

Citation: *R. v. Master Corporal R.K. Noseworthy*, 2006CM09

Docket:S200609

**STANDING COURT MARTIAL
CANADA
GREENWOOD, NOVA SCOTIA
14 WING GREENWOOD**

Date:20 April 2006

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

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL R.K. NOSEWORTHY
(Offender)**

SENTENCE

(Rendered orally)

[1] Master Corporal Noseworthy, having accepted and recorded your plea of guilty to the sixteenth charge, a charge of obtaining by false pretenses, this court now finds you guilty of the sixteenth charge.

[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 described in the statement of circumstances, Exhibit 9; the evidence heard and received in the course of these 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. 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 explained to you when you tendered your plea 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.

[7] 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.

[8] The facts of the offence are described in the statement of circumstances, Exhibit 9. In summary, during the period charged in the charge sheet, the offender was employed as a clerk in the Maritime Proving and Evaluation Unit at CFB Greenwood. Her duties included the processing of claims by other members for accountable advances of public funds, and travel claims. Over the period of 18 June to 27 July 2004, the offender submitted three claims for advances on public funds, in the amount of \$1000 US each, in the names of three officers by forging the signatures of the officers, and then obtained the money herself by way of cash advances directly from the base cashier.

[9] Over the period 24 February 2004 to 9 August 2004, she submitted nine separate falsified travel claims for trips that she did not make. In each case she obtained an advance of funds for the purpose of travel, then later claimed for amounts for

transportation, lodging, meals and incidental expenses in excess of the advanced amounts. She deposited each reimbursement cheque into her personal bank account. In a statement she gave to the police investigators, she advised that she obtained these amounts in order to support a gambling habit.

[10] Pursuant to section 194 of the *National Defence Act*, the offender requests that a further offence be taken into consideration by the court for purposes of sentencing. That offence involved the use of the unit kit shop whose non-public funds accounts were administered by the offender. In two transactions during April of 2004, the offender submitted cheque requisitions for payment to herself in respect of expenses she had not incurred on behalf of the kit shop. When the circumstances of these offences came to light, she submitted fraudulent invoices in an apparent attempt to avoid detection.

[11] I would like to observe, parenthetically, that the practice adopted by counsel here of obtaining from the offender a signed and written request, under section 194, with details of the offence sought to be taken into consideration, including the facts underlying the offence, is a practice that ought to be followed in other similar cases at court martial.

[12] The total amount of these separate and individual frauds is \$11,928.52 of which, I am told, nothing has been recovered.

[13] The prosecution and counsel on behalf of the offender agree that a fit disposition in this case would be a severe reprimand and a very substantial fine. In addition, the prosecution asks the court to consider reducing the offender in rank.

[14] The prosecutor has pointed to several aggravating circumstances in the present case. They include the large amounts of money involved and the position of trust that the offender enjoyed at the time of these offences that facilitated the commission of the offences. A number of transactions were involved over a substantial period of some months, and different methods were used repeatedly to obtain sums of money. There are some elements of sophistication in the creation of false documentation, including the forgery of the signatures of other members of the Canadian Forces. The methods used by the offender were apparently sufficient to avoid discovery on an initial audit.

[15] In my view these are the kinds of cases of which Justice Létourneau spoke in the case of *R. v. St. Jean* referred to by counsel, when he wrote at paragraph 22 on behalf of the Court Martial Appeal Court:

....In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a

multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct. Deterrence in such cases does not necessarily entail imprisonment, but it does not per se rule out that possibility even for a first offender. There is no hard and fast rule in this Court that a fraud committed by a member of the Armed Forces against his employer requires a mandatory jail term or cannot automatically deserve imprisonment. Every case depends on its facts and circumstances."

[16] Both counsel have pointed to several mitigating circumstances that are present in this case. The offender, after some initial hesitation, appears to have cooperated with the police investigation, has pleaded guilty to the offence, and has publicly apologized for her conduct. She has 17 years of service in the Canadian Forces and this is her first disciplinary infraction. She is married to a member of the Canadian Forces and she has a dependant son aged 15. The charge has taken some time to reach the trial stage and the wait has no doubt been stressful for the offender.

[17] I am satisfied that the offender was diagnosed as a pathological gambler after being assessed by the addictions counselor, Mr Rutherford, in March of 2005. She successfully completed a six-week in-patient program in British Columbia at the end of June 2005. I am also satisfied that the offender has been reasonably diligent in her follow-up with Mr Rutherford since completing the program.

[18] I accept that the reason for her fraudulent acts was to obtain money with which to gamble. But I cannot find, on the evidence I have heard, that the symptoms of her gambling addiction were severe enough to deprive her of her self-control.

[19] The offender has not repaid any of the money owing to the Canadian Forces, although she has executed two promissory notes in favour of the Crown. She has recently made an assignment in bankruptcy.

[20] The defence points out that in all likelihood the Canadian Forces will recover the money owing. While this is true, the failure to make any restitution to the Canadian Forces during the lengthy period since the charge was laid leads me to conclude that the concerns of the court about specific deterrence and rehabilitation are still important considerations.

[21] In my view the circumstances of these offences, especially the close relationship between the rank and the position of the offender and the commission of the offences, as well as the circumstances of the offender generally, call for a reduction in rank as part of the sentence. As I stated in the case of Corporal Hache:

Rank is a visible sign to other members of the level of responsibility assigned to a member of the Canadian Forces, and of the trust and confidence that the Canadian Forces places in the member to properly discharge that responsibility...

[22] In the same way as trust can be lost and regained over time, you, Master Corporal Noseworthy, will have the opportunity to regain your current rank when you have again demonstrated that you deserve it.

[23] I have decided that the fine that would otherwise be appropriate in this case should be substantially reduced because of the financial consequences to the offender of the accompanying punishment of reduction in rank. Stand up, Master Corporal Noseworthy.

[24] You are sentenced to reduction in rank to the rank of private, a severe reprimand, and a fine in the amount of \$1800. The fine is to be paid in monthly installments of \$100 each commencing 15 May 2006 and continuing for the following 17 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 amount is due and payable the day prior to your release. March out Private Noseworthy.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Lieutenant-Commander R. Fetterly, Directorate of Military Prosecutions
Attorney for Her Majesty The Queen
Major C.E. Thomas, Directorate of Defence Counsel Services
Attorney for Master Corporal R.K. Noseworthy