



## COURT MARTIAL

**Citation:** *R. v. Komoroci*, 2016 CM 1003

**Date:** 20160217

**Docket:** 201532

General Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman S.A.L. Komoroci, Offender**

**Before:** Colonel M. Dutil, Chief Military Judge

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### REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Komoroci has admitted his guilt on 15 February 2016 to one count of possession of child pornography, an offence punishable under section 130 of the *National Defence Act*, contrary to subsection 163.1(4) of the *Criminal Code of Canada*. The particulars of the charge read as follows:

“In that he, on or about 13 December 2013, at or near Victoria, British Columbia, did have in his possession child pornography, to wit: images and videos, contrary to section 163.1(4) of the *Criminal Code*.”

[2] The facts surrounding the commission of the offence are revealed in the statement of circumstances filed with the court at Exhibit 7. In a nutshell, it provides the following information: Leading Seaman Komoroci enrolled in the Canadian Armed Forces (CAF) on 26 March 2003 in the trade of naval communicator. He was promoted to his present rank on 20 April 2007 and completed trade qualification courses including qualification level 5A in 2008 and navigator’s yeoman in 2012. As part of his employment, Leading Seaman Komoroci is trained to operate and administer computers and computer networks. He has served as a naval communicator on board numerous

Royal Canadian Navy ships, at Maritime Pacific Headquarters, Canadian Fleet Pacific Headquarters (CANFLTPAC HQ) and at Fourth Maritime Operations Group Headquarters as well as in various other units on Canada's west coast. Leading Seaman Komoroci deployed in HMCS *Ottawa* for Operation (OP) ALTAIR, Task Force ARTEMIS from 27 September 2006 to 14 March 2007. OP ALTAIR was Canada's contribution of warships to operations supporting OP ENDURING FREEDOM in the Persian Gulf and the Arabian Sea. Leading Seaman Komoroci was awarded the General Service Medal – South-West Asia, with Afghanistan Bar on 8 February 2007.

[3] Leading Seaman Komoroci was posted ashore to CANFLTPAC HQ in 2011 and, apart from a number of short periods at sea, he worked in west coast Royal Canadian Navy HQ shore postings as a naval communicator from 2011 until August 2014. During that time, he often performed naval communicator duties at the Patrol Craft Training Section (PCTS) including throughout the summer and fall of 2013, when he worked regularly at building DY-66, Canadian Forces Base (CFB) Esquimalt. Since August 2014 he has worked at Formation Augmentation Pacific (FAP), CFB Esquimalt, and Canadian Forces Fleet School Esquimalt in various non-naval communicator positions. He is presently posted to FAP.

[4] On 15 November 2013, a Royal Canadian Mounted Police (RCMP) constable from the National Child Exploitation Coordination Centre notified the Canadian Forces National Investigation Service (CFNIS) that on 22 October 2013 an unknown person had uploaded child pornography from an Internet Protocol (IP) address owned by the Department of National Defence (DND). That IP address was linked to locations in CFB Esquimalt. The suspect's user name was Jose Walsker. A complex CFNIS investigation ensued.

[5] The information provided by the constable was based on a complaint made by Twitter, Incorporated to the National Center for Missing and Exploited Children (NCMEC), the United States program that provides assistance to law enforcement in its efforts to identify victims of child pornography and child exploitation. The NCMEC report, which was passed to the RCMP constable, related to a .ZIP file containing various images which had been uploaded by a person using the user name of Jose Walsker. Other identifying information relating to user Jose Walsker was also provided, including the "Twitter handle" (URL: [twitter.com/Jose Walsker](https://twitter.com/Jose_Walsker)) and an email address. The upload was linked to the specific IP address which belongs to DND. Six images from the ZIP file were analyzed. Some of those images met the *Criminal Code of Canada* definition of "child pornography". One image was specifically identified by its "hash value", which is a unique alphanumeric code, in this case 34 characters long, which is attached to that JPEG image. The "hash value" of that image, which had previously been specifically and digitally assigned to that image, identified it as being an image of child pornography known to police agencies that investigate child pornography offences.

[6] A CFNIS investigator conducted further investigation into open source social media regarding Jose Walsker.

[7] The Canadian Forces Network Operation Center (CFNOC) was contacted and was able to locate Twitter traffic from the specific IP address at the time and date provided in the report and also confirmed that the access was made from a Defence Wide Area Network (DWAN) device. While CFNOC was unable to identify the user, they confirmed that no one with the user name "Jose Walsker" had a DWAN account.

[8] CFNOC identified that three specific DND computers were connected to Twitter during the upload timings. Those three computers were identified by their asset tag numbers and serial numbers. All three computers were physically located on the first floor in building DY-66, CFB Esquimalt.

