



COURT MARTIAL

Citation: *R.v. Jackson*, 2015 CM 4012

Date: 20150616

Docket: 201524

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal G.D. Jackson, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Corporal Jackson, having accepted and recorded your plea of guilty in respect of the one charge on the charge sheet, the court now finds you guilty of that charge under section 117(f) of the *National Defence Act* for having committed an act of a fraudulent nature; namely, the use of a DND credit card for personal purchases totalling approximately \$20,000 between January 2011 and September 2014.

Matters considered

[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 considered as well 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.

Purpose of the Military Justice System

[3] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Armed 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 successful missions in a trusting and reliable manner. In doing so, it also ensures that the public interest in promoting respect for the laws of Canada is served by the punishment of persons subject to the Code of Service Discipline.

Objectives of sentencing

[4] 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 Armed 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.

Principles applicable to sentences

[5] 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.

[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. For a court martial, this means imposing a sentence composed of the minimum punishment or combination of punishments necessary to maintain discipline.

[7] The Queen's Regulations and Orders require that the judge imposing a sentence at a court martial considers any indirect consequence of the finding or the sentence, and "impose[s] a sentence commensurate with the gravity of the offence and the previous character of the offender." Any sentence imposed must be adapted to the individual offender and the offence he or she committed.

The offender

[8] Before the court is a 38-year-old Mobile Support Equipment Operator, who has been serving since July 2010 with the headquarters of the Canadian Special Operations Forces Command in Ottawa. He joined the Regular Force in May 2003 after service with the Primary Reserve since 1999. In the Regular Force, he has served mainly in CFB Petawawa with 2 Service Battalion between operational assignments to the Golan Heights, CFS Alert and Joint Task Force Afghanistan. He is married and has two daughters.

[9] The defence produced Personnel Evaluation Reports, Course Reports and various letters and reports covering essentially the entire period of service of Master Corporal Jackson, Regular Force and Reserve, between July 1999 and March 2014, that is, before the offence subject to the plea was investigated. These documents portray Master Corporal Jackson as a soldier who has made a positive contribution to the Canadian Armed Forces through good attitude, motivation, intellectual capacities and leadership. His last three formal Personnel Evaluation Reports in his current rank reveal that his performance exceeded standards and that he has above average potential for promotion to the rank of Sergeant. Yet, the court is not prepared to extrapolate from those past evaluations as to what the leadership potential of Master Corporal Jackson is today, now that he has admitted to committing the acts of a fraudulent nature described in the charge. There has been no evidence introduced to that effect.

The offence

[10] 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 117(f) of the *National*

Defence Act are punishable by imprisonment for less than two years or to less punishment.

[11] The circumstances of the offence were brought before the court in large part by means of a short statement of circumstances produced as Exhibit 6, read by the prosecutor and accepted as conclusive evidence by Master Corporal Jackson. Those circumstances are as follows:

- (a) Master Corporal Jackson was posted to the Canadian Special Operations Forces Command (CANSOFCOM) in July 2010. On 19 July 2010, he was issued a DND credit card for the purchase of fuel in connection with his employment with CANSOFCOM.
- (b) Upon receiving the credit card, Master Corporal Jackson was informed of his responsibilities and obligations with regards to the use of the credit card. He signed two documents, acknowledging that the DND credit card issued to him was for the sole use of fuel purchases as required in the course of his regular military duties.
- (c) Master Corporal Jackson had possession and was the sole user of the credit card from 19 July 2010 to 10 September 2014.
- (d) In January 2011, due to financial hardship, Master Corporal Jackson started using the credit card for personal fuel purchases. Until September 2014, he used the credit card to purchase fuel for his personal vehicles at different locations in Ontario. The total amount spent by Master Corporal Jackson for his personal benefit through the use of the credit card was approximately \$20,000.
- (e) On 10 September 2014, Master Corporal Jackson voluntarily submitted a written statement to the Military Police confirming the information related above and expressing remorse for his actions.

