

Citation: *R. v. Private H.A. Castle*, 2008 CM 2007

Docket: 200745

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE PETAWAWA**

Date: 19 March 2008

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

HER MAJESTY THE QUEEN

v.

**PRIVATE H.A. CASTLE
(Offender)**

**SENTENCE
(Rendered orally)**

[1] Private Castle, having accepted and recorded your plea of guilty to the second charge in the charge sheet; that is, a charge of failing to comply with a condition imposed under Division 3 of the *National Defence Act*, this court now finds you guilty of the second charge.

[2] It now falls to me to consider 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 in the course of these mitigation 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 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.

[7] The facts of the offence are briefly stated and are essentially captured by the wording of the charge. Having been brought before military authorities and charged with an offence, the offender was released by the Custody Review Officer on terms that required that she abstain from communicating directly or indirectly with the named complainant, Melissa Belmonte. That order was varied as late as 1 November 2006 to specify those terms. Almost exactly one month later, on 2 December 2006, the offender violated the terms when, apparently by happenstance, she encountered the complainant on the street in Petawawa, Ontario. At that time, despite the order not to talk, the offender replied to the complainant with some kind of taunt and then they exchanged unpleasantries for a period of around two minutes until the offender left.

[8] The prosecution submits that this is a fit case for a reprimand and a fine in the amount of \$500 to \$1,000. I have not been provided with any precedents of other cases dealt with at court martial for this particular offence so far as sentencing is concerned, but in my own experience I can say that this offence has not come before a court martial frequently. This kind of offence does come before civilian courts on a regular basis.

[9] Lieutenant-Commander McMunagle, on behalf of the defence, suggests that a reprimand is not appropriate and that if a fine is to be imposed, it should not exceed \$200, and that the court might consider minor punishments in addition to the fine.

[10] The view I take of the offence to which the offender has pleaded guilty is somewhat more serious than the position advocated by counsel for the offender. In my view, this is a different offence when committed in a military context than when it is committed in a civilian context. Although the offender in this case is a young member, she has had the benefit of something over two years of Reserve Force service before she joined the Regular Force in March of 2006, some months before the offence date of 2 December 2006.

[11] By that point, I have no doubt that she was well-trained in the importance of complying with orders given to her by her military superiors. In my view, the conditions upon which the offender was released by the Custody Review Officer ought to be considered to be analogous to an ordinary order of a superior officer. Disobedience of a lawful order is a relatively serious matter under military law, and, of course, is entirely unknown to civilian criminal law, but I consider that this particular kind of offence is a species of failing to comply with an order of a superior.

[12] I take account of the fact that the member is a relatively junior member with a clear conduct sheet and every prospect of a successful career in the Canadian Forces ahead of her. I also take account of the fact that she has taken responsibility for the offence by pleading guilty. In my view, however, minor punishments are simply not appropriate in a case such as this.

[13] Stand up, Private Castle. You are sentenced to a reprimand and a fine in the amount of \$500. The fine is to be paid in monthly installments of \$100 each, commencing 15 April 2008 and continuing for the following four 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 Private Castle.

COMMANDER P.J. LAMONT, M.J.

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