in this case, I have considered the direct and indirect consequences of the findings of guilt and the sentence I am about to impose.

[7] It is clear from the findings of the panel that you lied to your supervisor in order to avoid your duty. It is clear from the evidence that those in authority trusted you, in part, because of your rank as a senior non-commissioned member. You proved yourself unworthy of that trust. I have considered, among the mitigating factors in this case, the fact that you have 27 years of previously unblemished service in the Canadian Forces. You have no record of previous disciplinary infractions. Considering all the circumstances, both of the offence and of the offender, I am satisfied that the range of sentence proposed by counsel is appropriate.

[8] Stand up, Petty Officer Spellman. You are sentenced to a reprimand and a fine in the amount of \$2,200, payable in monthly installments of \$200 each,

commencing 15 February 2008, and continuing for the following 10 months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding unpaid balance is due and payable the day prior to your release. March out Petty Officer Spellman.

[9] The proceedings of this Disciplinary Court Martial in respect of Petty Officer 1st Class Spellman are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major S.A. MacLeod, Office of the Director of Military Prosecutions
Lieutenant(N) M.J. McCarthy, Department of National Defence/Canadian
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Counsel for Her Majesty the Queen
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