

**Citation:** *R. v. Ordinary Seaman D. Dicks*, 2004 CM 31

**Docket:** S200431

**STANDING COURT MARTIAL  
CANADA  
NOVA SCOTIA  
6080 YOUNG STREET, 5<sup>TH</sup> FLOOR, SUITE 506, HALIFAX**

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**Date:** 7 July 2004

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

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**HER MAJESTY THE QUEEN**

**v.**

**ORDINARY SEAMAN D. DICKS  
(Accused)**

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**SENTENCE  
(Rendered Orally)**

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[1] You may break off and be seated beside your defence counsel. Ordinary Seaman Dicks, you have been found guilty of the first charge, a charge of altering a military document with intent to mislead. 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 mitigation phase, as well as the submissions of counsel, both for the prosecution and for the defence.

[2] 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.

[3] 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 a 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.

[4] 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.

[5] 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.

[6] 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. The facts of the offence were described in my finding and I will not repeat what I said then. Both counsel submit that a fit sentence in this case should be a fine. In support of a higher fine amount, the prosecutor has referred to the objective gravity of the offence. The maximum punishment prescribed by the *National Defence Act* for this offence is three years' imprisonment. This relatively severe maximum punishment in the Code of Service Discipline amply demonstrates that the Canadian Forces must rely on the honesty and integrity of its individual members in order to discharge its important responsibilities to the nation. The actions of the offender constitute a violation of the trust reposed in him. The alteration of the dates on the sick chit in such a manner as to deceive his superiors required some thought on the part of the offender. On the other hand, the prosecutor acknowledges that the facts of this particular offence of deception are less serious than other cases that come before this court.

[7] There are important mitigating factors in this case. The offender is a young first offender with no previous disciplinary record during his service in the

Canadian Forces, commencing in September of 2000. The documentary materials provided to me show that the offender is a valued member of the Canadian Forces who performs his duties in the Deck Department aboard ship at a standard of very good to excellent. He has assumed the responsibility of supporting a common law spouse and a young child. Of particular note is the fact that the offender has suffered, since at least June of 2002, and continues to suffer from a disease condition that has resulted in his pending release from the Canadian Forces for medical reasons.

[8] I conclude that the offence was committed at a time when the offender was suffering from the effects of the disease, and I agree with the submission of defence counsel that his deceitful use of the sick chit was an error in judgement on his part that was prompted, in part at least, by the symptoms of his illness. This factor substantially attenuates the concern the court would otherwise have for the principle of general deterrence in a case of this kind.

[9] Stand up, Ordinary Seaman Dicks. You are sentenced to a fine in the amount of \$600 to be paid in monthly installments of \$200 beginning July 31, 2004, and continuing for the following two months. In the event you are released from the Canadian Forces prior to the payment in full of the fine, the entire, then unpaid amount of the fine will be due and owing the day prior to your release. March out Ordinary Seaman Dicks.

[10] The proceedings of this court martial in respect of Ordinary Seaman Dicks are hereby terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Captain K.A. Reichert, Regional Military Prosecutions Atlantic  
Counsel for Her Majesty the Queen  
Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services  
Counsel for Ordinary Seaman D. Dicks