

Citation: *R.v. Ex-Master Corporal Matchee*,2004CM14

Docket: I200414

**INQUIRY BY
STANDING COURT MARTIAL
CANADA
SASKATCHEWAN
HER MAJESTY'S CANADIAN SHIP UNICORN, SASKATOON**

Date: 21 September 2004

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

HER MAJESTY THE QUEEN

v.

**EX-MASTER CORPORAL MATCHEE
(Accused)**

DECISION RESPECTING SECTION 202.12 OF THE *NATIONAL DEFENCE ACT*.

(Rendered orally)

[1] This is an application under section 202.12 of the *National Defence Act*. That section provides for the periodic review of the sufficiency of the evidence against an individual who has been found to be unfit to stand trial under the Code of Service Discipline on account of mental disorder. Mental disorder simply means a disease of the mind.

[2] The correctness of the judicial finding of unfitness is not before me. The only question at this stage is the sufficiency of the evidence currently available to the prosecution to put the accused person on trial.

[3] The accused is charged with two charges under section 130 of the *National Defence Act*; one charge of murder and a second charge of torture, both contrary to the *Criminal Code of Canada*. The offences are alleged to have occurred on 16 March 1993 in a Canadian military compound near Belet Uen, Somalia.

[4] Counsel for the prosecution submits that the test to be applied on these proceedings was accurately stated by the military judges who held inquiries in this same case in 1998, 2000, and 2002. The test is the same test that governs a justice conducting a preliminary inquiry under the *Criminal Code* and the same test that governs an application for a directed verdict of not guilty at the conclusion of the case for the prosecution at trial under Queen's Regulations and Orders 112.05(13).

[5] I agree with the submission of the prosecutor as to the nature of the test to be applied. To the authorities cited by the prosecutor in his address of *Skogman and Sheppard*, I will add the recent decision of the Supreme Court of Canada in *R. v. Fontaine*, [2004] 1 S.C.R. 702. I ask myself whether the prosecution has established an evidential foundation on the issue of guilt; that is, whether there is some evidence on each of the elements of both offences charged upon which a properly instructed jury could reasonably return a verdict of guilty.

[6] Defence counsel on behalf of Ex-Master Corporal Matchee concedes that the affidavit material before the court is sufficient to put the accused to his trial. I have read and considered the affidavit evidence, and I have considered what inferences of fact may be properly drawn from the facts alleged in the affidavits.

[7] Considering the elements of the offences of murder and torture and applying the test to those alleged facts, I am satisfied that sufficient admissible evidence can be adduced to put the accused on trial.

[8] Major MacGregor, I direct your attention to Queen's Regulations and Orders, article 119.29, paragraph 8, which on its face requires the court to cause the Judge Advocate General to be informed as to the decision of this court, and I trust that you can discharge that duty on behalf of the court.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major B.W. MacGregor, Directorate of Military Prosecutions
Counsel for Her Majesty The Queen

Major G.K. Duncan, Canadian Forces Legal Advisor/Pension and Finance Legal Services

Counsel for Ex-Master Corporal Matchee