

Citation: *R. v. Corporal W.S. Whelan*, 2008 CM 2016

Docket: 200835

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

Date: 1 October 2008

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

HER MAJESTY THE QUEEN

v.

**CORPORAL W.S. WHELAN
(Offender)**

SENTENCE

(Rendered orally)

[1] Corporal Whelan, having accepted and recorded your plea of guilty to the first charge, the only charge on the charge sheet, the court now finds you guilty of the 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, and the materials heard during the course of these proceedings. I have, as well, had the benefit of 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 the 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. But, 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.

[5] 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. 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. 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.

[7] 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 this offence are not complicated.. They involve the offender in falsely representing, in writing, the nature of goods that he had shipped from Afghanistan to Canada, being his personal property consisting of a motorcycle.

[9] In this case, both the prosecution and defence agree that a fit disposition is a sentence of a reprimand coupled with a fine in the amount of \$1, 000.

[10] The sentence to be pronounced is, of course, a matter for the court. But where, as in this case, both counsel agree on a recommended disposition, that recommendation carries great weight with the court. The courts of appeal across Canada, including the Court Martial Appeal Court, have stated that the joint representation of counsel as to sentence ought to be accepted by the sentencing court

unless to do so would be contrary to the public interest or would otherwise bring the administration of justice into disrepute.

[11] I note particularly that, in this case, the offender is a mature man of some 40 years, and although his service with the Canadian Forces is broken by a period of some years, he has years of service to his credit without any previous mark on his conduct sheet. I note also that he has pleaded guilty at the first opportunity to do so, having instructed his counsel to speak to the prosecutor about a disposition at an early stage of these proceedings. I also note that it has been some substantial period of time before the offence, which goes back to April of 2007, was brought to trial by way of court martial for reasons that both counsel are aware of and need not be detailed by me.

[12] Corporal Whelan, as the Court Martial Appeal Court has noted in previous cases, the Canadian Forces is a large organization. Thousands of people just like you across Canada serve their country in uniform. In that capacity, they are called upon to deal with major and minor matters of administration. And, because of that, the Canadian Forces, as an organization, relies on the honesty and integrity of its members to discharge its difficult duties at home and around the world. In this case, you have apparently breached that duty of honesty. You must devote yourself, as I'm sure you have in the intervening time, you must devote yourself to re-instilling in others with whom you work the confidence they are entitled to have that you will discharge all your duties, both major matters and less important matters, with honesty and integrity. I believe you understand that message.

[13] On all the circumstances, I am not persuaded that the joint submission of the parties is either contrary to the public interest or would bring the administration of justice into disrepute, and I therefore accept the joint recommendation of counsel.

[14] Stand up, Corporal Whelan. You are sentenced to a reprimand and a fine in the amount of \$1, 000, to be paid in monthly installments of \$200 each commencing 1 November 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.

[15] The proceedings of this Standing Court Martial in respect of Corporal Whelan are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major S.A. MacLeod, Regional Military Prosecutions Central
Counsel for Her Majesty the Queen

Lieutenant-Commander J.C.P. Levesque,
Directorate of Defence Counsel Services
Counsel for Corporal W.S. Whelan