



COURT MARTIAL

Citation: *R. v. MacDonald*, 2016 CM 1022

Date: 20161123

Docket: 201565

Standing Court Martial

3rd Canadian Division Support Group
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Captain J.C. MacDonald, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Having accepted and recorded your plea of guilty in respect of the first charge, neglect to the prejudice of good order and discipline, the Court finds you guilty of that charge.

[2] In the 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 Canadian Armed Forces. The purpose of this system is, of course, to prevent misconduct but, in a more positive way, to promote good conduct.

[3] Here, today, prosecution and defence have joined in making a proposal on sentence in a fine of \$200. Although the Court is not bound by that joint recommendation, it is accepted, now, certainly, that the sentencing judge should not depart from a joint submission on sentence unless it would be contrary to the public interest, as stated recently in the Supreme Court of Canada decision under the writing of Moldaver J in *R. v. Anthony-Cook*, 2016 SCC 43, and, more particularly, at paragraph 32, when the court says:

[32] Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[4] At paragraph 34, Moldaver J says:

[34] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

And, of course, that applies to the military justice system.

[5] So this public interest test is certainly more stringent than any other test applied before, including the fitness test. This approach has been validated by the Supreme Court of Canada for several reasons. First, it is proper and necessary for the justice system itself. It provides certainty for the accused, certainty because he gives up his right to a trial. It provides certainty for the prosecution because it minimizes the risk either because of the strength of the evidence or other considerations, but it certainly minimizes the risk for the prosecution and it also allows the prosecution to secure a conviction. But it also minimizes the stress, the legal costs and impact on other participants in the justice system, including victims. So, as I said earlier when I was quoting Moldaver J, the Court would only depart from a joint recommendation when if “viewed by reasonable and informed persons [it would constitute] . . . a breakdown in the proper functioning of the justice system.”

[6] This approach relies heavily on the work of the prosecution, who represents the community’s interests, including the military community here, as well as the defence counsel who is acting in the accused’s best interest.

[7] The Court has been provided with a Statement of Circumstances that is most complete, and it has also been provided with the circumstances of the offender, in the form of an Agreed Statement of Facts. Both documents are reproduced here:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Captain MacDonald was a member of the Canadian Armed Forces, Regular Force. In March 2015, Captain MacDonald was posted to Canadian Forces Base Suffield, Alberta, as a member of the base staff.
2. On 18 March 2015, Canadian Forces Base Suffield conducted a rifle range qualification shoot, in which Captain MacDonald participated.
3. The shoot was conducted at the Owl Range Field Firing Small Arms range, an austere range location, within the confines of the Suffield

training area. Owl Range is a permanently templated range area, but contains limited fixed infrastructure. It has no “butts” or permanent backstop, and limited targetry emplacements, arc markers, and firing points. When in use, the range is conducted as a field firing range. The individual arcs of fire for each participant were the edges of their own paper target. The arcs of fire for the range were the outer edges of the left and right hand targets. The right hand arc of fire of the range was the right hand edge of the target for firing point number 1.

4. Captain MacDonald was provided with a C7 rifle for the shoot. He attended the range briefing, where it was expressly stated that only the proper handling drills were to be used on the range. Where any participant had difficulty, they were to raise their hand and seek the assistance of the range staff. Captain MacDonald participated in a refresher of the weapons handling drills, also commonly known as “TsOETs” (tests of elementary training), conducted by Master Corporal Oliver. Captain MacDonald completed this review without difficulty.

5. The proper procedure for unloading the C7 rifle is:

- a. Remove the trigger finger from the trigger and place the weapon on safe by switching the safety selector to ‘safe’. Maintain control of the muzzle and ensure that the muzzle is pointed in a safe direction.
- b. Press the magazine release button with the index (trigger) finger and remove the magazine.
- c. Cock the action to the rear twice. Hold the action open and inspect the chamber to ensure it is clear.
- d. Release the action to go forward. Adopt a point of aim in a safe direction, place the trigger finger on the trigger, switch the safety to ‘repetition’ and fire the action.

6. Captain MacDonald was assigned to a group of firers, called a firing relay, and to firing point number three. He would be shooting at the third target from the right, near the right hand edge of the range. Captain MacDonald initially attempted to load a magazine which had a strip of masking tape on its side. The magazine would not seat, so he set it aside. A member of the range staff took up the magazine and loaded it for Captain MacDonald.

7. Captain MacDonald then followed the words of command for the first practice, firing a five round grouping. Following the five round grouping, the firing relay was instructed to “Unload – For inspection clear

weapons”. Captain MacDonald had difficulty removing the magazine from the weapon. He was observed lying on his side, struggling to remove it from his rifle. He did not seek assistance from the range staff, as had been briefed.

8. Despite having completed the earlier refresher, he performed the drill incorrectly. He did not place the weapon on safe, as required by the drill. Captain MacDonald’s trigger finger did not properly depress the magazine release. Instead, Captain MacDonald’s trigger finger either remained on, or returned to, the trigger. As Captain MacDonald struggled to remove the magazine, he depressed the trigger and a single live round was discharged, striking the ground 3-5 meters in front and to the left of him. The point of impact was outside of his assigned individual arcs of fire. The round was not recovered, but did not harm anyone on the range or down range from the firing line.

9. Captain MacDonald’s weapon was cleared by range staff. Two subsequent function tests were performed by the range staff, both of which found the weapon to be functioning normally.

10. Captain MacDonald was provided with a different C7 rifle and continued with the shoot. The magazine was also removed from the range.”

“AGREED STATEMENT OF FACTS

1. The charge was laid on 3 July 2015.
2. Captain MacDonald elected trial by court martial on 10 July 2015.
3. Captain MacDonald requested representation by DDCS counsel on 20 July 2015.
4. RMP(W) sent the written request for counsel to DDCS on 1 September 2015.
5. Defence counsel was assigned on 8 September 2015.
6. The charge was preferred on 11 September 2015.
7. The prosecutor communicated an offer of settlement to defence counsel on 27 September 2016.”

[8] Captain MacDonald is 54 years old. He served in the Reserve from 1994 and in the Regular Force since 2010. He has no previous criminal or disciplinary record. He has been a very good performer in his military career. So, the Court has no hesitation to accept and adhere to the joint proposal made by counsel today. Not only is it a sentence that meets the public interest test, but it is a fair and just sentence in the circumstances.

FOR THESE REASONS, THE COURT:

[9] **FINDS** Captain MacDonald guilty of the first charge.

[10] **SENTENCES** Captain MacDonald to a fine in the amount of \$200.

Counsel

Captain G.J. Moorehead for the Director of Military Prosecutions

Major C.E. Thomas, Defence Counsel Services, Counsel for Captain J.C. MacDonald