[12] The circumstances of the offences demonstrate to the court a pattern of dishonesty occurring over a period of over two and a half years. The offender has filled his personal vehicle on a significant number of occasions commencing six months after being entrusted with the credit card and ending as the investigation commenced in September 2014. The extent of the fraudulent acts is evidenced by the amount the Crown was defrauded of, totalling approximately \$20,000.

Aggravating factors

[13] The court acknowledges the representations of the prosecutor to the effect that a serious crime has been committed by Master Corporal Jackson. The offence diverted

funds allocated by the Crown to national defence purposes to the private purse of the offender and, in that sense, it is not a victimless crime. The amount of the fraud is far from being insignificant. Even if Master Corporal Jackson was facing only one charge, he had to misuse the DND credit card entrusted to him on numerous occasions. In other words, he failed to avail himself of many opportunities to realize that what he was doing was wrong and to come clean. The financial hardship of an undisclosed nature experienced at the time did not excuse his behaviour. Master Corporal Jackson's actions were rendered possible by the confidence shown to him by his chain of command who entrusted him with a DND credit card. In using this card for personal fuel purchases, he betrayed that trust. This is a significant aggravating factor in the circumstances.

Mitigating factors

[14] 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. Master Corporal Jackson's guilty plea which the court considers as a genuine sign of remorse and an indication that he is taking full responsibility for what he has done before this court martial.
- b. Master Corporal Jackson's cooperation with the investigators and the early communication of his intent to plead guilty, which avoided the expenses related to the preparation and conduct of a full trial.
- c. Master Corporal Jackson's record of service with the Canadian Armed Forces. By all indications, he has been considered positively by superiors and was no doubt a strong asset, as evidenced by the material produced as Exhibits 7 to 9. Incidentally, contrary to the submission of the prosecution, I cannot find that any of the aggravating circumstances listed at section 380.1 of the *Criminal Code* would apply here for two reasons: First, the prosecution has chosen to use the less severe charge under section 117(f) of the *National Defence Act* to sanction the behaviour of the offender in this case, as opposed to charging under section 130 of the *National Defence Act* for fraud contrary to section 380 of the *Criminal Code*. The aggravating circumstances at section 380.1 are considered only when imposing a sentence for fraud under the *Criminal Code*. Second, even if I wanted to be inspired by the circumstances at section 380.1 of the *Criminal Code*, the offence does not preclude the consideration of Master Corporal Jackson's positive record of service as a mitigating factor: there are no indications that his record contributed nor was used in any way in the commission of the offence nor are there indications that performance was a factor in entrusting him with a DND credit card. The Statement of Circumstances is to the effect that the card was required as a result of his employment as Mobile Support Equipment Operator with CANSOFCOM.

- d. The absence of record. Master Corporal Jackson is a first-time offender in relation to the particular behaviour subject of the charge he pleaded guilty to.
- e. The age and potential of Master Corporal Jackson to make a positive contribution to the Canadian Armed Forces, should he be retained in the service, but also to Canadian society in the future.

Objectives of sentencing to be emphasized in this case

[15] I came to the conclusion that, in the particular circumstances of this case, sentencing should place the focus on the objectives of denunciation and general deterrence. Indeed, as recognized by Clayton Ruby in his seminal text on Sentencing, 8th edition at pp. 1021-1022:

"In a modern state where massive amounts of public funds are distributed, a wide variety of citizens may succumb to the temptation to misrepresent their qualifications in order to receive benefits to which they are not entitled. . . . The general deterrence of other like-minded persons continues as a basic theme in sentencing in this area."

