



COURT MARTIAL

Citation: *R. v. Snow*, 2015 CM 4003

Date: 20150316

Docket: 201443

Standing Court Martial

Gagetown Courtroom
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal D.T. Snow, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Snow, having accepted and recorded your plea of guilty in respect of the first charge on the charge sheet, the court now finds you guilty of that charge under section 95 of the *National Defence Act* for striking a person who by reason of appointment was subordinate to you. The Court orders a stay of proceedings in respect of the second charge, also laid under section 95 of the *National Defence Act*, and in respect of the third charge, laid under section 130 of the *National Defence Act*.

[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 as well as at courts martial. I have 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 the defence.

[3] The military justice system constitutes the ultimate mean 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 the respect of 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, the court 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. What a sentencing judge must do is, “impose a sentence commensurate with the gravity of the offence and the previous character of the offender” as stated 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.

[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 and its members;
- (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) lastly, 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, both specific and general, as 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 effect on the efforts the offender will have to make to reintegrate as a productive member of this unit, the Army and, indeed, the Canadian Forces.

[10] As mentioned above, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[11] First, the offender. Before the court is a 25-year-old infantryman posted to the 2nd Battalion of the Royal Canadian Regiment here in Gagetown. He joined the Regular Force in August 2008 after having gained previous military experience as a member of the Primary Reserve. He deployed to Joint Task Force Afghanistan in 2010. He is married and has no children.

[12] The course reports produced as Exhibit 7 and the Performance Evaluation Reports at Exhibit 9 reveal that Master Corporal Snow was an extremely promising soldier who quickly gained the confidence of his superiors, rising to the rank of corporal in May 2010, less than two years after joining the battalion, and to the appointment of master corporal in July 2013. From a course report signed in October 2013, the Court can see that Master Corporal Snow experienced personal difficulties of a marital nature, as confirmed in the Statement of Circumstances. From the moment of the commission of the offence in February 2014, the career of Master Corporal Snow suffered a significant setback, due in part to the incident, but also due to other issues which caused

his unit to lose confidence in his judgment, reliability and leadership potential, as evidenced by his most recent evaluation report at Exhibit 9, dating from May 2014.

[13] Having been placed on a recorded warning as a remedial measure for the events subject of the charge, Master Corporal Snow is expected to continue his career pending successful completion of a period of counselling and probation in May 2015. A recent evaluation expressed in a Personnel Development Review on 4 March 2015, introduced as Exhibit 12, as well as a positive correspondence from a captain within the regiment, introduced at Exhibit 11, reveal some recent improvements in Master Corporal Snow's performance.

[14] As a result of his arrest in the hours following the offence, Master Corporal Snow was detained for a few hours and released on strict conditions regarding consumption of alcohol and presence at establishments serving alcohol, conditions he has been living under for over a year.

[15] 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 may impose. An offence under section 95 of the *National Defence Act* is punishable by imprisonment for less than two years or to less punishment.

[16] The circumstances of the offence were brought before the Court by means of an extensive Statement of Circumstances, produced as Exhibit 6, read by the prosecutor and accepted as conclusive evidence by Master Corporal Snow. Those circumstances are as follows:

- (a) Sometime before the events that led to the charge, Master Corporal Snow was made aware that Corporal Joncas had previously been intimate with his wife, Mrs Snow. Corporal Joncas had met Mrs Snow at the Canadian Forces Base (CFB) Gagetown gym during October 2013. They began being intimate at that time and their relationship lasted until December 2013 or the beginning of January 2014.
- (b) On 10 February 2014, Master Corporal Snow's Company Sergeant Major was made aware that Corporal Joncas had previously been intimate with Mrs Snow. He decided to organize a meeting between Master Corporal Snow and Corporal Joncas in his presence on 12 February 2014 to discuss the situation. In the meantime, Master Corporal Snow was placed on leave, not to return before 12 February 2014, to avoid contact between the two members.
- (c) On Tuesday, 11 February 2014, at around 1235 hours, at CFB Gagetown, Corporal Joncas was driving back to work from lunch and pulled into the parking lot of building D57. Shortly after, Master Corporal Snow drove his personal vehicle and stopped in front of

Corporal Joncas' vehicle, in a way that would have prevented Corporal Joncas to leave.

- (d) Master Corporal Snow then exited his vehicle, leaned against it, crossed his arms and stared at Corporal Joncas. Corporal Joncas exited his vehicle. Master Corporal Snow then walked towards Corporal Joncas. A short tense conversation ensued. Master Corporal Snow's demeanour was aggressive.
- (e) Master Corporal Snow then struck Corporal Joncas with his arms and hands. This resulted in Corporal Joncas being pushed on the ground with Master Corporal Snow on top of him. Corporal Joncas managed to get up for a second, but was pulled back on the ground. He was then face down with Master Corporal Snow's knee pushing on the back of his head. Corporal Joncas did not initiate the confrontation.
- (f) Corporal Perron and Corporal Parnell witnessed the events. They both ran toward and reached Corporal Joncas and Master Corporal Snow at the point where Corporal Joncas was face down on the ground with Master Corporal Snow on top of him. Corporal Parnell put his arms around Master Corporal Snow and tried to defuse the situation verbally. Corporal Parnell stated, "You're a master corporal, this isn't the place." Corporal Perron also intervened by placing his hand on Master Corporal Snow's arm repeating, "He's had enough." Soon after, Master Corporal Snow moved away from Corporal Joncas, went back to his vehicle and drove away.

