

Citation: *R. v. Private Khosho*, 2005CM33

Docket: S200533

**STANDING COURT MARTIAL
CANADA
ONTARIO
3RD BATTALION, THE ROYAL CANADIAN REGIMENT**

Date: 20 July 2005

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

HER MAJESTY THE QUEEN

v.

PRIVATE M.M. KHOSHO

(Accused)

SENTENCE

(Rendered orally)

[1] Private Khosho, you have been found guilty contrary to your plea of one charge of Absence Without Leave contrary to section 90 of the *National Defence Act*.

[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 disclosed by the evidence heard on the trial and the evidence heard in the course of the mitigation phase, as well as 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 absolutely indispensable 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] 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 for the offender of the finding of guilt and the sentence I am about to impose.

[11] The facts of this case were set out in my finding and I will not repeat what I said then. The prosecutor takes the position that a fit sentence, in this case, would consist of a fine, coupled with the minor punishment of a period of confinement to barracks. In support of their position, the prosecutor relies upon the conduct sheet of the offender, which is before the court as Exhibit 6.

[12] The conduct sheet discloses that the offender was convicted of an offence of absence without leave which arose on the 26th of March, 2004. That offence involved a period of 25 minutes when he was absent from the morning roll-call in this building, S-118. For that offence, the offender was awarded, at summary trial, a minor punishment of five days stoppage of leave.

[13] The next entry involves another offence of absence without leave which arose on 19 October 2004, some weeks prior to the offence before the court today. On that date, the accused was absent from the Driver Wheeled course for a period of three minutes only. At summary trial, held on 8 November 2004, the offender was again awarded a minor punishment, this time, five days confinement to barracks.

[14] The third occasion disclosed on the conduct sheet arose on 6 December 2004, some weeks following the offence before the court today. On that occasion, the offender was again absent from his place of duty for a period of one hour and fifty minutes. It appears from the last entry on his conduct sheet that on the same date, he gave a false account of his whereabouts to Sergeant Durocher which attracted a charge of Conduct to the Prejudice of Good Order and Discipline contrary to section 129 of the *National Defence Act*. On 19 January 2005, again at summary trial, for these two most recent offences, the offender was awarded a fine of \$1500 together with 14 days confinement to barracks.

[15] Taking account of this record, the prosecution urges me to impose a fine in excess of \$1500 and a further period of confinement to barracks exceeding 14 days. In my view, this is not appropriate—not an appropriate case to impose another minor punishment of confinement to barracks.

[16] There are several factors of a mitigating nature which the court takes account of in arriving at a sentence in this case. The offender, at the time of the offence, was but 21 years of age and is now some weeks shy of his 22nd birthday. He is single and without dependents and enrolled in the Canadian Forces in August of 2002. I have heard the evidence of Warrant Officer Hansen in the course of this mitigation proceedings. Shortly put, Warrant Officer Hansen testifies that from his first-hand observation of the offender over a period of some year and one half, he considers that the offender has turned himself around. By this, I understand Warrant Officer Hansen to be referring to a new sense of self-discipline that the offender has found in himself. No military organization can exist usefully without a discipline from all its members, and the discipline of a military unit is ultimately and really nothing more nor less than the self-discipline of each member of that military unit.

[17] I expect that Warrant Officer Hansen understood military discipline fully in the same context and meaning as I have just expressed, and I take Warrant Officer Hansen's evidence as an expression of his confidence in your ability, Private Khosho, to change your

behaviours. In my view, your previous behaviours, as disclosed by your conduct sheet, essentially demonstrate an immaturity on your part. The necessary maturity to be effective as a soldier may be achieved over a short period of time and in my view, may already have been achieved by Private Khosho.

[18] I cannot say that this assessment is free of doubt, but your counsel asks that you be given one last chance to demonstrate that you can adhere to military discipline. In view of your age, the confidence Warrant Officer Hansen has expressed in your developing soldierly qualities and the confidence of your chain of command as demonstrated by your recent re-engagement, I am prepared to give you that last chance. You should know that the phrase "last chance" as employed by your counsel and by me is not a mere rhetorical flourish. I can tell you that in the event you are before a service tribunal with a further offence of absence without leave, that service tribunal will be giving very serious consideration to a sentence of detention.

[19] Stand up, Private Khosho.

[20] You are sentenced to a reprimand and a fine in the amount of \$800, payable in eight monthly installments of \$100 each, commencing 31 August 2005. In the event of your release from the Canadian Forces, for any reason, before the fine is fully paid, the then outstanding unpaid balance is due and is to be paid the day before your release.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J-B. Cloutier, Regional Military Prosecutions Central
Counsel for Her Majesty The Queen
Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services
Counsel for Private Khosho