



COURT MARTIAL

Citation: *R. v. Barker*, 2016 CM 1025

Date: 20161214

Docket: 201562

Standing Court Martial

Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Seaman S.G. Barker, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Master Seaman Barker has admitted his guilt to one count of having negligently performed a military duty imposed on him under section 124 of the *National Defence Act (NDA)*.

Particulars: In that he between 1 April 2014 and 31 July 2014 at or near 12 Wing Shearwater, Nova Scotia when employed as Accommodations Supervisor, performed his duties in a negligent manner by failing to properly safeguard and control public monies in the amount of \$14,889.05 collected for accommodations at Warrior Block, 12 Wing Shearwater.

[2] The circumstances surrounding the commission of the offence reveal that Master Seaman Barker was a member of the Regular Force and employed as accommodations supervisor at Warrior Block, 12 Wing Shearwater, Canadian Forces Base (CFB) Halifax between April 2014 and July 2014. On 4 September 2014, Military Police Unit Halifax received an allegation of theft of public funds from Warrior Block, 12 Wing

Shearwater, CFB Halifax. During the period April 2014 and July 2014, none of the money received to pay for accommodations was deposited with the 12 Wing Shearwater cashier. The deposit of this money to the 12 Wing Shearwater cashier was the duty of the accommodations supervisor, Master Seaman Barker. The discovery of Master Seaman Barker's failure to perform his duty to make the deposits was triggered by the inquiry of a member as to why their cheque as payment for accommodations had not been cashed and the turnover of duties from the offender to another service person.

[3] A review of the financial receipts for Warrior Block accommodations showed that a total of \$14,889.05, paid to Master Seaman Barker, was unaccounted for during the period that he was the accommodations supervisor. During the time Master Seaman Barker was the accommodations supervisor, few deposits were ever made to the 12 Wing Shearwater cashier or the Receiver General. It is only after the turnover of duties to his successor that Master Seaman Barker made the following deposits: on 2 September 2014, a deposit of \$766.20 was made to the 12 Wing Shearwater cashier; on 3 September 2014, a deposit of \$6,453.65 was made to the Receiver General Director of Finance Clerk; and on 5 September 2014, a deposit of \$1,268.05 was made to the Receiver General Director of Finance Clerk of which \$1,090.05 were personal cheques. Overall, it indicates that from the total amount received by Master Seaman Barker, while he was the accommodations supervisor, the amount remaining unaccounted for was \$6,401.15. The missing funds in the amount of \$6,401.15 have since been deducted from Master Seaman Barker's pay.

[4] In his capacity as the accommodations supervisor, Master Seaman Barker was aware of this duty to:

- (a) collect the money received in payment for staying in the rooms of Warrior Block;
- (b) ensure the proper handling and safeguarding of these sums; and
- (c) deposit the totality of the amount with the proper cashier in a timely fashion.

It is also established that, between April 2014 and July 2014, Master Seaman Barker chose not to deposit the money with the cashier but instead took portions and stored it in his home. In doing so, he did not ensure the safety and integrity of the sums he was so entrusted. His actions constituted a marked departure from the standard expected of a reasonable person in all of the circumstances of the case.

[5] During the sentencing hearing, the prosecution called two witnesses, namely Chief Petty Officer 1st Class Mosher and Chief Petty Officer 2nd Class Deschaines. In a nutshell, they testified as to the role and responsibilities of the accommodations supervisor, who works for the Base Administration Officer at CFB Halifax and who is in charge of various facilities including 12 Wing Shearwater. Chief Petty Officer 1st Class Mosher said that the position of accommodations officer is one of trust. He added

that he became the Unit Chief Base Administration Officer at CFB Halifax in late October 2015 and had never met Master Seaman Barker before this court martial. Asked to describe the effects of Master Seaman Barker's negligent performance of duties on the morale and discipline of the unit, Chief Petty Officer 1st Class Mosher stated that he visited the staff with the commanding officer and the executive officer in October 2015 but that nothing was brought up to him and everything appeared fine at the time. He had no knowledge of what had happened.

[6] Chief Petty Officer 2nd Class Deschaines stated that he is currently the branch advisor for Eastern Canada for the steward occupation (Master Seaman Barker's occupation) as well as being the Single Quarters' manager at CFB Halifax. He described the duties and responsibilities of a steward in the Canadian Armed Forces (CAF) and particularly in the Navy. Stewards are entrusted with the care and custody of goods given to them and they provide morale and support for members of a unit. They are responsible for catering services, messes and husbandry. Chief Petty Officer 2nd Class Deschaines testified that prior to his current position he served on Her Majesty's Canadian Ship (HMCS) *St. John's* and he worked with Master Seaman Barker who had been posted to the ship after the incidents that led to this trial. He stated that Master Seaman Barker was made the supervisor for food services in the wardroom and that Master Seaman Barker had been deprived of any authority or responsibility in the handling of cash or accounts by the chain of command. Chief Petty Officer 2nd Class Deschaines supervised the offender for one year. He was in good standing with others, and performed his duties very well, achieved his goals and provided good leadership to his juniors.

