

Citation: *R. v. Corporal J.M.G. Lamontagne*,2005CM09

Docket: S200509

**STANDING COURT MARTIAL
CANADA
QUEBEC
AREA SUPPORT UNIT VALCARTIER
COURCELETTE, QUEBEC**

Date: April 26, 2005

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

HER MAJESTY THE QUEEN

v.

**CORPORAL J.M.G. LAMONTAGNE
(Accused)**

**SENTENCE
(Orally)**

TRADUCTION FRANÇAISE OFFICIELLE

[1] Corporal Lamontagne, the Court having accepted and recorded your plea of guilty on the first count, the Court now finds you guilty of that first count and orders that the hearing be suspended on the second count.

[2] The counsel present have filed a joint submission with the Court in relation to the sentence that this Court should impose. Counsel recommend that this Court impose a fine of \$200. It is the court's obligation to determine an appropriate punishment or an appropriate

sentence, and it has the right to reject the joint submission by counsel. It is nevertheless established case law, as your counsel stated, that the court is only entitled to reject a joint submission if there are compelling reasons to do so. Thus, the judge must accept the common or joint submission made by counsel unless it is deemed to be inappropriate or unreasonable, if it is contrary to public order or would bring the administration of justice into disrepute. For example, if it falls outside the spectrum of sentences previously imposed for similar offences. In return, counsel are bound to set out for the judge all of the facts in support of their common submission.

[3] The Court would like to state that in this case, counsel have in fact submitted the circumstances or sufficient circumstances for this Court to be able to determine if the joint submission should be accepted.

[4] When imposing an appropriate sentence on an accused for wrongdoings that he has committed and in respect of offences of which he is guilty, certain objectives are targeted in light of the applicable principles, even though of course they vary from one case to the other. The importance assigned to each of these principles or objectives must be adapted or accommodated to fit the circumstances of the case.

[5] Obviously, to contribute to one of the essential objectives of military discipline, which is to maintain professional and disciplined armed forces, operational and effective in a free and democratic society, the objectives and principles can be stated as follows:

first, protecting the public and the public includes the Canadian Forces;

second, punishing and denouncing the offender;

third, dissuading the offender and anybody else from committing the same offences;

fourth, rehabilitating and reforming the offender;

fifth, proportionality between the gravity of the offences and the degree of responsibility of the offender;

sixth, harmonizing sentences;

and finally, the court will take into account the aggravating circumstances which are incidental to the circumstances of the case and which are also incidental to the offender and to the commission of the offences.

The Court will also consider the circumstances mitigating the punishment in the same manner that it does for the aggravating circumstances.

[6] In this case, the protection of public will be achieved by a sentence emphasizing: collective deterrence; proportionality between the gravity of the offence and your degree of responsibility; as well as the denunciation of the act in question. The Court wishes to add that it does not feel it necessary to consider a punishment that will emphasize specific or individual deterrence or your rehabilitation for the act in question. As I will state a little later on, in fact it is an isolated act and the circumstances of that matter are such that these factors are not important elements in this case. Therefore, to return the joint submission made by counsel, it must be instrumental in achieving the objectives and principles that I just mentioned.

[7] In considering what sentence would be appropriate, the Court took into account the following aggravating and mitigating factors. And there are very few. In terms of aggravating factors, the Court considers, first, the nature of the offence provided by Parliament. In fact, the offence committed within the meaning of section 129 of the *National Defence Act* is punishable by dismissal with disgrace from Her Majesty's service. It is an objectively serious offence even if in the context of this case, it would be one of a lesser degree in terms of gravity for this type of offence.

[8] The Court also considers as an aggravating factor the fact that the act was not only committed in an operational theatre, but in one of the most risky operational theatres that the Canadian Forces have known in the last, I would say, 15 or 20 years, in light of what is correctly described in paragraph 2 of the Kabul operational order which is the subject of exhibit 7. Those are aggravating factors which the Court considers in this case.

[9] As for mitigating factors, the Court considers your admission of guilt before this Court. There is no doubt that it was a sincere and candid indication that you admit your error, which is corroborated, I should add, by your immediate action in correcting your error, based on the recommendation of your superior, Warrant Officer Asselin. Therefore, in context, your admission of guilt is clearly a sincere indication that you acknowledge your mistakes.

[10] The Court also considers as mitigating factors your age, your service records and your rank. Of course, it was stated to the Court that you had a little experience anyway – five years of experience, two operational tours – but given your age, your rank and your services records, it is nonetheless a mitigating factor.

[11] With respect to your conduct sheet, clearly the Court cannot draw any inference from it. First, because as your counsel or attorney stated, it was an offence

committed afterward, but also because it was an offence which is in absolutely no way related to the matter before this Court.

[12] The Court shares the opinion expressed by your counsel to the effect that it was an isolated act and also a particular situation and I would add particular to the extent that had it not been for the conversation Warrant Officer Asselin had with Master Warrant Officer St-Pierre – and my words should not be construed as criticism or an indication that they did not make the correct decision by initiating disciplinary measures – but the Court wishes to add that had Warrant Officer Asselin not intervened, that incident would have ended on the spot. Therefore, this was a particular situation. Obviously, the military authorities have the discretion to take disciplinary measures and we can understand that in the operational context in question, the measures taken were or could have been considered entirely appropriate in the circumstances. But I point out the fact that the incident and your action resulting from that incident took place in a very, very short period of time, and that none of your colleagues, as indicated in the statement of circumstances, would have been aware of that incident. Therefore, all of that to put the aspect of general deterrence in context, I think, the deterrence to which the prosecution intended to refer. Therefore, the action of Warrant Officer Asselin opened the door, at that moment, to the matter of general deterrence. Had it not been for that intervention, perhaps there would have been less of a need to ensure general deterrence.

[13] Therefore, in imposing its sentence today, the Court has carefully considered the summary of the circumstances which was read by the prosecution and the Court also took into account counsel's arguments which were very thorough today.

[14] Your actions could have had serious consequences for your own safety and the safety of your colleagues. Fortunately, your promptness in rectifying your reprehensible act prevented this from being the case.

[15] Accordingly, the Court accepts the joint submission by counsel which it considers to be the minimum punishment to ensure the protection of the public and to maintain discipline in the circumstances.

[16] Therefore, I will ask you to rise. The Court fines you \$200. You may be seated.

LIEUTENANT-COLONEL M. DUTIL, M.J.

Counsel:

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Certified true translation

Kelley A. Harvey, BCL, LLB