

Citation: *R. v. Corporal B.A.F. Lewis*, 2008 CM 4004

Docket: 200760

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

Date: 8 April 2008

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL B.A.F. LEWIS
(Offender)**

SENTENCE

(Rendered orally)

[1] Ex-Corporal Lewis, please stand up. Ex-Corporal Lewis, having accepted and recorded your plea of guilty to charge number one and to charge number two, the court finds you guilty of these charges. You have pled guilty to one charge laid under sub-section 125(a) of the *National Defence Act* of having willfully made a false entry in a document that was required for official purposes and you have pled guilty to one charge laid under sub-section 117(f) of the *National Defence Act* of an act of a fraudulent nature not particularly specified in sections 73 to 128 of the *National Defence Act*.

[2] The statement of circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of these offences. On 13 March 2006, you completed an application for payment of separation expenses indicating that you were living in a common law relationship. You knew that this information was false because you had ceased to live in a common law relationship since December 2005. You claimed separation expense, rations and quarters from March to September 2006. By doing so, you defrauded Her Majesty in right of Canada of the amount of \$2,553.53.

[3] You may now sit down while I explain the rest of my decision. The principles of sentencing, which are common to both courts martial and civilian criminal trials in Canada, have been expressed in various ways. Generally, they are founded on

the need to protect the public and the public includes the Canadian Forces. The primary principles of sentencing are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you personally as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct and, last but not least, the principle of reformation and rehabilitation of the offender.

[4] The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[5] The court has also considered the guidance set out in sections 718 to 718.2 of the *Criminal Code* of Canada. These sections provide for the denunciation of the unlawful conduct, the deterrence of offenders and other persons from committing offences, the separation of offenders from society where necessary, to assist in rehabilitating offenders, the provision of reparations for harm done to victims or to the community, and the promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[6] The court is also required in imposing a sentence to follow the directions set out in article 112.48 of the *Queen's Regulations and Orders* which obliges it in determining a sentence to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender.

[7] The court has also given consideration to the fact that sentences of offenders who commit similar offences in similar circumstances should not be disproportionately different. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[8] The prosecution and your defence counsel have jointly proposed a sentence of a severe reprimand and a fine in the amount of \$2500. They have also recommended a payment schedule where you would pay \$50 per month for the first four months and then you would pay \$100 per month for the following 23 months.

[9] The Court Martial Appeal Court has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is otherwise not in the public interest.

[10] I will firstly address the aggravating factors of this case. The amount that was defrauded is significant. This fraud was also perpetrated during a period of approximately seven months. You were 50 years old and had the benefit of

approximately 22 years of service at the time of the offence. You had been in the Canadian Forces long enough to know better; long enough to know that this was illegal.

[11] I will now deal with the evidence in mitigation of sentence. Although you have a conduct sheet, you must be considered a first time offender since the offences listed on your conduct sheet occurred after the charges before this court. Canadian jurisprudence generally considers an early plea of guilty as a tangible sign that the offender feels remorse for his or her actions and that he or she takes responsibility for these illegal actions and the harm done as a consequence of these actions.

[12] Therefore, an early guilty plea is considered a mitigating factor. This approach is generally not seen as a contradiction of your right to silence and of your right to have the Crown prove beyond a reasonable doubt the offences, but it is seen as a mean for the courts to impose a more lenient sentence because the plea of guilty usually means that the accused wants to take responsibility for his or her unlawful actions. Also, witnesses do not have to testify and a guilty plea greatly reduces the costs associated with the judicial proceeding.

[13] You suggested a repayment schedule in November 2007 to alleviate the financial stress on your family. Your defence counsel has commented on the precarious financial situation that you face. This is evident by your declaration of bankruptcy on 27 July 2007.

[14] I understand also that these charges form part of the reasons for your compulsory release from the Canadian Forces under item 5(f).

[15] You have served Canada and the Canadian Forces for approximately 23 years and have deployed four times to Cambodia, Haiti, Kosovo and Bosnia-Herzegovina. It would appear that you had an unblemished record until 2007.

[16] Ex-Corporal Lewis, please stand up. You made some very foolish decisions in 2007. It would appear that these foolish decisions only amplified what was already a very difficult period in your life. I hope you have learned from these mistakes.

[17] After reviewing the case law presented by your counsel, the totality of the evidence and the representations made by the prosecutor and by your defence counsel, I have come to the conclusion that the proposed sentence would not bring the administration of justice into disrepute and that the proposed sentence is in the public interest. Therefore, I agree with the joint submission of the prosecutor and of your defence counsel.

[18] Ex-Corporal Lewis, I sentence you to a severe reprimand and a fine in the amount of \$2500.00. The fine is to be paid in the following manner: \$50 per month for

the first four months and then \$100 per month for the following 23 months. You shall start this payment schedule on 1 May 2008. You may sit down.

[19] The proceedings of this standing court martial in respect of Ex-Corporal Lewis are terminated.

LIEUTENANT-COLONEL J-G PERRON, M.J.

Counsel:

Major B.J.A. McMahon, Regional Military Prosecutions Central,
Counsel for Her Majesty The Queen
Lieutenant-Commander S.C. Leonard, Directorate of Defence Counsel Services,
Counsel for Corporal B.A.F. Lewis