



COURT MARTIAL

Citation: *R. v. Paradis*, 2015 CM 1002

Date: 20150219

Docket: 201346

Standing Court Martial

Canadian Forces Base Bagotville
Saguenay, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Ex-Corporal Paradis, H. S., Offender

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

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

[1] Corporal Paradis, retired, has been found guilty on six charges contrary to section 130 of the *National Defence Act* (NDA) for the following offences punishable under the *Criminal Code*, namely: one charge of unauthorized possession of a prohibited device, contrary to subsection 91(2) of the *Criminal Code*; one charge of careless storage of ammunition, contrary to subsection 86(1) of the *Criminal Code*; three charges of contravening a regulation made under paragraph 117(h) of the *Firearms Act* respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons, contrary to subsection 86(2) of the *Criminal Code*; and, finally, one charge accusing him, being the holder of an authorization or a licence for a restricted weapon, of possessing a semiautomatic handgun at a place that is other than a place indicated on the authorization or licence as being a place where he may possess it, or other than a place where it may be possessed under the *Firearms Act*, under subsection 93(1) of the *Criminal Code*.

[2] Counsel for the prosecution and for the defence made a joint submission regarding the sentence that the Court should impose in the circumstances of this case, namely, imprisonment for a term of four months and a fine of \$1,000 payable in 10 equal instalments, and they also ask that this Court stay the term of imprisonment. Finally, they ask that the Court make an order under section 147.1 of the *National Defence Act* for 5 years, 10 years or life, depending on the type of weapon, device or other such things named in said order.

[3] A statement of circumstances was filed with the Court. I have reproduced its contents here [The joint statement of facts is reproduced as presented in Exhibit 7.]:

[TRANSLATION]

STATEMENT OF CIRCUMSTANCES

1. On March 16, 1995, Ex-Cpl Paradis joined the Canadian Armed Forces (CAF) as a member of the Regular Force.
2. At the time of the events in this case, Ex-Cpl Paradis was working for the Range Control patrols on Canadian Forces Base (CFB) Gagetown. He was following a progressive return-to-work program for health reasons. He was only able to work between 1500 hours and 2300 hours.
3. On or about 27 February 2012, Sgt McNeil, a military police officer at CFB Gagetown, was informed by senior members of Range Control of certain allegations made by co-workers of Ex-Cpl Paradis that raised fears for his safety and that of his fellow members because of his behaviour and some statements he made regarding personal weapons.
4. After making some checks and conducting an investigation into the reported allegations, Sgt McNeil learned that in 2006, Ex-Cpl Paradis had acquired a licence to acquire and possess an unrestricted weapon. Ex-Cpl Paradis then allegedly acquired a licence for restricted weapons in March 2010. Sgt McNeil was also informed that Ex-Cpl Paradis had nine (9) weapons of various calibres, all of which had been registered.
5. On 12 March 2012, Sgt McNeil learned from another co-worker of Ex-Cpl Paradis that he had gone to an area known as Lauvina Wood for shooting practice. Lauvina Wood was part of a training area at CFB Gagetown, used by engineers for practising demining manoeuvres. Sgt McNeil inspected the area and recovered bullets and casings that Ex-Cpl Paradis had left behind. A laboratory analysis showed that the recovered bullets and casings did indeed come from a weapon belonging to Ex-Cpl Paradis, a Berretta PX4 Storm SD.

