



COURT MARTIAL

Citation: *R. v. Chapman*, 2016 CM 4019

Date: 20161128

Docket: 201580

Standing Court Martial

Asticou Centre
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Master Warrant Officer A. Chapman, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Warrant Officer Chapman, having accepted and recorded your plea of guilty in respect of the second charge on the Charge Sheet, the Court now finds you guilty of that charge under section 93 of the *National Defence Act (NDA)* for disgraceful conduct. The Court orders a stay of proceedings on the first charge under section 130 of the *NDA* for sexual assault contrary to section 271 of the *Criminal Code*.

A joint submission is being proposed

[2] I now need to impose the sentence. This is a case where a joint submission on sentence is made to the court. Both the prosecutor and defence counsel recommended that I impose a sentence composed of the punishments of reduction in rank to warrant officer and a fine of 2,500 dollars.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. I am not obliged to go along with whatever is being proposed. However, as any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated on 21 October 2016 by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] While it is my duty to assess the acceptability of the joint submission being made, the threshold to depart from it is undeniably high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders who are remorseful to begin making amends. The benefits of joint submissions are not limited to the accused but extend to victims, witnesses, the prosecution and the administration of justice generally, by saving time, resources and expenses which can be channelled into other matters. The most important gain to all participants is the certainty a joint submission brings, of course, to the accused, but also to the prosecution who wishes to obtain what the prosecutor concludes is an appropriate resolution of the case in the public interest.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as military judge. As noted by the Supreme Court in *R. v. G  n  reux*, [1992] 1 S.C.R. 259, the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces (CAF) but serves a public function as well by punishing specific conduct which threatens public order and welfare. Courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following trial or a guilty plea. The sentencing usually takes place on a military establishment, in public, normally in the presence of members of the accused's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs a disciplinary function. Article 112.48 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the previous character of the offender. When a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered but also adequately laid out in the sentencing decision to an extent that may not always be necessary in many busy downtown criminal justice courts. The particular requirements of sentencing at courts martial do not detract from the guidance provided by the Supreme Court on joint submissions. (*Anthony-Cook*, paragraph 54)

Matters considered

[7] In this case, the prosecutor read a Statement of Circumstances and entered as exhibits other documents as provided for at QR&O 112.51. The Court also benefited from the testimony of the victim in this case. In a statement read to the court, Amy Graham outlined very precisely the impact the offence had on her, considering her personal circumstances at the time and her struggles with mental illness since then. She stated the offence came at a time when her mind was most vulnerable. She does not attribute all of the symptoms she experienced and continues experiencing to the actions of the offender but I agree with her views on the importance that one's disgraceful actions may have on those affected by this behaviour. What might seem as "no big deal" by an offender or bystander at the time may have a profound impact on someone else. That is why such behaviour must of course be avoided and dealt with as it occurs; this is every one's responsibility.

[8] In addition to the evidence, the Court also benefitted from the submissions of counsel that support their joint position on sentence on the basis of the facts and considerations relevant to the case. These submissions and the evidence, including the statement by the victim, allow me to be sufficiently informed to meet the requirement of the QR&O to consider any indirect consequence of the sentence, and impose a sentence that is adapted to the individual offender and the offence he committed.

The offender

[9] Master Warrant Officer Chapman is 47 years old Intelligence Operator employed at the Canadian Forces Intelligence Group Headquarters (CF Int Gp HQ) here in the National Capital Region. He has had a lengthy career with the Canadian Forces since 1987, first with the artillery for about 12 years, serving with field and air defence regiments in Shilo, Lahr, Chatham and Moncton. After completing training at Canadian Forces School of Intelligence and Security in 1999, he was employed with Headquarters and Signals Regiments as well as internationally in the Netherlands and Italy. He deployed twice in Afghanistan.

[10] The Court has not been provided with any specific information relating to Master Warrant Officer Chapman's contribution or performance as a member of the CAF. However, his progression through the ranks over the years indicate to me that he has been entirely successful in his career and has made a significant contribution to the CAF in almost 30 years of service. Master Warrant Officer Chapman has no conduct sheet and is, therefore, to be considered as a first-time offender.

[11] The Court has not been provided with much information on the offender's personal situation. Master Warrant Officer Chapman's records indicate that he is married and has one additional dependant.

The offence

[12] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offence as illustrated by the maximum punishment that can

be imposed. Offences under section 93 of the *NDA* for disgraceful conduct are punishable by imprisonment not exceeding five years or less punishment. On that basis, disgraceful conduct is a disciplinary offence of significant gravity.

