



COURT MARTIAL

Citation: *R. v. Recollet*, 2017 CM 1001

Date: 20170213

Docket: 201635

Standing Court Martial

Canadian Forces Base Cold Lake
Cold Lake, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Aviator M.J. Recollet, Offender

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

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

[1] Corporal Recollet, you have admitted your guilt to one count under section 130 of the *National Defence Act* for possession of a substance included in Schedule II, contrary to section 4(1) of the *Controlled Drugs and Substances Act*. The statement of particulars read as follows:

Particulars: In that he, on or about 12 September 2015, in Cold Lake, Alberta, did unlawfully possess a substance included in Schedule II of the *Controlled Drugs and Substances Act*, to wit, cannabis (marihuana).

[2] The Court is in the presence this morning of a joint submission by counsel. They recommend that the Court sentences you to a reprimand and a fine in the amount of

\$700, to be paid in four monthly instalments of \$175 per month, starting 15 March 2017.

[3] In the context of the armed forces, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element to military activity in the Canadian Armed Forces. The purpose of this system is to prevent misconduct but in a more positive way, to promote good conduct. The 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, although sometimes by different means, as any other person, living in Canada.

[4] This joint submission is made in the context of the recent Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43, delivered by Justice Moldaver for the Court on 21 October 2016. As stated by the prosecution, the Supreme Court exposed the legal test that trial judges must apply in deciding whether it is appropriate in a particular case to depart from a joint submission. In other words, a judge should not and 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. It means that trial judges should depart from the joint recommendation on sentence only if it would be viewed by a reasonable and informed person as a breakdown in the proper functioning of the justice system; whether it is a military justice system or civil justice system. So it is a high threshold for judges to follow.

[5] It is recognized that it is an accepted and entirely desirable practice for the prosecution and defence counsel to agree on joint submission on sentences in exchange for a plea of guilty. The prospect for a joint submission that carries with it a high degree of certainty, encourages offenders to enter guilty pleas and also as, pointed by counsel or the defence, they save the justice system precious time, resources and expenses that can be channeled into other matters. But there is more benefit to it, including sparing victims, as the case may be, from testifying and it also secures for the prosecution a conviction.

[6] No joint submissions can be possible if the parties, both the prosecution and defence, do not have a high degree of confidence that they will be accepted. If there is too much doubt about it, the parties would choose instead to accept the risk of a trial or a contested sentencing hearing.

[7] In this case, I am satisfied that the prosecution and defence have provided the Court with a proper Statement of Circumstances as well as an Agreed Statement of Fact that lists all the key elements that ought to be considered and they read as follows:

“STATEMENT OF CIRCUMSTANCES

1. Aviator Recollet enrolled in the regular force of the Canadian Armed Forces on 18 December 2012. His trade is Aircraft Structures Technician. He was posted to 1 Air Maintenance Squadron in Cold Lake Alberta on 31 March 2015.
2. On 11 September 2015, Firefighters from 4 Wing conducted a routine fire inspection of Avr Recollet's residence at XXXX Street in Cold Lake, with Avr Recollet's consent. XXXX Street is a building owned by the Department of National Defence. Avr Recollet was the sole resident. Following the inspection, the firefighters attended 4 Wing Military Police Detachment. They reported detecting the odour of fresh marijuana while inspecting the basement of Avr Recollet's residence.
3. On the basis of that information, Military Police obtained a search warrant for Avr Recollet's residence. A search was conducted on 12 September 2015 by military police. In the course of that search, military police found and seized the following items in Avr Recollet's basement: a bag containing 4 buds of marijuana; 2 ziplock bags containing ash and shake (that is, small particles of burnt and semi-burnt marijuana); a small glass pipe with marijuana residue, and; a small, unbagged piece of marijuana bud. The total amount of marijuana found in Avr Recollet's residence was approximately 2.2 grams.
4. A charge was laid 17 November 2015. Avr Recollet elected trial by court martial on 8 December 2015. A charge was preferred on 7 October 2016."

"AGREED STATEMENT OF FACT

- 1- Cpl Recollet successfully completed 12 months' Counselling & Probation on 30 October 2016, for the incident that lead to the charge before the Court.
- 2- Cpl Recollet was promoted to the rank of Cpl on 5 January 2017.
- 3- Cpl Recollet completed the Aircraft Structures Technician Journeyman QL5A on 12 December 2016.
- 4- Cpl Recollet is qualified as an Aircraft Structures Technician on the CF-18."

[8] The Court is also satisfied that the proper aggravating and mitigating factors set out by the prosecution were properly considered and given the weight they deserved in this context, particularly denunciation, deterrence and rehabilitation. The offender is 24 years old, has been in the Canadian Armed Forces for roughly 5 years. He has a conduct

sheet for an unrelated offence, although I am told that this conviction for impaired driving was properly weighed in the context of coming to this joint submission. One of the most important mitigating factors in this case is the fact that Corporal Recollet has served a period of counselling and probation for the very same incident that had led to the charges before the Court. It shows that he did amend himself and that he can continue successfully in the Canadian Armed Forces, according to his chain of command. The Court is amply satisfied that it has been provided with the proper circumstances of this case and all the appropriate factors that should have been considered by both prosecution and defence in coming to that joint submission in order to meet that public interest test.

FOR THESE REASONS, THE COURT:

[9] **FINDS** you guilty of the first charge for possession of a substance under section 4(1) of the *Controlled Drugs and Substances Act* contrary to Schedule II, cannabis (marihuana).

[10] **SENTENCES** you to a reprimand and a fine in the amount of \$700, to be paid in four equal monthly instalments of \$175 each, that will start on 15 March 2017.

Counsel:

Major E.J. Cottrill for the Director of Military Prosecutions

Major B.L.J. Tremblay, Defence Counsel Services
Counsel for Corporal M.J. Recollet