6. It was discovered that Ex-Cpl Paradis was authorized to transport and use his restricted weapons at the Fredericton Recreational Shooting Association's shooting club, more specifically, at the Springfield Gun Club. However, between 1 October 2011 and 14 April 2012, Ex-Cpl Paradis used his restricted semiautomatic handgun, the Beretta PX4 Storm SD, in an area of Lauvina Wood. Lauvina Wood is located more than fifty-eight (58) kilometres from the authorized shooting club. Ex-Cpl Paradis therefore used his weapon at a place that is other than a place indicated on the authorization or licence as being a place where he may possess it, or other than a place where it may be possessed under the *Firearms Act*.
7. Around 2020 hours, on 13 April 2012, Ex-Cpl Paradis was arrested without a warrant while he was on duty and aboard a Range Control patrol vehicle. Ex-Cpl Paradis co-operated with the police when he was arrested. He was proper and polite. The arrest was made without incident. No firearms were found in the vehicle. Some bladed weapons were found, namely, a machete, a pruning saw and multiple knives with blades of various dimensions.
8. Ex-Cpl Paradis then had the chance to speak with a lawyer and was put in a cell. Before the vehicle and home of Ex-Cpl Paradis were searched, Sgt McNeil met with him to advise him of what they were going to do. Ex-Cpl Paradis provided certain details regarding the state of the weapons and their location. He told him that there were loaded weapons in his home. He drew a sketch of the premises and provided relevant information to make the search easier. Ex-Cpl Paradis appeared to be very concerned about the untidy state in which the military police officers would find the premises.
9. On 14 April 2012, after collecting all this information and obtaining a duly authorized warrant to search and seize under section 117.04 of the *Criminal Code*, Sgt McNeil and several military police officers carried out a search at the home of Ex-Cpl Paradis, located at 45 Inchby Drive, Oromocto, province of New Brunswick. During this search, the police officers found
 - (a) a dozen (12) prohibited cartridge magazines;
 - (b) two thousand one hundred and seventy-four (2,174) bullets of various calibres (described in Schedule A to the charge sheet);
 - (c) one (1) restricted semiautomatic handgun, namely, a Beretta PX4 Storm SD, loaded;
 - (d) one (1) restricted semiautomatic firearm, namely, a Sabre Defense Industries XR 15, loaded;

- (e) one (1) firearm, namely, a Benelli Super Nova tactical rifle, loaded; and
 - (f) numerous other weapons of various types.
10. Ex-Cpl Paradis did not hold licences to possess the twelve (12) cartridge magazines found in his home.
 11. The ammunition seized in this operation was stored negligently, without lawful excuse. Ex-Cpl Paradis had also not taken sufficient safety precautions to protect others from it. The ammunition at the home of Cpl Paradis was found in different rooms throughout the house (bedrooms, kitchen, closet, entrance hall, pantry and basement). The ammunition was kept in various ways, in open or closed boxes, in shoeboxes, inside pieces of furniture, in bags, on shelves inside armoires, on the floor and on tables. The ammunition was in plain sight and easily accessible. It had not been stored in a safe place under lock and key. The ammunition was near several weapons that had not been stored safely. A total of two thousand one hundred and seventy-four (2,174) bullets were seized.
 12. The two restricted semiautomatic weapons had not been stored in compliance with section 6 of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*. The weapons had not been rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into.
 13. The Berretta PX4 Storm SD was loaded with a magazine containing bullets, and there was one bullet in the weapon's chamber. The weapon was nearby a spare magazine containing bullets. It was also found near ammunition not stored in accordance with the Regulations. The weapon was found in a bedroom, under a pillow on a bed.
 14. The Sabre Defence Industries XR 15 was loaded with a magazine containing twenty (20) bullets, and there were no bullets in the weapon's chamber. It too was found near ammunition not stored in accordance with the Regulations. The weapon was found in a bedroom, inside a sleeping bag on a bed.
 15. Finally the Benelli Super Nova tactical rifle was not stored in compliance with subsection 5(1) of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*. The weapon was loaded with a magazine containing four (4) bullets, and there was one bullet in the weapon's chamber. The weapon had not been rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked

and that is constructed so that it cannot readily be broken open or into. It too was found near ammunition not stored in accordance with the Regulations. The weapon was found in a bedroom, under a sleeping bag on a bed.

16. Around 2250 hours, on 14 April 2012, after the search of his home and vehicle, Ex-Cpl Paradis was released by a custody review officer on certain conditions, including to remain under military authority and not to possess any type of firearm, ammunition or bladed weapon.

[4] The charges were preferred by the Director of Military Prosecutions on 24 May 2013, and the proceedings in this Court Martial began on 28 April 2014. The beginning of the trial was delayed to allow expert reports to be filed. After expert reports were obtained regarding the state of the accused's mental health at the time of the commission of the offences and since then, ex-Corporal Paradis pleaded guilty to the above-referenced charges on 20 October 2014, and the Court agreed to allow his counsel to withdraw from the case for professional reasons unrelated to this case. With the prosecution's consent, the hearing was adjourned until 16 February 2015 because of the availability of the accused's new counsel. At the outset, it is important to note that this is a highly unusual case. Counsel were therefore able to take advantage of the delays to present considerable and highly relevant evidence to substantiate their joint submission. I would like to thank them for their excellent work. It allowed the Court to better understand their submission and determine whether it is appropriate.

