COURT MARTIAL

Citation: *R. v. Curkowskyj*, 2017 CM 3005

Date: 20170308
Docket: 201714

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Private V.R. Curkowskyj, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, 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] Private Curkowskyj, having accepted and recorded a plea of guilty in respect of the first and only charge on the charge sheet, the Court finds you now guilty of this charge, the particulars which read as follows:

> In that he, between August 2015 and September 2015, at or near Canadian Forces Base Shilo, Manitoba, permitted members of the Canadian Armed Forces to use a substance held out to be cocaine at his residential housing unit while he was present.

[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. It is through discipline that an armed force ensures that its members would accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that the public order is maintained, in that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[3] Here, in this case, the prosecutor and the offender's defence counsel made a joint submission on sentence to be imposed by the Court. They recommended that this Court sentences you to a fine in the amount of $200.

[4] Although this Court is not bound by this joint recommendation, it is generally accepted that the sentencing judge should depart from the joint submission only when it would not be contrary to public interest as stated by the Supreme Court of Canada in *R. v. Anthony-Cook,* 2016 SCC 43 at paragraph 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.

[5] So essentially, from that decision of the Supreme Court of Canada, a more stringent test does no longer involve anymore the fitness test. Basically, it is not up to the Court, when it faces a joint submission, to assess the fitness of the suggestion made by counsel. I would say that it is good to take this approach for a number of reasons. It is proper and necessary to the system because it allows people to have confidence in the work of those who are part of this system; it certainly provides a certainty to the accused, especially in this case.

[6] Private Curkowskyj, you gave instruction to your counsel to come to an agreement, so what you were looking for is basically some kind of certainty by pleading guilty, but, also, certainty about the sentence that may be imposed by this Court, and you gave up your right to a trial for that reason. You require some certainty. If you give up a right, you need to be sure that there is some chance that the Court will accept your approach.

[7] It also provides certainty to the prosecution because, in this way, it may secure a conviction and minimizes the risk. Also, it minimizes the stress, and, as said by your counsel, the legal cost, and also the effect on other participants, such as witnesses that would have been called and spent some time here. So it makes it shorter, but also the people who would have been called as witnesses in order to testify or introduce documents don't have to come here. This approach is very helpful.

[8] The Court may depart from a suggestion such as this one only if the proposed sentence would be viewed by a reasonable and informed person as a breakdown in the proper functioning of the justice system (see *Anthony-Cook*, paragraph 42). I do not

foresee a breakdown occurring with the suggestion made. For people in the audience, you may see that this Court, by taking this approach, relies heavily on the work of the prosecution as representing a community's interest and also on the defence counsel as acting in the accused's best interests. The statement of circumstances and agreed statement of fact are reproduced as follows:

"STATEMENT OF CIRCUMSTANCES

1. At all material times, Gunner Curkowskyj was a Regular Force member and served at 1st Regiment, Royal Canadian Horse Artillery ("1 RCHA") at Canadian Forces Base Shilo, Manitoba.

2. Gunner Curkowskyj resided in a military residential housing unit located at XXXX, Canadian Forces Base Shilo, Manitoba (the "RHU"). Gunner Curkowskyj was the sole occupant of the RHU.

3. In late August 2015, Gunner Curkowskyj had a party at his RHU (the "party"). Several members of 1 RCHA attended the party, including Bombardier Playford, Gunner Bastos, Gunner Mayer-Mule, and Gunner Woods.

4. During the party, Gunner Curkowskyj was drinking and showing some of his guests his DJ equipment. At around 2230 hours, Bombardier Playford pulled out a small pouch that contained a substance purported to be cocaine. Bombardier Playford asked if anyone would like to try some cocaine. Gunner Curkowskyj believed that the substance in the pouch was in fact cocaine.

5. Gunner Curkowskyj knowingly permitted the use of his RHU to Bombardier Playford and other 1 RCHA members to consume a substance held out to be cocaine. Gunner Curkowskyj, Gunner Bastos, Gunner Mayer-Mule, and Bombardier Playford went to the second floor of the RHU. While upstairs, Bombardier Playford, Gunners Bastos and Mayer-Mule inhaled a substance held out to be cocaine.

6. Gunner Woods remained on the ground floor and did not go upstairs at any time.

7. Approximately 25 minutes later, Gunner Woods and Gunner Bastos left Gunner Curkowskyj's RHU. Bombardier Playford and Gunner Mayer-Mule fell asleep at Gunner Curkowskyj's RHU. They left the RHU the following morning.

8. Gunner Curkowskyj was aware of the Canadian Forces Drug Control Program and knew that he was facilitating other Canadian Armed Forces members to breach that policy.

9. Information about drug related activities of Gunner Curkowskyj, Gunner Bastos, Gunner Mayer-Mule, Bombardier Playford and other members eventually disseminated through to almost all of the 1 RCHA members, and resulted in a breakdown of cohesion and morale. The Battery Sergeants-Major and other unit members could no longer trust those soldiers as that conduct showed disregard for the rules and regulations that govern the Canadian Armed Forces."

"AGREED STATEMENT OF FACT

1- Gnr Curkowskyj successfully completed 12 months' Counselling & Probation which ended on 14 December 2016, an administrative measure that was related to his drug activities.

2- Gnr Curkowskyj has instructed his Defence Counsel to reach a joint position in this case."

[9] So basically my understanding, Private Curkowskyj, is that in August 2015 you had a party at your residence and during the party you permitted some people to use drugs which were held out to be cocaine at that time, and you did that with necessary knowledge for this incident. You were put under counselling and probation for 12 months and you performed that successfully, as explained by your counsel. You went through some tests for drugs, despite the fact that you were not charged or considered as having used drugs, but permitted the use of drugs at your location. But you underwent that with success, and basically you were charged, if I understand correctly, in January 2016, and it is 13 months later that you are before this Court. For a case like this, I have explained the procedure; it is a bit unusual to take so long. Consideration was given, if I understand correctly, by both counsel to that factor leading to the suggestion that the Court must impose a fine in the amount of $200. So, in consequence, the Court will accept the joint submission made by counsel to sentence you to a fine of $200, payable immediately, and considering that it is not contrary to the public interest and would not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[10] **FINDS** you guilty of the first and only charge on the charge sheet for conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act.*

[11] **SENTENCES** you to a fine of $200, payable immediately.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander S. Torani

Captain P. Cloutier, Defence Counsel Services, Counsel for Private V.R. Curkowskyj