



COURT MARTIAL

Citation: *R. v. Wheaton*, 2015 CM 4017

Date: 20151118

Docket: 201536

Standing Court Martial

Canadian Forces Base Greenwood
Greenwood, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal S.L. Wheaton, Offender

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

REASONS FOR SENTENCE

(Orally)

Declaration of guilt

[1] Master Corporal Wheaton, having accepted and recorded a plea of guilty in respect of the one charge on the charge sheet, the court now finds you guilty of that charge under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline for having harassed Corporal J.R. contrary to Defence Administrative Orders and Directives (DAOD) 5012-0.

Matters considered

[2] It is now my duty as the military judge presiding 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 considered the submissions of counsel, both for the prosecution and the defence.

Purpose of the military justice system

[3] The military justice system constitutes the ultimate means of enforcing 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 the respect of 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, including 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 a number of 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, 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 either 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 for the Canadian Forces* (QR&O) require the judge imposing a sentence at a court martial to consider any indirect consequences to the finding or the sentence and impose a sentence commensurate to 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] Master Corporal Wheaton is a 39-year-old supply technician whose performance in the service of her country has been nothing short of outstanding since she joined the Canadian Armed Forces in September 2004. Apart from basic and occupational training, she has served mainly in Greenwood with the exception of a deployment to Southwest Asia in 2009-2010. The evaluation reports submitted to the court as Exhibit 8 reveal that she excels in every possible way in her duties as a supply technician. In addition, she volunteers for other duties and is significantly involved in her community, military and civilian. As an illustration, she has served the last two years as both the Vice President Mess Committee and President Mess Committee of the Junior Ranks Mess in Greenwood. Her partner is a service member and their family is composed of three children.

The offence

[9] 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, namely dismissal with disgrace from Her Majesty's service or less punishment.

[10] The offence at section 129 of the *National Defence Act* sanctions a wide variety of behaviour which prejudice good order and discipline within the Canadian Armed Forces. Discipline is that quality that every member of the military must have that allows him or her to put the interests of Canada and of the service before personal interests. Discipline is developed and encouraged through instruction, training and practise, but it must also be internalized in the form of self-discipline. This includes the self-discipline required to display an exemplary conduct at all times, on and off duty.

[11] The specific circumstances of the offence in this case are as follows:

- (a) The events relating to the charge occurred on 12 December 2013. At that time, Master Corporal Wheaton was the chairperson of the entertainment sub-committee on the junior ranks mess. She had attended the junior ranks' Christmas dinner, starting to consume alcohol around noon. Later, she attended 14 Wing Greenwood Junior Ranks Mess, where she consumed more alcohol. At various points during the evening, Master Corporal Wheaton found herself in a small storage room adjacent to the mess which is customarily used by members of the mess committee to temporarily store personal items, such as coats or boots, while they attend the mess.
- (b) At around 2150 hours, Master Corporal Wheaton was in that room with her service spouse engaging in intimate relations. They both had their respective shirts off and Master Corporal Wheaton was wearing a bra. After knocking, Corporal J.R. entered the room with the intent of gathering her personal effects.
- (c) As Corporal J.R. was looking for her boots, Master Corporal Wheaton uttered a number of flirtatious and sexualized comments to Corporal J.R. During the interaction, which lasted approximately six minutes, Master Corporal Wheaton:
 - (i) made comments about Corporal J.R.'s physique;
 - (ii) commented that Corporal J.R.'s breasts were beautiful, and she compared them to her own; and
 - (iii) proposed to Corporal J.R. to stick around, join her and her spouse and have some fun.
- (d) These comments made Corporal J.R. very uncomfortable. She indicated that she was not interested by the invitation and left shortly thereafter.

Mitigating factors

[12] As far as the offender is concerned, the court has considered the following mitigating factors:

- (a) 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 she has done, in the very public forum of this court martial. The plea also avoided the necessity to conduct a trial which counsel have described to the court as potentially long, complex and difficult on the victim who would have had to testify.
- (b) The fact that Master Corporal Wheaton had no previous record and is a first-time offender with obvious potential to continue to make a positive

contribution to the Canadian Armed Forces and, indeed, Canadian society. This is truly a case of an out-of-character incident.

- (c) Master Corporal Wheaton's service with the Canadian Armed Forces. Not only quantitatively, as she has served over 11 years, including a deployment overseas, but also, and especially, qualitatively, given her outstanding performance, both before and since the commission of the offence.

