

Citation: *R. v. Ex-Able Seaman C.R. Hoddinott*, 2006 CM 24

Docket:200624

**STANDING COURT MARTIAL
CANADA
NOVA SCOTIA
CANADIAN FORCES BASE HALIFAX**

Date:24 February 2006

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

HER MAJESTY THE QUEEN

v.

**EX-ABLE SEAMAN C.R. HODDINOTT
(Offender)**

SENTENCE

(Rendered orally)

[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 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-Able Seaman Hoddinott 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 nature of the trafficking was by the passing of a joint from the offender to an undercover operator in the offender's apartment on 27 November 2004 in Halifax in the presence of several of the offender's friends. This type of trafficking is often referred as social trafficking; that is, where the offence does not involve any commercial aspect. The evidence does not support an inference that there may have been service members in the apartment when the offence was committed. It is also relevant for the purposes of sentencing to consider that the offender was an admitted drug user who was immersed in the drug culture. The evidence received at trial is abundant on this issue. The evidence heard at trial also indicates that the offence was not committed in or near a defence establishment and in the presence of other service members.

[4] The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a "just, peaceful and safe society" by imposing just sanctions. In the context of military tribunals, this purpose must be balanced with the special and the essential requirements to maintain and enforce strict military discipline. 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 also recognized that these principles and objectives will slightly vary from case to case, but they must always be adapted to the circumstances of the case and of the offender. 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, 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 the degree of responsibility of the offender. A sentence must be proportional to the harm done as well as to the moral blameworthiness of the offender. This is society's way of affirming fundamental values, protecting the public,

and making it clear to those who transgress these values that they are accountable for their actions;

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 but also the denunciation of the offender's conduct. The sentence shall also leave room to the rehabilitation of Mr Hoddinott in light of the evidence received at the sentencing hearing.

[6] The seriousness of drug offences ranges from possession through trafficking, that trafficking itself ranges from social trafficking through wholesale commercial trafficking and the danger of drugs ranges from marijuana to heroin. It is clear, therefore, that the objectives of deterrence and rehabilitation must be addressed in every drug related sentence, the emphasis allocated to deterrence and to rehabilitation will fluctuate in light of the type of drug offence for which the court is imposing a sentence and the offender who has committed the crime. Trafficking in drugs is a very serious offence, but 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.

[7] It has long been established before courts martial that the drug subculture affects morale and 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. The creation of the National Investigative Section, 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.

[8] Of similar importance though, is the seriousness and commitment of the Canadian Forces to promote a drug free environment through aggressive education as well as running or providing access to rehabilitation programs for service members with

substance abuse problems. More than ever, is it essential to promote and preserve a sophisticated and disciplined force in a drug free environment. Drug trafficking should always be looked as a very serious matter, including trafficking in cannabis marihuana anywhere in the large spectrum of this offence and how it can be made, including by the passing of a simple joint in a social context. As serious as the offence of trafficking in the military context can be, it does not require in all cases that an offender be deprived of liberty when the matter involves a very small quantity of soft drug such as marihuana and where the trafficking takes place in a social context, namely the passing of a joint. This situation cannot be compared to the trafficking of severe drugs such as cocaine, even if it involves very small quantities, which requires sentences that include imprisonment. In *R. v. Dominie*¹, the Court Martial Appeal Court provided the following guidance in the context of trafficking crack cocaine:

[4] The appellant first argues that the learned President erred in finding that incarceration was the only sentence available to him. It is our view that the trial judge did not err in finding that the incarceration was the only sentence available in the circumstances of this case.

[5] Trafficking in crack cocaine on numerous occasions, even though it is non-commercial in nature, generally requires the imposition of actual imprisonment even for civilian offenders. In respect of military offenders, general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine on military bases. Suspended sentence simply is not available, except in the rare case of extremely mitigating circumstances. This is not one of those rare cases.

