

**Citation:** *R. v. Captain J.D. Leslie*, 2008 CM 2015

**Docket:** 200813

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

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**Date:** 30 September 2008

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

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**HER MAJESTY THE QUEEN**

**v.**

**CAPTAIN J.D. LESLIE  
(Offender)**

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**SENTENCE**

**(Rendered orally)**

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[1] Captain Leslie, having accepted and recorded your plea of guilty to charge number two, a charge of negligently performing a military duty imposed upon you, the court now finds you guilty of charge number two.

[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, 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.

[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 set out in an admirably detailed yet succinct manner in Exhibit 6, the Statement of Circumstances. In brief, on the date alleged in the charge the offender was the Command Post Officer and Senior Technical Gunnery Officer at an artillery position in Kandahar Province, Afghanistan, supporting a company of Canadian soldiers who, with their Afghan allies, were engaged in a combat operation against Taliban insurgents.

[9] When the Taliban fighters began to withdraw, artillery fire was called in to cut off the withdrawal. Because of a series of errors and misjudgements on the part of the offender, the artillery fire from one gun was misdirected, and a total of three rounds impacted in the immediate vicinity of the Canadian soldiers. No one was seriously injured. The offender immediately investigated and determined the cause of the misdirected fire, and promptly admitted his full responsibility.

[10] The prosecution submits that a fit sentence in this case would be forfeiture of seniority for a period of one year, together with a fine in the amount of \$4,000. Defence counsel, on behalf of Captain Leslie, argues that forfeiture of seniority is not appropriate, and recommends a reprimand and a fine in the amount of \$2,000.

[11] In my view, a sentence disposition involving forfeiture of seniority is not appropriate. I am asked to consider forfeiture of seniority largely for its symbolic value as being a punishment which is higher than a severe reprimand in the scale of punishments prescribed by section 139 of the *National Defence Act*, but lower than reduction in rank, which the prosecution submits is not a fit disposition. I consider, however, that the punishment of forfeiture of seniority simply would not advance the objectives of general deterrence and denunciation that I consider to be the foremost considerations in this case.

[12] Captain Leslie, it is apparent to me that you are a gifted artillery officer with many skills. You have served with distinction, and you continue to enjoy the confidence of the chain of command, despite the event giving rise to this charge. I believe that confidence is well placed, and this kind of incident is very unlikely to be repeated by you. You promptly admitted your responsibility at the time, and you continue to take full responsibility by your plea of guilty today. Specific deterrence and rehabilitation are not large factors in arriving at the sentence.

[13] I must also, however, have regard for the facts of the offence. They disclose a series of actions or inactions or omissions on your part that led directly to a serious threat to the lives and safety of Canadian Forces engaged in a combat operation. On this isolated occasion, and under the stresses of combat, you neglected to take a series of precautionary steps that were intended, in part at least, to protect against just the kind of risk of harm to which your fellow soldiers were subjected.

[14] Stand up, Captain Leslie. You are sentenced to a severe reprimand and a fine in the amount of \$4,000, to be paid in monthly installments of \$400 each commencing 1 November 2008, and continuing for the following nine 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 Captain Leslie J.D. are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major A.M Tamburro, Regional Military Prosecutions Central  
Counsel for Her Majesty the Queen

Lieutenant-Commander J.A. McMunagle,  
Directorate of Defence Counsel Services  
Counsel for Captain J.D. Leslie