

Citation: *R. v. Corporal H.P. Nguyen*, 2005CM57

Docket: S200557

**STANDING COURT MARTIAL
CANADA
QUEBEC
714TH COMMUNICATIONS SQUADRON
BELVÉDÈRE ARMOURY
SHERBROOKE, QUEBEC**

Date: December 19, 2005

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

HER MAJESTY THE QUEEN

v.

**CORPORAL H.P. NGUYEN
(Offender)**

SENTENCE

(Rendered orally)

OFFICIAL ENGLISH TRANSLATION

[1] Corporal Nguyen, the Court having accepted and entered your plea of guilty to the first and third counts, the Court now finds you guilty of the first and third counts and it orders a stay of proceeding on the second count.

[2] Counsel have presented a joint submission regarding the sentence the Court should impose. Counsel have recommended that the Court sentence the offender to a reprimand and a 500-dollar fine. The defence requested that the fine be payable over an eight-month period.

[3] The duty to impose an appropriate sentence falls to the Court, which has the right to reject the joint submission by counsel. It is settled law, however, that the Court may reject the submission only if there are compelling reasons to do so. Thus, the Judge must accept the joint submission by counsel, unless it is deemed inadequate or unreasonable,

contrary to public order, or likely to bring the administration of justice into disrepute, for example, if it falls outside the range of punishments that have previously been imposed for similar offences. In return, counsel must present to the Judge all the supporting evidence for this joint submission.

[4] In *R. v. Généreux*, the Supreme Court of Canada held that to maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. The Supreme Court noted that, in the particular context of military discipline, breaches of discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. Even if raised to the lever of principle, this statement of the Supreme Court does not allow a military tribunal to impose a sentence composed of one or more punishments that would go beyond what is required by the circumstances of the case. In other words, any sentence imposed by a court, whether civilian or military, must always represent the minimum necessary intervention.

[5] Corporal Nguyen, in determining the sentence it considers appropriate and minimum in the circumstances, the Court has weighed the circumstances surrounding the commission of the offences as disclosed by the summary of circumstances, the truthfulness of which you have accepted; the documentary evidence filed with the Court; the submissions by counsel; and the applicable sentencing principles. When giving an accused an appropriate sentence for the misconduct he has committed and in regard to the offences of which he is guilty, certain objectives are addressed in light of the applicable sentencing principles, although these vary slightly from case to case. The importance assigned to them must, however, be adapted to the circumstances of the case in order to contribute to one of the essential objectives of military discipline – the maintenance of a professional, disciplined, operational and effective armed force within a free, democratic society. These principles and objectives can be set out as follows:

First, protection of the public, and the public necessarily includes the Canadian Forces;

Second, punishment and denunciation of the offender;

Third, deterrence of the offender, and of anyone else, from committing the same offences;

Forth, rehabilitation and reform of the offender;

Fifth, proportionality to the gravity of the offences and the degree of responsibility of the offender;

Sixth, consistency in sentencing; and

Finally, the Court will take into account the aggravating circumstances related to the circumstances of the case, the situation of the offender and the commission of the offences.

[6] In this case, protection of the public will be achieved by a sentence that emphasizes deterrence of the offender, and of anyone else, from committing the same offences and denunciation of the act and of the offender. However, the sentence must also not compromise your rehabilitation. Thus, the analysis of the joint submission by counsel must enable the Court to achieve these objectives and principles.

[7] In considering which sentence would be appropriate, the Court took into consideration the following aggravating factors and mitigating factors. I will start with the aggravating factors. The Court considers aggravating the following factors:

First, the nature of the offence and the penalty provided by Parliament. This is an offence under section 129 of the *National Defence Act*, the maximum sentence for which is dismissal with disgrace from Her Majesty's service. This is a strictly military offence without a criminal law equivalent. It is important to specify, however, that this is a serious offence within the context of military discipline, especially when it involves acts towards subordinates where there has been a breach of trust towards the said subordinates, but also towards the chain of command.

Second, renunciation of your responsibilities as instructor, which were conferred upon you.

Third, the lack of judgment you showed in your treatment of recruits, whether by fraternizing with a young non-commissioned member or harassing another recruit by using provocative language several times. Your superiors had the right to expect a greater degree of maturity from you.

[8] Turning now to the mitigating factors, the Court notes your admission of guilt before this Court and the delays incurred since the events that resulted in the charges. The Court considers your confession under the circumstances to be sincere and to attest to the

remorse you feel in regard to these events. The Court also took into account the fact that this is your first encounter with either civilian or military justice.

[9] In imposing its sentence today, the Court has carefully considered the evidence before this Court, including the summary of circumstances read by counsel for the prosecution. The Court has also taken into account the submissions by counsel.

[10] Consequently, the Court accepts the joint submission by counsel, which it considers to be the minimum sentence to ensure the protection of the public and the maintenance of discipline in the circumstances.

[11] For these reasons, the Court sentences you to a reprimand in conjunction with a fine of 500 dollars payable in equal installments over an eight-month period. Counsel for the prosecution will provide you with the address where the payments should be sent by registered mail and in the form of certified cheques or postal or bank money orders.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

Major G. Roy, Eastern Region Military Prosecutor

Counsel for the prosecution

Lieutenant-Commander J.C.P. Lévesque, Directorate of Defence Counsel Services

Counsel for Corporal H.P. Nguyen

