

Citation: *R. v. Corporal Wolfe*, 2005CM48

Docket: S200548

**STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
4TH AIR DEFENCE REGIMENT MONCTON**

Date: 26 August 2005

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

HER MAJESTY THE QUEEN

v.

CORPORAL WOLFE

(Accused)

SENTENCE

(Rendered orally)

[1] Bombardier Wolfe, having accepted and recorded your plea of guilty to one charge of possession of an explosive substance, the court now finds you guilty of the 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 described in the evidence I have heard over the course of the applications, including the admitted facts; the evidence heard during 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.

[7] 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.

[8] 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.

[9] As I explained to you when you tendered your plea of guilty, 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 may be 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.

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

[11] In arriving at the sentence in this case, I have considered the direct and indirect consequences of the finding of guilt and the sentence I am about to impose.

[12] The facts of this case have been extensively canvassed in the course of pretrial motions. Briefly, the offender was employed on Class B Reserve service as a storesman with the Land Forces Atlantic Area Training Centre. In that capacity, he had access to ammunition

and pyrotechnics during exercises in October of 2003. He was entrusted with the responsibility of issuing these items to other soldiers who were students on a soldier qualification course, and he took custody of any such items that were found at the end of the exercise.

[13] On 19 October 2003, in the early morning hours, while off duty, the offender was a passenger in a car full of his friends. As a result of an incident involving minor damage to property from the throwing of eggs, the group of friends came to the attention of the Fredericton Police Force. Constable Durling stopped the vehicle and conducted a pat-down search of the offender. Constable Durling discovered an explosive, a Simulated Projectile Ground Burst, in the jacket pocket of the offender. The offender was arrested and later released, and military police took charge of the investigation. The explosive device is a training tool used to simulate an artillery explosion. It is not a weapon, but if misused, it is capable of causing injury or damage.

[14] Counsel for the prosecution and for the defence submit that a fit disposition, in this case, is a reprimand and a fine in the amount of \$1200. The prosecution submits that, in addition, the offender should be reduced in rank.

[15] The offender is now 21 years of age and was aged 19 at the time of the offence. Since his enrolment in the Canadian Forces as a Reserve Force Air Defence Artilleryman, on 20 June 2001, he has served on Class B service each summer. He has no disciplinary record, and his military superiors, including his current commanding officer, have a very high opinion of his character and abilities. He promptly admitted responsibility for this offence to his military superiors, and immediately took responsibility for the liquor found in the friend's car, and pleaded guilty to a charge under a municipal by-law arising out of the throwing of the eggs and the provincial offence of illegal possession of liquor. He has pleaded guilty to the current offence of possession of an explosive substance, after waiting for a long period of time for the investigation to result in charges and a period of a further nine months before the charges came to trial.

[16] Against these weighty mitigating circumstances, the court must consider the seriousness of the offence. There was certainly a potential for injury or harm in the situation presented by this case where one of several people under the influence of alcohol and engaged in an act of vandalism was in possession of an explosive substance. The offender was entrusted with responsibility for the property found in his possession. I agree with the prosecutor that the offender must have deliberated for some, perhaps a short, period of time before deciding to take improper and illegal possession of the item. However, I do not find it to be established before me that the offender intentionally avoided a process of giving statutory declarations designed to verify that all these devices were accounted for at the conclusion of the exercise.

[17] Having regard for all the circumstances of the offence and of the offender, I am satisfied that the recommendation of counsel as to a reprimand and a fine is a fit sentence in this case.

[18] I do not consider that the punishment of reduction in rank should be imposed. In my view, the process of investigation, prosecution, finding of guilt, and the sentence I have arrived at will sufficiently serve the sentencing objectives of specific and general deterrence. In particular, I do not find any connection between the rank of the offender and the commission of the offence.

[19] Finally, I have considered whether this is an appropriate case for a weapons prohibition order under section 147.1 of the *National Defence Act*. In my view, such an order is not necessary or desirable in the interests of the safety of any persons, and I make no such order.

[20] Stand up, Bombardier Wolfe.

[21] You are sentenced to a reprimand and a fine in the amount of \$1200, to be paid at a rate of \$100 per month, commencing 30 September 2005 and continuing for the following 11 months. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the outstanding unpaid amount of the fine is due and owing the day prior to your release.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Major J.J. Samson, Regional Military Prosecutions Atlantic
Counsel for Her Majesty The Queen
Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Corporal Wolfe