

Citation: *R. v. Corporal W.D. Hillier*, 2004CM02

Docket: S200402

**STANDING COURT MARTIAL
CANADA
ALBERTA
EDMONTON GARRISON LECTURE TRAINING FACILITY**

Date: 5 February 2004

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

HER MAJESTY THE QUEEN

v.

**CORPORAL W.D. HILLIER
(Accused)**

SENTENCE

(Rendered orally)

[1] Corporal Hillier, you may break off and be seated beside your defence counsel.

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

[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 described in the Statement of Circumstances, Exhibit 6; the evidence I have heard in mitigation; and 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.

[5] 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.

[6] 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.

[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. 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.

[8] 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.

[9] 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'm about to impose.

[10] In brief, the facts disclose that when on leave, here in Edmonton, the accused drank alcohol to the point of intoxication. He came to the attention of the civilian, and later military, police authorities when he entered an unlocked building looking for an automated teller machine, and accidentally triggered a silent alarm.

[11] Defence counsel for Corporal Hillier points out that he had only just begun a period of leave beginning 24 May 2003 at the time he became drunk. He had planned a trip to Ontario and the United States for his period of leave. His leave pass was revoked on 25 May 2003 as he was placed on duty.

[12] Defence counsel submits that Corporal Hillier was recalled from leave pursuant to Queen's Regulations and Orders, article 16.01, paragraph 2. Counsel characterizes this action as a stoppage of leave, which is a minor punishment that may be imposed by a service tribunal for the commission of a service offence. Counsel invokes the ancient protection of the law that a person is not to be punished twice for the same offence. This principle is now enshrined in the *Canadian Charter of Rights and Freedoms*.

[13] In my view, Corporal Hillier has not yet been punished for the offence to which he has pleaded guilty. It is true that there is no evidence before me of an imperative military requirement justifying a recall from leave in this case; however, there is no basis upon which I can say that article 16.01 was not properly invoked by Corporal Hillier's commanding officer in this case.

[14] Although a recall from leave may be a disappointment and unfortunate for a Canadian Forces member, a recall from leave is not a punishment. Even if a member is recalled from leave as a result of conduct that later forms the subject matter of a charge under the Code of Service Discipline, the principle against double punishment is not engaged.

[15] For example, a vehicle used in the commission of a narcotics offence might be impounded and forfeited as a result of the offence. The principle against double punishment does not prevent a court from imposing a sentence of imprisonment as a punishment for the offence, even though the offender may consider that the forfeiture of his vehicle was a form of punishment.

[16] In any event, I note from the evidence of Master Warrant Officer Bennett that after some administrative hiccups, Corporal Hillier's leave entitlement was returned to him, if only recently. I cannot conclude, as urged by defence counsel, that, in a sense, the time already served should be considered a fit sentence.

[17] I'm prepared to find that Corporal Hillier was recalled from leave as a result of the behaviour he exhibited when he became intoxicated and accidentally triggered a silent building alarm. The fact that Corporal Hillier lost his leave, and therefore his holiday plans as a result of the offence, is a mitigating factor, although a minor factor, that I have considered in determining a fit sentence.

[18] The accused is before a service tribunal for the first time. He has pleaded guilty to the offence at the first available opportunity, and I conclude he is genuinely remorseful. He is described as a good soldier, trustworthy and loyal. The offence was committed while he was on leave and was not accompanied with the kind of objectionable behaviours that frequently characterize this offence.

[19] Corporal Hillier, you have a lot going for you: the support of your unit, a promising career in the Canadian Forces, increasing responsibilities in your personal life, but most of all, you have recognized that alcohol is a problem for you. To your credit, you recognized this well before the incident that brings you before this court, and you are taking productive steps to deal with it. I am satisfied that you now know the potential harm that alcohol can cause to your future in the Canadian Forces.

[20] Stand up, Corporal Hillier.

[21] You are sentenced to a fine in the amount of \$400 to be paid at a rate of \$100 per month commencing 29 February 2004. March out Corporal Hillier.

[22] The proceedings of this court martial in respect of Corporal Hillier are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

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