[13] The facts surrounding the commission of the offence in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Master Warrant Officer Chapman. These circumstances can be summarized as follows:

- a. On 13 May 2010, Master Warrant Officer Chapman is in Cyprus with members of his unit, including Corporal Amy Graham. They are in that location as part of the decompression program following a deployment to Afghanistan as part of the All-Source Intelligence Centre for the Joint Task Force Kandahar.
- b. On the last night in Cyprus, Master Warrant Officer Chapman knocked on the hotel room door of Corporal Graham at or around 3:00 a.m. He explained that he needed to use the spare bed in her room since his roommate was with a woman in their room. He knew this to be false.
- c. Corporal Graham let Master Warrant Officer Chapman, who was apparently intoxicated, into her room on the condition that he would sleep and not talk, and indicated the spare bed that he would be using.
- d. Yet once in bed, after being repeatedly told to go to sleep and stop talking, Master Warrant Officer Chapman asked Corporal Graham if she wanted to cuddle with him, to which she responded: "No, we will not cuddle, you are here to sleep".
- e. Despite hearing and understanding these words, Master Warrant Officer Chapman left his bed moments later and approached Corporal Graham's bed, again suggesting that the two of them cuddle. Corporal Graham refused and even tried to reason with him, mentioning the fact that he was married and that he would see his wife and children the following day.
- f. Master Warrant Officer Chapman then leaned over her bed, kissed Corporal Graham's neck and tried to grab her breasts. Corporal Graham told him: "you need to get the fuck out of the room" and added that she was not going to "play this ridiculous game".
- g. Master Warrant Officer Chapman told her he was going to stop and pleaded with her to allow him to remain in the room. She accepted. Before sleeping, however, he said that he was going to have a cigarette.

- h. Master Warrant Officer Chapman smoked a cigarette close to the room's balcony door. While doing so he was talking to Corporal Graham, who was trying to sleep. Once his cigarette was done, instead of going directly to his bed, he again tried to get in Corporal Graham's bed, again kissing her face and trying to grab her breasts.
- i. Corporal Graham, who was panicked at that point, told him to stop and to get out. She started pushing him towards the door. Once close to the door, Master Warrant Officer Chapman started pushing back away from it. At that point, Corporal Graham feared for her safety, froze, became angry and started pushing him more forcefully.
- j. Master Warrant Officer Chapman only went away when Corporal Graham, as she was pushing him, threatened to call the Military Police.

Aggravating Factors

[14] The circumstances of the offence in this case are extremely serious as they have to be to sustain a charge of disgraceful conduct, punishable by imprisonment for up to five years. I note a number of important aggravating factors on the facts presented to me. First is the use of rank and authority in an entirely inappropriate manner to obtain access to the room of a sleeping subordinate with the intent of obtaining sexual favors from her. The offender alleged the need for him to use a bed in the room under false pretense. It is trite to say that the authority and privileges of rank come with the responsibility of superiors to ensure and promote the welfare of subordinates. The actions of the offender on 13 May 2010 were selfish, disgusting and a clear violation of the trust given to him as a master warrant officer in a unit of the CAF. With his rank and experience he should have known much better before acting the way he did, especially in relation to a subordinate from his unit whose rank was much lower than his, a fact which should have alerted him to the need to remain professional and responsible at all times.

[15] Secondly, from the moment that the advances Master Warrant Officer Chapman made were clearly not being received favorably it should have been clear to him that his conduct was unacceptable and needed to stop. Yet he persisted in his verbal requests. He even decided to disregard Corporal Graham's refusals and moved towards her bed while kissing her face and trying to grab her breasts. He did so not once but on two occasions both before and after having a cigarette. He even resisted leaving the room as he was pushed towards the door, realizing that he should desist only when confronted with Corporal Graham's intention to call the Military Police. This behaviour constitutes an aggravation of the already disgraceful conduct that was being perpetrated.

[16] Finally, the behaviour of Master Warrant Officer Chapman is not a simple dereliction of duty. The circumstances of the offence in my view constitute an attack on a subordinate in a place and at a time where she should have felt safe. The conduct of the offender not only threatened discipline, it was of such nature to place the safety, the

security and the health of a subordinate at risk. In doing so, the conduct threatened the operational effectiveness of the CAF. Sure enough, there were impacts and very real consequences for a member of the CAF in this case. The victim of this behaviour is no longer contributing to our military. She has had to leave gainful employment as a civilian to seek treatment. I certainly hope she will be successful in her treatment and studies so that she can be in a position to help others in the future. She deserves to turn the page on this episode which has had significant consequences on her.

