



COURT MARTIAL

Citation: *R. v. Garner-Garballa*, 2014 CM 3019

Date: 20141022

Docket: 201378

General Court Martial

Canadian Forces Base Trenton

Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal C.E. Garner-Garballa, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Garner-Garballa has been found guilty by this General Court Martial today of one count of disobeying a lawful command of a superior officer. As the military judge presiding at this General Court Martial, it is now my duty to determine the sentence.

[2] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline. The law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention, since moderation is the bed-rock principle of the modern theory of sentencing in Canada.

[3] When imposing a sentence, a military court must also take into consideration some objectives and principles. Concerning the objectives, the court must consider the following:

- (a) to protect the public, which includes the Canadian Forces;
- (b) to denounce unlawful conduct;

- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society where necessary; and,
- (e) to rehabilitate and reform offenders.

[4] Also, the court must take into consideration the following principles:

- (a) A sentence must be proportionate to the gravity of the offence;
- (b) A sentence must be proportionate to the responsibility and previous character of the offender;
- (c) A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) An offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the court should impose a sentence of imprisonment or detention only as a last resort as it was established by the Court Martial Appeal Court of Canada and the Supreme Court of Canada decisions;
- (e) And lastly, all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[5] In the morning of 20 May 2013, Corporal Garner-Garballa was part of the force protection unit at an access control point and finished a 12-hour night shift at 7:30 a.m. in the context of Maple Resolve 2013, an exercise that was taking place at Airfield 21, Camp Wainwright, Alberta. While he was standing with others and about to head to his tent in order to rest, further to a shift change and dressed in his full fighting order (FFO), an alarm went on. It was not a surprise to Corporal Garner-Garballa that such a thing happened, having being told previously about the fact that an exercise would take place on that morning.

[6] The nature of the exercise was about the reaction to a possible improvised explosive device (IED) located near the transport tent on the camp. Being responsible for the day shift as part of the force protection unit, Sergeant Bastien, the Air Force security force sergeant who had just taken over the shift, then started to walk toward the direction of the transport tent. On his way, he saw his 2 i/c, Master Corporal Dumont, at the access control point with some military police members involved in the previous night shift and in the current day shift.

[7] Sergeant Bastien needed somebody with him to act as a runner because he wanted to go first to the location of the alleged IED to get a sense of what was going on, and then send somebody back to get anything or anybody else he would need to perform the task.

[8] He passed by the access control point and told Corporal Garner-Garballa, who was there, to come with him. Sergeant Bastien continued to walk and realized that Corporal Garner-Garballa was not following him. He then turned around, walked back and got closer to Corporal Garner-Garballa. He told him to come with him while doing, at the same time, a gesture with his arm and hand to let him know to come with him. A short moment later, seeing Corporal Garner-Garballa was not listening to him, he then told his 2 i/c that the two master corporals who were standing there too had to come with him. Those two people followed him to the transport tent where the alleged IED was located, but Corporal Garner-Garballa did not.

[9] As I mentioned in my instructions to the panel members, obedience to orders is fundamental in all aspects of the military life. The efficiency of any military task and success of any mission rests on that principle.

[10] The court is of the opinion that sentencing in this case should focus mainly on the objectives of denunciation and general deterrence. It is important to remember that the principle of general deterrence means that the sentence should deter not only the offender from re-offending, but also to deter others in similar situations from engaging in the same prohibited conduct.

[11] I considered the following aggravating factors:

- (a) There is the objective seriousness of the offence of disobeying a lawful command of a superior officer. The maximum punishment for such an offence is imprisonment for life or less punishment.
- (b) Also the subjective seriousness of the offence has been considered and it covers two aspects:
 - (1) First by your actions at the time, you have shown some disrespect. And by the way you reacted, not following the order given, you undermined Sergeant Bastien's authority.
 - (2) Second, you put yourself before your unit. You took advantage of some kind of miscommunication or what appeared to be some misunderstanding to do what you wanted to do, basically. This is what has been revealed by the circumstances.

[12] I also consider the following mitigating factors:

- (a) The circumstances of this offence reveal that it has been considered as something at the lower end of seriousness.
- (b) You do not have any annotation on your conduct sheet for something similar.
- (c) Your age, 29 years old, must be considered. You are really young; still a valid asset in the Canadian Forces and Canadian society, so I'm sure you will bring to the Canadian Forces good things.
- (d) You also had to face this court martial which was announced and accessible to the public and which took place in the presence of some of your peers. It has, no doubt, had a very significant deterrent effect on you and on them. It sends the message to others that the kind of conduct you displayed regarding obedience to an order will not be tolerated in any way and will be dealt with accordingly.
- (e) Also, I consider as a mitigating factor that your conduct had no impact and did not result in any danger and there were no real consequences, at the time, on what was going on.
- (f) In addition, it has to be mentioned that whatever it is, this punishment will remain on your conduct sheet unless you get a pardon for the criminal record you are getting today. The reality is that your conviction would carry out a consequence that is often overlooked, which is that you will now have a criminal record and it is not insignificant.

[13] From my perspective, the appropriate penalties for an offence of this nature in such a context usually range from a severe reprimand to reprimand and a fine, and to only a fine in some cases. The court must reiterate that the reprimand is a serious penalty in a military context. In the scale of penalties, it is above a fine, regardless of the amount. It reflects the doubt cast on the military member's commitment at the time the offence was committed. It also reflects the gravity ascribed to the offence, but also the offender's real hope for rehabilitation.

[14] Considering the nature of the offence, the applicable sentencing principles, including sentences imposed on similar offenders for similar offences committed in similar circumstances by military tribunals, the principle of parity in sentences, and the aggravating and mitigating factors mentioned above, I am of the opinion that a reprimand and a fine would appear as the appropriate and the necessary minimum punishment in this case.

[15] Concerning the amount of the fine, the court does not consider that imposing an amount as the one suggested by the prosecution would really reflect a sentence commensurate with the gravity of the offence and the previous character of the offender, especially in a context where there is a combination of a fine with a reprimand. The court concludes that a fine in the amount of \$400 would better represent the real or the exact meaning of this principle.

[16] A fair and just punishment should recognize the gravity of the offence and the responsibility of the offender in the context of the particular case. The court does consider as an appropriate, minimum and fit punishment to impose a combination of a reprimand and a fine in the amount of \$400.

FOR THESE REASONS, THE COURT:

[17] **SENTENCES** you to a reprimand and a fine in the amount of \$400. The fine is to be paid in two monthly instalments of \$200 each, commencing on 1 November 2014 for a period of two months. If, for any reason, you are released from the Canadian Forces prior to paying the full amount of that fine, the remaining amount shall be paid in full before you are released.

Counsel:

Major E. Carrier, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major S. Collins, Directorate of Defence Counsel Services
Counsel for Corporal Garner-Garballa