COURT MARTIAL

Citation: *R. v. Christensen,* 2016 CM 1026

Date: 20161129
Docket: 201617

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Captain D.T. Christensen, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] You have admitted your guilt to the offence of disgraceful conduct under section 93 of the *National Defence Act*. The charge reads as follows:

Second charge Section 93 (*NDA)* (Alternative to the first charge)	BEHAVED IN A DISGRACEFUL MANNER Particulars: In that he, on or about 10 June 2015, at 4-12B Ypres Drive, CFB Kingston, ON, did assault Sgt H.R.H.

[2] In the context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Armed Forces. The purpose of this system is to prevent misconduct or, in a more positive way, to promote good conduct. The justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] Today, counsel from the prosecution and defence have made a joint submission on sentence, seeking a reduction in rank to the rank of lieutenant. That joint submission is made in the context of the recent Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43, that was delivered by Justice Moldaver for the court on 21 October 2016. The Supreme Court exposed the legal test that trial judges should apply in deciding whether it is appropriate in a particular case to depart from a joint submission. The court affirmed that the public interest test is the proper legal test that trial judges should apply, which means that a trial judge should not or cannot depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. What that means is that trial judges should depart from the proposed sentence only if it would be viewed by a reasonable and informed person as a breakdown in the proper functioning of the justice system. So it is a high threshold for judges to follow.

[4] It is recognized by the Supreme Court of Canada, that it is an accepted and entirely desirable practice for Crown or prosecution and defence counsel to agree to a joint submission on sentence in exchange of a plea of guilty. Agreements of this nature are commonplace and acknowledged as vitally important to the well-being of our criminal justice system and I will add to the military justice system. The prospect of a joint submission that carries with it a high degree of certainty encourages persons to enter a plea of guilty. And guilty pleas save the justice system precious time, resources and expenses that can be channeled into other matters. This is not a small benefit. But, he has other benefits as well, including sparing victims from testifying as to the circumstances of the offences or making less of an issue for the anxiety of persons to testify in those contexts as well. So it has many benefits and that was recognized by the Supreme Court.

[5] It means also that for joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. If there is too much doubt about it, then the parties may choose instead to accept the risks of a trial or a contested sentencing hearing.

[6] In short, why is it a good approach?

(a) It’s proper and necessary for the system; it’s granted;

(b) It provides certainty to the accused, in a sense that he gives up his right to a trial, and also, the most obvious benefit certainly is that the Crown with prosecution agrees to recommend a sentence that the accused is prepared to accept. It may be that this recommendation is likely to be more lenient of what the accused might expect at a full trial or contested sentencing hearing. And having accused persons pleading guilty or recognizing their guilt promptly are able to minimize the stress and the legal costs associated with trials. In addition, for those offenders that are truly remorseful, a guilty plea offers the opportunity to begin making amends in some sort with regard to what they have done. So there is

> benefit for the accused but there is also benefit for the Crown or the prosecution; and
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> (c) For the prosecution, it minimizes the risk of conducting a trial with issues of evidence that may or may not arise and most definitely, it secures a conviction. So the guarantee of a conviction that comes with a guilty plea makes resolution desirable in the prospect of the prosecution. As I said, another benefit is that the Crown may decide to enter into a joint submission because it may consider that it is the best practice in part to the case for the benefit, as I said, of the victims or other witnesses. When an accused pleads guilty in exchange on a joint submission on sentence, the victims and witnesses are spared the emotional cost of a full trial. Moreover, the victims may also obtain some comfort from a guilty plea, given that it indicates an accused's acknowledgement of responsibility and, in many cases, a sincere expression of remorse. So, there is a benefit for the Crown as well.

[7] This approach recognized by the Supreme Court of Canada relies heavily on the work of the prosecution as representing the community's interest, as spoken by Captain Langlois from the prosecution and the defense counsel as acting on the accused's best interest. Counsel should, of course, provide the Court with a full account of the circumstances of the offender and the offence. And the joint submission should provide those elements without the judge having to ask for that information. That was done in this case. As trial judges are obliged to depart only rarely from a joint submission, there is a corollary obligation upon counsel to ensure that they amply justify their recommendation, mainly what is their position on the fact of the case as presented in open court. And we had that today with the Statement of Circumstances, which is very thorough and very complete.

[8] The Court is informed that the offender is 27 years old and he enrolled in the Canadian Armed Forces in 2011. He has a previous disciplinary record for an offence for conduct to the prejudice of good order and discipline for having shown nude photos of another officer without her consent to another officer. He was found guilty on June 2015 and was sentenced to a reprimand and a fine of twelve hundred dollars. There is no other conviction related to that offender. He is single and he has entered in a recent relationship. His commanding officer provided information about the impact the commission of the offence had on the unit but also noted the significant progress made by the offender in both his personal and professional life since the commission of the incident. And finally and importantly, the Court was provided with a Victim Impact Statement by Sergeant Hawes, who came today and read her statement in Court. And she talked about the impact of those incidents or that event, physically and emotionally. Also, she testified or she read it had an impact economically as a result. So, this is certainly what the Court has to look at in the context of this joint submission.

[9] Finally, the Court is satisfied that in the circumstances, counsel have discharged their obligations in support of their joint recommendation on sentence and the Court finds that it meets the public interest.

FOR THESE REASONS, THE COURT:

[10] **FINDS** you guilty of the offence of disgraceful conduct under section 93 of the *National Defence Act*. The Court directs a stay of proceedings on the alternate charge of sexual assault under section 130 of the *National Defence Act* contrary to section 271 of the *Criminal Code*.

[11] **SENTENCES** you to a reduction in rank to the rank of lieutenant.

Counsel:

Captain L. Langlois for the Director of Military Prosecutions

Mr D.M. Hodson, 16 Lindsay Street North, Lindsay, Ontario and Captain P. Cloutier, Defence Counsel Services, counsel for Captain D.T. Christensen