COURT MARTIAL

Citation: *R. v. Scott*, 2016 CM 3003

Date: 20160219
Docket: 201576

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal S.T. Scott, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal Scott, having accepted and recorded a plea of guilty in respect of the second charge, the court finds you now guilty of this charge, and considering that the first charge is alternative to the second charge, the court then orders a stay of proceedings on the first charge.

[2] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of the military activity in the Canadian Forces. The purpose of this system is to prevent misconduct or in a more positive way promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] Here in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the court. They recommended that this court sentence you to a reprimand and a fine in the amount of $1,000. Although this court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when 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 would be contrary to the public interest as indicated in the Court Martial Appeal Court decision of *R. v. Taylor*, 2008 CMAC 1, at paragraph 21.

[4] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and the maintenance of discipline. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[5] In order to make its determination, the court shall consider 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 offence or offences;

(d) to separate offenders from society where necessary; and

(e) to rehabilitate and reform offenders.

[6] When imposing sentence, a military court must also take into consideration the following principles:

(a) the sentence must be proportionate to the gravity of the offence;

(b) the sentence must be proportionate to the responsibility and previous character of the offender;

(c) the 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 in the circumstances; in short, the court should impose a sentence of imprisonment or detention only as a last resort as it was established by the

Court Martial Appeal Court and the Supreme Court of Canada decisions; and

(e) lastly, any sentence to be imposed by the court should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[7] The court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general deterrence. It is important to remember that the principle of general deterrence means that the sentence should deter not only the offender from reoffending, but also to deter others in similar situations from engaging in the same prohibited conduct.

[8] You were an in-cab instructor and your role was to assess candidates in vehicles. As well, you became a section commander due to the departure of one instructor on the course.

[9] You received Instructor Standardized Training (IST) sessions prior to the course, which emphasized expected attitude and behaviour of instructors toward candidates.

[10] On 12 December 2015, you socialized with course candidates and you also engaged in social contact with a course candidate on numerous occasions during the course.

[11] Annex A to the Agreed Statement of Facts, Exhibit 7, states the policy allowed staff and candidates to socialize in a responsible manner, but clearly from the circumstances you went beyond what was authorized and what was explained to you by Warrant Officer Murchison prior to starting the course. You went beyond his order that was given to you.

[12] Further to some revelations about what happened, you were removed from the course, a unit investigation was launched and you were put under a recorded warning that you successfully respected. Later, charges were laid and we are brought to this court martial. So, those are the circumstances on which I based my decision.

[13] In arriving at what the court considers a fair and appropriate sentence, the court has considered the following mitigating and aggravating factors:

(a) The court considered as aggravating the objective seriousness of the offence. The offence you were charged with was laid in accordance with section 129 of the *National Defence Act* and it is punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

(b) With respect to the subjective seriousness of the offence, the court considers two things as aggravating factors:

(i) the trust that you must disclose when you act as an instructor. As you know, you were acting in a training environment which imposed on any instructor a relationship between a candidate and the instructor, but also among the instructors themselves. The rule about fraternizing and socializing with candidates was issued for a specific purpose and you were trained on that; you were told about it and you were told about its purpose. You ignored it and, as mentioned by your counsel, you had some kind of cavalier attitude. Basically, you decided to put your own needs and yourself before the mission and this lack of trust is an aggravating factor to be considered by the court; and

(ii) there is also your rank, position of authority and experience at the time of the event. When you acted as an in-cab instructor and also as a section commander, you had enough experience, considering your rank, to know what to do as a leader. And, as I mentioned earlier, your position of authority put you in a different kind of relationship, as explained by Captain Trépanier, being involved in a one-on-one assessment to avoid any favouritism or any fear from any candidates in order to be assessed properly. You had to respect that rule, which you did not.

[14] I have also considered the following mitigating factors:

(a) there is your guilty plea. I do understand that as soon as you learned that this matter was ready to go to court, you instructed your counsel to enter a plea of guilty to this charge. It means, for the court, that you accepted full responsibility for what you did;

(b) there is no annotation on your conduct sheet; in fact, there is no conduct sheet whatsoever so there is no annotation regarding any disciplinary incidents or disciplinary matters, or indication of any criminal record you may have. So, I do not have any indication that you have a criminal record for any matter;

(c) also, I take from the circumstances that it is an isolated incident, a bit out of character, as it is your first time before the court. You were put under a recorded warning that you successfully respected; this indicates to the court that it was clearly an isolated incident; and

(d) you also had to face this court martial. This court martial is public and is done in front of your peers and from my perspective it has some deterrent effect, just not on you, but on others. It is not a usual event despite that some people may say I am often in Petawawa these days, but that had nothing to do with you personally. I believe a court martial is a very unusual event for your unit and because it is unusual, it receives attention;

> it makes people consider their own behaviour in the Canadian Armed Forces. As a result, it may deter people as they will think twice before disobeying such a rule.

[15] Now, the court will accept the joint submission made by counsel to sentence you to a reprimand and a fine in the amount of $1,000, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[16] I understand that you have learned the lesson here. I think you are old enough and experienced enough to get a sense of what happened and there is no need to always go before a court martial to get the message, but you got it and I think others also received it. You are now able to turn the page on this event and you may use this experience at a later date in a positive way in order be a better leader, even if initially it was not positive.

FOR THESE REASONS, THE COURT:

[17] **FINDS** Corporal Scott guilty of the second charge for conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act*;

[18] **ORDERS** a stay of proceedings on the first charge.

[19] **SENTENCES** Corporal Scott to a reprimand and a fine in the amount of $1,000, payable immediately.

Counsel:

The Director of Military Prosecutions as represented by Major C. Walsh

Major C.E. Thomas, Defence Counsel Services, Counsel for Corporal S.T. Scott