

Court Martial Appeal Court
of Canada



Cour d'appel de la cour martiale
du Canada

Date: 20120810

Docket: CMAC-550

Citation: 2012 CMAC 2

**CORAM: BLANCHARD C.J.
VEIT J.A.
BENNETT J.A.**

BETWEEN:

CORPORAL SOUKA, D.J.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on August 10, 2012.

Judgment delivered from the Bench at Vancouver, British Columbia, on August 10, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

BLANCHARD C.J.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on August 10, 2012)

[1] Corporal Souka was convicted by a general court martial of the included offence of assault, contrary to section 130 of the *National Defence Act* [NDA] and section 267(b) of the *Criminal Code of Canada* and drunkenness contrary to section 97 of the NDA. He was acquitted of the charge of assault causing bodily harm, contrary to section 130 of the NDA and section 267(b) of the *Criminal Code*.

[2] At the outset of the hearing, Corporal Souka sought a stay of proceedings on the basis that his right to trial within a reasonable time pursuant to section 11(b) of the *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act 1982* being schedule B to the *Canada Act 1982 (U.K.) 1982, c. 11* [the Charter] was violated. That application was dismissed by the military judge.

[3] During the course of the trial, Corporal Souka sought to take a view of the scene where the assault occurred, pursuant to section 190 of the NDA. That application was also dismissed by the military judge.

[4] Corporal Souka appeals both of these rulings.

[5] Corporal Souka submitted that the military judge erred in finding that the charges were laid on June 1, 2010 rather than April 23, 2010. There was evidence that there was legal advice given pursuant to *Queens Regulations & Orders*, section 107.11 on April 23, 2010, which he contends meant a charge had been laid by that date.

[6] It is not necessary to deal with this question as the additional time of 5 weeks delay, (between April 23, 2010 and June 1, 2010), during which legal advice was sought, cannot be said to tip the balancing of the various factors in Corporal Souka's favour.

[7] Corporal Souka alleges the military judge erred by not inferring prejudice from the length of the delay alone. The military judge in fact found some prejudice as a result of the delay. We are

satisfied that the military judge considered the whole of the circumstances in coming to this conclusion and he committed no error in this regard.

[8] In our view, the military judge made no error in his balancing of the interests of the appellant and the societal interests at stake.

[9] We are also satisfied that the military judge did not err in the exercise of his discretion when he declined to permit a new view of the scene.

[10] The appeal will be dismissed.

“Edmond P. Blanchard”

Chief Justice

Court Martial Appeal Court
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COURT MARTIAL APPEAL COURT OF CANADA

SOLICITORS OF RECORD

DOCKET: CMAC-550

STYLE OF CAUSE: CORPORAL SOUKA, D.J. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, B.C.

DATE OF HEARING: August 10, 2012

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THE COURT BY:** Blanchard C.J.
Veit J.A.
Bennett J.A.

DELIVERED FROM THE BENCH BY: Blanchard C.J.

DATED: August 10, 2012

APPEARANCES:

Major Denis Berntsen FOR THE APPELLANT

Major Douglas G. Curliss RMP FOR THE RESPONDENT

SOLICITORS OF RECORD:

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