COURT MARTIAL

Citation: *R. v. Captain L.M. Paquette*, 1997 CM 27

Date: 26 November 1997
Docket: S199727

Standing Court Martial
Borden, Ontario, Canada
Canadian Forces Base Borden

Her Majesty the Queen

- and -

Captain L.M. Paquette, accused

Before: Commander R.F. Barnes, M.J.

Warning

Subject to sub-section 486(3) and 486(4) of the *Criminal Code* and section 179 of the *National Defence Act*, the court has directed that the identity of the complainant and any information that would disclose the identity of the complainant shall not be published in any document or broadcast in any way.

SENTENCE

(Orally)

[1] Captain Paquette, having accepted your guilty pleas yesterday, the court now finds you guilty of charges one, four, six, seven, ten and twelve on the charge sheet. Since

my sentencing reasons will be lengthy, you may break off and sit with your defending officer.

[2] In determining sentence, the court has considered the circumstances surrounding the commission of the offences, the mitigating circumstances raised by the evidence, including the representations made by your defending officer, and also the applicable principles of sentence.

[3] Those principles have been expressed in various ways and generally they relate to the following: Firstly, there is protection of the public, and the public of course includes the interest of the Canadian Forces; secondly, the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender but also on other who might be tempted to commit similar offences and, fourthly, the reformation and rehabilitation of the accused. There is also the principle of denunciation which is intended to communicate society's condemnation of an offender's conduct in cases such as this.

[4] The prime principle is the protection of the public. The court must determine if that protection would be best achieved by a punishment of deterrence or rehabilitation. In this case I find that the principles of deterrence, both specific and general, will best serve to protect the public in this case. As well, denunciation, while not an overriding concern in this case, does require consideration along with the principle of deterrence.

[5] The civilian courts have recognized the requirement for and the validity of the Canadian Forces' unique code of discipline and its separate justice system to enforce and maintain that code. The Supreme Court of Canada recognized in *R. v. Généreux* that breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. In this case, where the military has placed the officers and non-commissioned members of the cadet instructors cadre in charge of, and in a position of authority over young cadets at a summer cadet camp, away from their parents, the punishment may well have to be more severe than in the purely civilian context to properly account for the additional factor of military discipline.

[6] The fact that Captain Paquette has pled guilty to several offences before this court is always considered as an acknowledgment by an accused person of his or her misconduct and is a meaningful demonstration of remorse. I have no doubt that Captain Paquette is sincerely remorseful for his conduct and I am mindful that his pleas of guilty have spared the complainants and other young witnesses the ordeal of testifying in public as to these incidents. The plea of guilty and the remorse have had the practical effect of reducing what I consider as a suitable punishment in this case because it diminishes the

need, in my view, for specific deterrence. There is also of course the years of good service to the Canadian Forces, of which exhibit 10 is but one reminder.

[7] In the case of Lieutenant-Commander Smith, cited by Captain Kenny and unreported so far, but I understand it's CMAC 387, there were guilty pleas to two charges of wilfully making false statements in the attendance record of a unit for which he was the CO, in respect of Class X unit training. Lieutenant-Commander Smith did not benefit personally from these acts, rather, as I understand it, the offences benefitted the unit in some respect.

[8] The Court Martial Appeal Court held that the potential indirect consequences of loss of his civilian position in the provincial civil service and loss of status in a professional association, I believe it may have been the chartered accountancy profession, should have been taken into greater consideration. In that case the Court Martial Appeal Court varied the non-custodial sentence from reduction in rank to a severe reprimand. (Can I listen to this please?)

[9] I am very aware that in this case at bar a period of incarceration longer than 30 days will effectively end Captain Paquette's civil employment and that alternative similar employment in the Kapuskasing area is extremely limited. Such a sentence could, unfortunately, have a long term effect on Captain Paquette's family welfare, but such a result, it seems to me, is not unusual for offenders who are sentenced to more than a brief term of incarceration in civil courts on a weekly, if not a daily, basis. The likely loss of employment will be carefully considered and weighed, but it cannot act as a shield to an otherwise appropriate sentence.

[10] Many of the civilian cases cited by the prosecution involved sexual conduct of a much more serious nature than the acts described in charges one, four, six, seven, ten and twelve. Some of those offences involved the offence of sexual interference under section 151 of the *Criminal Code* and sexual assault, for which the maximum sentence is ten years imprisonment, twice the maximum sentence prescribed for the offence of sexual exploitation.

[11] The cases cited by the defence included one sexual exploitation precedent and several sexual harassment cases and other similar charges laid under section 129 of the *National Defence Act*, including the strange offences in the Standing Court Martial of Chief Petty Officer 1st Class Tyre, which appear to be addressing sexual assault outside Canada but do not charge it as such.

[12] These precedents are of course of assistance, but there is nothing in them that is directly on point. In this case Captain Paquette has pled guilty to six offences involving several cadet victims. While some of the testimony of Captain Paquette indicated that he played a somewhat passive role as the senior officer present who neglected to intervene to stop inappropriate behaviour, that view is not entirely borne out by an examination of the charges themselves and the circumstances which are now conclusive facts before the court. The fact is that Captain Paquette was responsible for supervising cadet adventure training and as such was in a position of trust or authority respecting the cadets. He also held a superior rank.

