COURT MARTIAL

Citation: *R. v. Landry*, 2016 CM 1024

Date: 20161209
Docket: 201579

Standing Court Martial

4th Canadian Division Support Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant M.D. Landry, Offender

Before: Colonel M. Dutil, CMJ

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Landry, you have admitted your guilt to two offences under the *National Defence Act (NDA*); namely, an offence punishable under section 130 of the *NDA*, that is to say, possession of a substance included in Schedule II, pursuant to section 4(1) of the *Controlled Drugs and Substances Act (CDSA*). The substance being marihuana. And, you have admitted your guilt to a charge of conduct to the prejudice of good order and discipline under section 129 of the *NDA* for a violation of article 20.04 of the *Queen's Regulations for the Canadian Forces* for the use of cannabis (marihuana).

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

[3] Today, counsel have made a joint submission on sentence seeking a reduction in rank to the rank of corporal and a fine in the amount of $500. In *R. v. Anthony-Cook*, 2016 SCC 43, 21 October 2016, the Supreme Court of Canada 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 it is the public interest test that is the proper legal test that trial judges should apply, which means 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 would otherwise be contrary to the public interest. In other words, 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.

[4] The Supreme Court states:

> [25] It is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large.
>
> [40] The prospect of a joint submission [on sentence] that carries with it a high degree of certainty encourages accused persons to enter a plea of guilty. And guilty pleas save the justice system precious time, resources, and expenses, which can be channeled into other matters. This is no small benefit.
>
> [41] . . . [F]or joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. Too much doubt and the parties may choose instead to accept the risks of a trial or a contested sentencing hearing.

[5] This approach relies heavily on the work of the prosecution as representing the community's interest, and the defence counsel as acting in the accused's best interest. At paragraph 54, the Court stated:

> Counsel [must] provide the court with a full account of the circumstances of the offender, the offence, and the joint submission [must contain those elements] without waiting for a specific request from the trial judge.

[6] As joint submissions cannot be assessed in the dark, the prosecution and the defence must "provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence." I must say that this obligation that is imposed on counsel has been satisfied extensively today in the present case.

[7] This court is informed that the offender served his country for more than 20 years before being released last July. He was deployed five times over eight years between 1998 and 2006. He had a conduct sheet for use of marihuana in 2004 and other

minor disciplinary offences in 1998 and 2015. He is divorced and has one child born in 2012 of whom he has custody every Tuesday and alternating weekends.

[8] The court was informed in the document entitled "Statement of Circumstances" of the circumstances surrounding the commission of the offences and of significant and various other relevant facts that were considered by both counsel in the process of this joint proposal on sentence as they appear at Exhibit 7. It provides the following information:

> "1. At all material times in relation to the commission of the offences before this court, Sgt Landry was a member of the Regular Force, Canadian Armed Forces, Royal Canadian Dragoons. Sgt Landry was released from the Canadian Armed Forces on 4 July 2016. By operation of law, Ex-Sgt Landry remains liable to the *Code of Service Discipline* in relation to the charges currently before this court.
>
> 2. On 18 January 2015, members of the 2 Military Police Detachment Petawawa (MP) received a call for assistance from Second Lieutenant White concerning her three year old son, who was under the care of his father, Sgt Landry.
>
> 3. Second Lieutenant White reported that she and Sgt Landry were separated, but had a son, A.L-W who was subject to an access and custody agreement. As part of their custody agreement Sgt Landry was entitled to weekend visitation access periods.
>
> 4. On Friday, 16 January 2015, after Sgt Landry had picked up his son from daycare, Second Lieutenant White sent a text message to Sgt Landry requesting to speak to her son before he went to bed. She received no response to that text, or to subsequent text and phone messages placed to Sgt Landry that evening and the subsequent day.
>
> 5. By Sunday 18 January 2015, Second Lieutenant White had become increasingly concerned about the well-being of her son and attended at his residence, being 313 Paardeburg Blvd, Grn Petawawa. Second Lieutenant White arrived at approximately 0900hrs. Upon knocking on his door Second Lieutenant While could hear the voice of her son and Sgt Landry telling him to come away from the door. Second Lieutenant White continued to knock on the door until Sgt Landry opened his blinds and told her to go away. Second Lieutenant White told Sgt Landry that she wanted to know if her son was okay as she had not received a response to her multiple texts and phone messages. For a brief moment, when Sgt

Landry quickly opened and then locked the front door, Second Lieutenant White detected an instant odour of cannabis.

6. Concerned for the well-being for her son, Second Lieutenant White immediately called the Military Police for assistance. Local Family Child Services were also called to attend the residence by Military Police.

7. Upon arrival at the residence the Military Police were greeted at the door by Sgt Landry. Upon opening the door the Military Police detected a strong odour of raw cannabis. Sgt Landry was hesitant to allow the Military Police into the residence, however, eventually consented to the Military Police entry.

