COURT MARTIAL

Citation: *R. v. White*, 2024 CM 4002

Date: 20240213
Docket: 202333

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between :

His Majesty the King

- and -

Private C. White, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Private (Pte) White, having accepted and recorded your plea of guilty in respect of charge one on the charge sheet, the Court now finds you guilty of that charge for fighting, contrary to section 86 of the *National Defence Act* (*NDA*).

A joint submission is being proposed

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommend that I impose a fine in the amount of $500. This is a lenient suggestion considering the circumstances of the offence, as I will explain later.

[3] The fact that the sentence was jointly recommended severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I

may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[4] The Supreme Court of Canada has set a high threshold to depart from joint submissions made by counsel because joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial, and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the goal of the sentencing process. I must also keep in mind the disciplinary purpose of courts martial in performing the sentencing function attributed to me as a military judge. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The starting point for any sentencing decision is found at section 203.2 of the *NDA* which provides that a military judge shall impose a sentence commensurate with "the gravity of the offence and the degree of responsibility of the offender".

Matters considered

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Pte White. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51. The Statement of Circumstances reveals that the fight alluded to in the particulars of the offence was in effect an assault on a course mate which can very much be considered a victim of the offence. That victim was provided an opportunity to prepare a victim impact statement referred to in subsection 203.6(1) of the *NDA* but declined, stating that he was fine with Pte White, even if they may never be the best of friends. This situation is not unusual for a fighting charge under section 86 of the *NDA* as the infraction is meant to sanction the impact that fights have on the discipline, efficiency and/or moral

within the Canadian Armed Forces (CAF) or one of its constituting parts and does not require that anyone be victimized.

[9] For its part, the defence produced an affidavit from the offender, Pte White, explaining that he has no specific memory of the events grounding the charge, but he remembers drinking about twelve beers immediately before. He explained that he is sorry and that he has taken steps before and since the offence in order to set a good example for his sons. In addition, the Regimental Sergeant Major (RSM) of 2nd Battalion of Princess Patricia's Canadian Light Infantry (2 PPCLI) testified to explain contributions made by Pte White since joining the Battalion in May 2023, shortly after the events, as well as his significant potential to continue making an exceptional contribution in the future. Furthermore, a written statement from Pte White's company Sergeant-major (CSM) was presented, providing a very positive assessment of the offender's contribution since joining the Battalion and his potential for assuming greater responsibilities in the future.

[10] It became apparent to the Court during the presentation of the evidence on sentencing that Pte White is Ojibwe and contributes to raise the awareness of other members of his units of Aboriginal heritage and culture. Counsel explained that they did not see the need to provide a pre-sentence report highlighting specific factors linked to the Aboriginal status of the offender, known as a "Gladu report", given the nature of their joint submission on sentence which does not envisage a custodial punishment nor generates a criminal record for the offender. However, the Court was told that the Aboriginal background of the offender was considered to arrive at the specific sentence being recommended.

[11] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case, in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

The circumstances of the offence

[12] The Statement of Circumstances and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

(a) in March 2023, Pte White was undergoing training with 3rd Canadian Division Training Center (3 CDTC) at CFB Wainwright. On the evening of 4 March 2023, Pte White attended the junior ranks mess (JR Mess) with members from his course. He wanted to relax and enjoy a hockey game or whatever else was on television. It was his first night out since being on course. He estimates that he consumed twelve beers at the JR Mess;

(b) upon returning to the shacks, he went with two other course mates to Pte Quach's pod, another course mate who had not attended the JR Mess that night. Pte White and Pte Quach did not know each other very well;

(c) the four privates were joking around together before his two colleagues left the pod. Pte White continued talking with Pte Quach and almost stepped on a bag of chips that were on the floor. Pte Quach told Pte White to watch out for the bag of chips;

(d) Pte White proceeded to stomp on the bag of chips. Pte Quash pushed Pte White off the bag of chips, yelled, "What the Hell?!", and told Pte White to leave. Pte White grabbed Pte Quach in a rear-naked chokehold and would not let go;

(e) Pte Quach tried to get out of the chokehold by "tapping out" twice. He also tried to punch Pte White. Pte White would not let go. Another private who passed by came into the room and attempted to pull Pte White off Pte Quach. He was unable to get Pte White to release. Other candidates had to help remove Pte White from Pte Quach. Pte White eventually let go, went to his bed and did not return; and

(f) the next day, Pte White learned about what happened through his warrant officer. Pte White's last clear memory of that night is being at the JR Mess, and he does not remember this incident. Pte White apologized to Pte Quach immediately after being informed of this incident.

