COURT MARTIAL

Citation: *R.v. Morgan*, 2015 CM 4005

Date: 20150408
Docket: 201427

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant R.D. Morgan, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Morgan, having accepted and recorded your plea of guilty in respect of the three charges on the charge sheet, the court now finds you guilty of those charges under section 129 of the *National Defence Act* for Conduct to the Prejudice of Good Order and Discipline, for having sexually harassed Corporal Stoyles, Master Corporal Morton and Corporal Lauzon.

[2] It is now my duty as the military judge presiding at this Standing Court Martial to determine the sentence. In so doing, I have considered the principles of sentencing that apply in the ordinary courts of criminal jurisdiction in Canada and at courts martial. I have as well considered the facts relevant to this case as disclosed in the statement of circumstances and the material submitted during the course of the sentencing hearing. I

have also considered the submissions of counsel, both for the prosecution and for the defence.

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Forces, and a fundamental element of the military activity. The purpose of this system is the promotion of good conduct by allowing the proper sanction of misconduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. In doing so, it also ensures that the public interest in promoting respect for the laws of Canada is served by punishment of persons subject to the Code of Service Discipline.

[4] It has been long recognized that the purpose of a separate system of military justice or tribunal is to allow the Armed Forces to deal with matters that pertain to the respect of the Code of Service Discipline and the maintenance of efficiency and morale.

[5] As the Supreme Court of Canada recognized in *R. v. Généreux*, [1992] 1 S.C.R. 259 at page 293:

> To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

At the same page, it emphasized that in the particular context of military justice:

> Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct.

[6] That being said, punishment imposed by any tribunal, military or civilian, should constitute the minimum necessary intervention that is adequate in the particular circumstances. Moderation is the bedrock principle of the modern theory of sentencing in Canada.

[7] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and maintenance of discipline by imposing sanctions that have one or more of the following objectives:

(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.

[8] When imposing sentences, a sentencing judge must also 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; and

(e) all sentences should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[9] I came to the conclusion that in the particular circumstances of this case sentencing should place the focus on the objectives of denunciation and deterrence, not only specific deterrence, to ensure that the conduct of the offender is not repeated, but also general deterrence. Indeed, the sentence imposed should not only deter the offender but also others in a similar situation from engaging in the same prohibited conduct. I also believe that the objective of rehabilitation is important in this case, as any sentence I impose should not have extensive detrimental effects on the efforts the offender will have to make to reintegrate as a productive member of his unit and the Canadian Forces.

[10] The task of the sentencing judge is to "impose a sentence commensurate to the gravity of the offence and the previous character of the offender" as recognized in the Queen's Regulations and Orders for the Canadian Forces (QR&O). In other words, any sentence imposed must be adapted to the individual offender and the offence he or she committed. As well, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This is not a result of slavish adherence to precedent, but because it appeals to our common sense of justice that like cases should be treated in similar ways.

[11] First, the offender. Before the court is a 50-year-old medical technician posted to the Central Medical Equipment Depot here in Petawawa. He has served continuously in the Regular Force since April 1988. Following basic and occupational training, he was posted to Germany, Ottawa and Petawawa. He participated in three operational deployments since 2003: twice in Afghanistan and once in Pakistan. He is single and the sole support for his 15-year-old daughter.

[12] The three Personal Evaluation Reports for years 2012, 2013 and 2014, produced as Exhibit 9, reveal that Sergeant Morgan has been assessed as a strong performer

particularly apt in administration and management of processes and personnel. His performance scores progressed each of these years, in line with the assessment of his potential for promotion. The impact that these proceedings may have on these assessments is unknown, but it is clear that Sergeant Morgan wishes to remain in the Canadian Armed Forces.