[17] Having summarized the circumstances of the offence as described in the essential facts contained in the Statement of Circumstances, read by the prosecutor and accepted as conclusive evidence by Master Corporal Snow, the Court makes the following conclusions on the subjective gravity of the offence in the circumstances of this case:

- (a) The offence, while objectively serious, was not committed in operational circumstances, in the sense that it did not involve use of violence in the course of the accomplishment of military tasks.
- (b) Yet the offence was committed at the unit and required the intervention of unit personnel, who were well aware of the rank and responsibilities held by Master Corporal Snow as a member of the battalion.
- (c) Although the offence did not result in serious, permanent injuries to Corporal Joncas, it remains significant as any assault by a person of higher rank or appointment on a junior member undermines the military leadership principle which requires senior personnel to take care of the well-being of subordinates, specifically those serving within the same

organization, such as India Company of the 2nd Battalion of Royal Canadian Regiment in this case.

[18] The Court considers aggravating, in the circumstances of this case, the following elements underlined by the prosecutor, and described above, in illustrating the subjective seriousness of the offence:

- (a) Indeed, the offence showed a blatant disregard to the safety of Corporal Joncas, a subordinate, and has caused more than an insignificant disruption to the unit.
- (b) The offence involved a degree of premeditation in the way it was committed as Master Corporal Snow initiated the encounter with Corporal Joncas.
- (c) Most importantly, the circumstances show a clear disregard to the method privileged by unit authorities to deal with the delicate matter of Corporal Joncas having been intimately involved with Master Corporal Snow's wife, namely a meeting organized in unit lines under the supervision of senior non-commissioned officers. Clearly, in confronting Corporal Joncas in the manner he did, Master Corporal Snow had taken matters in his own hands and has shown very poor judgment indeed.

[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) First and foremost, 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. This admission of responsibility occurred in a very formal and public forum of this court martial, in the presence of members of his unit and chain of command.
- (b) The fact that Master Corporal Snow was under significant stress at the time of the commission of the offence, dealing with a challenging emotional situation, a factor which does not in any way excuse him from using violence however.
- (c) Master Corporal Snow's record of service with the Canadian Forces. Before incidents of February 2014, he was 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 exhibits before this Court.

- (d) The absence of a conduct sheet, indicating that Master Corporal Snow is to be treated as a first-time offender and revealing that the offence is somewhat out of character for him.
- (e) The administrative consequences of the offence, specifically the steps that Master Corporal Snow had to take as a result of the recorded warning to seek assistance in mental health and anger management, and the fact that he had to face significant restrictions since being released from custody on 11 February 2014.
- (f) Finally, the age and potential of Master Corporal Snow to make a positive contribution to his battalion, the Army, the Canadian Forces, and, indeed, Canadian society in the future, even if his military career was to come to an end.

[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 composed of the punishment of detention for a period of seven days and a fine of \$1,000 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, 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 counsel presented the Court with numerous 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 unfit. 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 in its circumstances, and, therefore, 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 offence, the circumstances in which it was committed, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, I am of the view that the punishments of detention for a period of seven days and a fine of \$1,000 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] The prosecution took the view that the Court did not need to make a prohibition order under section 147.1 of the *National Defence Act*, despite the fact that Master Corporal Snow was convicted of an offence “in the commission of which violence against a person was used.” The defence agreed. The Court has considered the issue and concluded that given the circumstances of the offence, it would not be desirable to make a prohibition order. Furthermore, there has been no application made by the prosecution for Forensic DNA Analysis under Division 6.1 of the *National Defence Act*.

[24] Master Corporal Snow, the circumstances of the charge you pleaded guilty to reveal a behaviour that is entirely unacceptable for a member in the Canadian Forces. You have clearly gone through a difficult situation with your marriage, yet that happens to many people. It is not a reason to resort to violence. Anyone who behaves like you did on 11 February 2014 should find him or herself before a judge to answer for their action. But, in your case, your conduct involves a distinct military aspect: you are trained to use violence that is controlled to achieve a military mission, not to serve personal vengeance against the law. You have also been entrusted by your leadership with an appointment as master corporal in recognisance of your capacity and ability to control the actions of subordinates, not to show them a very bad example. You have chosen the military profession and have demonstrated in the past that you have what it takes to succeed in it. I believe you recognize the wrong you have done and hope that you will endeavor to serve your punishment appropriately and move on to rehabilitate yourself with superiors, peers and subordinates alike, without re-offending.

FOR THESE REASONS, THE COURT:

[25] **FINDS** you guilty of Charge 1 on the Charge Sheet.

[26] **DIRECTS** a stay of proceedings on Charges 2 and 3.

[27] **SENTENCES** you to detention for a period of seven days and a fine of \$1,000, payable forthwith.

Counsel:

Major D. Martin, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major S.L. Collins, Directorate of Defence Counsel Services
Counsel for Master Corporal D.T. Snow