The circumstances of the offender

[13] Pte White is a thirty-year-old infantry soldier who has been serving with the 2 PPCLI here in Shilo for the last ten months, following successful completion of basic and occupational training in the fall of 2022 and winter 2023. He has a common law spouse and is the father of a newborn and two other sons aged six and eleven.

[14] As it pertains to the way Pte White reflects on the offence, he has stated in his affidavit that he remembers only wanting to go to the JR Mess that evening to relax and watch television. He believes he drank about twelve beers but does not remember leaving the JR Mess and do not have a clear memory of anything else from later that night. He swore that his behaviour of that night bothers him and that he is sorry for his actions against Pte Quach.

[15] Importantly, Pte White added that he used to drink a lot when he lived on his reserve but said he has cut down on his drinking leading up to starting his training with the CAF as he wanted to leave the heavy drinking behind him. He stated that he completely stopped drinking for many months after this incident in March 2023 and does not drink a lot now. He does not want to have another instance where he cannot

remember his behaviour because of excessive drinking. Finally, and importantly, Pte White stated that he wishes to set a good example for his sons.

[16] The Court has heard the testimony of the RSM of the Battalion who complimented Pte White for his accomplishments of the last months in completing several courses and obtaining driver qualifications which allow him to be employed with minimal supervision in making a significant contribution to the operations of his unit. The testimony of the RSM, combined with the statement of the CSM reveal that Pte White demonstrates an excellent attitude and is assessed as being within the top tier of performers in his rank within his company, while also performing as a member of the Battalion's hockey team and contributing to Aboriginal awareness activities. He has also made a positive contribution in a recent Brigade level exercise and has very much established himself as a mature and professional soldier, displaying a positive attitude with his superiors and his peers who respect him. The RSM testified that he was impressed with Pte White's resilience in achieving these accomplishments despite the looming court martial and mentioned that moving forward, Pte White will no doubt be given additional responsibilities as acting section second in command based on his overall performance.

Seriousness of the offence

[17] The Court has considered the objective gravity of the offence in this case. The offence in section 86 of the *NDA* attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence which recognizes the importance for CAF members to refrain from resorting to physical confrontations with colleagues in all circumstances. Mention was made of the fact that we are here because of the need to sanction stupid fights. Indeed, military law has provided for offences aimed at preventing and sanctioning quarrels, fights and other disorder within the troop. As I have mentioned in the recent case of *R. v. Gilson*, 2023 CM 4018, the offence of fighting with another member of the CAF is significant because fights are actions that often lead to injuries, hence loss of efficiency within the unit, while in addition causing resentment susceptible of having a negative effect on the cohesion, efficiency and morale within a unit. Fights can threaten the physical integrity of those involved and of by standers who often need to get involved to break them. They can cause scars, physical and mental, which may be more than trivial. Consequently, fights within a unit are not insignificant occurrences.

[18] CAF personnel undergoing training are provided with accommodations where they can relax and socialize with colleagues, an important part of military life. This is a place where soldiers should feel safe, not a place where their physical integrity should be threatened. Even without a specific statement as to the impact of the offence on the victim, it remains that the circumstances of this case reveal a gratuitous attack on a CAF member who had done nothing to provoke it. The conduct of Pte White therefore needed to be sanctioned.

[19] I therefore agree with counsel to the effect that the circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. I wish to state that I do not entirely agree with the submission of counsel to the effect that specific deterrence is not required by virtue of the significant rehabilitative steps taken by the offender since the offence. Indeed, the offence occurred not even a year ago. I do acknowledge that the offender has made significant steps to improve as a soldier and as a person since, especially in addressing his drinking. Yet, more efforts are still required over the long run. The sentence therefore needs to take account the objective of specific deterrence.

