

Citation: *R. v. Master Corporal W.B. Dunphy*, 2005CM53

Docket: S200553

**STANDING COURT MARTIAL
CANADA
ALBERTA
CANADIAN FORCES BASE/AREA SUPPORT UNIT EDMONTON**

Date: 14 February 2006

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

HER MAJESTY THE QUEEN

v.

**MASTER CORPORAL W.B. DUNPHY
(Accused)**

SENTENCE

(Rendered Orally)

[1] Master Corporal Dunphy, you may break off and be seated beside your counsel.

[2] Master Corporal Dunphy, the court has found you guilty of two offences in the charge sheet; that is, the second charge of using provoking gestures toward a person subject to the Code of Service Discipline intending to cause a quarrel or disturbance, and the third charge, a charge of drunkenness.

[3] 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 judicial confession, Exhibit 3, the evidence heard during the course of the mitigation phase, and the submissions of counsel both for the prosecution and for the defence.

[4] 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 responsi-

bility and character of the offender. 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. 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. 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.

[6] 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.

[7] 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 is 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. It is an important principle that the court should impose the least severe punishment that will maintain discipline. In arriving at the sentence in this case, I have considered the direct and indirect consequences of the findings of guilt and the sentence I am about to impose.

[8] The facts of the case disclose that Master Corporal Dunphy, while under the influence of alcohol, was present in the communications room for Task Force Kabul when Private Laflamme arrived to do his duties as a signals operator. For no reason apparent to me, Master Corporal Dunphy directed derogatory and insulting comments at Private Laflamme. He then unloaded his 9-millimetre Browning pistol, waved it in the direction of Private Laflamme, and dry-fired the pistol by firing the mechanism, making an audible click. Private Laflamme was antagonized by the actions of Master Corporal Dunphy, who clearly

intended to provoke Private Laflamme into a reaction. Private Laflamme was shaken by this experience.

[9] Counsel before me are agreed that a fit disposition in this case is a reprimand and a fine, they differ only in the quantum of the recommended fine. I have considered the circumstances of the offences and of the offender. He has 11 years of service in the Canadian Forces without disciplinary difficulties. He supports a spouse and two young children. He performs his military duties in a skilful manner with good attention to detail. Master Corporal Dunphy was, at the time of the offences, a very recently appointed master corporal. It is apparent, though, that he lacks skills in dealing with his subordinates. As a first level supervisor, Master Corporal Dunphy, you must remember that your subordinates look to you to model an example for them. These offences demonstrate that you must be more attentive to the welfare of younger, less experienced members. I am satisfied, based on the evidence I have heard, that you have learned that important lesson. I accept the sentencing options suggested by counsel.

[10] Stand up, Master Corporal Dunphy. You are sentenced to a reprimand and a fine in the amount of \$2,000, payable in monthly installments of \$200 beginning 1 March 2006, and continuing for the following nine 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 is due and payable the day prior to your release.

[11] The proceedings of this court martial in respect of Master Corporal Dunphy are now terminated.

COMMANDER P.J. LAMONT, M.J.

Counsel:

Captain T.D. Simms, Regional Military Prosecutions Western
Counsel for Her Majesty The Queen
Major C.E. Thomas, Directorate of Defence Counsel Services
Counsel for Master Corporal W.B. Dunphy