

Date: 20020530

Docket: CMAC-448

Citation: 2002 CMAC 8

**CORAM: EWASCHUK J.A.
PELLETIER J.A.
O'KEEFE J.A.**

BETWEEN:

ANTHONY DOMINIE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on May 30th, 2002.

Judgment delivered from the Bench at Halifax, Nova Scotia, on May 30th, 2002.

REASONS FOR JUDGMENT OF THE COURT BY:

EWASCHUK J.A.

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REASONS FOR JUDGMENT

**(Delivered from the Bench at Halifax, Nova Scotia
on May 30th, 2002.)**

[1] The appellant Anthony Dominie appeals his global sentence of 8 months' imprisonment for the offences of unlawful possession of stolen property and trafficking in a substance held out by him to be crack cocaine.

[2] The appellant pleaded guilty of the possession charge but not guilty to the trafficking charge.

[3] The appellant was a Master Seaman of 15 years' tenure in the Canadian Forces. The trafficking charge also involved a junior member of the Canadian Forces. The appellant and the junior member essentially went on a crack cocaine binge for 3 to 4 days on a military base. The appellant's trafficking was non-commercial in nature but did require the appellant to travel to a nearby city to purchase the crack cocaine on 11 to 12 occasions.

[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.

[6] The appellant next argues that the learned President erred in law in finding a perceived lack of remorse as constituting an aggravating factor. It is our view that the trial judge simply viewed a lack of remorse in respect of the trafficking charge as a neutral factor in

contradistinction to the appellant's plea of guilty on the possession charge, which he correctly viewed as a mitigating factor.

[7] The appellant next argues that the sentence imposed contravenes section 15 of the *Canadian Charter of Rights and Freedoms* by disadvantaging him by reason of his occupation or status. It is our view that a person's status as a civilian as opposed to a member of the Canadian Forces, or vice versa, does not require rise to an analogous stereotypical ground of discrimination.

[8] Finally the appellant argues that the learned President erred in failing to award costs because of misconduct by the military police and the prosecutor. It is our view that the appellant must succeed on this ground. The prosecutor was aware by viewing the videotape interview and by reading its transcription that the military police had contravened the appellant's section 10(b) of the *Canadian Charter of Rights and Freedoms* and that a voir dire would necessarily result in the exclusion of the accused's statement. In this case, we would award costs in the amount of \$3000.00 because of the egregious conduct of the military police and participation in that conduct by the prosecutor's efforts in tendering that evidence on a futile voir dire. In the result the appeal will be allowed but only with respect to costs.

E. G. Ewaschuk
Judge

COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET: CMAC-448

STYLE OF CAUSE: ANTHONY DOMINIE v. HER MAJESTY THE QUEEN

PLACE OF HEARING: HALIFAX

DATE OF HEARING: MAY 30, 2002

REASONS FOR JUDGMENT BY THE COURT: (EWASCHUK J.A.
PELLETIER J.A. AND
O'KEEFE J.A.)

DELIVERED FROM THE BENCH: EWASCHUK J.A.

DATED: MAY 30, 2002

APPEARANCES:

MR. DAVID BRIGHT FOR THE APPELLANT

MAJOR KEN A. LINDSTEIN FOR THE RESPONDENT

SOLICITORS OF RECORD:

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