

**Citation:** *R. v. Ex-Corporal J.R.A. Couture*, 2004CM16

**Docket:** S200416

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
VALCARTIER GARRISON**

---

**Date:** September 17, 2004

---

**PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.**

---

**HER MAJESTY THE QUEEN**

**Prosecutor**

**v.**

**EX-CORPORAL J.R.A. COUTURE**

**(Accused)**

---

**SENTENCE**

**(Delivered from the bench)**

---

**OFFICIAL ENGLISH TRANSLATION**

[1] Ex-Corporal Couture, please rise. The Court has accepted and entered your guilty plea on the second count, and the Court now finds you guilty on the second count. Please be seated.

[2] Counsel present have made a joint submission to the Court regarding the sentence that the Court should impose. Counsel are recommending that the Court impose a sentence composed of a reprimand with a fine of \$500 payable within one month. The obligation to determine an appropriate sentence rests with the Court, which is entitled to reject the joint proposal made by counsel. It is settled law, however, that the Court may reject the joint submission of counsel only for compelling reasons. Accordingly, the judge should accept the joint submission of counsel unless it finds it to be inappropriate or unreasonable, contrary to the public interest or likely to bring the administration of justice into disrepute, for example if it fell outside the range of sentences previously imposed for similar offences. However, counsel are required to provide the judge with all of the facts on which the joint submission is based.

[3] In imposing an appropriate sentence on an accused for the wrongful acts he has committed and in relation to the offences of which he is guilty, certain principles must be followed, which may be stated as follows: first, protection of the public, and here the public includes the interests of the Canadian Forces; second, punishment of the offender; third, deterrence, not only of the offender but also of others who might be tempted to commit similar offences; fourth, rehabilitation and reform of the offender; and fifth, denunciation of the offender.

[4] The first principle is protection of the public, and the Court must determine whether this protection will be achieved by a sentence designed to punish, denounce, rehabilitate or deter. How much stress is to be placed on any of those principles will of course depend on the circumstances, which vary from case to case. In some cases, the primary concern, if not the sole concern, will be deterrence of the accused. In other cases, it will be on general deterrence. As well, there may be cases in which little or no weight will be placed on rehabilitation or reform of the offender. In this case, the Court is of the opinion that the emphasis must be placed on general deterrence and denunciation of the act committed by the offender.

[5] In considering what sentence would be appropriate, the Court has taken the following mitigating and aggravating factors into consideration. First, the factors mitigating sentence:

[6] First, the fact that you have pleaded guilty and that since the beginning of the investigation process you have acknowledged that you committed the theft, as set out in the summary of circumstances. As prosecution counsel pointed out this morning, had it not been for your cooperation with the authorities it would have been difficult for the police to complete their investigation and the prosecution would undoubtedly not have been able to lay charges. In the circumstances, your guilty plea very early in the proceedings is, in the opinion of the Court, a genuine and sincere indication of your remorse at committing a theft from the property of the welfare section of your battalion.

[7] The Court also finds the fact that you have no conduct sheet or criminal record, after a 23-year career in the Canadian Forces, as a mitigating factor.

[8] The third factor that the Court finds to be mitigating is the time that has passed since the offences were committed.

[9] And the fourth is the fact that less than a week after the theft, but on the same day as you admitted your wrongdoing, you repaid or replaced the cartons of cigarettes you had taken in order to pay a personal debt to a creditor who, according to the circumstances submitted to the Court, had threatened you. Not only did your actions gain you nothing, but you in fact suffered a net loss of nearly \$600.

[10] With respect to aggravating factors, the first is of course the nature of the offence and the sentence provided by Parliament. For the offence of theft, where the offender is not in one of the situations listed in subsection 114(1) of the *National Defence Act*, that is, did not have the custody or control of the property stolen by reason of his rank, appointment or responsibilities, the maximum term is imprisonment for seven years. It is an objectively serious offence in itself.

[11] The Court also finds the fact that you were an experienced soldier who exhibited a lack of honesty and integrity to be an aggravating factor.

[12] Third, the fact that the property you took was substantial.

[13] In sentencing you today, the Court has taken careful note of the evidence before this Court, including the summary of circumstances read by counsel for the prosecution and your own testimony. The Court has also had regard to counsel's argument and the case law submitted. As your counsel, Colonel Couture, noted, you made a serious error in judgment, and that error in judgment on your part will have serious consequences for you, including the fact that it has tarnished your military record but also the fact that it has tarnished your own reputation, after many years of loyal service. Even more than that, there is the fact, which is not insignificant in the circumstances, when you are starting a new career at the age of 41, that you will now have a criminal record.

[14] Accordingly, the Court accepts the joint submission of counsel, which it considers to be the minimum sentence necessary for the protection of the public and the maintenance of discipline in the circumstances.

[15] Ex-Corporal Couture, please rise. This Court sentences you to a reprimand, together with a fine in the amount of \$500. The fine will be payable no later than October 17, 2004, a month from today.

[16] The proceedings of this standing court martial regarding Ex-Corporal Couture are now concluded.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major G. Roy, Regional Military Prosecutor, Eastern Region  
Counsel for the prosecutor

Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services  
Counsel for Ex-Corporal J.R.A. Couture