[7] The defence called Petty Officer 1st Class Campbell who is the current immediate supervisor of Master Seaman Barker on HMCS *St. John's* since July 2015. He testified that the ship will be leaving Halifax, for a period of at least 6 months, in January 2017 and that the command team is generally aware of the events involving Master Seaman Barker. Petty Officer 1st Class Campbell stated that the command team wants Master Seaman Barker to continue to be part of the ship's company and leave port in January with all members of the HMCS *St. John's*. Petty Officer 1st Class Campbell affirmed that although Master Seaman Barker has not been given financial responsibilities as the wardroom supervisor bar manager during the last year, he has performed strongly and volunteered regularly to stay late and work at functions to help his juniors and also in acting as a first aid instructor on the ship and for other ships as well. He stated that Master Seaman Barker is perceived as a good mentor and liked by all. Petty Officer 1st Class Campbell testified that Master Seaman Barker is now qualified to act as Petty Officer of the Watch, which duty is normally performed by someone of a higher rank. Of interest, Petty Officer 1st Class Campbell stated that once the court martial proceedings are completed, it is the intent of Master Seaman Barker's immediate chain of command to progressively give him financial responsibilities for various wardroom accounts.

[8] The defence also filed several documents in mitigation of sentence. Ten letters or memos of appreciation dated between 2007 and 2015 that recognized the

contribution of Master Seaman Barker, as part of a team or in his personal capacity, during various events over the years. Of more significance, the court was provided with his most recent personnel development reviews (PDR) for the year 2016, as well as the divisional officer's notes, from February 2016 until November 2016, with regard to the offender. Briefly, his performance during the last year has been described as "great". He was praised for his outstanding contribution as a leader and a mentor to the steward team and the ship's company.

[9] 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 military activity in the CAF. 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. 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 the victims and to the community; and
- (f) the reformation and rehabilitation of the offender.

[10] 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 or 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 a last resort; and

- (d) 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.

[11] Although the circumstances of the offence indicate that the offender was entrusted with and had the custody and control of the money received in payment for those staying in the rooms of Warrior Block, the offender has not been convicted for the offence of stealing under section 114 of the *NDA* or a similar offence under the *Criminal Code*. The offence created under section 124 of the *NDA* is nevertheless a serious offence that relates specifically to the discharge of a military duty that was imposed on a person. The concept of penal negligence applies here and it implies that there was a standard of care of conduct to be exercised by the accused and that he or she breached or failed to meet that standard. A person found guilty of this offence is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

[12] The Court considers the following elements to be mitigating factors in the circumstances:

- (a) the plea of guilty of Master Seaman Barker and the acceptance of his responsibility for his actions;
- (b) the absence of any prior criminal or disciplinary record;
- (c) his family and financial situation; and
- (d) his excellent performance on HMCS *St. John's* since the commission of the offence.

[13] The prosecution asked the Court to impose the punishment of detention for a period of 15 days to achieve and promote the objectives of general deterrence and denunciation in light of aggravating factors present in this case; namely, the position of trust held by the offender at the time, the amount involved and the objective seriousness of the offence. I agree with the prosecution that these are the relevant sentencing objectives and aggravating factors in this case. Those persons entrusted with significant amounts of public and non-public funds, for the benefit of the CAF and its members, have an important military duty that must be exercised with vigilance and rigour. However, the Court is not convinced that detention is the least punishment available to promote these objectives in the circumstances.

[14] In support of its position the prosecution has provided the following case law, namely: *R. v. Roche*, 2010 CM 4001, *R. v. Price*, 2009 CM 4009 and *R. v. Bélanger*, 2010 CM 3011. The common theme of these three cases lies in the fact that all those offenders were entrusted with funds. However, *Price* and *Roche* (in her case, for the second time) were found guilty of an objectively more serious offence, namely stealing

while entrusted contrary to section 114 of the *NDA*. In the case of *Bélanger*, the offender was found guilty of an offence under section 116 of the *NDA* for having lost \$6,673.18 in non-public funds while he was the chief clerk of his unit. In imposing a fine of \$1,000, the presiding judge highlighted that the accumulation of duties on the offender at the time, as well as other mitigating factors, allowed him to accept a joint submission made by counsel “since often a reprimand and a fine are standard in these . . . cases.” (*Bélanger*, paragraph 19).

[15] The defence argued that incarceration should not be imposed in the circumstances, relying on the general principles enunciated in the decisions of the Court Martial Appeal Court in *Legaarden*, *Deg* and *St. Jean*. The defence submitted that a fine in the range of \$1,000 to \$1,500, that may be combined with a reprimand, would be a fit sentence. I agree in part with counsel for the defence. The circumstances surrounding the commission of the offence are serious. They highlight a high degree of negligence in the disappearance of \$6,401.15 that remains unexplained, despite the fact that Master Seaman Barker’s pay has been deducted accordingly. The punishment of a reprimand would not be sufficient in my view to denounce sufficiently the conduct of the offender.

FOR THESE REASONS, THE COURT:

[16] **FINDS** you guilty of one count of having negligently performed a military duty imposed on you under section 124 of the *NDA*.

[17] **SENTENCES** you to a severe reprimand and a fine in the amount of \$1,500. The fine will be payable through consecutive instalments of \$200 per month starting the 1 February 2017 until full payment of the fine.

Counsel:

Lieutenant (N) C.Y. MacKinnon for the Director of Military Prosecutions

Mr David Bright, BOYNECLARKE LLP, 99 Wyse Road, Dartmouth, Nova Scotia,
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