[13] The two sexual exploitation offences involved counselling cadets, for a sexual purpose, to lick peanut butter and jam off each other's chests. Two of the section 129 offences involved counselling cadets to perform degrading acts involving partial nudity and simulated sexual activity. And the other two 129 offences involved harassment of cadets by intimidating them into performing acts embarrassing to them, contrary the Canadian Forces Administration Order on harassment.

[14] The first charge of sexual exploitation, and the fourth and sixth charges under section 129 of the *National Defence Act*, one of counselling and the other of harassment, refer to the evening of the 28th of July 1997. The incidents on this evening included Cadet X., who was uncomfortable with a dare of removing all his clothes and streaking past the group, who none the less did remove his clothes and complied because he felt he had no other choice but to obey Captain Paquette. Cadet X. was 15 at the time and felt ashamed following this dare.

[15] Other dares in the presence of Captain Paquette on the 28th included a male cadet simulating anal intercourse with a female cadet, while clothed, a male cadet simulating masturbation, a male cadet emulating a moose in heat and a male and female cadet removing marshmallows from each other's bodies with their mouths. The same evening included the sexual exploitation offence wherein Captain Paquette counselled, for sexual purpose, two cadets, M.K. and M.G., to lick peanut butter from each other's chests, having first removed their shirts.

[16] The evening of the 30th of July involved the other offence of sexual exploitation and the other two offences charged under section 129, one of counselling, again, and one of harassment. The incidents were as follows: Despite the objections of Cadet Y. and Cadet Z., Captain Paquette replied that Cadet Y. had to complete a dare of removing her clothing, except her brassiere and panties, sit on the lap of a male cadet and tell him she loved him. Cadet Y. was visibly distressed but the dare was completed. She was 14 years of age at the time.

[17] Cadet W. objected to a dare of dancing clad only in a newspaper but was told to complete the dare with panties, brassiere and a newspaper. She did so, while she was 17 at the time.

[18] There was the demonstration of the sexual position 69 by a male and a female cadet, both of whom did not wish to comply. There was another streaking dare involving a male cadet whose request to retain his underwear was apparently refused by Captain Paquette and others. And lastly, there was the other peanut butter and jam mixing and licking off the chests of two female cadets wearing only brassieres above their wastes, over the objections of the two cadets.

[19] Captain Paquette initiated this dare through Cadet T.. One cadet was upset at having to remove her shirt but felt obliged to comply because of the rank of Captain Paquette. Captain Paquette actively encouraged the cadets during this dare and rewarded the older cadet with cigarettes afterwards. The cadets ages were 14 and 17.

[20] These are the facts which the sentence must address. The offences will no doubt have repercussions on the cadet movement for some time. There is no evidence to suggest, however, any lasting adverse effects on the cadets themselves.

[21] There is also the apparent agreement between the prosecutor and the defending officer on the appropriateness of a sentence of 30 days imprisonment, although whether or not that sentence should be suspended is not in agreement.

[22] In my view, a sentence of 30 days incarceration is unreasonable and inadequate in the circumstances. We have six offences involving several young victims wherein the offender, a commissioned officer in charge of cadets undergoing adventure training, committed two sexual exploitation offences, counselled cadets to perform other degrading acts involving partial nudity and simulated sexual activity and harassed cadets into performing other embarrassing acts.

[23] Sentencing is of course in the discretion of the trial judge in a Standing Court Martial. It cannot be limited by counsel's submissions. Joint sentencing submissions, or an agreement on sentence, should of course only be disregarded where it is clearly not appropriate, that is, it is clearly outside the accepted range of sentences for similar offences. In my opinion, the acceptable global sentence for these six offences involving numerous young victims is between six and 12 months imprisonment. I am well aware that by operation of section 140(c) of the *National Defence Act* any such period of imprisonment is deemed to include a sentence of dismissal from Her Majesty's service.

[24] Taking into account the mitigating factors of the guilty pleas, remorse, cooperation, Captain Paquette's status as a first offender, his prior good service and his family and personal circumstances, I am prepared to go somewhat below what I have indicated would be the lower end of the range. Would you stand up Captain Paquette.

[25] This court sentences you to imprisonment for a period of five months. This sentence is passed at 0932 hours on the 26th day of November 1997.

[26] Captain Kenny, do you have an application for release pending appeal to deliver at this time?

[27] DEFENDING OFFICER: Not at this time sir, we would like to avail ourselves of the 24 hour period as a right.

[28] PRESIDENT: In that case, Captain Paquette, I must advise you that if you intend to apply to this court for release pending appeal you must comply with the provisions of article 118.03 of Queen's Regulations and Orders and deliver an application for release pending appeal within 24 hours.

[29] March out Captain Paquette.

[30] The proceedings of this court martial in respect of Captain Paquette are hereby terminated subject to an application for release pending appeal.

Counsel:

Major M.R. Gibson, Deputy Judge Advocate Trenton, Counsel for Her Majesty the Queen

Major J.M. MacMillan, Deputy Judge Advocate Central (9), Assistant Counsel for Her Majesty the Queen

Captain M.F. Kenny, Directorate of Law/Defence, Counsel for Captain L.M. Paquette