

Citation: *R. v. Private A.G. Doling*, 2005CM14

Docket: S200514

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

Date: 18 July 2005

PRESIDING: COLONEL K.S. CARTER, M.J.

HER MAJESTY THE QUEEN

v.

**PRIVATE A.G. DOLING
(Accused)**

SENTENCE

(Rendered verbally)

[1] Private Doling, please stand. The court accepted and recorded your plea of guilty to charges three, four, and five on the charge sheet and the court finds you guilty of those charges. The court has had to determine what is an appropriate sentence in light of your convictions on those offences. In determining the sentence, the court has considered the circumstances surrounding the commission of the offences; that is, the information that was provided during the course of the trial. The court has also considered the arguments of both the prosecution and the defence made during the sentencing stage as well as the applicable principles of sentencing.

[2] The court would like to thank counsel for their assistance in this as well as the other phases of what has been a very complex case.

[3] The principles of sentencing are what the court uses to determine a sentence and they take into account a series of very logical factors. Firstly, the protection of the public which of course includes the interest and the protection of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the individual involved, which is called specific deterrence, but also the deterrent effect on others who might be inclined to commit similar offences and that is called general deterrence; finally

and equally important, there is the issue of the reformation and rehabilitation of the offender. Queen's Regulations and Orders 112.48 imposes on the court the obligation in determining an appropriate sentence to take into account any indirect consequences of the finding of guilty on the sentence imposed and to impose a sentence which reflects not only the gravity of the offence but the previous character of the offender. The ultimate purpose of a court martial is to ensure, through the application of justice, that the necessary discipline is maintained in the Canadian Forces. Ultimately however, discipline is maintained, for the most part, through self-discipline which individual members of the Canadian Forces must develop through training and through experience.

[4] Both absence without leave and acts to the prejudice of good order and discipline are called military offences. They are challenges to a disciplined and effective fighting force. It is clear however from the evidence in the main trial; from the circumstances surrounding the commission of these offences; and from your current medical state, that you are completely unsuited for service in the Canadian Forces, both the prosecution and the defence have submitted that and I accept that you should be released from the Canadian Forces as soon as possible. This sentence that I am going to impose takes that into account.

[5] You have, on the evidence before the court, longstanding psychological problems predating your enrolment in the Canadian Forces, which, it appears, have only begun to be addressed over the past few months in Kingston. The court believes it's worthwhile to reiterate its findings; that is, that these difficulties do not arise from a sexual assault which occurred in Saint-Jean on the 1st of March 2004, the prosecution established beyond a reasonable doubt that that did not occur. Your diagnosed pathological disassociation, your borderline personality, your anxiety, your tendency to say whatever is necessary to benefit yourself, and your inability to distinguish between what is and what is not real, makes you a danger to the Canadian Forces.

[6] The prosecution submits a number of aggravating factors which they say make these offences very serious: the fact that there are multiple offences; the fact that you obtained a benefit; the shocking nature, as I described it, of the lie; the fact that the lie was to a padre; the fact that you abused the trust of a compassionate leave system for your own purposes; and also, Major Trudel has argued, the high risk of recidivism. For all those reasons the prosecution submits that this court should consider an upper range of possible punishments such as dismissal or detention.

[7] Your defence counsel's position is that, in fact, there are a number of mitigating factors. First is that this is your first offence as a member of the Canadian Forces and implicit in that likely your last, given the short nature of your career; secondly, your plea of guilty; thirdly, the fact that you are a junior member of the Canadian Forces with little experience at the time of the commission of these offences. Your defence counsel submits also that your

psychological problems are a mitigating factor; also, that it has been more than a year since these offences occurred; and finally, he argues that your cooperation in undergoing medical treatment is a mitigating factor. As a consequence, he submits that general deterrence would be served with a sentence of a fine in the range of \$1500 to \$2000, which is an appropriate sentence for similar offences.

[8] This court finds that the applicable sentencing principles in this case are protection of the Canadian Forces and general deterrence. Specific deterrence and rehabilitation are matters which can, in this particular situation, best be addressed, it appears, by psychological counseling.

[9] The court has found there are some aggravating factors: the first is that this was done clearly for personal benefit; both the lying and the absence without leave were for things that suited you at that time; secondly, the court has found that these occurred in circumstances which undermine the compassionate leave program, that is, it makes it less functional when people lie in order to obtain it. The court would indicate that it does not find that the nature of the lie is an aggravating factor, although it might be considered by some that it is tempting faith to suggest these kind of things can happen to someone who is near and dear to you, it is not, from the court's point of view, legally an aggravating factor. Nor is it an aggravating factor that it was to a padre. As the court has indicated, it is because it undermines the compassionate leave program that the court considers that aggravating.

[10] Your counsel has quite rightly identified as mitigating factors that this is a first offence; that you were a junior member of the Canadian Forces when they occurred and by first offence does not mean that this is one offence, but simply the first series of offences for which you have been convicted; the fact of your psychological problems; and also, that it has been more than a year since these offences were committed.

[11] The court would say that it considers your undergoing medical treatment at this stage a neutral factor, in part because it is not evident to the court that there has been any progress as a result of it and, as the court has indicated in the main trial, you appear a less competent individual today than you were a year ago. Nor does the court take into account the fact that you attended this court martial as a mitigating factor, that is an obligation, you did not have a choice.

[12] The court accepts that for a junior member of the Canadian Forces who is convicted for these kind of offences for the first time that the normal range that is required for general deterrence is similar to that suggested by your counsel. However the court feels because these are multiple offences that in addition there should be a reprimand.

[13] So the court sentences you, Private Doling, to a reprimand and a \$1500 fine.

COLONEL K.S. CARTER, CM.J.

Counsel:

Major M. Trudel, Regional Military Prosecutor, Eastern Region
Attorney for Her Majesty The Queen
Major L. Boutin, Directorate of Defence Counsel Services
Attorney for Private A.G. Doling