

Citation: *R. v. Corporal J.W. Campbell*, 2004CM27

Docket: S200427

**STANDING COURT MARTIAL
CANADA
BRITISH COLUMBIA
CANADIAN FORCES BASE ESQUIMALT**

Date: 18 October 2004

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

HER MAJESTY THE QUEEN

v.

CORPORAL J.W. CAMPBELL

(Accused)

SENTENCE

(Rendered orally)

[1] Corporal Campbell, having accepted and recorded your pleas of guilty to charges number 1 and 2, the court now finds you guilty of charge number 1 and charge number 2.

[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 7, 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.

[4] 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.

[6] Importantly, in the context of the Canadian Forces, these objectives include the maintenance of discipline, that habit of obedience which is absolutely indispensable to the effectiveness of an armed force.

[7] 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.

[8] 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.

[9] 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 and is 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.

[10] It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[11] In arriving at the sentence in this case, I have considered the direct and indirect consequences of the findings of guilt and the sentence I am about to impose.

[12] The facts of this case disclose that on the date alleged in the charge sheet, the offender was on duty with the Canadian Contingent of the United Nations Disengagement Observer Force at Camp Ziouani in the Golan Heights. He was tasked with the duties of Duty Supply Technician. Standing Operating procedure 3226 dated November 2003 sets out the duties of the Duty Supply Technician, and they include

raising the flag each morning at 0745 hours and opening up the Supply Headquarters, and then lowering the flag and securing the building at 1600 hours. The offender failed to discharge these duties. He testified that he attended the MIR on the date alleged, and that he forgot about his duties.

[13] In this case both counsel submit that the appropriate sentence is one of a fine in the amount of \$200. The sentence to be pronounced is, of course, a matter for the court, but where, as in this case, both parties agree on a recommended disposition, that recommendation carries great weight with the court.

[14] The Courts of Appeal across Canada, including the Court Martial Appeal Court, have held that the joint submission of counsel as to sentence should be accepted by the court unless the recommended sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

[15] The offender is 29 years of age and single. He has served in the Reserve Force since 1997 and has accepted a number of call-outs as a medical assistant, a cook, and a supply technician. He testified, and I accept his evidence, that he enjoys the continuing support of his unit, the 11 Medical Company, and I take it that he wishes to continue with his military career.

[16] His conduct sheet discloses a conviction for absence without leave for an incident which also took place during his deployment to the Golan Heights, and which resulted in a fine of \$800, imposed but seven days prior to the commission of the offences to which he has pleaded guilty today.

[17] Corporal Campbell, I hope you now understand the importance of attention to duty for all members of the Canadian Forces. If you wish to continue your service, you will have to take that lesson to heart.

[18] Taking account of all the circumstances, both of the offence and of the offender, I cannot say that the sentence recommended by counsel is either contrary to the public interest or would bring the administration of justice into disrepute, and accordingly, I accept the joint submission.

[19] Stand up, Corporal Campbell.

[20] You are sentenced to a fine in the amount of \$200 to be paid at a rate of \$50 per month commencing 31 October 2004 and continuing for the following three months. In the event that you are released from the Canadian Forces for any reason before the fine is paid in full, the then unpaid amount of the fine is due and owing the day prior to your release. March out Corporal Campbell.

[21] The proceedings of this court martial in respect of Corporal Campbell are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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