Aggravating factors

[13] Both counsel in their submissions acknowledged that the conduct of Master Corporal Wheaton on 12 December 2013 was a departure from the standard of conduct expected of her, even if it is an isolated incident. I agree. The circumstances of the offences demonstrate to the court that Master Corporal Wheaton's conduct was unacceptable in that she engaged in sexual harassment towards another female member of the Canadian Armed Forces of a lower rank. She made explicit and unwanted sexual advances. The offence occurred in the mess, in the aftermath of a Christmas dinner, which is meant to be a pleasant event where personnel can enjoy themselves and walk out with pleasant memories. That is not what happened in this case, especially for Corporal J.R., who was embarrassed and made uncomfortable by the conduct of Master Corporal Wheaton, in the presence of Master Corporal Wheaton's male spouse, in the limited confines of a small room.

[14] The occurrence of sexual harassment in a workplace is serious. As found by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, at paragraph 56:

When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[15] This principle is found in the Canadian Armed Forces policy at Defence Administrative Orders and Directives (DAOD) 5012-0 on Harassment Prevention and Resolution which recognizes that:

All CAF members and DND employees have the right to be treated fairly, respectfully and with dignity in a workplace free of harassment, and they have the responsibility to treat others in the same manner.

It is a standard which has been enforced repeatedly by the Canadian Armed Forces leadership, both administratively and through proceedings under the Code of Service Discipline, including at courts martial.

[16] In this case, Master Corporal Wheaton was aware that harassment in any form constitutes unacceptable conduct and it is not tolerated within the Canadian Armed Forces. She knew of the prohibition that no Canadian Armed Forces member shall subject any person in the workplace to harassment. The comments she made and the behaviour she displayed on 12 December 2013, directed at Corporal J.R., were objectionable and unwelcome. They should have been recognized as such. The court agrees with the prosecution that these circumstances, including specifically the rank and position of responsibility of the offender in relation to the victim, are aggravating. Although there was no evidence of trauma caused to the victim in relation to the incidents, nor any evidence of operational impact on the units at the time, it remains that any harassing behaviour by a person of higher rank or appointment on a junior member may erode mutual confidence and respect for individuals, and can lead to a poisoned work environment, as outlined in DAOD 5012-0.

Objectives of sentencing to be emphasized in this case

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

The joint submission of counsel and its effect

[18] 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 a sentence comprised of the punishment of a reprimand and a fine of \$1200 in order to meet justice requirements.

[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] In the course of the sentencing hearing, the prosecution and defence counsel presented the court with legal precedents which may be considered as useful to appreciate the range of punishment imposed by military tribunals in previous circumstances, allowing me to evaluate not only what a proper sentence might be, but also to assist in my obligation to determine if the joint submission is unfit.

[21] That being said, every case is different and none of the precedents presented to me was exactly on point as to the type of sexual harassment and the rank of the perpetrators and victims respectively. Based on the submissions of both counsel, I am confident that the reprimand being suggested here is aimed at properly sanctioning the conduct of the offender. This punishment, combined with a fine which has a personal impact on the offender, can meet the objectives of denunciation and general deterrence. The fact that the sentence is imposed in a public trial in the presence of several

members of the military community indicates that the offender is not getting away from her responsibilities in relation to her conduct. I agree with the prosecution that the proposed sentence meets the objectives of specific deterrence, along with meeting the objectives of denunciation and general deterrence. It can have the effect of deterring others from engaging in the same kind of conduct.

[22] Considering the nature of the offence, the circumstances in which it was committed, the applicable sentencing principles and the aggravating and mitigating factors mentioned previously, I am of the view that the punishments of a reprimand and a fine of \$1200 jointly proposed by counsel is within the range of appropriate sentences in this case. The joint submission is not contrary to the public interest and will not bring the administration of justice into disrepute. The court will, therefore, accept it.

[23] Master Corporal Wheaton, I have no doubt that you are an exceptional person who has contributed significantly to the Canadian Armed Forces in the past and have outstanding potential to contribute even more in the future. Yet, the profession of arms that you chose and in which you excel requires more than outstanding performance – it requires and demands exemplary conduct, on and off duty. That is true of every member of the Canadian Armed Forces from private to general and we have seen exceptional performers of both ranks find themselves before courts martial to answer conduct deficiencies in the past. The circumstances of the charge you pleaded guilty to reveal an instance of unacceptable behaviour, which fortunately appears to be out of character for you. Yet, the demands on you to display exemplary conduct is only going to increase with the increase in the leadership responsibilities of the rank you aspire to be promoted to in the future. These proceedings will be over in a minute, yet the efforts you will have to make to maintain the respect, confidence and support of subordinates, peers and superiors alike will continue throughout your career. I trust you will succeed without reoffending.

FOR THESE REASONS, THE COURT:

[24] **SENTENCES** you to a reprimand and a fine of \$1200, payable forthwith.

Counsel:

The Director of Military Prosecutions, as represented by Major D.G.J. Martin and Major M.E. Leblond

Lieutenant-Commander B.G. Walden, Defence Counsel Services, Counsel for Master Corporal S.L. Wheaton