[9] A general warrant was obtained and on 9 December 2013 a search was conducted on the three hard disk drives (HDD) in the identified computers located in building DY-66. A mirror image of each of those HDDs was created and an initial examination was conducted. The investigator recognized some of the content that had been captured on the HDD under the user profile "KOMOROCISAL", including the profile photo of Jose Walsker.

[10] The investigator identified Leading Seaman Steven Komoroci on the Global Address List as the only Komoroci on the DWAN. The user account name for Leading Seaman Komoroci's DWAN account was "KOMOROCISAL" and his account information showed that he worked at the PCTS, building DY-66, CFB Esquimalt. He possessed a valid British Columbia driver's license which listed his residential address and he owned a British Columbia license plate relating to a 2013 grey Hyundai Tucson. That residence was checked and the residence appeared occupied and the vehicle with the British Columbia license plate registered to Leading Seaman Komoroci was parked directly in front.

[11] Telewarrants were obtained and executed on 13 December 2013. The three DND HDDs were seized. Leading Seaman Komoroci's residence was searched for evidence of accessing and distribution of child pornography and an iMac computer HDD was seized.

[12] Leading Seaman Komoroci was attending a civilian management course in downtown Victoria on 13 December 2013. Two CFNIS members attended and Leading Seaman Komoroci was asked to exit his class, bringing all his belongings with him. Leading Seaman Komoroci was taken to a private room where the CFNIS investigator arrested him without incident for accessing child pornography and distribution of child pornography. The investigator cautioned Leading Seaman Komoroci, read his right to counsel to him and seized a BlackBerry cell phone that was in Leading Seaman Komoroci's possession. Leading Seaman Komoroci was returned to CFB Esquimalt where he was given access to defence counsel by phone in a private room. He declined to provide a statement. He was released by a custody review officer on conditions pursuant to section 158.6(1) of the *National Defence Act*.

[13] A *Criminal Code of Canada* search warrant was obtained in relation to the BlackBerry cell phone that had been seized from Leading Seaman Komoroci incidental to his arrest. All of the items seized pursuant to the three search warrants were forwarded to the Information and Communication Technology Unit (ICTU) in Ottawa for further search and analysis.

[14] The ICTU analyzed the HDDs seized from the three DND computers and recovered over one hundred images that met the *Criminal Code of Canada* definition of “child pornography”. All images were recovered from unallocated clusters saved in the “KOMOROCI.SAL” user profile on the HDDs of the DND computers. Those images had been accessed by that user, who is Leading Seaman Komoroci.

[15] ICTU analysis of the iMac HDD and other items seized from the residence also showed that more than a thousand images as well as multiple videos on the iMac HDD met the *Criminal Code of Canada* definition of “child pornography”. These child pornography images and videos were located in a back-up file which was created when an iPad was connected to the iMac computer when user “stevenkomoroci” was logged onto that iMac computer. That iPad, identified on the iMac computer as “Steven Komoroci’s iPad”, had a serial number of DMPJ16W5DVD3. Access to those images and videos depicting child pornography on the iMac HDD could not be accessed by a user directly from the iMac computer itself. The images could only be accessed by connecting that “Steven Komoroci’s iPad” to that iMac computer and logging in to the account of “stevenkomoroci”, which was password-protected. The iMac HDD showed that the iPad was last backed up on 8 August 2012.

[16] The images that met the *Criminal Code of Canada* definition of “child pornography” that were found in this case included those showing children engaged in sexual acts with other children, a bondage photograph of a child, adults performing sexual acts on children such as fellatio, and children performing sexual acts on adults. Some of the images are of pre-pubescent and very young children.

[17] Two charges were laid against Leading Seaman Komoroci by the CFNIS on 12 December 2014 pursuant to section 130 of the *National Defence Act* for violation of section 163.1(4) of the *Criminal Code of Canada*. The two charges on the charge sheet were preferred by an officer authorized in accordance with section 165.15 of the *National Defence Act* on 15 May 2015.

[18] During the sentencing hearing, the court heard the testimony of Dr Oliver Robinow, a clinical psychiatrist who has been the offender’s treating psychiatrist for several years. He explained the treatment program put in place to help assist Leading Seaman Komoroci’s mental health issues including paraphilia. The court also heard Mr Terrance Parsons, an expert in the field of mental health social work with vast experience in the treatment of paraphilia. In the last few years, he has worked in concert with Dr. Robinow to help the offender develop coping mechanisms and manage situations that trigger his mental health issues. They testified that Leading Seaman Komoroci responds well to the treatment and that he is engaged and motivated.