[20] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely the maintenance of "discipline, efficiency and morale of the Canadian Forces," the sentence proposed must be sufficient to denounce Pte White's conduct in the military community and to act as a deterrent to him and others who may be tempted to engage in a similar type of conduct in relation to colleagues, especially violations, however minor, of their bodily integrity.

[21] At the same time the sentence must not be so severe as to cause a disproportionate impact on the offender and risk compromising his necessary rehabilitation, especially for a member who has shown resilience and a commitment to improve since the offence and whose superiors have come forward to support, mentioning his above average potential to obtain additional responsibilities in the future.

Aggravating and mitigating factors

[22] The circumstances of the offence reveal aggravating factors in that Pte White's conduct constituted an unprovoked attack on a fellow soldier in his quarters, which appears to have been triggered by the consequences of excessive drinking.

[23] That said, the Court acknowledges the following mitigating factors:

(a) Pte White's guilty plea today, which was announced at the first occasion, thereby avoiding the expense and energy of running a trial and demonstrating that he is taking responsibility for his actions in public, in the presence of members of his unit and of the broader military community;

(b) the absence of a criminal record and of a conduct sheet revealing precedents of similar misbehaviour;

(c) the significant evidence presented by the defence to illustrate that Pte White has recognized his fault, apologized, and addressed to a significant extent the underlying cause of his unacceptable behaviour, namely his alcohol consumption; and

(d) the fact that the rehabilitation of the offender is well under way, as evidenced by the significant contribution that he has made to his unit since the commission of the offence, information which was conveyed to the Court by significant actors in the leadership of the 2 PPCLI, showing both that the conduct of the offender in March 2023 was out of character for him and that the sentence to be imposed should not compromise his potential to contribute further to the CAF and society in the future.

Assessing the joint submission

[24] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel mentioned that the range of sentence previously imposed for such conduct include, at the higher end, severe reprimands with fines and, at the lower end, minor punishments. Counsel stressed that given the significant and extraordinary mitigating factors at play in this case, they did not see the need to comment in detail on other cases. Although I would have preferred at least a few jurisprudential illustrations, I can conclude, based on my experience, that the joint submission of counsel is within the range of sentences previously imposed for similar behaviour.

[25] As mentioned previously, the proposed sentence is very much at the low end of the range and is lenient given the circumstances of the offence, specifically the unprovoked nature of the attack. Yet, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[26] Although the sentence proposed is lenient, it is not so markedly out of line with the expectations of reasonable persons aware of the circumstances that they would view it as a breakdown in the proper functioning of the military justice system. In this case, the proposed sentence expresses disapprobation for the failure in discipline involved and has a direct impact on the offender. It meets the objectives of denunciation and deterrence, without having a lasting effect detrimental to the rehabilitation of Pte White.

[27] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence and, as stated during submissions, have taken the interests of the offender, victims, the chain of command and the broader public into consideration in arriving at their agreement on the proposed sentence. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[28] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

[29] Pte White, you have demonstrated that you accept responsibility for your offence, and you deserve credit for that. It is not every day that I see a RSM in my court testifying in public about the progress, the commitment, and the potential of a private. You are no doubt a promising soldier and a good man. I heard that you have shown resilience while awaiting these proceedings. I hope you have learned a lesson from this experience, especially as it pertains to the impact of your consumption of intoxicants on your behaviour, more specifically in relation to colleagues. They must believe that they are safe in your presence, even after you have taken a few drinks. That remains your challenge to show that you can be trusted at all times. Your superiors have vouched for you in that regard, and I am joining them in accepting this joint submission, confident you will not be seen before a Court again. Do not let us down and continue to set a good example for your peers, superiors, the members of your community and, most importantly for your sons.

FOR THESE REASONS, THE COURT:

[30] **SENTENCES** Pte White to a fine in the amount of $500, payable in two installments as follows: $250 to be paid no later than 1 March 2024 and the other $250 to be paid no later than 15 March 2024. Should Pte White be released from the CAF before the fine is paid in full, any amount due becomes payable the day of his release.

Counsel:

The Director of Military Prosecutions as represented by Major A. Dhillon

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, counsel for Private C. White