COURT MARTIAL

Citation: *R. v. Charette*, 2016 CM 4020

Date: 20161214
Docket: 201637

Standing Court Martial

Saint-Jean Garrison
Saint-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Sergeant J.S. Charette, Offender

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

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sergeant Charette, having accepted and recorded your plea of guilty in respect of the four charges on the charge sheet, the Court finds you guilty of these four charges under section 86 of the *National Defence Act*, for having quarrelled with Warrant Officer McAdam (1st charge) and with Captain Lagrange (2nd charge); and under section 85 of the *National Defence Act*, having used threatening language to Warrant Officer McAdam (3rd charge) and Captain Lagrange (4th charge).

A joint submission is presented to the Court

[2] It is now my duty to determine the sentence. The prosecution and the defence have presented a joint submission to the Court regarding the sentence to be imposed. Counsel recommend that the Court impose a sentence consisting of a severe reprimand and a fine in the amount of $1,000.

[3] The military judge who is given a joint sentencing submission is severely limited when exercising his sentencing discretion. Although I must ultimately exercise sentencing discretion alone, I cannot disregard a joint submission unless I have serious reasons to do so. The Supreme Court recently specified in *R. v. Anthony-Cook*, 2016 SCC 43, that 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] Although it is my duty to assess whether the joint submission presented to me is acceptable, the threshold that the submission must reach for it to be rejected is undeniably high—with good reason, given the numerous public interest considerations in support of any jointly recommended sentence. In fact, in those cases, the prosecution agrees to recommend a sentence that the accused is disposed to accept, thus minimizing stress and trial costs. In addition, for those who feel genuine remorse, a guilty plea provides an opportunity to start taking responsibility for their wrongdoing. The joint submissions are also in the interests of the victims, witnesses and the administration of justice in general as it allows the justice system to economize resources and precious time, which can be allocated to other matters. The most important advantage is the certainty provided by agreements leading up to joint submissions. They are attractive not only for the accused but also for the prosecution, which wishes to obtain what counsel considers to be an appropriate settlement to the matter in the public interest.

[5] That being said, even though certainty regarding the result is important to the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary objectives of the Code of Service Discipline in carrying out my responsibilities. As the Supreme Court stated in *R. v. Généreux*, [1992] 1 S.C.R. 259, the purpose of a court martial, as a military tribunal, is, among other things, to allow the Canadian Armed Forces to deal with matters that pertain directly to the maintenance of discipline, efficiency and morale of the troops. Courts martial make it possible to effectively enforce discipline. The sentence is the culmination of the disciplinary process following a trial or a plea. It is the only opportunity for the Court to address disciplinary needs generated by the conduct of the accused in a military establishment in front of an audience including several members of the accused's current or past unit as well as, increasingly, in the victims' presence.

[6] Sentencing in a court martial trial thus includes a significant disciplinary aspect. To determine a sentence, I must be guided by section 112.48 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), which provides that a sentence must be

commensurate with the gravity of the offence and the previous character of the offender. When a joint submission is submitted to the court, the military judge must ensure at least that the facts relevant to the accused's situation and to the commission of the offence are not only considered but also adequately explained in his or her reasons for sentence, to an extent that is not always necessary for a civilian court presiding over a criminal matter in a downtown somewhere in Canada. These sentencing requirements do not depart from the guidelines set out by the Supreme Court regarding joint submissions as they appear at paragraph 54 of *R. v. Anthony-Cook*.

Facts considered

[7] At the hearing, the prosecutor read out loud a joint statement of facts and circumstances, the truth of which was admitted by the accused. He also presented the documents set out in QR&O 112.51. For her part, counsel for the defence presented to the Court documents regarding Sergeant Charette's performance. In addition to the evidence, the Court of course considered the submissions of counsel in support of their joint submission on sentence based on the facts and other considerations relevant to the case at bar. Those submissions and the evidence made it possible for me to be sufficiently informed to meet the requirements of the QR&O to take into consideration any indirect consequences of the sentence and that I impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

The offender

[8] First, with respect to the offender. The Court takes into account that Sergeant Charette is 46 years old. He joined the Canadian Armed Forces in April 1990 as a Mobile Support Equipment Operator. After successfully completing his basic training in the field, he was posted to Valcartier, Esquimalt, Bagotville and Montréal throughout a career spanning 26 years, during which he was also deployed to Croatia, twice to Golan Heights and to Alert. Despite an acceptable performance, Sergeant Charette has been unable to return to work in his unit since the events of March 2015, which resulted in the charges. He is monitored by specialists for his anger management and mental health problems and takes medications for them. Now released from the Canadian Armed Forces, he plans to start looking for civilian employment as soon as he receives his Attestation of Collegial Studies in human resources management support. Sergeant Charette's files show that he is in a common-law relationship with another CAF member and has two adult children.