8. Upon entry, the Military Police verified that Sgt Landry's son was in fact in the residence. Sgt Landry admitted to consuming cannabis outside his house prior to the arrival of Military Police. Sgt Landry explained that the cannabis was in his possession for personal use, which he used to self-medicate due to symptoms of Post-Traumatic Stress Disorder (PTSD). Further discussions with the Military Police resulted in Sgt Landry escorting the Military Police to his basement where he produced a vacuumed sealed bag which contained one hundred and thirty two (132) grams of raw cannabis stored in a metal cabinet which was subsequently seized by the Military Police. The Military Police investigation did not reveal any evidence of an intention to traffic in cannabis.

9. Not long after the arrival of Military Police, Family Child Services attended the residence and Sgt Landry's son was voluntarily surrendered to Second Lieutenant White without incident.

10. The cannabis was subsequently seized and a sample was sent by the Military Police to Heath Canada for analysis which returned a positive result for a substance within the meaning of the *Controlled Drugs and Substance Act*, to wit: Schedule II, 1 (2) cannabis (marihuana).

11. Sgt Landry further admitted to CAF authorities that his cannabis use consists of consumption twice a day, during off duty hours, to help with the side effects of his prescribed medications including the reduction in the occurrence of nightmares, panic attacks and increased his severely diminished appetite.

12. At all material times, Sgt Landry was fully aware of the prohibition on the use of controlled drugs, including cannabis, as set out in the Canadian Armed Forces Drug Policy, and *Queens Regulations and Orders for the Canadian Armed Forces* article 20.04, and that his conduct in using cannabis was prejudicial to good order and discipline.

13. On 20 July 2015 charges were referred to the Director of Military Prosecutions. On 3 December 2015 charges were preferred by the Director of Military Prosecutions against Sgt Landry. Shortly thereafter, the Prosecution entered into settlement discussions with counsel for Sgt Landry. Further to these discussions, in June 2016, a medical report concerning Sgt Landry was procured and provided to the Prosecution which outlined a number of medical factors relevant to the charges. In September 2016 a settlement offer was presented by the Prosecution to counsel for Sgt Landry which was accepted on 21 September 2016.

14. On 19 Oct 2004, during a vehicle check at CFB Petawawa, Sgt Landry (then Cpl) was found to be in possession of cannabis. Based upon an admission of drug use to the Military Police, Sgt Landry was charged and convicted at on 19 April 2005 at Summary Trial of one offence contrary to s.129 of the *National Defence Act* for drug use (marijuana) contrary to article 20.04 of the *Queens Regulations and Orders for the Canadian Armed Forces*. Sgt Landry was awarded a sentence of 15 days detention at the Canadian Armed Forces Service Prison and Detention Barracks.

15. On 8 March 2008, and in relation to his admitted drug use on 19 Oct 2004, Sgt Landry was given a Remedial Measure of Counselling and Probation for drug misconduct and was provided with Phase II substance abuse treatment further to a recommendation from the Base Addiction Councillor. Sgt Landry began Phase III aftercare treatment on 8 Feb 2005 until 6 Feb 2006 which he completed successfully. No further misuse of drugs was reported until the incident which forms the basis of the charges currently before this court.

16. Sgt Landry, as a Canadian Armed Forces member, was deployed to Coralici, Bosnia, from 11 Jul 1998 to 28 Sep 1998, to Pristina, Kosovo, from 16 Dec 1999 to 23 Apr 2000, to Kabul, Afghanistan, from 10 Aug 2003 to 02 Feb 2004 and from 22 Oct 2005 to 23 Feb 2006. He was also deployed to Kandahar, Afghanistan, from 28 Oct 2006 to 17 Feb 2007

where Sgt Landry was involved in combat engagements with enemy forces on numerous occasions.

17. At the time of the offenses, Sgt Landry was suffering from Operational Stress Injury-Posttraumatic Stress Disorder (OSI-PTSD), moderate and chronic; Operational Stress Injury - Major Depressive Disorder (OSI-MDD) with anxious distress, severe and chronic; Cannabis Use Disorder, moderate. His psychologist, Dr. Thomas Fournier, identifies operational stress as the principal proximal cause of Sgt Landry's PTSD and MDD. He identifies events in his childhood and adolescence as the proximal causes of the initiation of his cannabis abuse, but notes that his operational stressors can nonetheless be linked to his cannabis abuse.

18. Sgt Landry was released from the Canadian Armed Forces on 4 July 2016, with a release item 5(D): Not Advantageously Employable.

19. Now released from the Canadian Armed Forces, Sgt Landry has a medical doctor's prescription for medical cannabis.

20. Sgt Landry is divorced and is the father of A.L.-W. of whom he has custody every Tuesday and alternating weekends. Sgt Landry currently receives $1818.65 a month from Manulife for earnings loss benefits. He pays $680 per month in child support to Second Lieutenant White for their son A.L-W.