[9] The court cannot sentence an offender for offences for which he has not been found guilty or for offences for which he could or should have faced criminal or disciplinary charges. This is particularly important in this case and the court refers to its reasons when it made its findings yesterday. The court would also add that sentencing offenders should not be perceived nor used as a recognition for the efforts made by law enforcement authorities who are provided with important resources to circumscribe illegal drug related activities in the Canadian Forces over the recent years. This is not a goal or a sentencing principle that can guide this court. The court would note that it would have been of some interest to be informed, for at least parity purposes, of what measures as well as the outcome of these measures, measures that were taken by the National Investigative Service in this case, in cooperation with local police authorities as the case may be, with regard to the information provided by their own undercover operator about the presence on the offender's coffee table of significant quantity of substances that he believed were illegal drugs when the offence for which the offender has been found guilty was committed. The evidence was silent on that. Every person concerned with the issue of illegal drug related activities by members of the Canadian

¹ Neutral Citation 2002 CMAC 8.

Forces is well aware that the said activities are not confined on defence establishments and not taking place between service members only. The picture is much broader.

[10] The court has also reviewed very carefully the case law provided by counsel. Although these decisions provide general guidance, they were of very little assistance because the trafficking described in all of them was invariably more serious than in the case at bar. 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 will generally be achieved by imposing a period of incarceration for trafficking in drugs. However, this is not a case where a fair punishment must include imprisonment in order to achieve the maintenance of discipline because it would be imposing the punishment of last resort, as it was recently reiterated by the Court Martial Appeal Court in *R. v. Baptista*, Neutral Citation 1, delivered on 27 January 2006.

[11] As I said, this is not a case where a fair punishment must include imprisonment in order to achieve the maintenance of discipline. The court cannot agree with the suggestion of the prosecution to impose a punishment that would include a period of imprisonment of 14 to 30 days. This would certainly send a message that every drug trafficker in the Canadian Forces will be incarcerated if convicted, but it would be legally wrong. Even in the military context, a fair sentence cannot be composed of a mandatory period of imprisonment if the facts of the crime of trafficking in a drug place the crime at the lowest range of the type of trafficking and the lowest range of illicit drugs in the broad spectrum for this crime. On the other hand, the court rejects suggestion made the defence counsel that a fine of approximately \$750 would meet the need for general deterrence and constitute a fair punishment. As low as this can be in the range of the crime of trafficking, it remains trafficking in cannabis marihuana in the context of the military and it must be punished seriously.

[12] 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 the objective seriousness of the offence and its prescribed maximum punishment. It is a serious offence, and it's even more serious in the military context. The offence of trafficking in a substance included in Schedule II that includes cannabis marihuana for a quantity not exceeding three kilos, carries a maximum period of five years imprisonment.

[13] The court considers that these other elements should mitigate the sentence:

First, the fact that the quantity involved in the trafficking was very small in that it was limited to the passing of a joint which was returned to the offender, or handed back to the offender after the undercover operator had simulated inhaling it twice;

Second, the court considers that the previous record of service and the previous performance as a sonar operator by the offender was described as being outstanding by his former superiors;

Third, the fact that the offender seemed to suffer from substance abuse addiction that included alcohol and drugs at the time of the offence;

Fourth, the fact that the offender has already been released from the Canadian Forces as a result of drug related activities and behaviour. In this context, the court considers that the age of the offender as well, 25 years of age today, should also be seen as a mitigating factor because the court considers that there's still many years ahead of the offender to improve and contribute positively to the society in general, if not in the Canadian Forces;

Fifth, the fact that Mr Hoddinott now attend university as a full-time student in order to start a new career;

Sixth, the fact that the offender seems now on the road to positive rehabilitation, according to his former drug counselor; and

Finally, the fact that Mr Hoddinott did not have a conduct sheet or criminal record related to similar offences in the circumstances.

[14] Mr Hoddinott, please stand-up. For these reasons, this court sentences you to reduction in rank to the rank of ordinary seaman and a fine of \$1000. 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.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel :

Major J.J. Samson, Regional Military Prosecutions Atlantic
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Counsel for ex-Able Seaman Hoddinott