[13] Turning now to the offence. In arriving at evaluating what would be a fair and appropriate sentence, the court has considered the objective seriousness of the offence as illustrated by the maximum punishment that the court could impose. Offences under section 129 of the *National Defence Act* are punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

[14] The circumstances of the offence were brought before the court by means of a short statement of circumstances produced as Exhibit 7, read by the prosecutor and accepted as conclusive evidence by Sergeant Morgan. Those circumstances are as follows:

> The events relating to the first charge occurred between 13 October and 21 December 2005, when the offender, then at the rank of master corporal, was the supervisor of Corporal Stoyles, a female medical technician. They were deployed in Pakistan.
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> During the deployment, Sergeant Morgan consistently flirted with Corporal Stoyles. He would touch her shoulders or her back. On one occasion, he tried to grab her hand. On another occasion, he grabbed the buttocks of Corporal Stoyles with one hand, over her combat clothing.
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> As for the events relating to the second charge, they occurred between 2007 and 2008, when both Sergeant Morgan and Master Corporal Morton, a female medical technician, were posted to the 1st Canadian Field Hospital in Petawawa.
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> During that time, Sergeant Morgan would consistently and repetitively ask Master Corporal Morton out on dates even after she had clearly stated she was not interested in that type of relationship with him.
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> On one specific occasion, during training in Wainwright, Sergeant Morgan slapped Master Corporal Morton's buttocks over her clothing. When Master Corporal Morton reacted negatively to this, Sergeant Morgan claimed it was an accident.
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> The events relating to the third charge occurred between 2010 and 2012, when both Sergeant Morgan and Corporal Lauzon, a female medical technician, were posted to the 1st Canadian Field Hospital in Petawawa.

> During this period, Sergeant Morgan consistently and repetitively tried to establish a personal relationship with Corporal Lauzon, even after she had clearly stated she was not interested. On one specific occasion, in early 2012, Sergeant Morgan inserted his hand in the back pant pocket of Corporal Lauzon and squeezed her buttocks.

[15] The circumstances of the offences demonstrate to the court a pattern of sexually harassing behaviour towards three female subordinates consisting of unwelcome advances accompanied by some touching and, in each case, either a grab, a slap or a squeeze of the buttocks, over clothing. This behaviour repeated itself on three occasions during a period of just over six years, between 2005 and 2012. One of those offences occurred in operational circumstances, while deployed in Pakistan.

[16] Counsel submitted that the facts of this case are not the most egregious instances of sexual harassment that one can consider. It was also submitted that physical contacts which occurred were fleeting in nature and non-intrusive. The Court recognizes that it is not uncommon for flirting to occur in any workplace. Yet, even if the facts constituting sexual harassment may be categorized in a scale of gravity, it remains that the occurrence of sexual harassment in a workplace is in itself serious. As found by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 at para 56:

> . . . When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[17] This principle is found in the Canadian Forces Policy at DAOD 5012-0 on Harassment Prevention and Resolution which recognizes that “All CF members and DND employees have the right to be treated fairly, respectfully and with dignity in a workplace free of harassment, and they have the responsibility to treat others in the same manner.” It is a standard which has been enforced repeatedly by the Canadian Forces leadership, both administratively and through proceedings under the Code of Service Discipline, including at courts martial. For instance, the court adopts the remarks made by Judge Lamont in the Standing Court Martial of *R. v. Corporal Priemus*, 2006 CM 2013 at paragraph 9 to the effect that victims of harassment have earned and are entitled to the respect of their peers, superiors and subordinates, adding that:

> . . . the court must also be concerned with general deterrence. Members of the Canadian Forces and especially women members who are much more frequently the [victims] of this kind of behaviour, must have the assurance that their dignity is respected by fellow members.

[18] The court acknowledges that flirtatious behaviour may occur between military members of sometimes varying ranks within a Canadian Forces workplace. Yet, in this case, the kind of behaviour was unwelcome and should have been seen as such on three occasions, over a significant period of time in relation to three female members who were subordinate in rank to the offender. The court agrees with the prosecution that these circumstances, including specifically the rank of the offender, are aggravating. Although there was no evidence of trauma caused to the victims in relation to the incidents, nor any evidence of operational impact on the units at the time, it remains that any harassing behaviour by a person of higher rank or appointment on a junior member may erode mutual confidence and respect for individuals and can lead to a poisoned work environment, as outlined in DAOD 5012-0.

