

Citation: *R. v. Ex-Ordinary Seaman M. Jacobs*, 2006CM25

Docket: S200625

**STANDING COURT MARTIAL
CANADA
ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
CANADIAN FORCES NAVAL ENGINEERING SCHOOL DETACHMENT**

Date: 14 February 2006

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

HER MAJESTY THE QUEEN

v.

EX-ORDINARY SEAMAN M. JACOBS

(Accused)

SENTENCE

(Rendered orally)

[1] As it has been stated numerous times, 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 a 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 today the court has considered the circumstances surrounding the commission of the offence as revealed by the evidence heard during the trial, the documentary evidence provided to the court, as well as the testimonies heard during the sentencing procedure. This court has examined the evidence in light of the applicable principles of sentencing, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code* when they 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] Ex-Ordinary Seaman Jacobs 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 trafficking in cannabis marihuana contrary to subsection 5(1) of the *Controlled Drugs and Substances Act*. The charge related to the sale of 3.3 grams of marihuana on 15 January 2005, to an undercover police agent who had been inserted in the CFNES as a first year student. The sale took place in the undercover's apartment which has been leased by the CFNES in St. John's. In other words, this apartment complex was used as military barracks and constituted a defence establishment for all intents and purposes.

[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 also to the offender.

[5] In order to contribute to one of the essential objective of military discipline; that is, the maintenance of a professional and disciplined armed force that is operational, effective and efficient within a free and democratic society, the sentencing principles and objectives could be listed as: firstly the protection of the public, and this includes the Canadian Forces; secondly, the punishment and the denunciation of the unlawful conduct; thirdly, the deterrence of the offender and other persons from committing similar offences; fourthly, the separation of offenders from society, including from members of the Canadian Forces where necessary; fifthly, the rehabilitation of offenders; sixthly, the proportionality to the gravity of the offence and to 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 a less restrictive punishment or a combination of punishments may be appropriate in the circumstance; and finally, the court shall consider any relevant aggravating or mitigating circumstance relating to the offender or to the offence. In this case the protection of the public must be achieved by a sentence that will emphasize general deterrence, punishment and denunciation as well as specific deterrence. The sentence must also assist to rehabilitate the offender particularly in light of the young age of the offender.

[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:

- a) the objective seriousness of the offence in its prescribed maximum punishment. This offence is a serious offence. For example, the offence of trafficking in a substance included in Schedule II and VII; that is, cannabis marihuana for a quantity

- not exceeding three kilos, carries a maximum period of five years imprisonment;
- b) the fact that the trafficking took place not only on a defence establishment but in the CFNES barracks to a person that the offender believed to be a first year student; and
 - c) the fact that the trafficking was made by sale to a person believed to be a fellow student junior to the offender.

[7] The court considers that the following circumstances mitigate the sentence:

The age of the offender. The offender was only 19 years old when he committed the offence for which he has been found guilty. Altogether your military career lasted 20 months, it is a measurable failure. But the evidence before the court is particularly convincing to demonstrate that you have taken serious steps to be an asset to society and move on with your life. At 20 years of age, you have many years ahead to improve and to contribute positively to society in general, if not in the Canadian Forces.

Second, your financial situation. The evidence before the court establishes that you have been struggling financially as a result of your release, although that release is attributable to your own conduct. It's fair to say that your financial situation is not likely to improve in the near future, but the court acknowledges your commendable effort to take your life back on track. Any sentence imposed by this court should not jeopardize your efforts to rehabilitate yourself, particularly when the offender is only 20 years old and has no previous criminal record like yourself. So the fact that you did not have a conduct sheet or criminal record in relation to similar offences in the past is also a factor that the court considers to be mitigating in the circumstances.

Fourth, the delay since the laying of the charges.

relatively Five, the fact that the quantity involved and the transaction was minor.

Sixth, the fact that the evidence before this court shows that the offence was made out of a single transaction.

Seven, the fact that you've been released already from the Canadian Forces for the very reasons that brought you before this court. In the

context of this case, this is important with regard to the deterrent effect required for this type of conduct.

[8] In addition, the court has reviewed once again the circumstances related to the police conduct in this case, although the conduct of police officers deserves some comments from the court at the stage of the proceedings that dealt with finding, the court does not consider that such conduct should have a mitigating effect in the particular circumstances of the case.

[9] Trafficking in drugs is a very serious offence. But it is far more serious in the military context because of the pervasive and deleterious effects that are associated with the drug culture. This is exactly why the Canadian Forces adopted a severe drug policy as set out in chapter 20 of the Queen's Regulations and Orders for the Canadian Forces. It has long been established before courts martial that a drug subculture affects morale and the cohesion of units. This has a direct impact on operational effectiveness and it is imperative that the working environment as well as the institution of the Canadian Forces be protected from the devastating effects that illicit drugs may have on their resources. It's even more disturbing when drug activities take place in CF training establishments, where young recruits are making their first steps in the military. The creation of the NIS drug enforcement team and the resources allocated to circumscribe illegal drug related activities in the Canadian Forces over the recent years, as shown by the evidence before this court, demonstrate that this issue is taken very seriously and is particularly pressing in today's modern military context. More than ever is it essential to promote and preserve a sophisticated and disciplined force in a drug free environment. Drug trafficking should be always looked as a serious, very serious matter, including when this trafficking deals with cannabis marihuana.

[10] However, and despite the fact that the court accepts that the most important factor should be general deterrence and denunciation, there is no evidence before this court that the situation in the Atlantic Region or at the CFNES detachment in St.John's, Newfoundland and Labrador is more problematic than elsewhere in the Canadian Forces in terms of drug related problems. The court cannot sentence an offender for offences for which he or she has not been found guilty or for offences for which he could have faced criminal or disciplinary charges. The court has reviewed very carefully the case law provided by counsel with this reality in mind. One should not forget that sentencing is mostly an individualized process. Although every case must be decided based on its own merit, the court agrees that general deterrence can only be achieved in this particular case with a fair punishment that should include a significant period of imprisonment in order to achieve the maintenance of discipline, even if this punishment should be imposed as one of last resort as it was recently reiterated by the Court Martial Appeal Court in *R. v. Baptista*, neutral citation number one, which was delivered on 27 January 2006.

[11] For these reasons—please stand up—the court sentences you to imprisonment for a period of 60 days and a fine in the amount of five hundred dollars. However, the court believes that this is a proper case to suspend the carrying into effect of the punishment and therefore the court suspends the carrying into effect of the imprisonment. You may be seated

[12] The fine shall be paid to the Receiver General of Canada by certified cheque or money order at the address that will be provided to you by counsel for the prosecution.

(...)

The fine should be paid at the latest on 14 April 2006.

LIEUTENANT-COLONEL M. DUTIL, MJ

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