



COURT MARTIAL

Citation: *R. v. Stillman*, 2013 CM 4029

Date: 20131024

Docket: 201322

Standing Court Martial

Canadian Forces Station Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal C.J. Stillman, Offender

Before: Lieutenant-Colonel J-G Perron, M.J.

REASONS FOR SENTENCE

(Orally)

[1] You have been found guilty by this Standing Court Martial of having discharged a firearm with intent contrary to section 244 of the *Criminal Code of Canada*, of discharging a firearm recklessly contrary to section 244.2 of the *Criminal Code*; of aggravated assault contrary to section 268 of the *Criminal Code*; of using a firearm in the commission of an offence contrary to section 85 of the *Criminal Code* and of possession of a loaded restricted firearm contrary to section 95 of the *Criminal Code*. Every charge was laid under section 130 of the *National Defence Act*. You did not plead guilty to these charges but you admitted, under Military Rule of Evidence 37(b), the facts necessary to prove these five offences. The court must now impose a fit and just sentence.

[2] Firstly, I will briefly review the facts of this case. Master Corporal Stillman had spent the night of 28/29 July 2012 at the residence of Bombardiers Trimm and Cote at Canadian Forces Base Shilo. They had been drinking and socializing. Master Corporal Stillman had an argument with Bombardier Trimm and Bombardier Trimm told Master Corporal Stillman to leave, but Master Corporal Stillman refused. Bombardier Trimm

then told Master Corporal Stillman to stay where he was, and Bombardier Trimm went upstairs to wake Bombardier Cote so that he could help him to get Master Corporal Stillman to leave. While Bombardier Trimm was in Bombardier Cote's bedroom, Master Corporal Stillman appeared in the doorway to the bedroom. Bombardier Trimm thought that Master Corporal Stillman was in a stance that Bombardier Trimm took to mean that Master Corporal Stillman was getting ready to fight. Bombardier Trimm immediately went to where Master Corporal Stillman was standing, and punched him in the head. Bombardier Trimm hit Master Corporal Stillman to the head numerous times causing cuts to Master Corporal Stillman's head, bruising, and swelling to one of Master Corporal Stillman's eyes. Master Corporal Stillman left the residence. At approximately 0600 hours on 29 July 2012, he came back to the residence and shot Bombardier Trimm in the leg and, shortly later, he shot at Bombardier Cote. Master Corporal Stillman was arrested by the military police shortly thereafter while he was still on base.

[3] As indicated by the Court Martial Appeal Court (CMAC), sentencing is a fundamentally subjective and individualized process where the trial judge has the advantage of having seen and heard all of the witnesses and it is one of the most difficult tasks confronting a trial judge (see *R. v. Tupper*, 2009 CMAC 5, paragraph 13).

[4] The Court Martial Appeal Court also clearly stated in *Tupper* that the fundamental purposes and goals of sentencing as found in the *Criminal Code of Canada* apply in the context of the military justice system and a military judge must consider these purposes and goals when determining sentence. Section 718 of the *Criminal Code* provides that the fundamental purpose of sentencing is to contribute to "respect for the law and the maintenance of a just, peaceful and safe society" by imposing just sanctions that have 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;
- (e) to provide reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community.

[5] The sentencing provisions of the *Criminal Code*, sections 718 to 718.2, provide for an individualized sentencing process in which the court must take into account not only the circumstances of the offence, but also the specific circumstances of the offender. A sentence must also be similar to other sentences imposed in similar circumstances. The principle of proportionality is at the heart of any sentencing. Proportionality means

a sentence must not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence, but a sentence is also a “form of judicial and social censure.” A proportionate sentence may express, to some extent, society’s shared values and concerns.

[6] A judge must weigh the objectives of sentencing that reflect the specific circumstances of the case. It is up to the sentencing judge to decide which objective or objectives deserve the greatest weight. The importance given to mitigating or aggravating factors will move the sentence along the scale of appropriate sentences for similar offences.

[7] The CMAC also indicated that the particular context of military justice may, in appropriate circumstances, justify and, at times, require a sentence which will promote military objectives (see *Tupper*, paragraph 34). But one must remember that the ultimate aim of sentencing in the military context is the restoration of discipline in the offender and in the military society. The court must impose a sentence that should be the minimum necessary sentence to maintain discipline.

[8] Only one sentence is imposed upon an offender, whether the offender is guilty of one or numerous offences, and the sentence may be composed of more than one punishment.

[9] The prosecution and your defence counsel have jointly proposed a sentence of imprisonment for a period of six years and dismissal from Her Majesty’s service. The CMAC has stated clearly that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or unless the sentence is, otherwise, not in the public interest.

[10] The prosecution suggests that the following principles of sentencing apply in this case: denunciation and general and specific deterrence. The prosecution has provided this court with four cases in support of its submission that the proposed joint sentence is the minimum sentence in this matter. Defence counsel asserts that rehabilitation is an important sentencing principle in this case.