[19] The court also considered the following mitigating factors, as mentioned in submissions by counsel and demonstrated by the evidence presented in mitigation, especially by defence counsel:

(a) The offender's guilty plea which the court considers as a genuine sign of remorse and an indication that the offender is taking full responsibility for what he has done. The offender communicated his plea early.

(b) The fact that this admission of responsibility occurred in a very formal and public forum of this court martial, in the presence of members of his current unit and chain of command, in relation to events which date from 3 to almost 10 years ago and occurred in other units.

(c) Sergeant Morgan's record of service with the Canadian Forces. Despite these incidents, he has been considered very positively by his superiors and was no doubt a strong asset for the Canadian Forces, as evidenced by the evaluation reports produced as exhibit before this court.

(d) Although Sergeant Morgan has a conduct sheet, it is entirely unrelated to the circumstances at play here and, therefore, should not impact on the treatment of Sergeant Morgan as a first time offender in relation to the particular behaviour subject of these charges.

(e) Finally, the age and potential of Sergeant Morgan to make a positive contribution to his unit, the Canadian Forces and, indeed, Canadian society in the future.

[20] The prosecutor and defence counsel made a joint submission on the sentence to be imposed by the court. They recommended that this court impose a sentence comprised of the punishments of a severe reprimand and a fine of $2,000 in order to meet justice requirements. Although this court is not bound by this joint recommendation, it has been determined by the Court Martial Appeal Court in *R. v. Taylor,* 2008 CMAC 1 at paragraph 21, that the sentencing judge at a court martial cannot depart from a joint submission unless there are cogent reasons for doing so.

Cogent reasons mean where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest. As a military judge, therefore, I may not like the sentence being jointly proposed, and I may think that I would have come up with something better. Yet, any such opinion I may have is not sufficient to reverse the joint submission that was made to me.

[21] In the course of the sentencing hearing, the prosecution and defence counsel presented the court with cases which may be considered as useful precedents to assist in determining the range of punishments which may be relevant to the imposition of a proper sentence in this case. This assistance is most welcome, as the court has the obligation to determine if the proposed sentence is fit. Sentences imposed by military tribunals in previous cases are useful to appreciate the kind of punishment that would be appropriate here. That being said, every case is different. For this reason, and in the circumstances, I don't see the need to go over these cases in detail in these reasons. Suffice to say that those cases show that the proposed sentence corresponds to punishments imposed in the past for similar offences. That is sufficient to allow the court to conclude that the proposed sentence is not unfit.

[22] Considering the nature of the offences, the circumstances in which they were committed, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, I am of the view that the punishments of a severe reprimand and a fine of $2,000 jointly proposed by counsel is within the range of appropriate sentences in this case. The joint submission made by counsel is not contrary to the public interest and will not bring the administration of justice into disrepute. The court will therefore accept it.

[23] Sergeant Morgan, the circumstances of the charges you pleaded guilty to reveal a behaviour that is entirely incompatible with service in the Canadian Forces. The Personal Evaluation Reports which I have read reveal that you have shown in the past the capacity to care for and develop subordinates for their successful employment and progression within the Canadian Forces. Yet, the offences you committed have the exact opposing effect: no one wishes to work for a supervisor who acts like you did. The behaviour you displayed is detrimental to the mutual confidence necessary to a productive supervisory relationship. It can lead to a loss of respect for you and a poisoned work environment which threatens operational effectiveness, productivity, team cohesion and morale within your unit. For almost 27 years you have served honorably and shown potential to succeed as a supervisor. I believe you recognize the wrong that you have done and I certainly hope that you will endeavor to move on and rehabilitate yourself with your superiors, your peers and your subordinates alike, without re-offending.

FOR THESE REASONS, THE COURT:

[24] **SENTENCES** you to a severe reprimand and a fine of $2,000 payable at a rate of $250 per month. Should you be released from the Canadian Forces before the full payment of the fine, any outstanding sum will be payable at the date of your release.

Counsel:

The Director of Military Prosecutions as represented by Major E. Carrier

Lieutenant-Commander P. Desbiens, Counsel for Sergeant Morgan