



COURT MARTIAL

Citation: *R. v. Booth*, 2015 CM 4015

Date: 20150923

Docket: 201402

General Court Martial

Canadian Forces Base Gagetown
Gagetown, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Corporal B.R. Booth, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Prior to the panel of this General Court Martial assembling, Corporal Booth submitted a guilty plea on the fourth charge on the charge sheet, under section 129 of the *National Defence Act* for an act to the prejudice of good order and discipline, relating to events which occurred during a basic Reserve infantry course at Canadian Forces Base (CFB) Gagetown in August 2013, when he brought in or consumed alcohol into an assigned quarter, contrary to his Commanding Officer's Standing Orders.

[2] After a full trial on the first three charges on the charge sheet, relating to one charge of disgraceful conduct and two alternative charges of conduct to the prejudice of good order and discipline, the panel of this General Court Martial returned a verdict of not guilty on those charges.

[3] It is now my duty as the military judge presiding this General Court Martial to determine the sentence in relation to the fourth charge, on which I have accepted a guilty plea. 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 also 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, as well as testimony and the submissions of counsel, both for the prosecution and for the defence.

Objectives and principles of sentencing

[4] The military justice system constitutes the ultimate means to enforce discipline in the Canadian Armed Forces, and a fundamental element of 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 punishment of persons subject to the Code of Service Discipline.

[5] 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 others from committing the same offence;
- (d) to separate offenders from society where necessary; and
- (e) to rehabilitate and reform offenders.

[6] 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 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.

[7] 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 as, indeed, the sentence should aim at restoring discipline in the offender and in military society.

[8] 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.

The offender

[9] Before the court is a 21-year-old Reserve Force infantry soldier at the rank of corporal, who is a member of the Cape Breton Highlanders. He has been serving continuously in the Reserve Force since he was recruited in February 2013, at the age of 19. He completed his first formal course with the military at his home unit in Sydney, Nova Scotia in July 2013 and moved on to attend the next phase of his infantry training at CFB Gagetown in August 2013, but was taken off that course as a result of the events which lead to this trial. He did the course over successfully in August 2014 and since then has had a successful progression as a member of the Reserve Force on a part and full-time basis.

[10] In his civilian life, Corporal Booth is currently completing a political science degree with the University of New Brunswick in Fredericton. He has been active in his community in Cape Breton and his accomplishments were outlined in the press in 2015, in relation to a crime prevention programme and a local campaign to make a case for the continued operation of a lighthouse on the Cape Breton coast. He has a spouse and the couple is expecting the birth of a child in the near future. Corporal Booth wishes to continue his studies and eventually apply for admission to law school. The information provided by the prosecution under QR&O 112.51 reveals that Corporal Booth has no conduct sheet and no civilian convictions.

The offence

[11] 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 this 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.

[12] The circumstances of the offences were brought before the court by means of a short statement of circumstances, produced as Exhibit 26, read by the prosecutor and accepted as conclusive evidence by Corporal Booth. Those circumstances are as follows:

- (a) Corporal Booth, then a Private, was a student on the DP1 Infantry Module 1 course, serial 0034 that ran on CFB Gagetown from 6 to 30 August 2013.
- (b) On 8 August 2013, Corporal Booth signed the Commanding Officer's of the 5th Canadian Division Training Centre Orders and In-Routine, which contained the unit alcohol policy and an order prohibiting candidates from storing or consuming beer, wine and spirits in single or assigned quarters. He had been briefed and was fully aware of the prohibition.
- (c) On the second week of the course, Corporal Booth brought a half full bottle of Captain Morgan rum into his assigned shared quarters. On one occasion, he further was observed by fellow students on the course drinking alcohol in his assigned shared quarters.