Mitigating factors

[17] The Court also considered a number of mitigating factors arising either from the circumstances of the offence or the offender in this case. Amongst those highlighted by defence counsel, I especially note the following:

- a. First and foremost, the offender's guilty plea, which avoided the conduct of a trial, which I consider as a clear indication that the offender is taking full responsibility for his actions, in this public trial in the presence of members of the military community. He has also allowed the victim to have a voice at the sentencing hearing, thereby demonstrating his consideration to what she has had to go through as a result of his actions.
- b. Second, the fact that the offender has no criminal or disciplinary record. His career path thus far would appear to indicate that the disgraceful conduct he admitted to was out of character for him.
- c. Finally, Master Warrant Officer Chapman's past service with the CAF for almost 30 years including numerous postings and deployments, indicating not only the extent of his past contribution but also that he has the potential to continue making a positive contribution to Canadian society in the future.

Objectives of sentencing to be emphasized in this case

[18] I find that these circumstances require that, in sentencing the offender in this case, the focus be placed on the objectives of denunciation and general deterrence.

Assessing the joint submission

[19] As alluded to earlier, in determining the appropriate sentence in this case, I first need to assess the joint submission of counsel and its effect. Indeed, the prosecutor and defence counsel both recommended that this Court impose the punishment of a reduction in rank to warrant officer and a fine of 2,500 dollars to meet justice requirements.

[20] In determining the acceptability of the joint submission, I must apply the public interest test recently imposed by the Supreme Court. I may depart from the joint

submission only if I consider that the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[21] As a military judge, the issue for me to assess is not whether I like the sentence being jointly proposed or whether I would have come up with something better. Indeed, the threshold for departing from joint submissions is very high and any opinion I might have on an appropriate sentence is not sufficient to reverse the joint submission that was made to me.

[22] The Supreme Court has required such a high threshold as it is necessary to allow all of the benefits of joint submissions to be obtained. Prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offences, as with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command. He or she is aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[23] In determining whether a jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, I must ask myself whether, despite the public interest considerations that support imposing it, the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system. Indeed, as any judge assessing a joint submission, I have to avoid rendering a decision that causes an informed and reasonable public, including members of the CAF, to lose confidence in the institution of the courts, including courts martial.

[24] I do believe that a reasonable person aware of the circumstances of this case would expect that the offender, guilty of disgraceful conduct, would receive a sentence composed of punishments that both express disapprobation for the failure in discipline involved and have a personal impact on the offender. A sentence composed of a reduction in rank and a fine is aligned with these expectations. Such a reasonable person would also know that the prosecution has agreed to the acceptance of the guilty plea on the charge of disgraceful conduct and to the consequential stay of the sexual assault charge. In the circumstances, that reasonable person would not expect that the offender be punished as severely as if he had been found guilty of sexual assault after a full trial.

[25] I am of the view that considering the nature of the offence, the circumstances in which it was committed, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, the sentence jointly proposed by counsel

would not bring the administration of justice into disrepute and is not otherwise contrary to the public interest. The Court must, therefore, accept it.

[26] Under section 145(2) of the *NDA*, the terms of payment of a fine are in the discretion of the service tribunal that imposes it. At the sentencing hearing I invited both counsel to comment on whether their joint submission included provision for periodic payments of the fine. As it turns out, there was no discussion on the issue. The prosecution is of the view that the fine should be payable forthwith and the defence suggested periodic payments of a few hundred dollars. Given that there was no agreement for periodic payments of the fine as part of the joint submission, that the pay statement at Exhibit 5 indicates a monthly net pay of 4,499.39 dollars and that I have not heard evidence of financial hardship affecting the offender, I will order that the fine be payable forthwith.

[27] Master Warrant Officer Chapman, the circumstances of the charge you pleaded guilty to reveal a very troubling conduct and I believe that by now you realize the gravity of what you have done, especially after having heard the victim of your actions testify this morning. As far as my involvement goes, you have paid your debt to the Military Justice System with respect to the events of 13 May 2010. I trust you have had an opportunity to reflect on your behaviour since then. You will live with the consequences of your actions for some time, coming back to your unit with a reduction in rank and consequential reduction in pay. I trust you will rehabilitate and continue making a positive contribution to the CAF and indeed Canadian society in the future.

FOR THESE REASONS, THE COURT:

[28] **FINDS** you guilty of Charge 2 on the Charge Sheet.

[29] **DIRECTS** a stay of proceedings on the first charge under section 130 of the *NDA* for sexual assault contrary to section 271 of the *Criminal Code*.

[30] **SENTENCES** you to a reduction in rank to the rank of warrant officer and a fine of 2,500 dollars payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Captain M.L.P.P. Germain and Captain N. Thiessen

Major J.L.P.L. Boutin, Defence Counsel Services, Counsel for Master Warrant Officer Chapman