Although the treatment put in place should continue for his lifetime, they are confident that the offender's likelihood to be a recidivist is low. Leading Seaman Komoroci also testified. He expressed remorse and accepted responsibility. He is genuinely engaged in his treatment and he stated that this is not what he wanted to be. He testified that, as a result of his actions, he has been precluded from seeing his young daughter. This situation caused him grief, but he said he understood why that condition was imposed on him at the time. He hopes that the situation will change in the future and that his family will be able to be together soon. Leading Seaman Komoroci is aware that his conviction will likely result in his release from the CAF.

[19] Counsel for the prosecution and defense have made a joint submission that a fit sentence in this case should consist of imprisonment for a period of six months. In addition, the prosecution seeks the following orders: an order authorizing the taking of bodily substances for forensic DNA analysis under section 196.14 of the *National Defence Act*; and an order that applies for 10 years to comply with the *Sex Offender Information Registration Act* under section 227.01 of the *National Defence Act*. Although this court is not bound by this joint submission, it can only reject it if the recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[20] In examining the joint submission of counsel, I have applied the sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code of Canada*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) to denounce the unlawful conduct;
- (b) to deter the offender but also others who might be tempted to commit such offences;
- (c) to separate offenders from society, where necessary;
- (d) to provide reparations for harm done to the victims or to the community;
- (e) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community; and
- (f) the reformation and rehabilitation of the offender.

[21] The sentence must also take into consideration the following principles:

- (a) The sentence must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility;

- (b) It should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should be used as last resort; and
- (d) Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[22] Both parties agree that it has been recognized that the predominant objectives for offences of this nature are denunciation and deterrence. I believe that the sentence imposed here should not unduly impair Leading Seaman Komoroci's rehabilitation in light of the ongoing and positive treatment.

[23] In *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, the Supreme Court of Canada had already expressed the primary goal of child pornography laws. Chief Justice McLachlin, for the majority, stated the following, at paragraph 28:

Just as no one denies the importance of free expression, so no one denies that child pornography involves the exploitation of children. The links between possession of child pornography and harm to children are arguably more attenuated than are the links between the manufacture and distribution of child pornography and harm to children. However, possession of child pornography contributes to the market for child pornography, a market which in turn drives production involving the exploitation of children. Possession of child pornography may facilitate the seduction and grooming of victims and may break down inhibitions or incite potential offences.

[24] In recent years, Parliament has continued to send a clear message that these offences deserve unequivocal repudiation. The increase of mandatory minimal punishments for those found guilty of possession and accessing child pornography is self-explanatory.

[25] I now turn to the specific aggravating and mitigating circumstances of this case beyond the elements that are generally related to the gravity of the offence and the moral blameworthiness of the offender.

[26] In addition to the objective seriousness of the offence, the court considers the following elements to be aggravating in the circumstances:

- (a) The quantity and the nature of the material possessed. The items seized showed more than one thousand images as well as multiple videos. They included those showing children engaged in sexual acts with other

children, a bondage photograph of a child, adults performing sexual acts on children such as fellatio, and children performing sexual acts on adults. As I said earlier, some of the images were of pre-pubescent and very young children.

- (b) The period over which the possession of child pornography took place and its accessibility both at home and on the DND computer located on a Defence establishment.
- (c) The impact on children and the danger it poses to them.

[27] The court considers the following elements to be mitigating factors in the circumstances:

- (a) The plea of guilty of Leading Seaman Komoroci. The offender has pleaded guilty at the earliest opportunity. This admission of guilt and his testimony satisfy the court that he accepts responsibility for his actions and that his expression of remorse is sincere.
- (b) Leading Seaman Komoroci's response to medical and behavioural treatment. The offender has been engaged in ongoing treatment for the last four years and he is committed to continue to improve his condition. Both experts are positively confident that Leading Seaman Komoroci will continue to do well and manage the triggers that affect his condition.
- (c) The absence of a criminal record.
- (d) The extent of the impact caused on Leading Seaman Komoroci and his family as a result of his conduct, including a likely upcoming release from the CAF.

[28] The court, therefore, accepts that the proposed sentence is the minimal sentence in the circumstances to achieve denunciation and deterrence. It should not impair the offender's rehabilitation. Finally, the proposed sentence is not contrary to public interest and it would not bring the administration of justice into disrepute.

**FOR THESE REASONS, THE COURT:**

[29] **FINDS** you guilty of one count of possession of child pornography, an offence punishable under section 130 of the *National Defence Act*, contrary to subsection 163.1(4) of the *Criminal Code of Canada*.

[30] **SENTENCES** you to imprisonment for a period of six months.

[31] **MAKES** the order under section 196.14 of the *National Defence Act* for the taking of samples of bodily substances for the purpose of forensic DNA analysis.

[32] **AND MAKES** the order under section 227.01 of the *National Defence Act* to comply with the *Sex Offender Information Registration Act* for ten years.

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**Counsel:**

Commander S.M. Archer for the Director of Military Prosecutions

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Leading Seaman S.A.L. Komoroci