COURT MARTIAL

Citation: *R. v. MacNeil*, 2017 CM 3006

Date: 20170308
Docket: 201704

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Corporal J. MacNeil, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil**,** M.J.

REASONS FOR SENTENCE

(Orally)

[1] Corporal MacNeil, 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 of which read as follows:

> In that he, between November 2012 and August 2014, at or near Canadian Forces Base Shilo, Manitoba, encouraged a member of the Canadian Armed Forces to use a substance held out be to be cocaine.

[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

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] 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 sentence you to a fine 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 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] It is what we call a more stringent test and it does no longer involve the fitness test. So basically, it does not have to deal with whether the suggested sentence fits the proper range; the Court is more concerned with whether it is contrary or not to the public interest.

[6] This approach taken by the Court is proper and necessary to the system, because it provides certainty to the accused, considering, basically, that you are giving up your right to trial and you are trying to secure a sentence. In doing so, you want to be sure there is a good chance that a Court will accept the suggested sentence by achieving an agreement with the prosecution.

[7] There is also certainty for the prosecution because it minimizes the risk. You pleaded guilty, so the prosecution does not have to prove its case and it secures a conviction.

[8] Also, it minimizes the stress on the people involved, the legal costs and the impact on other participants, such as those who would have been called as witnesses before this Court. For the Court, in order to depart from a joint submission, it can be done only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system (see *Anthony-Cook,* paragraph 42).

[9] This approach relies heavily on the work of the prosecution as representing the community's interests, representing the Canadian Armed Forces (CAF), and it also relies on the defence counsel as acting in your best interests.

[10] Here, I am dealing with somebody who enrolled in April 2011, almost six years ago, as a private and now you are a corporal promoted in 2015, so you have almost six years with the CAF.

[11] My understanding is that in November 2012, while some of your peers were at your residence, you encouraged Gunner LaFleche to do drugs, being cocaine. And you encouraged him to continue to do so, which he did by coming back between November 2012 and August 2014 and continued to use drugs in your residence through various parties or other activities at your residence.

[12] The complete Statement of Circumstances is reproduced as follows:

"STATEMENT OF CIRCUMSTANCES

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

2. In late November 2012, Gunner LaFleche and Gunner Paquin-Dupont were at Bombardier MacNeil's military residential housing unit with several other people, which was located at Canadian Forces Base Shilo, Manitoba. While there, Bombardier MacNeil asked Gunner LaFleche to follow him to Gunner Paquin-Dupont's bedroom. Bombardier MacNeil then asked Gunner LaFleche to close the door of the bedroom. A substance purported to be cocaine was being consumed in that bedroom. Bombardier MacNeil pointing at the substance told Gunner LaFleche: "Hey LaFleche, do some". Gunner LaFleche then used the substance.

3. Between November 2012 and August 2014, Gunner LaFleche attended several parties at Bombardier MacNeil's residence, where he used a substance purported to be cocaine.

4. Bombardier MacNeil was aware of the Canadian Forces Drug Control Program and knew that he was encouraging another Canadian Armed Forces member to breach that policy.

5. Information about the drug related activities of Gunner LaFleche, Gunner Paquin-Dupont, Bombardier MacNeil 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 a disregard for the rules and regulations that govern the Canadian Armed Forces."

[13] Those facts eventually disseminated through 1 RCHA members, the chain of command, and actions were taken. A charge was laid in January 2016, but also administrative action was taken against you. You were placed on counselling and

probation for a period of 12 months, which involved regular drug testing. You completed the counselling and probation period successfully. You are now 30 years old. It has been explained by counsel that you are a first-time offender and at the first opportunity you decided to plead guilty to the charge. So those circumstances were explained and are sufficient for me to make a decision that I will accept this joint submission made by counsel to sentence you to a fine of $200, considering that it is not contrary to the public interest and will not bring the administration of justice in to disrepute.

[14] One of the main factors that were considered by the prosecution was the chain of command had the duty to proceed promptly with charges laid, but it was not the case here. It was one factor considered by counsel and it was part of their discussions, which explained in part why they came up with that suggestion.

FOR THESE REASONS, THE COURT:

[15] **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.*

[16] **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 Corporal J. MacNeil