

Date: 20020620

Docket: CMAC-453

Neutral citation: 2002 CMAC 9

**CORAM: LINDEN, J.A.
WEILER J.A.
SHARLOW J.A.**

BETWEEN:

MASTER CORPORAL THOMAS BOUCHARD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on Thursday, June 20, 2002

JUDGMENT delivered from the Bench at Ottawa, Ontario, on Thursday, June 20, 2002

REASONS FOR JUDGMENT OF THE COURT BY:

LINDEN J.A.

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on Thursday, June 20, 2002)**

LINDEN J.A.

[1] We have not been persuaded by the able argument of counsel for the appellant that the Military Judge erred in such a way as to warrant this Court's interference.

[2] We are of the view that the case of *Corporal La Chance v. The Queen*, CMAC 451 (14 May 2002), 2002 CMAC 7, is dispositive of this case. A guilty plea that is free, voluntary, informed and unequivocal normally waives the right to challenge the decision on the basis of s.

11(b) of the *Canadian Charter of Rights and Freedoms*. In rare and special circumstances, it may be possible to set aside a guilty plea, but no evidence of any such circumstances have been adduced in this case.

[3] Fortifying this conclusion is the possible availability of paragraph 37(a) of the Military Rules of Evidence, allowing a guilty plea "subject to variations and exceptions" which was referred to by Justice Létourneau (p. 9).

[4] The decision of *R. v. MacDougall* (1998), 19 C.R. (5th) 275 (S.C.C.), is distinguishable on the basis that it dealt with a post-guilty plea delay pending sentencing.

[5] In view of this conclusion, there is no need to deal with the merits of the appeal.

[6] The appeal will therefore be dismissed.

“A.M. Linden”

J.A.

COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET: CMAC-453

STYLE OF CAUSE:

MASTER CORPORAL THOMAS BOUCHARD v. QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 20, 2002

REASONS FOR JUDGMENT OF THE COURT: (Linden, Weiler & Sharlow JJ.A.

RENDERED FROM THE BENCH BY: Linden J.A.

APPEARANCES:

Lieutenant-Colonel M. Gibson

FOR THE APPELLANT

Major K. Lindstein

FOR THE RESPONDENT

Lieutenant-Commander M. Pelletier

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