

**Date: 20060127**

**Docket: CMAC-485**

**Citation: 2006 CMAC 1**

**CORAM: HUGESSEN J.A.  
HENEGHAN J.A.  
STRAYER J.A.**

**BETWEEN:**

**SECOND LIEUTENANT D. BAPTISTA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**Heard at Toronto, Ontario, on January 27, 2006**

**Judgment delivered at Toronto, Ontario, on January 27, 2006**

**REASONS FOR JUDGMENT OF THE COURT BY:**

**HUGESSEN J.A.  
HENEGHAN J.A.  
STRAYER J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on January 27, 2006)**

**HUGESSEN J.A.**

[1] The appellant was convicted of forgery and uttering a forged document as well as of two offences of absence without leave (to which he pleaded guilty at trial).

[2] We did not call on the respondent on the appeal from conviction.

[3] The appellant was sentenced on all four charges to dismissal from the service and to imprisonment for 30 days.

[4] Leave is granted to appeal that sentence.

[5] We are all of the view that the military judge committed a serious error of principle in pronouncing sentence in that he failed to give effect to the well-established rule that imprisonment should only be imposed as a last resort.

[6] That rule is found in s. 718.2 of the *Criminal Code* but it is also a general rule of sentencing which was applied by the courts even before its enactment (*R. v. Gladue*, [1999] 1 S.C.R. 688 at paras. 38 and 40).

[7] In our view, the circumstances of the appellant and of his offences, which were of relatively minor consequence, including the fact of a prior conviction for a similar offence for which he was sentenced prior to his trial on these charges but after he committed the offences now under consideration, were not such as to require imprisonment for the maintenance of military discipline.

[8] We would set aside the sentence pronounced by the military judge and substitute therefor a severe reprimand and a fine of \$5,000.

[9] The appellant is entitled to costs to be assessed under the Federal Court Tariff.

“James K. Hugessen”

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J.A.

**COURT MARTIAL APPEAL COURT OF CANADA**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

CMAC-485

**STYLE OF CAUSE:**

SECOND LIEUTENANT D.  
BAPTISTA and  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:**

Toronto, Ontario

**DATE OF HEARING:**

January 27, 2006

**REASONS FOR JUDGMENT  
OF THE COURT BY:**

HUGESSEN J.A.  
HENEGHAN J.A.  
STRAYER J.A.

**DELIVERED FROM THE  
BENCH BY:**

HUGESSEN J.A.

**APPEARANCES:**

Mr. David J. Bright, Q.C.

FOR THE APPELLANT

Major J-B Cloutier

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPELLANT

Office of the Directorate of Military  
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Ottawa, Ontario

FOR THE RESPONDENT