

Date: 19991026

Docket: CMAC-427

**CORAM: McGILLIS J.A.
 LYSYK J.A.
 ROSCOE J.A.**

BETWEEN:

LIEUTENANT (N) HAROLD J. DEG

Appellant,

--and--

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, Tuesday, October 26, 1999

Judgment rendered from the Bench, October 26, 1999

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

McGILLIS J.A.

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REASONS FOR JUDGMENT

**(Delivered from the Bench at Ottawa, Ontario,
Tuesday, October 26, 1999)**

McGILLIS J.A.

[1] The appellant pleaded guilty to the charge of stealing while entrusted with the custody, control and distribution of a standing advance, contrary to section 114 of the *National Defence Act*, twenty-three (23) charges of making false entries in documents required for official purposes, contrary to subsection 125(a), and one charge of neglect to the prejudice of good order and discipline, contrary to section 129. The prosecution elected to proceed by way of Standing Court Martial. The appellant was sentenced to four months imprisonment.

[2] We are all of the opinion that both the application for leave to appeal the sentence and the appeal against sentence should be allowed. In arriving at our decision, we understand that a sentence should only be varied in circumstances where it is "clearly unreasonable" [see *Regina v. Shropshire* (1995), 102 C.C.C. (3d) 193 at 210 (S.C.C.)]. In our opinion, the sentence imposed on the appellant meets that test.

[3] In the present case, the appellant was a supply and accounting officer whose duties included the payment of minor travel expense claims and government purchase orders. He was responsible for a combined \$17,000.00 standing advance. The appellant was negligent in performing his duties and, prior to assuming another position, he attempted to conceal what he believed was a discrepancy in his accounting by fabricating and submitting four false general allowance claims totalling \$1,307.90. He forged the signature of his superior officer on the false claims and on nineteen government purchase orders. The appellant miscalculated and erroneously believed that there was a discrepancy in the accounting. He also miscalculated in his attempt to balance the figures and ended up by submitting claims in excess of the amount which he believed to be required. In the final analysis, he received \$619.00 to which he was not entitled.

[4] At the time of the imposition of the sentence, the President of the Standing Court Martial did not have the benefit of the recent decisions of this Court in *Her Majesty the Queen v. Vanier* (February 17, 1999), CACM-422 and *Legaarden v. Her Majesty the Queen* (February 24, 1999), CMAC-423 in which non-custodial sentences were imposed for offences of a similar nature. Counsel for the respondent sought to distinguish those cases on the basis that neither of them

involved the more serious charge of stealing while entrusted. Although we agree that those cases did not involve such a charge, they nevertheless dealt with offences of stealing by officers who were in a position of trust and responsibility by virtue of their rank and positions. We are therefore of the opinion that the decisions in *Vanier* and *Legaarden* are instructive with respect to the principles to be applied and the approach to be adopted in sentencing for offences of this nature.

[5] Given the circumstances surrounding the commission of the offences, the appellant's unblemished record of service over his 25-year career and the small amount of money involved, we have concluded that the sentence of four months imprisonment is clearly unreasonable, particularly when compared with the non-custodial sentences imposed in *Vanier* and *Legaarden*.

[6] We will therefore set aside the sentence and substitute a sentence of a five thousand dollar (\$5,000.00) fine and a severe reprimand. As Chief Justice Strayer stated in *Legaarden* "[w]e believe that this is a reasonable penalty for what was a foolish and inexplicable course of conduct by [an officer] ... We also believe that this will serve as an adequate general deterrent ...".

[7] The appeal against sentence is therefore allowed with costs.

(s) D. McGillis
JUDGE

OTTAWA, ONTARIO
October 26, 1999

COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET: CMAC-427

STYLE OF CAUSE: Lieutenant (N) Harold J. Deg v. Her Majesty the Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 26, 1999

REASONS FOR JUDGMENT OF THE COURT: (McGillis, Lysyk, Roscoe JJ.A.)

RENDERED FROM THE BENCH BY: McGillis, J.A.

APPEARANCES:

Mr. David J. Bright, Q.C. For the Appellant

Major G.T. Rippon For the Respondent

SOLICITORS OF RECORD:

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