[5] At the sentencing hearing, the parties filed a wide range of documents, including documents on ex-Corporal Paradis's career in the Canadian Forces; the informations used to obtain search and seizure warrants, to understand the peace officers' grounds and the objective of the search; a transcript of interviews with the accused in the hours leading up to the search, which demonstrate the accused's state of mind and his co-operation; the curriculums of the education programs taken by ex-Corporal Paradis since committing the offences; and his adaptation to civilian life since his release in September 2012. Numerous witnesses also appeared before the Court to help the Court understand not only the circumstances surrounding the commission of the offences, but also the progress of ex-Corporal Paradis over the last three years. The Court heard two witnesses who explained the offender's academic endeavours since his return to civilian life, his readjustment, his excellent motivation and his efforts to achieve his objectives. Two expert witnesses, the highly experienced psychiatrists Dr. Bérard and Dr. Rochette, testified regarding what likely caused the mental disorder afflicting the offender at the time of the commission of the offences and how bringing him back home to his loved ones has contributed to his healing process since the incident. They also gave their opinion to the effect that ex-Corporal Paradis does not represent a danger to society even though he had weapons in his possession. Finally, ex-Corporal Paradis and his spouse testified. Their testimony corroborates to an extent the other testimonies heard before theirs because they confirmed that the offender has solid family and social support. Their testimony also shows that their relationship is a respectful and harmonious one.

[6] Nevertheless, the fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair punishments having one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders in order to return them to their environment in the Canadian Forces or to civilian life; and
- (e) to promote a sense of responsibility in military members who are offenders.

[7] The sentence must also take the following principles into account. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence must also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court shall take into consideration that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Finally, the sentence must be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender. The sentence will therefore be the result of a balancing exercise that yields the minimum sentence that the Court considers to be adequate to meet that which will consist of a punishment or a combination of punishments that the Court Martial considers to be minimal while contributing to the maintenance of military discipline and respect for the law.

[8] Counsel's joint submission must allow the objectives and principles that apply in the present case to be achieved; the Court should not reject it unless it is not within the range of sentences applicable in similar circumstances or brings the administration of justice into disrepute. The proposed sentence meets the key objectives of denunciation and deterrence required in firearms offences, but it allows the offender to pursue his rehabilitation and contribute to civilian life.

[9] The psychiatrists' expert opinions differ as to the reasons for the accused's mental state at the time of the commission of the offences and for the disorder in his house at the time of the search. Dr. Bérard is of the opinion that the main source of ex-Corporal Paradis's mental health problems is related to a major cognitive disorder resulting from a head injury sustained in 1991, while Dr. Rochette is of the opinion that the events for which the offender is standing trial occurred in a context of isolation and a reactivation of post-traumatic stress experienced in Bosnia in 1993. The experts do agree, however, that he was suffering from a mental disorder at the time of offences and that this situation no longer exists. They also agree that sending the offender to a

detention centre is undesirable because it would place him back in a state of isolation that could cause his state of disorganization to reoccur.

[10] Before accepting the joint submission, the Court took into account the objective gravity of the offences, which carry maximum sentences of between two and five years' imprisonment when prosecuted by indictment. I also note the relevant aggravating and mitigating factors in this case. One aggravating factor considered by the Court is the fact that the storage conditions for the various weapons and ammunition at the accused's home were not the result of a fleeting oversight. The state of the premises indicates that the situation had been going on for several days, even several weeks before the search took place. Such a situation is totally inconsistent with the degree of experience and knowledge that ex-Corporal Paradis had with regard to handling and storing the items in question and demonstrates a significant degree of negligence in the circumstances. The nature of the weapons and ammunition and the state in which they were found are also aggravating factors in this case. Ex-Corporal Paradis also acknowledged that Force members know better than anyone else the importance that must be given to the safe use and storage of weapons and ammunition and to the applicable rules.

[11] The mitigating circumstances are nonetheless very important.

