



COURT MARTIAL

Citation: *R. v. Wilks*, 2017 CM 1008

Date: 20170525

Docket: 201620

General Court Martial

Her Majesty's Canadian Ship *Prevost*
London, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 2nd Class (Retired) J.K. Wilks, Offender

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

Restriction on Publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described during these proceedings as the complainant, namely, J.W. shall not be published in any document or broadcast or transmitted in any way.

By court order made under section 179 of the *National Defence Act* and section 486.5 of the *Criminal Code*, information that could disclose the identity of the people described during these proceedings as the complainants, namely, C.C., K.W., D.S., J.W., R.M., and M.K. shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

[1] Petty Officer 2nd Class (Retired) Wilks was found guilty of one count of sexual assault, an offence punishable under section 130 of the *National Defence Act*, contrary to section 271 of the *Criminal Code*; and three counts of breach of trust by a public

officer, an offence punishable under section 130 of the *National Defence Act*, contrary to section 122 of the *Criminal Code*.

[2] Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that this court should impose a punishment of imprisonment for a term of 9 months. They submit that their analysis led them to conclude that such sentence would meet the necessary objectives of denunciation and general deterrence, particularly in light of the most serious and deemed aggravating factors found in section 718.2 of the *Criminal Code*, namely:

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on [a] victim...

[3] At all material times of the offences, Petty Officer 2nd Class (Retired) Wilks was employed as a medical technician in the Regular Force of the Canadian Armed Forces (CAF), and responsible for administering, among other procedures, enrolment medical examinations. Two findings of guilty relate to the conduct of Petty Officer 2nd Class (Retired) Wilks in the conduct of an enrolment medical examination on two victims, namely R.M. and M.K., in January 2009 and May 2009 in London, Ontario, in a manner contrary to the Canadian Forces Health Services Group policies and procedures. Whereas, two other findings of guilty relate to the conduct of Petty Officer 2nd Class (Retired) Wilks during the enrolment medical examination of Ms J.W. on 22 July 2009 in Windsor, Ontario. As these findings were made by the panel of a General Court Martial, the Court shall accept as proven all facts, express or implied, that were essential to each of the court martial panel's finding of guilty.

[4] The evidence led at trial by the prosecution established that with regard to the duties and responsibilities of the medical assistants in conducting enrolment medical examinations, including the instructions, orders, policies and directives that applied in conducting enrolment medical examinations expressly protecting the right to privacy for the applicants and prohibited the conduct of examinations of the breasts or genitalia, including by visual examination. With regard to the breach of trust committed by the offender on the person of Ms R.M. in London, Ontario, on 22 January 2009, it refers specifically to events that took place during her enrolment medical examination conducted by Petty Officer 2nd Class (Retired) Wilks at the recruiting centre in London, Ontario. Petty Officer 2nd Class (Retired) Wilks directed her to remove her top, but that if she felt uncomfortable, she could keep her bra on. She chose to remove it because she felt that she could trust him as she was joining the military and he seemed professional. He then visually inspected her breasts and told her that one of her breasts was larger than the other.

[5] In the case of Miss M.K., her enrolment medical examination took place on 28 May 2009, at the recruiting centre in London, Ontario. She was finishing Grade 10 and

was 16 years old. Only Petty Officer 2nd Class (Retired) Wilks and herself were in the room during the examination. He gave her a form to fill out and she completed it on her own. She put on a gown prior to the examination after she was requested to remove her shirt. Miss M.K. said that Petty Officer 2nd Class (Retired) Wilks wanted to examine her breasts because she had mentioned that she had a nipple piercing. At the end of the examination, he had her lower her gown to expose her breasts and put her hands behind her head. Then he visually inspected her breasts.

[6] Finally, the two other findings of guilty, respectively for the offence of sexual assault and breach of trust by a public officer, are related to the enrolment medical examination of Ms J.W. on 22 July 2009, in Windsor, Ontario. She was provided a gown to put on. The offender felt her breasts for lumps. He then pulled the gown down and told her to touch her own breasts while he watched her perform a breast examination on herself. Then the offender took his fingers and thumb and pulled on her nipples until they were hard. He told her that he was making sure her nipples reacted properly. She has provided the court with a victim impact statement that describes how the conduct of the offender negatively affected her personal and professional life for several years, including three years of her military career. The court has fully considered her statement in assessing the joint submission on sentence.

