

Citation: *R. v. Ordinary Seaman A.S. Jobe*, 2004CM03

Docket: S200403

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
6080 YOUNG ST. HALIFAX**

Date: 30 March 2004

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

HER MAJESTY THE QUEEN

v.

**ORDINARY SEAMAN A.S. JOBE
(Accused)**

SENTENCE

(Rendered orally)

[1] Ordinary Seaman Jobe, having accepted and recorded your plea of guilty to the second charge, the court now finds you guilty of the second 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, Exhibit 7, the evidence heard in mitigation, 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 so necessary 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 the 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] 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.

[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 for the offender of the finding of guilt and the sentence I am about to impose.

[12] The facts of the case disclose that in July of 2003, the offender completed a form entitled "Explanation of Lost, Stolen or Damaged Identification Card" falsely indicating that his Canadian Forces temporary identification card had been lost in Mayport, Florida, when, in fact, his identification card had been seized by civil police authorities in Mayport. It appears that the card was seized because the offender had

altered the date of birth on the card in order that he could enter various drinking establishments while ashore by misrepresenting his age to be over 21 years.

[13] The offender joined the Canadian Forces in September of 2001. He is presently 21 years of age and employed as a naval communicator. He has pleaded guilty to the offence of wilfully making a false statement in an official document signed by him, and I take this as a genuine indication of remorse on his part for having committed the offence.

[14] His conduct sheet discloses two entries for offences of absence without leave, one offence predating the current offence, and the other being subsequent to the current offence. He is single and without dependents. His commanding officer gave evidence before me. He describes the offender as a capable naval communicator who loves the Navy but needs to do some maturing. I must say that Commander Paterson's assessment strikes me as bang on.

[15] Ordinary Seaman Jobe, you likely have a long and rewarding career ahead of you in the Navy, providing that you learn responsibility. Part of that responsibility involves being honest. The Canadian Forces expects nothing less than complete honesty from you in the discharge of all your duties, as do your shipmates. You must understand that if you continue to offend, you will jeopardize that career and perhaps even your freedom.

[16] In this case, both counsel submit that the appropriate sentence is one of a fine in the amount of \$250. 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.

[17] 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.

[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, Ordinary Seaman Jobe.

[20] You are sentenced to a fine in the amount of \$250 to be paid by the end of April 2004.

[21] March out Ordinary Seaman Jobe.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Lieutenant-Commander C.J. Deschênes, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen
Major J.A.M. Côté, Directorate of Defence Counsel Services
Counsel for Ordinary Seaman Jobe