[16] In addition, the CMAC in *R. v. St-Jean* (CMAC 429 of 8 February 2000 by Letourneau J.A.) had this to say at paragraph 22 about the objectives to be emphasized in cases of fraud by members of the Canadian Forces in relation to their employment:

In a large and complex public organization such as the Canadian Forces which possesses a very substantial budget, manages an enormous quantity of material and Crown assets and operates a multiplicity of diversified programs, the management must inevitably rely upon the assistance and integrity of its employees. No control system, however efficient it may be, can be a valid substitute for the integrity of the staff in which the management puts its faith and confidence. A breach of that faith by way of fraud is often very difficult to detect and costly to investigate. It undermines public respect for the institution and results in losses of public funds. Military offenders convicted of fraud, and other military personnel who might be tempted to imitate them, should know that they expose themselves to a sanction that will unequivocally denounce their behaviour and their abuse of the faith and confidence vested in them by their employer as well as the public and that will discourage them from embarking upon this kind of conduct. Deterrence in such cases does not necessarily entail imprisonment, but it does not *per se* rule out that possibility even for a first offender.

[17] I also believe that the objective of rehabilitation remains present 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, indeed, society. Yet, this objective is in the background, not at the forefront.

The joint submission of counsel and its effect

[18] Both counsels in this case have jointly proposed that the sentence be constituted solely by a punishment of detention for a period of 60 days.

[19] 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.

[20] 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 more appropriate. Yet, any such opinion I may have is not sufficient to reverse the joint submission that was made to me.

[21] The prosecution and defence have agreed that imposing a punishment of detention is required and adequate in a case such as this one. I agree with their assessment. Even if sentences for offences under section 117(f) of the *National Defence Act* are more frequently dealt with by a combination of a severe reprimand and fine, this is by virtue of the less severe nature of that offence in relation to other offences of fraud under the *Criminal Code* or in relation to offences of “stealing while entrusted” under the *National Defence Act*. It is also because of the fact that generally there are lesser amounts involved in charges under section 117(f). Given the significant amount of the deprivation suffered by the Crown in this case, I believe that detention is appropriate and constitutes the minimum punishment to meet the objective of deterrence in this case.

[22] Also, even if courts have often preferred punishments of imprisonment for behaviour of a criminal nature such as the acts of a fraudulent nature present here, the case law discussed by counsel during the sentencing hearing reveals that detention has also been imposed in similar cases. The reluctance expressed in imposing detention as opposed to imprisonment, most notably in the decision of the Chief Military Judge in *R. v. Master Corporal C. Poirier*, 2007 CM 1023 at paragraph 15, was very much linked to charges of fraud under section 130 of the *National Defence Act*, contrary to section 380 of the *Criminal Code*. There is no such charge of fraud at play here.

[23] As for the duration of the period of detention proposed, I conclude from the cases discussed by counsel that for acts of a fraudulent nature in circumstances similar to this case, a period of detention for 60 days is within an appropriate range and is not unfit.

[24] 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 punishment of detention for a

period of 60 days jointly proposed by counsel can be considered as appropriate and the minimum necessary punishment in this case. The joint submission made by counsel is not contrary to the public interest and its acceptance will not bring the administration of justice into disrepute. I will, therefore, accept it.

[25] In reaching this conclusion, I am aware of the indirect consequence of such a sentence. The conviction of Master Corporal Jackson and the imposition of the punishment of detention will not only appear on the offender's conduct sheet but will also carry out a consequence that is often overlooked, which is that Master Corporal Jackson will now have a criminal record.

[26] Master Corporal Jackson, the circumstances of the charge you pleaded guilty to reveal an extremely disappointing behaviour that's incompatible with the services you have provided in the past. You have been a good soldier. I believe you recognize the wrong you have done. Although this court martial may signal the end of formal disciplinary proceedings against you, it marks the beginning of the efforts you now need to make to pay your debt to society and the Canadian Armed Forces and to rehabilitate yourself with fellow soldiers and superiors. I trust you will learn a lesson from this and that you will be able to move on with your life without re-offending.

FOR THESE REASONS, THE COURT:

[27] **FINDS** you guilty of the first charge, for an offence under section 117(f) of the *National Defence Act*.

[28] **SENTENCES** you to detention for a period of 60 days.

Counsel:

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

Major S. Collins, Counsel for Master Corporal Jackson