

Citation: *R. v. Corporal J.J. Kennedy*, 2006 CM 58

Docket: S200658

**STANDING COURT MARTIAL
CANADA
NEW BRUNSWICK
CANADIAN FORCES BASE GAGETOWN**

Date: 13 October 2006

PRESIDING: LIEUTENANT-COLONEL L.V. D'AUTEUIL, M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL J.J. KENNEDY
(Offender)**

**SENTENCE
(Rendered orally)**

INTRODUCTION

[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 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. The primary interest of a court martial is still the maintenance or restoration of discipline which has been described as a willing and prompt obedience to lawful orders.

[2] In determining sentence, the court has considered the circumstances surrounding the commission of the offence, as revealed by the evidence heard during the trial, and the applicable principles of sentencing, including those set out in sections 718, 718.1 and 718.2 of the *Criminal Code* when those principles are not incompatible with the sentencing regime provided under the *National Defence Act*. The court also considered the representations made by counsel including the case law provided to the court and the documentation introduced.

[3] Corporal Kennedy was found guilty of one charge under the *National Defence Act*. The charge relates to an offence punishable under section 83 of the *National Defence Act* for disobeying an order given by a superior officer.

[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 to 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, of course, includes the Canadian Forces;

Secondly, the punishment and the denunciation of the unlawful conduct;

Thirdly, the deterrence of the offender and any other persons from committing similar offences;

Fourthly, the rehabilitation of offenders;

Fifthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender;

Sixthly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar 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. General deterrence means that the sentence imposed should deter not simply the offender from reoffending, but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct.

[6] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors.

AGGRAVATING FACTORS

[7] The court considers as aggravating:

1. The fact that you were on duty that evening and that you were told specifically in front of your peers and members of the platoon not to take any alcohol.
2. The fact that you demonstrated that specific night a lack of integrity, loyalty and responsibility.
3. The objective seriousness of the offence.

MITIGATING FACTORS

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

1. The facts and the circumstances of this case, including the fact that your disobedience did not result in any regrettable circumstances.
2. Your record of service in the Canadian Forces.
3. Your age and your career potential as a member of the Canadian Forces. Being 30 years old, you have many years ahead to contribute positively to the society in general as well as in the Canadian Forces.
4. The fact that you did not have a conduct sheet or criminal record related to similar offences.
5. The delay since the laying of the charges.
6. The fact that some administrative action were taken at the time of the offence in consideration of your conduct. This court recognizes clearly that these administrative measures do not constitute disciplinary sanction in itself. However, it had some specific deterrence on you at that time and limited general deterrence on the platoon members.
7. The fact that today, your superior has as a lot of faith and trust in you, to the point that the attitude you have demonstrated in the past few months lead him to put in your hands the safety of your section.

8. The court also recognized the direct and indirect consequences that the finding and the sentence will likely have on you, including the financial aspect.

[9] Disobedience of a lawful order of a superior officer is a very serious military offence. Obeying orders is at the heart of the profession of arms and of an armed force. The attitude toward orders is developed through different situations and training. It is on a day-to-day basis that the attitude to adopt in combat and operational situations is developed.

[10] The court agrees with the prosecution that the appropriate range for an offence of this nature is from a severe reprimand or reprimand and a fine, down to a fine. Although the court recognizes the requirement for general deterrence, in particular for offences committed by persons in whose trust had been put in, the facts and circumstances are such that the sentence suggested by the prosecutor would be unduly harsh and would, in some way, disregard its own context. I also disagree with your counsel when he asked the court to be more lenient in order to avoid permanent consequences on your conduct sheet.

[11] The court considers that the fact that you had to face this court martial has already had some deterrent effect on you, but also on others. The court is satisfied that you will not appear before a court for a similar or any offence in the future. The court is convinced that you are a good soldier and that you will have shortly an opportunity to apply what you have learned through this trial concerning the obedience to orders.

[12] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of this particular case.

DISPOSITION

[13] Corporal Kennedy, stand up, please. This court sentences you to a reprimand and a fine of \$500. The fine is to be paid in monthly installments of \$50 each commencing in November 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 then outstanding unpaid amount is due and payable the day prior to your release.

LIEUTENANT-COLONEL L.V. D'AUTEUIL, M.J.

Counsel:

Major S.D. Richards, Regional Military Prosecutions Atlantic
Counsel for Her Majesty the Queen

Lieutenant-Commander M. Reeskink, Directorate of Defence Counsel Services
Counsel for Corporal J. Kennedy