Mitigating factors

[13] The court considers the following factors mitigating in this case:

- (a) first and foremost, the offender's guilty plea which the court considers as an indication that the offender is taking full responsibility for what he has done;
- (b) the fact that the offender admitted his responsibility for the offence early and communicated his intent to plead guilty early;
- (c) the time that has elapsed since the commission of the offence;
- (d) the immaturity of the offender at the time of the offence: he was then at his first full-time course away from home in the Canadian Armed Forces at the age of 19;
- (e) the fact that the offender had never been charged before or since and this is his first presence before a military or civilian tribunal; and
- (f) the young age and potential of Corporal Booth to make a positive contribution to Canadian society, not only as a Reservist with the

Canadian Armed Forces, but also, and importantly in his civilian life where he has shown aptitudes to contribute positively to his community.

Aggravating factors

[14] The offence to which the offender has admitted his guilt is not infrequent yet cannot be excused. There are many excellent reasons why a commanding officer may wish to issue orders prohibiting candidates from storing or consuming beer, wine and spirits in single or assigned quarters, including safety and discipline. The offender in this case was undergoing basic infantry training at the time of the offence, an intense course requiring regular inspections in quarters, which constitutes an important part of the workplace of the participants on the course. One of the most important values for soldiers is obedience. Complying with orders is fundamental to achieve any objectives in a military organization. It is, therefore, particularly important that this value be respected in training, most importantly basic training.

[15] In the circumstances I outlined earlier, the offender has chosen to disregard an order with which he was entirely familiar, and to do so in shared quarters where he was bound to be viewed by other members of his course, thereby setting a very bad example. I find that violating such a simple and well-known Standing Order is a challenge to the authority of his commanding officer and, indeed, the entire chain of command. Doing so in a manner which would likely be known by his peers is aggravating. The offence committed here constitutes a direct attack on discipline at the unit.

Objectives of sentencing to be emphasized in this case

[16] These circumstances require that, in sentencing the offender in this case, the court place the focus on the objectives of denunciation and general deterrence

The joint submission of counsel and its effect

[17] The prosecutor and defence counsel made a joint submission on the sentence to be imposed by the court. They both recommended that this court impose the punishment of a fine in an amount of \$400 in order to meet justice requirements.

[18] The representative of the Director of Military Prosecutions in this case represents the public interest in the respect for the law and lawful authority and punishment of those who break the law. In the context of the military justice system, that public interest includes the interest of military authorities in the maintenance of discipline. The prosecutor is well placed to know what this interest requires. Yet, it is up to the court to decide what sentence is appropriate. Although this court is not bound by the 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.

[19] I have no reason to believe that the sentence proposed is unfit. The court martial case of *R. v. Leblanc*, 2010 CM 4011 was submitted to my attention pertaining to consumption of alcohol in quarters. Despite the dissimilarities in rank which lead to the approval of a different joint sentence than what is being proposed here, I find that it is a useful precedent to allow me to conclude that the fine of \$400 being jointly proposed is within a range which allows the proper sanction of the conduct of the offender who disregarded a Standing Order of his commanding officer in the presence of other members of his unit. This sentence can meet the objectives of denunciation and general deterrence. It signals that the offender is not getting away from his responsibilities, and contributes in meeting the objectives of denouncing the behavior and deterring others from engaging in the same kind of conduct.

[20] 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 a fine of \$400 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.

[21] Corporal Booth, the circumstances of the offence you committed show a behaviour of disrespect for rules that is incompatible with the very important value of discipline that every member of the military must embrace to have success in the Canadian Armed Forces. I hope this was a lapse in judgement and that you have learned a lesson from it. You have now been convicted of a service offence. You should make sure that it does not happen again if you wish your career goals to materialize in the future.

FOR THESE REASONS, THE COURT:

[22] **SENTENCES** you to a fine of \$400 payable in two payments of \$200 each, the first being due no later than 1 October 2015 and the other no later than 1 November 2015.

Counsel:

The Director of Military Prosecutions, as represented by Major D.G.J. Martin

Major D. Hodson, Defence Counsel Services, Counsel for Corporal B.R. Booth