

Citation: *R. v. Ex-Corporal J.S. Miksovsky*, 2008 CM 4019

Docket: 200838

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

Date: 22 December 2008

PRESIDING: LIEUTENANT-COLONEL J-G PERRON, M.J.

HER MAJESTY THE QUEEN

v.

**Ex-CORPORAL J.S. MIKSOVSKY
(Offender)**

**SENTENCE
(Rendered Orally)**

[1] Ex-Cpl Miksovsky, having accepted and recorded your plea of guilty to charge No. 1, I now find you guilty of that charge.

[2] The Statement of Circumstances, to which you formally admitted the facts as conclusive evidence of your guilt, provides this court with the circumstances surrounding the commission of the offence. On 15 October 2007 you slept in and failed to report to your squadron parade at 0730 hours, and you were absent until 1000 hours on that date.

[3] The principles of sentencing, which are common to both courts martial and civilian criminal trials in Canada, have been expressed in various ways. Generally, they are founded on the need to protect the public, and the public includes the Canadian Forces. The primary principles are the principles of deterrence, that includes specific deterrence in the sense of deterrent effect on you personally, as well as general deterrence; that is, deterrence for others who might be tempted to commit similar offences. The principles also include the principle of denunciation of the conduct, and last, but not least, the principle of reformation and rehabilitation of the offender. The court must determine if protection of the public would best be served by deterrence, rehabilitation, denunciation, or a combination of those factors.

[4] The court is also required, in imposing a sentence, to follow the directions set out in QR&O article 112.48, which obliges it, in determining a sentence,

to take into account any indirect consequences of the finding or of the sentence and impose a sentence commensurate with the gravity of the offence and the previous character of the offender. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline. The ultimate aim of sentencing is the restoration of discipline in the offender and in military society.

[5] The Court Martial Appeal Court decision in *R. v. Paquette*, 1998 CMAJ No. 8, stated:

... [T]hat a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice in to disrepute or unless the sentence is otherwise not in the public interest ...

The prosecution and your defence counsel have jointly proposed a sentence of a reprimand and a fine of \$250.

[6] I will set out the aggravating circumstances and the mitigating circumstances that I have considered in determining the appropriate sentence in this case. As for aggravating circumstances: You have a conduct sheet. You were found guilty of stealing DND tools in June 2007 and you were sentenced to eight days' confined to barracks and a fine of \$400.

As to the mitigating circumstances, I note the following:

This is your only offence of being absent without leave, and you did call your warrant officer that morning to tell him that you had overslept.

You indicated at the earliest opportunity that you wished to plead guilty. Your plea and your actions clearly demonstrate that you are willing to take full responsibility for this offence, as does your testimony here in court.

Your plea of guilty has saved the prosecution much effort, and witnesses did not have to be recalled from Christmas leave.

You are presently working on getting your high school diploma so you may start a welding apprenticeship.

You have described the difficult financial situation that has occurred since your wife has left you. You are receiving unemployment benefits and you are also working at a part-time job to the extent the unemployment benefits regulations permit. You have an income of approximately \$935 every two weeks, and your lodging expenses are approximately \$380 plus utilities per month. You also send your wife approximately \$100 to \$200 per month to help support your two children that reside with her in New Brunswick.

The court must consider your ability to pay a fine when imposing that type of punishment.

[7] Ex-Corporal Miksovsky, you have demonstrated to me that you take full responsibility for your actions. I agree with the joint submission on sentencing. I agree with the prosecution that the sentence must reflect primarily the principle of general deterrence, but the present circumstances of the offender must be taken into account when determining the just and fair sentence in a specific case. Therefore, I sentence you to a reprimand and fine in the amount of \$250. You shall pay \$125 on 15 January 2009 and \$125 on 15 February 2009.

Lieutenant-Colonel J-G Perron, M.J.

COUNSEL:

Major V. Ohanessian, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen

Captain B. Tremblay, Directorate of Defence Counsel Services
Counsel for ex-Corporal Miksovsky