

Citation: *R. v. Sergeant E.B. Thompson*, 2008 CM 2011

Docket: 200782

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

Date: 20 May 2008

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

HER MAJESTY THE QUEEN

v.

**SERGEANT E.B. THOMPSON
(Offender)**

SENTENCE

(Rendered orally)

[1] Sergeant Thompson, having accepted and recorded your plea of guilty to charge No. 1, a charge of conduct to the prejudice of good order and discipline; that is, entering into an inappropriate personal relationship with a named private, contrary to Land Forces Western Area Training Centre Relationship Policy, this court now finds you guilty of charge No. 1.

[2] As well, the panel of this Disciplinary Court Martial has found you guilty, contrary to your plea, of charge No. 3, also a charge of conduct to the prejudice of good order and discipline, in that you abused your authority by threatening and intimidating two named privates, contrary to Defence Administrative Order and Directive 5012-0, Harassment Prevention and Resolution.

[3] 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 disclosed by the evidence heard during the trial and during the sentencing phase, as well as the submissions of counsel, both for the prosecution and for the defence.

[4] 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.

[5] 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.

[6] 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.

[7] As I told you when you tendered your plea of guilty to charge No. 1, section 139 of the *National Defence Act* prescribes the possible punishments that may be imposed at court martial. Those possible punishments are limited by the provision of the law which creates the offence and provides for a maximum punishment and are 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 findings of guilt and the sentence I am about to impose.

[8] The facts underlying charge No. 1 are set out in the Statement of Circumstances, Exhibit 9, and the facts underlying charge No. 3 emerged in the course of the evidence led before the panel. In brief, the offender was employed as a course

instructor at the Land Forces Western Area Training Centre at Canadian Forces Base Wainwright, Alberta. In December of 2006, he developed a personal relationship with a female course candidate on a Basic Military Qualification Course on which he was an instructor and a section commander. The relationship included sexual relations in the unit lines shortly before the Christmas leave break and spending time together during the leave period. After the Christmas leave period, when the course resumed in January of 2007, the relationship apparently continued with the two of them spending weekends together, until a period of absence without leave on the part of the female member was terminated 4 February 2007. Personal sexual relationships between instructional staff and course candidates, and among course candidates, are prohibited in clear terms by the policy document of LFWA TC.

[9] On the morning of 8 January 2007, in the workplace, the offender separately took aside two male members of the course and spoke to each of them alone. He told them in apparently strong terms that they were to put a stop to rumours around the course concerning the relationship between the offender and the female private recruit or else the course would be shut down. Both privates felt threatened and intimidated by the actions of the offender, and although they felt a responsibility to report the conduct of the offender, they didn't want to jeopardize the successful completion of the course by themselves, and, no doubt, by their course mates.

[10] On the basis of the finding of the panel, the behaviour of the offender toward each of the two privates clearly constituted harassment within the meaning of DAOD 5012-0. And because of the rank difference and relationship of instructor to student, the evidence establishes an abuse of authority by the offender in relation to both the male private recruits. The prosecution suggests that a fit disposition in this case is reduction in rank. Counsel on behalf of the offender suggests that a reprimand and a fine in the amount of \$500 would be a fit disposition.

[11] I accept the submission of the prosecutor that the offences in this case are objectively serious. On the basis of the evidence of Chief Warrant Officer McNaughton, which I accept, it is clear that the relationship between a sergeant instructor and recruit candidates on a Basic Military Qualification Course is very special; perhaps even unique. The offender abused that relationship in relation to three of the recruits under his direction. It is not an exaggeration to say that the offender betrayed the trust reposed in him, both by the course candidates concerned, but more importantly, by the Canadian Forces. As for the offence of abuse of authority in relation to the male course candidates, it should be noted that the harassment in this case was of short duration and not part of a long-term pattern of conduct towards a subordinate. But having said that, it is clear that the offence of abuse of authority was committed in order to avoid detection for the offence of entering into an improper relationship.

[12] I also have regard for the personal circumstances of the offender. He has served in the Canadian Forces for twenty-one and one half years, and in his last several years has demonstrated remarkable talent as an instructor. His most recent performance appraisals show that he has mastered the job requirements of his present rank, and, indeed, has performed well in excess of the expectations of a higher rank, despite what his counsel characterizes as his fragile mental health. I accept the evidence that the dedication the offender has shown to service in the Canadian Forces has contributed to the dissolution of his marriage and a strain upon his family life. I accept the evidence that the offender is seeking professional assistance to deal with his personal problems. But on all the evidence, although the offender was under stress at the time of the offences, I cannot see a relationship between the offender's personal problems and the commission of these offences. Indeed, the offender, himself, in the course of his evidence, appeared to deny any such relationship.

[13] There is an unusual aspect to the procedure that was followed in this case. The offender was originally charged with the offence in charge No. 1 and a second charge of disobedience of an order, and proceeded to a summary trial before the commanding officer. He was found guilty and sentenced to reduction in rank. He applied for a review of the summary trial and the findings were quashed, along with the sentence, and he was reinstated in his current rank after some 97 days as a corporal. Upon being charged again, but this time only with the offence now in charge No. 1, he elected trial by court martial. Some months later, when the charge sheet was preferred by the Director of Military Prosecutions, it included a new charge, which is charge No. 3 before me. Thus, there was a substantial delay in charging the offence in charge No. 3, even though the evidence supporting the charge appears to have been available to the authorities by early February of 2007. It might well appear that by exercising his right to review, and by achieving some success in quashing the summary trial proceedings, Sergeant Thompson has been exposed to greater jeopardy before this court than he was at the summary trial stage.

[14] I do not accept the submission of the defence that the circumstances show that the system of trial by summary trial failed the offender in this case. But in my view, it would only be in exceptional circumstances that the punishment at court martial should exceed the punishment imposed at summary trial for the same offence when the finding and sentence at summary trial have been quashed.

[15] I accept that although the offender was reinstated in his rank and the financial penalties would have been reimbursed; nonetheless, there are non-financial aspects to the penalty of reduction in rank, and to some extent the offender has endured some punishment for the offence charged in charge No. 1 already. I take this into account as a mitigating circumstance in the present case. I also consider that the delay in proceeding with charge No. 3 is a mitigating circumstance. I also weigh in the balance the fact that the offender was subjected to administrative restrictions and a

recorded warning as a result of the conduct charged against him, and the restrictions were difficult to comply with because of the living and working conditions at CFB Wainwright. I am mindful of the plea of guilty made by the offender to charge No. 1, and that through counsel he admitted to certain facts that saved the female private the stresses of testifying in court. But on all the evidence, I consider that the process of rehabilitation of the offender is still in its early stages.

[16] On all the circumstances, I am persuaded that a disposition by way of reprimand and a fine is simply inadequate to address the principles of individual and general deterrence that the court must consider as the guiding sentencing principles in the circumstances of this case.

[17] As I have observed elsewhere, rank is a symbol of the authority of the wearer, and it is also evidence of the trust and confidence placed in the member by the Canadian Forces to carry out his or her duties with selflessness and dedication. Where rank is lost by reason of misconduct, it can also be regained when the member has demonstrated that he is worthy of the trust and confidence that rank symbolizes.

[18] Stand up, Sergeant Thompson. You are sentenced to reduction in rank to the rank of corporal. March out Corporal Thompson.

COMMANDER P. J. LAMONT, M.J.

Counsel:

Major R.J. Henderson, Regional Military Prosecutions Central
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