

Citation: *R. v. Corporal R.P. Joseph*, 2005 CM 41

Docket:S200541

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE NORTH BAY**

Date:12 January 2006

PRESIDING:LIEUTENANT-COLONEL M. DUTIL, M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL R.P. JOSEPH
(Accused)**

SENTENCE

(Rendered orally)

INTRODUCTION

[1] The purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The Supreme Court of Canada has recognized that breaches of military discipline must be dealt with speedily and frequently punished more severely than would be the case of a civilian engaged in similar conduct. However, the punishment imposed by any tribunal, military or civil, should constitute the minimum necessary intervention that is adequate in the particular circumstances.

[2] In determining sentence, the court has considered the circumstances surrounding the commission of the offence as revealed by the evidence heard during the trial and the applicable principles of sentencing, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. The court has also considered the representations made by counsel including the case law provided to the court.

[3] Master Corporal Joseph was found guilty of one charge under the *National Defence Act*. The charge relates to an offence punishable under section 130 of the *National Defence Act*, for a common assault contrary to section 266 of the *Criminal Code*.

[4] When a court must sentence an offender for offences that he has committed, certain objectives must be pursued in light of the applicable sentencing principles. It is recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances and to the offender. In order to contribute to one of the essential objectives of military discipline, that is, the maintenance of a professional and disciplined armed force that is operational, effective and efficient, the sentencing principles and objectives could be listed as:

Firstly, the protection of the public and this, of course, includes the Canadian Forces;

Secondly, the punishment and the denunciation of the unlawful conduct;

Thirdly, the deterrence of the offender and any other persons from committing similar offences;

Fourthly, the separation of offenders from society, including from members of the Canadian Forces, where it is necessary;

Fifthly, the rehabilitation of offenders;

Sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

Seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

Eighthly, an offender should not be deprived of liberty, if less restrictive punishment or combination of punishments may be appropriate in the circumstances; and

Finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[5] In this case, the protection of the public must be achieved by a sentence that will emphasize general deterrence.

[6] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors. The court considers as aggravating:

Aggravating factors

Your status as a military police person and the standard of conduct expected of police personnel.

Mitigating factors

The court considers that the following circumstances mitigate the sentence:

1. The facts and the circumstances of this case. You had been pushed to the limit of frustration and the level of force used was very minor.
2. Your record of service in the Canadian Forces.
3. Your age and your career potential as a member of the military police. Although you are 34 years old, you have many years ahead to contribute positively to the society in general as well as in the Canadian Forces.
4. The fact that you did not have a conduct sheet or criminal record related to similar offences.
5. The delay since the laying of the charges.

The court also recognized the direct and indirect consequences that the findings and the sentence will likely have on you, especially in light of the fact that you will likely face a career review board or a police credentials board as a result of this conviction.

[7] The court disagrees with the recommendation made by the prosecution to sentence you to a reprimand accompanied with a fine between 300 and 700 dollars. Although, the court recognizes the requirement for general deterrence, in particular for offences committed by persons whose duties is to enforce the law, the facts and circumstances, are such that the suggested sentence would be unduly harsh and would disregard its own context. I also disagree with your counsel when he asks the court to be more lenient because you were a relatively junior member of the military police. The court believes that the circumstances of this case are such that a senior police officer may have

acted in the same way. As I said previously, the particular circumstances of this case and the fact that this offence is at the lowest degree of what constitutes an assault warrant a punishment that should not have irremediable repercussions on your career and unduly stigmatize you.

[8] The court considers that the fact that you had to face this court martial despite the very minor level of assault, has already had a deterrent effect on you but also on others. It means that any unlawful use of force is taken very seriously and will be dealt with accordingly. The court is satisfied that you will not appear before a court for a similar or any offence in the future. The court is at least inclined to impose a sentence that reflects that conclusion. However, this is not a case where I consider that an absolute or conditional discharge would be appropriate for a police officer. This case is also more serious than the facts revealed in the Standing Court Martial of *R. v. Morin*, referred to by counsel for the defence, where the accused was imposed a minor punishment.

[9] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. Master Corporal Joseph, stand up. This court sentences you to a fine of \$200.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major A.M. Tamburro, Regional Military Prosecution Ottawa

Counsel for Her Majesty the Queen

Major Appolloni, Directorate of Defence Counsel Services Ottawa

Counsel for Corporal R.P. Joseph