The offences

[9] Now, the offences. To assess whether the joint submission is acceptable, the Court took into account the objective seriousness of the offences, which, as provided in sections 85 and 86 of the *National Defence Act*, are punishable respectively by dismissal with disgrace from Her Majesty's service or less punishment and imprisonment for less than two years or less punishment.

[10] The facts relevant to the commission of the offences are found in the statement of facts and circumstances read by counsel for the prosecution and accepted as being true by Sergeant Charette. The circumstances of the offences are as follows:

(a) On 25 March 2015, Sergeant Charette was called in to work at Technical Services at the 2nd Canadian Division in Montréal although at the time he was on approved leave for vacation until 12 April 2015. There was no imperative military requirement for this call back, and the commanding officer had not ordered a call back.

(b) To ensure his presence at work, Warrant Officer McAdam told Sergeant Charette that the meeting had to do with the evaluation of civilian employees. However, once Sergeant Charette was with Warrant Officer McAdam and Captain Lagrange, the subject of civilian employee evaluations was not mentioned. Sergeant Charette was instead placed under an administrative action.

(c) Angry that he was called back under false pretences by Captain Lagrange and Warrant Officer McAdam, Sergeant Charette lost his temper and left the office shouting that he would settle this on his return from vacation, that he was going to "end up in Edmonton for taking care of you" and that "kicking your asses would be worth it even if I got charged for it".

(d) Warrant Officer McAdam and Captain Lagrange remained in the office with the door closed when Sergeant Charette returned to the office still angry. He entered pushing the warrant officer and trying to reach for the captain, but was only able to grab his combat shirt while being restrained by the warrant officer. The fight was over when Sergeant Charette cooled off. No punches were thrown by anyone.

(e) The incident was the subject of a unit investigation. On 11 June 2015, Sergeant Charette received counselling and probation for six months to correct his behaviour related to the incident of 25 March. On 15 February 2016, charges were laid against Sergeant Charette and forwarded to the commanding officer to be dealt with at summary trial.

(f) On 16 March 2016, the commanding officer of Technical Services proceeded to a summary trial of Sergeant Charette. He familiarized himself with the evidence and heard the witnesses. He heard Sergeant Charette's defence. He said that he was being treated by a psychologist and a social worker and that he took medications for his mental health problems. The commanding officer concluded that he did not have jurisdiction to try Sergeant Charette and applied to the referral authority for disposal of the charges.

(g) Sergeant Charette was monitored by a psychologist for his anger management from October 2014 to February 2015, and, after the incident, he was treated by a psychiatrist from March 2015 to January 2016. Sergeant Charette tried several times to return to work at his unit after the events of 25 March 2015, unsuccessfully. He was released from the Canadian Armed Forces for medical reasons of 12 December 2016.

Aggravating factors

[11] The Court considers as an aggravating factor in the circumstances of this case the subjective seriousness of the offences. They were committed during a formal meeting in the workplace. They reflect acts of insubordination and aggressive words, as well as a violation, though minor, of the physical integrity of two superiors. Such behaviour can only be harmful to the cohesion and the morale of the unit. The accused, who is a sergeant with over 25 years of service at the time of the offences, had to be aware of the impact of his actions.

[12] In addition, the Court was given Sergeant Charette's conduct sheet indicating two convictions resulting from three past episodes of disobedience and quarrels and disorder during the 2003 and 2005 deployments. I accept the statement of counsel for the prosecution that he does not consider the offender to be a repeat offender on the ground that his previous convictions were more than ten years ago. I note also that Sergeant Charette could have obtained a pardon to remove these convictions from his conduct sheet in accordance with the Defence Administrative Order and Directive 7016-1. That said, it would be a mistake for Sergeant Charette, when time would give him the proper hindsight in evaluating his military career, to ignore the weaknesses of which he was guilty in the past, while he is considering a new start and new employment opportunities in the civilian environment. These offences, though committed in different circumstances than the offences presently before the Court, are a reflection of a lack of personal discipline, which is a quality that is, however, required for anyone who wishes to contribute positively to any organization and in any job.

Mitigating factors

[13] The Court also considered the following mitigating factors, as stated in counsel's submissions and illustrated by the evidence produced at the sentencing hearing:

(a) First, the offender's guilty plea and his cooperation with the authorities, which the Court considers as an indication of his remorse and as evidence that he accepts responsibility for his actions.