21. Sgt Landry enrolled in the Canadian Armed Forces on 27 May 1996 and served for 20 years. He was awarded the NATO Medal for Kosovo, Canadian Peacekeeping Service Medal, South-West Asia Service Medal, General Campaign Star – South-West Asia, NATO Medal for Former Yugoslavia and the Canadian Armed Forces Decoration medal.

22. The investigation of this matter disclosed potential triable *Charter* issues regarding the right to counsel, the right to be secured against unreasonable search or seizure and the right not to be arbitrarily detained. However, Sgt Landry collaborated with the Military Police and his chain of command in the investigation of these offences and instructed his counsel to negotiate a resolution of this matter in a timely manner."

[9] The court is satisfied that, in the circumstances, counsel have discharged their obligation in support of their joint recommendation on sentence. As the court martial stated in *R. v. Racine*, 2014 CM 1011, a decision delivered on 20 May 2014, the court

emphasized the importance of offences related to the illicit use of drugs in the Canadian Armed Forces at paragraphs 18, 19 and 22:

> [18] To arrive at a sentence that the Court considers to be fit and just in this case, I will stress the objective importance of the offence, and I will then list the relevant aggravating factors and mitigating factors. First of all, it is important to recognize that the offence set out in section 129 of the *National Defence Act* is objectively serious because it is punishable upon conviction by dismissal with disgrace from Her Majesty's service. Its subjective seriousness will vary depending on, among other things, the act, conduct or neglect to the prejudice of good order and discipline, but also depending on the intrinsic significance of the act, conduct or neglect within the spectrum of norms established to ensure operational effectiveness and the maintenance of discipline within the Canadian Armed Forces. Even though it has been amended periodically, the Canadian Forces Drug Control Program has for decades been a key instrument for ensuring operational effectiveness, discipline, the security of property and the safety of persons in the Canadian Armed Forces. It is appropriate to bear in mind the purpose of this essential policy as it appears in article 20.03 of the QR&Os:
>
> > **20.03 - PURPOSE**
> >
> > The purpose of the Canadian Forces Drug Control Program is the maintenance of:
> >
> > a. the operational readiness of the Canadian Forces;
> >
> > b. the safety of members of the Canadian Forces and the public;
> >
> > c. the health of members of the Canadian Forces and the public;
> >
> > d. the security of defence establishments, materiel and other public or private property;
> >
> > e. the security of information classified in the national interest or otherwise protected by law;
> >
> > f. discipline within the Canadian Forces;
> >
> > g. the reliability of members of the Canadian Forces; and
> >
> > h. cohesion and morale within the Canadian Forces.
>
> [19] These considerations cannot be dissociated from each other and cover both the professional competencies and the standards of conduct expected of members. This program is also the cornerstone of the Canadian Forces' commitment to maintaining a drug-free workplace. The implementation of this policy is set out in Defence Administrative Orders and Directives (DAOD) 5019-3, *Canadian Forces Drug Control Program,* which provides the appropriate tools and information to reduce or eliminate the drug-risk behaviours of Canadian Forces members. In this context, there can be no doubt that the illicit use of drugs by Canadian Forces members is a serious disciplinary offence.
>
> [22] The sentence must express the following objectives: general deterrence, denunciation of the act, promotion of a sense of responsibility in military members who are offenders and, lastly, rehabilitation. Self-medicating for real and serious health problems by ingesting illicit substances is no excuse for violating a clear prohibition as

> set out in Chapter 20 of the QR&Os. An outrageously lenient sentence would only encourage such practices, which is not in the interests of individuals or of the Canadian Armed Forces. The use of authorized drugs may be permitted by military authorities, but it will always be properly supervised so as not to undermine operational effectiveness and discipline.

[10] Clearly the joint submission made by counsel to impose a reduction in rank and a fine in the amount of $500 recognizes these objectives and, therefore, it is in the public interest that I accept it.

FOR THESE REASONS, THE COURT:

[11] **FINDS** Sergeant Landry guilty of possession of a substance, namely marihuana, included in Schedule II of the *CDSA*, contrary to section 4(1) of the *CDSA*, an offence punishable under section 130 of the *NDA*. The Court also finds you guilty of conduct to the prejudice of good order and discipline for use of cannabis (marihuana), contrary to article 20.04 of the *Queen's Regulations and Orders for the Canadian Forces*, an offence under section 129 of the *NDA*.

[12] **SENTENCES**, you to a reduction in rank to the rank of corporal and a fine in the amount of $500.

Counsel:

Major C. Walsh for the Director of Military Prosecutions

Major A. Gelinas-Proulx, Defence Counsel Services, Counsel for Sergeant M.D. Landry