Citation: *R.v. Second Lieutenant D. Baptista,* 2004 CM 23

Docket: S200423

STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
14 WING GREENWOOD

Date: 3 November 2004

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

HER MAJESTY THE QUEEN
v.
SECOND LIEUTENANT D. BAPTISTA
(Accused)

SENTENCE
(Rendered orally)

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[1] Second Lieutenant Baptista, having accepted and recorded your pleas of guilty to the third charge and the sixth charge, this court now finds you guilty on charge number 3 and charge number 6. In addition, the court has already found you guilty, contrary to your pleas, on the first charge and 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 appeared from the evidence heard in the course of the trial and as described in the Statement of Circumstances, Exhibit 10 as well as the material heard and received by the court during the course of the mitigation phase, 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. 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.

[7] 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] As I explained to you when you tendered your pleas of guilty to two of the charges, 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 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.

[9] It is an important principle that the court should impose the least severe punishment that will maintain discipline.

[10] 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 am about to impose.

[11] The facts related to the two charges of absence without leave, charges 3 and 6, are set out in Exhibit 10. On the dates alleged in the charges, the offender failed to appear for work at the Annapolis Mess until 1205 hours. His supervisor was unable to contact him during that morning.

[12] Then again just over three weeks later, on a Friday morning, the offender telephoned his supervisor and sought and was granted authorization to be absent until 1030 hours that morning. The offender did not report for duty at 1030 hours and was not heard from until he telephoned his supervisor on Monday, 12 May 2003. There is no evidence before me as to why the offender failed to report for duty as required on these occasions.

[13] The facts related to the charges of forgery and uttering a forged document, charges 1 and 2, were dealt with in my finding, and I will not repeat what I said then.

[14] The prosecution submits that an appropriate sentence, in this case, would be a short term of imprisonment and dismissal from Her Majesty's Service. Defence counsel, on behalf of the offender, submits that a sentence of a severe reprimand and a fine of $5,000 would properly meet the sentencing principles in this case.

[15] Both counsel have referred to the mitigating and aggravating factors in this case that should weigh with the court. The offender is presently 27 years of age. He joined the Canadian Forces in January of 1999 and was commissioned the following May at his current rank. He had trained in Aviation Flight Management before joining the Canadian Forces, and his ambition was to be a pilot. He suffered an injury early in his Canadian Forces training and it is unlikely that he will ever fly.

[16] As a result of his medical condition, I am told that he was denied training or career courses, and a release from the Canadian Forces on medical grounds may be pending. He is party to a common law marriage, and I have no information as to any dependents.

[17] Counsel have pointed out that the absence without leave charges date back to April and May of 2003, and the forgery and uttering charges date back to late April and early May of 2002. It is said that the existence of the pending charges over a long period of time has been a strain for the offender.

[18] Looking, first of all, at the two charges of absence without leave, in the absence of any evidence explaining why the offender committed these offences, I am left to conclude that he simply wished to avoid his duties. That such an offence should be committed twice within a relatively short period of time and after being specifically counselled to report for work on time or seek permission to be absent calls for a significant sentence. In this connection the court is particularly concerned with the principle of general deterrence.

[19] Turning to the offences of forgery and uttering, the prosecution has referred to several significant aggravating factors. These offences demonstrated some sophistication in the preparation of the false documentation. The offender is a commis-

sioned member who is properly held to a high standard of probity. Dishonesty is certainly dishonourable, as the prosecution suggests, but it is also incompatible with the military ethos. Members of an armed force must be able to rely on the honesty and integrity of fellow members if they are to effectively carry out their onerous duties.

[20] Defence counsel correctly points out that these offences did not actually result in financial loss to the building supply company, and submits that the offences were not related to the offender's military position. In my view, however, there is no room for a double standard for officers in the Canadian Forces between their professional dealings in the course of their military duty on the one hand and their private dealings as members of Canadian society on the other.

[21] The prosecution points out that the offender has been previously found guilty at court martial of one charge of a fraudulent act committed on 27 March 2001 for which he was sentenced to a severe reprimand and a fine of $2500 in July of 2002. The forgery and uttering offences before the court today were committed before the offender was tried and punished for the fraudulent act, but subsequent to the date he was charged with the fraudulent act in December of 2001. These offences then were committed while the offender was awaiting his trial on the fraud charge.

[22] The circumstances of the earlier offence disclose that the offender prepared false documentation on that occasion in order to commit a fraud that resulted in the loss of public funds. It is apparent that being investigated and charged for the earlier offence was not taken by the offender as a caution that he should change his ways.

[23] It is important to remember that the offender is not being punished today for his fraudulent act in March of 2001. That punishment was properly determined and imposed by the court that dealt with that earlier offence. But the offender's previous conduct is relevant to an appreciation of his character at the present time, and to the principle of specific deterrence.

[24] The offences of absence without leave were committed after he was sentenced for the fraud offence.

[25] As I have pointed out, only one sentence is imposed at court martial even where there is a finding of guilty on more than one offence. Where, as in this case, there are different kinds of offences over different time periods, the crafting of a fit sentence is difficult and challenging. The court takes account of the totality principle to ensure that what might otherwise be fit sentences for each of the charges individually are not simply added together. One must have regard for the global effect of the single sentence as a response to all of the offences.

[26] It is true, of course, that in many cases, the court's concerns about general and specific deterrence can be met by the imposition of a sentence that is less severe than imprisonment. However, in this case and for the reasons I have given, the circumstances of these offences and of the offender call for a sentence of incarceration.

[27] In addition, by his repeated criminal and disciplinary misconduct, the offender has demonstrated that he is manifestly unsuitable for further service in the Canadian forces.

[28] Stand up, Second Lieutenant Baptista.

[29] You are sentenced to imprisonment for a period of 30 days and to dismissal from Her Majesty's Service.

[30] The sentence is pronounced at 1229 hours, 4 November 2004.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major R.F. Holman, Regional Military Prosecutions Atlantic
Counsel for Her Majesty The Queen
Major J. A. M. Côté,
Counsel for Second Lieutenant D. Baptista