[11] I consider the following to be aggravating:

- (a) These offences are, objectively, very serious offences since sections 85, 244, 244.2 and 268 have a maximum sentence of fourteen years’ imprisonment and section 95 has a maximum punishment of ten years. Section 244 has a minimum sentence of five years and section 244.2, four years, and section 85 is one year, but consecutive to any other sentence imposed. One can clearly see that Parliament wished to severely punish offenders who use firearms.
- (b) Subjectively, these are also very serious offences. You shot a fellow soldier in the leg and you shot at a fellow soldier. Why? Because you had

lost control. You can count yourself very lucky that you did not kill them. Bombardier Trimm will most likely recover without any physical consequences. Again, you should count yourself lucky.

- (c) Restricted firearms, your Remington model 1911R1 semi-automatic .45 calibre pistol, in our case, are weapons that are highly controlled in Canada and it is not a right to own one. You broke numerous laws pertaining to this weapon and you used it against fellow soldiers.
- (d) You discharged your firearm in the residential area of the base. You could also have injured other innocent persons living in the immediate area.

[12] While I will accept your psychologist's opinion that you mostly reacted to the assault by Bombardier Trimm, there was nonetheless some degree of planning and premeditation in that you had to walk to your room in building L132, and get your pistol from your locked handgun case. You retrieved a magazine and .45 calibre ammunition. You loaded the pistol, and walked with it back to Bombardiers Trimm and Cote's residence. When one looks at Exhibit 6, a partial map of CFB Shilo, one sees that you had to walk a fair distance. You had time to think. You could have remained at your room, you could have gone to the base hospital, you could have gone to the military police; but, you chose to do as you did.

[13] Alcohol was surely an important factor in this sad incident. Your psychologist stated he felt it was a key aspect of these offences. While one cannot condone what Bombardier Trimm did to you, he did apologize to you when you returned. You did not reconsider your intentions, but just shot him and left. That is not the type of behaviour that we teach and expect in the Canadian Forces. That is not the type of behaviour that is acceptable in Canadian society. You might have reacted quite differently if you had not been under the influence of alcohol, but that was not the case.

[14] I will now examine the mitigating factors in this case:

- (a) You do not have a conduct sheet; thus, you are a first-time offender. You were forty years old at the time of the offence. You had joined the Canadian Forces in 1994, left in 1997 and had rejoined in 2000.
- (b) Your platoon commander testified and she spoke very highly of you. You are an excellent worker and good role model for your peers and subordinates. Warrant Officer Gerrow has also commented on your excellent performance (Exhibit 12). They are excellent evaluation reports and indicate that you have earned the respect of your peers and superiors through your consistent efforts. The letters of appreciation, found at Exhibit 10, also demonstrate that you perform your tasks very well and are appreciated. You have also complied with numerous onerous release

conditions for the last fifteen months. You have deployed three times in the course of your career, once in Bosnia and twice in Afghanistan.

- (c) Your actions, since the offences, demonstrate that you have the potential to rehabilitate and to address the emotional and psychological difficulties that contributed to your actions. Your psychologist has described you as an ideal patient who strives to follow his treatments such as faithfully attending your AA meetings and any other counseling session prescribed. You have even shown leadership within these groups and have helped fellow patients.
- (d) You threw your pistol to the ground, raised your hands and immediately admitted that you had shot someone when you were initially approached by the military police.
- (e) The court was informed of your psychological and emotional problems. Your psychologist provided a good description of your mental state at the time of the offences and today. He offered a positive prognosis, but, of course, he cannot predict the future. You have made much progress since July 2012; I encourage you to keep up the hard work.
- (f) It would appear that you would have cried for help shortly before you were posted from Edmonton to Shilo, but that not much was done. I cannot comment much on this situation since I have received little information on it. I will not speculate whether this situation might have been prevented had you been treated in Edmonton.
- (g) You exercised your right to plead not guilty. While you did not plead guilty to these charges, you did make admissions that provided this court with the facts that proved beyond a reasonable doubt that you had committed these offences. Your counsel explained that you chose this route because you wished to conserve your right of appeal should you decide to do so. These admissions mean that witnesses do not have to appear before this court martial and probably means a saving of time and money.
- (h) You have done what few offenders do; you testified and you expressed your remorse. I believe you. I believe that you fully realize that you did a very wrong thing. I agree with the prosecutor that you can still be a productive member of Canadian society after you will have served your sentence.

[15] This sentence must focus primarily on the denunciation of the conduct of the offender and on general deterrence but it must also focus on the rehabilitation of the offender.

[16] In determining the appropriate sentence, the court has considered the circumstances surrounding the commission of these offences, the mitigating and aggravating circumstances and the representations by the prosecution and by your defence counsel as well as the applicable principles of sentencing.

[17] I agree with counsel that you are not the type of offender that deserves more than the minimum sentence imposed by law. The Court has, thus, come to the conclusion that the proposed sentence would not bring the administration of justice into dispute and that the proposed sentence is in the public interest. Therefore, the court agrees with the joint submission of the prosecutor and of your defence counsel.

FOR THESE REASONS, THE COURT:

[18] **SENTENCES** Master Corporal Stillman to a period of imprisonment of six years and dismissal from Her Majesty's service.

Counsel:

Lieutenant-Colonel S. Richards, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services
Counsel for Master Corporal C.J. Stillman