



## COURT MARTIAL

**Citation:** *R. v. Woolvett*, 2014 CM 1029

**Date:** 20141211

**Docket:** 201428

Standing Court Martial

Canadian Forces Base Borden  
Borden, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal Woolvett J.G., Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Woolvett was found guilty of one count of failure to comply with conditions, contrary to section 101.1 of the *National Defence Act*. The particulars of the third charge read as follows:

*Particulars* : In that he, on or about 2 March 2014, at or near the Base Duty Centre, Canadian Forces Base Borden, Ontario, without lawful excuse, failed to abstain from the consumption of alcohol contrary to a condition of release given under Division 3 of the Code of Service Discipline on 29 October 2013.

[2] The evidence at trial revealed that during the early hours of 2 March, 2014, Master Corporal Woolvett experienced one of those recurring terrible nightmares where he sees himself and his fellow soldiers ambushed in Afghanistan. He described the horrific images that he saw during that nightmare, including images of his wife and child being executed. Master Corporal Woolvett stated that he saw no other valid option to calm himself down as he had no other medication readily available that night and that calling friends or a mental health hotline would serve no purpose in light of his previous

experience with his medical condition. He described his physical and emotional state after that particular nightmare, including his body shaking and sweating. He stated that he went to his fridge and instinctively grabbed the bottle of white wine and drank it as he watched TV. He knew that he had to report to the Base Duty Officer later that day and he knew that he had breached the condition imposed on him not to drink alcohol.

[3] Master Corporal Woolvett was diagnosed with Post-Traumatic Stress Disorder further to his experience in Afghanistan, with anxiety, severe and chronic. He also suffers from Alcohol Use Disorder and Attention Deficit Hyperactive Disorder. The evidence indicates also that Master Corporal Woolvett will be released from the Canadian Forces in April 2015 and that he is slowly transitioning to his future civilian life. His release was originally scheduled to take place in early November 2014. However, health professionals recommended to postpone his release because Master Corporal Woolvett's severe mental health condition could have had a devastating effect on him if the release would have taken effect during the Remembrance Day period. According to his treating psychiatrist, he responds well to his treatment program, however the acceptance of the loss of his military identity is very difficult for Master Corporal Woolvett.

[4] The prosecution submits that a fit and proper sentence in the circumstances of the offence and of the offender should be a short period of incarceration of seven days in the form of imprisonment considering that Master Corporal Woolvett has already spent eight days in pre-trial custody arising from the breach of condition and the fact that he has two previous civilian convictions for similar offences in October 2012. The proposed sentence would respect the step principle. It is argued that such sentence would achieve the relevant sentencing objectives of specific and general deterrence, as well as denunciation. The prosecution further recommends that the court should suspend the carrying into effect of the imprisonment because of the significant mental health issues of Master Corporal Woolvett.

[5] The defence relies on the evidence adduced at the sentencing hearing, by consent, to the effect that psychiatric medical opinion would suggest that a sentence that would include incarceration or loss of rank may have a significant negative impact on the offender's mental health, which could even lead to significant suicide risk. However, it is agreed by counsel that mental health support would be provided to Master Corporal Woolvett during any period of incarceration. Counsel for the defence submits that a severe reprimand with an accompanying fine in the order of \$500 would still achieve the objectives sought by the prosecution without being unduly harsh on the offender.

[6] In sentencing an offender under the Code of Service Discipline, a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and finally,
- (d) the reformation and rehabilitation of the offender.

[7] The sentence must also take into consideration the following principles. It must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility. The sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Finally, the sentence should or will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline. In this case, the sentence must emphasize the objectives of denunciation, specific and general deterrence as well as rehabilitation.

[8] With respect, the court does not believe that the punishment of last resort is appropriate in the circumstances of the offence and the offender. The recommendation made by the prosecution to suspend the punishment of imprisonment, in light of the mental health condition of the offender, highlights the danger to misuse the authority to suspend. The suspension of a period of detention or imprisonment only applies where the sentence of incarceration is appropriate in the first place. It can be used for a variety of reasons, including operational or humanitarian. However, the authority to suspend should not be used by a military tribunal to meet or achieve one or more of the applicable sentencing objectives, such as rehabilitation. The sentencing objectives must be applied to the appropriate punishment. The rehabilitation of Master Corporal Woolvett is an important objective in this case. A punishment of incarceration would not assist the rehabilitation of the offender in his specific circumstances.

#### **FOR THESE REASONS, THE COURT**

[9] **SENTENCES** the offender, Master Corporal Woolvett, to a severe reprimand and a fine in the amount of \$700 beginning on 31 January, 2015 payable at the rate of \$100 per pay until the completion of full payment of the fine. Should the offender be released from the Canadian Forces prior to the full payment of the fine, the balance will be payable immediately prior to the effective date of release.

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#### **Counsel:**

Major A.-C. Samson, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen.

Major D. Hodson, Directorate of Defence Counsel Services, Counsel for Master Corporal Woolvett.