

Citation: *R. v. Corporal T.J. Buck*, 2008 CM 2013

Docket: 200858

**STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN**

Date: 22 August 2008

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

HER MAJESTY THE QUEEN

v.

**CORPORAL T.J. BUCK
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Buck, having accepted and recorded your pleas of guilty to charges No. 2 and No. 4, being two charges of committing an act of a fraudulent nature; as well as to charge No. 5, a charge of willfully making a false statement in an official document signed by you, the court now finds you guilty of charges No. 2, No. 4, and No. 5, and directs a stay of proceedings with respect to charges No. 1 and No. 3.

[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 6, and the evidence heard during the mitigation phase 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 pleas 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. 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 findings of guilt and the sentence I am about to impose.

[7] Dealing with the facts of this case, in brief, in May of 2007, the offender advanced a claim in writing for payment out of public funds of amounts incurred in moving from Canadian Forces Base Greenwood to Canadian Forces Base Gagetown. She falsely claimed to have stayed in a hotel for a 20-day period, when in fact she had only stayed for five nights. When she was questioned on apparent discrepancies, she changed her position as to the total number of days for which she claimed reimbursement, but persisted in the attempt to defraud. The total amount claimed at one point was \$5,802.80, but some of that amount, I infer, the offender was entitled to claim, and

so what might be referred to as the "fraud amount" is somewhat less than that figure. I am told that if monies were paid to the offender in advance of the move, the monies owing have since been recovered. In other words, restitution is not an issue.

[8] Both counsel before me suggest that a fit sentence in this case is a severe reprimand and a fine of \$2400. The sentence to be imposed is, of course, a matter for the court, but where, as in this case, counsel representing both parties agree on a joint submission as to sentence, that recommendation carries great weight with the court. The courts of appeal across Canada, including the Court Marital Appeal Court, have stated that the joint representation of counsel as to sentence should not be departed from by the sentencing court except where the recommended sentence is, in the view of the court, contrary to the public interest, or would otherwise bring the administration of justice into disrepute.

[9] On all the evidence I have heard, I am satisfied that these offences were out of character for this offender. She has served as a medical technician and has six years' completed service without any disciplinary infractions. Her two latest Performance Evaluation Reports show that she is considered an accomplished professional who deals well with subordinates. The offender has pleaded guilty, having advised the prosecution in good time of her intention so to do. I consider this an indication of genuine remorse on her part. As well, I am mindful of the particular financial circumstances of the offender as a single parent of a 9-year-old child.

[10] On the other hand, I consider that the offences in this case involve some element of planning and execution, and the offender did not immediately own up to her wrong-doing, but attempted to get away with it by making false representations orally to the relocation services representative.

[11] On all these circumstances, I cannot say that the joint submission of counsel is contrary to the public interest or would otherwise bring the administration of justice into disrepute. Indeed, in my view, the suggested disposition is well within the range of sentence for these kinds of offences, and, accordingly, I accept the joint submission.

[12] Stand up, Corporal Buck. You are sentenced to a severe reprimand and a fine in the amount of \$2400. The fine is to be paid forthwith.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J. Samson, Regional Military Prosecutions Western Region
Counsel for Her Majesty the Queen

Lieutenant-Colonel T. Sweet, Directorate of Defence Counsel Services
Counsel for Corporal Buck