

35.9a *Combat stress*

R v Blackman 2014 EWCA Crim 1029, 2 Cr App R 18 (p 244) Court Martial Appeal Court LCJ D was convicted of murder. He was a sergeant in the Royal Marines and calmly shot an unarmed, badly injured, Afghani insurgent. D had spent 15 years in the Royal Marines and character witnesses commented on his exceptional qualities as an outstanding commander in his post. He had completed six tours of duty. A medical report produced 2 years after the incident noted that D suffered from accumulated frustration and could have suffered from combat stress disorder, though it was not possible to say with any certainty. Held. para 68 In mitigation, D had an outstanding service record. para 69 The effects on him of the nature of the conflict and the command he exercises were mitigating factors. The most serious [effect] was the stress. para 70 It is self-evident that forces sent to combat insurgents will be placed under much greater stress than forces sent to fight a regular army. para 72 D was under considerable stress dealing with insurgency and significant further stress because of the remote location of his command post. He had had little face to face contact with those commanding him and they could not assess the effect of the conditions upon him.

para 73 The Court Martial was correct that a very substantial reduction from the starting point was required. para 75 D's mental welfare had not been assessed in the ordinary way. The combat stress should have been accorded greater weight. **8 years**, not 10. For more detail see the **MURDER** para **294.67**.

35.9b *Absent without leave*

R v Owen 2013 EWCA Crim 2385 Court Martial Appeal Court D, a private, pleaded to three charges of being absent without leave. He joined the Army aged 16. D was absent for a total of 238 days (6 months, 3 months, 4 weeks' and 26 days). He and his family suffered a number of personal problems for which he absented himself to provide support. They included sexual abuse on a relative which caused severe effects and marital problems. He raised these concerns through the chain of command and D felt the response was inadequate. He was told he would have to be on duty on Christmas Day and that caused his first absence. He was contacted two and three months later and told to ask for welfare support. Arrangements were made for a return but he didn't turn up. He was then arrested by the police for a violent offence which ended the first period of absence. No evidence was offered against him and he was ordered to return and failed to do so. This failure started the second period of absence (4 days after the end of the first period). He said he wouldn't return. After 4 weeks he was militarily detained in the UK. He was released on condition he flew to his unit. He failed to do so. The absence caused him to miss training. D, now aged 21 had had several disciplinary findings along with two civilian convictions. The Judge passed 2 month, 3 month and 4 month sentences all consecutive. Held. We have in mind the effect on military discipline of absences like this. The three periods could not be treated as one course of conduct owing to D twice failing to return to his unit when given the opportunity to do so. We note notwithstanding the problems, he was told he would have to be on duty on Christmas Day. He must have found it extremely difficult to cope with his problems. The weight given to his personal problems was insufficient so, **7 months** in all not 9.