[7] Prior to the beginning of his trial by this General Court Martial on 9 January 2017, Petty Officer 2nd Class (Retired) Wilks had been convicted by Perron MJ, presiding at a Standing Court Martial, on 17 November 2011, of one charge of sexual assault and of four charges of breach of trust by a public officer for events committed between 2008 and 2009. He was sentenced to imprisonment for a period of 9 months. Petty Officer 2nd Class (Retired) Wilks has served that sentence. On 15 November 2013, a Standing Court Martial presided by d'Auteuil MJ found him guilty of 10 counts of sexual assault, contrary to section 271 of the *Criminal Code*, and 15 counts of breach of trust by a public officer, contrary to section 122 of the *Criminal Code*. He was sentenced to imprisonment for a period of 30 months on the 28th day of April 2014. All offences were related to a number of incidents that occurred in Thunder Bay and London, Ontario, between 2003 and 2009, and involved 15 different complainants. Essentially, in the course of an annual medical examination or a periodic health examination, Petty Officer 2nd Class (Retired) Wilks conducted breast examinations on complainants by only visually examining, or visually examining and touching, the bare breasts of the complainants while he had no authority or any kind of medical requirement to do so. Petty Officer 2nd Class (Retired) Wilks was released pending the disposition of an appeal after his second court martial and he appeared before this General Court Martial in January 2017, awaiting the decision of the Court Martial Appeal Court (CMAC).

[8] Last Friday, on 19 May 2017, the CMAC delivered its decision concerning Petty Officer 2nd Class (Retired) Wilks and dismissed his appeal, therefore ending his release. Consequently, a committal order was signed by Sukstorf MJ, on 24 May 2017, to implement the sentence passed by d'Auteuil MJ on 28 April 2014.

[9] The offender was released from the CAF in April 2011. He is now 57 years old and has served 27 years in the CAF. Other than these convictions, he had no disciplinary or criminal record and he was considered a competent and dedicated professional, according to the evidence heard during the trial. He suffers from various medical conditions including hypothyroid condition, high blood pressure and diabetes, for which he requires daily medication, including an insulin injection and an injection to treat his rheumatoid arthritis. Since his release, he has made a number of charitable donations to various organizations.

[10] This joint submission is made in the context of the recent Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43, where the Court exposed the legal test that trial judges should apply in deciding whether it is appropriate in a particular case to depart from a joint submission. The court affirmed that the public interest test is the proper legal test that trial judges should apply, which means that a trial judge should not or cannot depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. What that means is that trial judges should depart from the proposed sentence only if it would be viewed by a reasonable and informed person as a breakdown in the proper functioning of the justice system.

[11] It is recognized by the Supreme Court of Canada that it is an accepted and entirely desirable practice for Crown or prosecution and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. As well, agreements of this nature are commonplace and acknowledged as vitally important to the well-being of our criminal justice system and, I will add, to the military justice system. The prospect of a joint submission that carries with it a high degree of certainty encourages persons to enter a plea of guilty or to narrow the sentencing hearing to its more basic issues. It saves precious time, resources, and expenses. This is not a small benefit, it has other benefits as well. More importantly, in a case like this, it spares the victims from testifying again at the sentencing hearing as to the circumstances of the offences, as to the impact it had on them, and, of course, it makes it less of an issue for the anxiety those persons would suffer if they had to testify again during that sentencing hearing. So, those many benefits are certainly recognized by tribunals.

[12] It means also that for a joint submission on sentence, of course, to be possible, implies that the parties must have a high degree of confidence that they will be accepted. If there is too much doubt about it, then the parties may choose, instead, to accept the risks of a trial or a contested sentencing hearing. This approach recognized by the Supreme Court of Canada relies heavily on the work of the prosecution as represented here by Major van der Linde for the Director of Military Prosecutions, as well as Mr Hodson and Ms Mansour, the defence counsel who are acting on the accused's best interest. Counsel must, of course, provide the Court with a full account of the circumstances of the offender and the offences. They must analyze very meticulously all the applicable sentencing principles and the proper objectives to be met in a given case. Therefore, the joint submission should provide those elements without the judge having to ask for that information. As trial judges are obliged to depart only

rarely from a joint submission, this is why counsel have a corollary obligation to ensure that they amply justify their recommendation, mainly what is their position on the fact of the case as presented in open court. And I must say, this was done today by both parties. Therefore, the Court accepts and endorses the recommendation that the offender undergo a punishment of imprisonment for a period of 9 months.

FOR THESE REASONS, THE COURT:

[13] **SENTENCES** you to imprisonment for a period of 9 months.

[14] **MAKES THE ORDER** that the number of samples of bodily substances that is reasonably required be taken from you for the purpose of forensic DNA analysis under section 196.14 of the *National Defence Act*.

[15] **MAKES THE ORDER** requiring you to comply with the *Sex Offender Information Registration Act* for life pursuant to section 227.02(4) of the *National Defence Act*.

Counsel:

The Director of Military Prosecutions as represented by Major A.J. van der Linde and Major M.A. Pecknold

Mr D.M. Hodson and Ms D. Mansour, David Hodson Criminal Defence Law, 16 Lindsay Street North, Lindsay, Ontario, Counsel for Petty Officer 2nd Class (Retired) J.K. Wilks