- (a) In addition to admitting guilt, thereby avoiding a long trial, ex-Corporal Paradis co-operated with the military police officers upon his arrest. If not for the inherent yet necessary delays owing to the need to obtain expert reports on the accused's mental state, this case would have been settled long ago. It must be noted that the delay allowed the accused to show through concrete action, and on the basis of expert psychiatric opinions, that his social reintegration into civilian life has been a success and that he does not represent a risk to public safety;
- (b) Over the last year, the offender completed two programs of study. He received an attestation of college studies for 780 hours of study in the [TRANSLATION] "Industrial and Commercial Safety" program and successfully completed a 135-hour continuing education program entitled [TRANSLATION] "Introduction to Inquiry and Investigation Techniques". Two people in charge of these programs at Collège Alma testified to confirm that ex-Corporal Paradis was a serious, motivated, respectful and disciplined student. According to them, he adapted very well to an academic environment;
- (c) The offender did not stop at his recent academic successes. He recently began a formal program of pre-university college studies in social science so that he can begin university studies as soon as possible. Clearly, he is highly motivated and enjoys the unfailing support of his family and his spouse;

- (d) He is 40 years old and served in the Canadian Armed Forces from 1991 to 2012. He joined the Regular Force in 1995 as a combat engineer. Ex-Corporal Paradis was deployed to Bosnia for nearly nine months in 1993 when he was a reservist. He also served in Kabul, Afghanistan, from January to September 2004. After the incident in April 2012 that led to this court martial, ex-Corporal Paradis was released from the Canadian Armed Forces for medical reasons, not on disciplinary grounds, as Exhibit 3 attests. This is the offender's first run-in with the justice system. He has no military disciplinary record or criminal record. The actions to which he has pleaded guilty took place while he was suffering from serious mental health problems that are attributable in whole or in part to a state of isolation that resurrected traumas he experienced in Bosnia in 1993, or to cognitive disabilities related to a serious head injury suffered in 1991; and
- (e) Finally, there is no indication that ex-Corporal Paradis was keeping the seized materials for a criminal purpose. He has a passion for hunting and guns, including sharpshooting. As for the offender's financial status, he receives approximately \$21,000 a year from various sources, including his pension in accordance with the benefits plan to which he is entitled under the *Canadian Forces Superannuation Act*, as well as disability insurances benefits. He pays \$700 a month in support payments for his 21-year-old daughter. His spouse has a new full-time job. They are people who have a modest lifestyle, and their family income is enough to pay for their various household expenses.

[12] As for counsel's joint application to suspend the term of imprisonment, it is justified, in my view. Both psychiatric experts agree that a custodial sentence could negatively affect the offender by placing him back in a state of isolation. Considering that he was released from the Canadian Armed Forces in September 2012 and that he has successfully made exemplary progress since committing the offences, it would be oppressive and unnecessary to place ex-Corporal Paradis in a situation that would wipe out more than two years of efforts by him and his therapists and other persons. His incarceration is not required to protect the public or the Canadian Forces, and suspending his term of imprisonment would not bring the administration of justice into disrepute. The Court therefore accepts the joint submission of counsel.

FOR THESE REASONS, THE COURT:

[13] **FINDS** the offender guilty with regard to the second, third, fifth, seventh, eighth and sixteenth charges and orders a stay of proceedings with regard to the first, fourth, sixth, ninth and fifteenth charges. The prosecution had withdrawn the tenth, eleventh, twelfth, thirteenth and fourteenth charges.

[14] **SENTENCES** the offender, ex-Corporal Paradis, to imprisonment for a term of four months and a fine of \$1,000 payable in 10 consecutive equal instalments starting from the date of this sentence.

[15] **SUSPENDS** the prison sentence.

[16] **PROHIBITS** the offender, ex-Corporal Paradis, from possessing any firearm, cross-bow or ammunition for a period of 5 years, from possessing any restricted weapon for 10 years, and from possessing any prohibited weapon, prohibited device, prohibited ammunition or explosive substance for life, in accordance with section 147.1 of the *National Defence Act*.

[17] **ORDERS** that the following things be forfeited to Her Majesty:

- (a) a Beretta PX4 Storm SD semiautomatic handgun, serial number PK12808, specified in the fifth and sixteenth charges;
- (b) a Sabre Defence Industries XR15 semiautomatic weapon, serial number C05259, specified in the seventh charge;
- (c) a Benelli SuperNova tactical rifle, serial number Z543245, specified in the eighth charge;
- (d) the 12 prohibited magazine cartridge magazines, specified in the second charge; and
- (e) the ammunition seized, specified in the third charge and described in Schedule A to the charge sheet, Exhibit 2, in accordance with section 147.3 of the *National Defence Act*.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

D. Dionne, Maltais & Maltais, Avocats S.E.N.C.R.L.
Counsel for ex-Corporal H.S. Paradis