(b) Second, despite my previous observations regarding the subjective seriousness of the offence, the fact remains that the evidence shows a behaviour closely related to what the offender considered as unfair and

inappropriate treatment by his superiors, who interrupted his vacation under false pretences. I consider that, indeed, the circumstances were difficult. That said, as admitted by the offender, this is not an excuse: Sergeant Charette should have shown restraint even in the difficult circumstances he was confronted with.

(c) Third, I consider as a mitigating factor Sergeant Charette's medical condition, which could likely have had an impact on his reaction on 25 March 2015, in addition to being a challenge to his returning to the job market. Once again, the defence admits that this is not an excuse.

(d) Fourth, I have considered Sergeant Charette's performance and his years of service with the Canadian Armed Forces. The offender has served with honour, progressed in rank and, without a doubt, contributed to the success of multiple missions attributed to the units in which he was assigned throughout a significant period of service.

(e) Finally, I considered the potential of the offender, who, at age 46, can continue contributing to Canadian society in a civilian capacity.

Sentencing objectives that should be preferred in this case

[14] I came to the conclusion that, in the circumstances of this case, sentencing should target the objectives of denunciation and deterrence. The sentence to be imposed should not only deter the offender, but also others who, in a similar situation, might think about committing the same type of offence. That said, attaining these objectives must not compromise the offender's rehabilitation especially while he is starting a new career.

Assessment of the joint submission

[15] As mentioned above, to establish the appropriate sentence in this case, I must, first of all, assess counsel's joint submission and its impact. Indeed, the prosecution and defence jointly recommended that the Court impose a sentence consisting of a severe reprimand and a fine in the amount of $1,000, in order to meet the requirements of the administration of justice.

[16] To assess whether the joint submission is acceptable, I must apply the criterion recently stated by the Supreme Court to the effect that a trial judge cannot 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.

[17] As a military judge, the issue that I must determine is not whether I like the sentence that is jointly recommended to me or whether I could come up with something better. Indeed, the threshold that the submission must reach for me to reject it results in the fact that any other opinion that I could have on what could be an appropriate

sentence is not enough to allow me to reject the joint submission that was submitted to me.

[18] The Supreme Court has set a sufficiently high threshold to depart from joint submissions so that their undeniable benefits are not compromised. The prosecution and defence counsel are in a good position to arrive at a joint submission that reflects both the interests of the public and of the accused. In theory, they would know very well the offender's situation and the circumstances of the offence as well as the strengths and weaknesses of their respective positions. The military prosecutor is charged with representing the interests of military authorities and the civilian community to ensure that justice is done. Defence counsel is required to act in the accused's best interests, which includes ensuring that the accused's plea is voluntary and informed. Counsel representing both parties 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.

[19] To decide whether a joint submission would bring the administration of justice into disrepute or be contrary to public interest, I must ask myself whether, despite the public interest considerations that support imposing the sentence, 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 criminal 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 Canadian Armed Forces, to lose confidence in the institution of the courts, including courts martial.

[20] I am of the view that a reasonable person aware of the circumstances of this case would expect that an offender who had pleaded guilty to four charges relative to quarrelling with and threatening two superiors would be given a sentence that expresses disapproval for the lack of discipline reflected in the offences as well as having a direct personal impact on the offender. A sentence comprised of a severe reprimand and a fine is consistent with legitimate expectations.

[21] Considering the nature of the offences, circumstances in which they were committed, applicable sentencing principles and the aggravating and mitigating factors mentioned above, I am of the view that the sentence jointly recommended by counsel is not unreasonable, nor would it bring the administration of justice into disrepute. I will therefore agree to impose it.

[22] Sergeant Charette, the circumstances of the offences for which you have acknowledged your guilt show conduct that cannot be accepted. I believe that you recognize that the authorities could hardly avoid sanctioning your conduct with charges under the Code of Service Discipline, leading to your appearance before this Court today. You have now paid your debt to society. I hope that you have had the opportunity to reflect on what has happened and that you are determined to improve yourself as a

person so that your anger does not lead you into similar situations in the future, especially since you are beginning a new stage in your life. You no doubt have the qualities needed to make a positive contribution to Canadian society for many years to come. It would be a shame if that positive potential is compromised by any repeat of the actions that had landed you in trouble in the past.

FOR THESE REASONS, THE COURT:

[23] **SENTENCES** you to a severe reprimand and a fine in the amount of $1,000, payable immediately.

Counsel:

The Director of Military Prosecutions, as represented by Major A.J. Van der Linde

Captain P.H.C.C. Cloutier, Directorate of Defence Counsel Services, counsel for Sergeant J.S. Charette