



COURT MARTIAL

Citation: *R. v. Edmunds*, 2017 CM 3016

Date: 20170428

Docket: 201450

General Court Martial

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

Between:

Her Majesty the Queen

- and -

Master Corporal N.S. Edmunds, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master Corporal Edmunds was found guilty by this Court on 25 January 2017 of four service offences under section 130 of the *National Defence Act (NDA)* for fraud contrary to section 380 of the *Criminal Code*.

[2] All offences are the result of financial transactions that ended with the production of four cheques in March, April and June 2011 to a company owned by the offender for a total amount of \$24,956.04.

[3] Further to the finding delivered by the Court, I adjourned the case to 27 April 2017 in order to proceed with the hearing on sentence, which the Court did. Other than the mandatory documents presented by the prosecution to the Court, each party made the decision to rely on the evidence already before it. Consequently, no new evidence was heard by the Court.

[4] The Court began on 6 July 2015. During the trial, 13 *voir dire* were held by the Court in order to deal with a variety of issues. It included a disclosure issue, a plea in bar and an abuse of process application.

[5] Because of the number of preliminary issues to deal with, the time they required and the availability of those involved in these matters, the Court sat in July, August and November 2015 and May 2016. The trial itself took place in January 2017.

[6] Among other things, the accused presented an abuse of process application granted by the Court. I concluded that the decision of the prosecution to proceed with the current charges before this Court against the accused, while he already had a previous court martial dealing with a similar matter, was an abuse of process under the residual category caught by section 7 of the *Charter*. However, I reserved my decision on the remedy by indicating the intent of the Court to mitigate the sentence, if the trial reached that step, which happened.

[7] As the military judge presiding at this General Court Martial, it is now my duty to determine the sentence.

[8] 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 (CAF). 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 will 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.

[9] Here, in this case, the prosecutor suggested the Court sentence the offender to imprisonment for a period of 90 days. The offender's defence counsel recommended to this Court to impose a reduction in rank to the rank of private and a fine in the amount of \$2,000.00, and alternately, if the Court considers sentencing the offender to imprisonment, then he suggested that it is a situation calling for no more than a period of 30 days.

[10] The fundamental purpose of sentencing in a court martial is to ensure respect for the law and the maintenance of discipline, and from a more general perspective, the maintenance of a just, peaceful and safe society. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[11] As it has always been the practice of this Court and as mentioned by the Court Martial Appeal Court in *R. v. Tupper*, 2009 CMAAC 5 at paragraph 30, the trial judge

must consider the fundamental purposes and goals of sentencing as found in sections 718 and following of the *Criminal Code*.

[12] Keeping in mind this legal context, then the fundamental purpose of sentencing in a court martial, as I mentioned earlier, is to ensure respect for the law and the maintenance of discipline by imposing sanctions that have one or more of the following objectives:

- (a) to protect the public, which includes the CAF;
- (b) to denounce unlawful conduct;
- (c) to deter the offender and other persons from committing the same offences;
- (d) to separate offenders from society, where necessary; and
- (e) to rehabilitate and reform offenders.

[13] When imposing a sentence, a military court must also take into consideration the following principles:

- (a) a sentence must be proportionate to the gravity of the offence;
- (b) a sentence must be proportionate to the responsibility and previous character of the offender;
- (c) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (d) an offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances. In short, the Court should impose a sentence of imprisonment or detention only as a last resort, as it was established by the Court Martial Appeal Court and the Supreme Court of Canada decisions; and
- (e) lastly, any sentence to be imposed by the Court should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

[14] As suggested by the prosecution, the Court is of the opinion that sentencing in this case should focus on the objectives of denunciation and general deterrence. It is important to remember that the principle of general deterrence means that the sentence imposed should deter not only the offender from reoffending, but also deter others in similar situations from engaging in the same prohibited conduct.

[15] The Court made the decision that the sentence to be imposed on the offender will take account of the *Charter*'s violation of a right of Master Corporal Edmunds. Essentially, the impugned conduct, which is the rigid approach taken by the investigative authorities and their incapacity to deal properly with the research of the information, combined with the ambiguous and opportunistic approach taken by the prosecution about the major fraud case involving Master Corporal Edmunds, which resulted with Master Corporal Edmunds facing two trials for charges of the same nature allegedly committed during the same time frame, committed in the exact same way, and exposed him to the fact that he may have to serve two sentences of incarceration at two different times, is clearly related to the offender.

[16] In such circumstances, as established by the Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6, the Court is entitled to consider reducing the sentence in order to take account of a *Charter* violation. Such approach was also confirmed by Letourneau, JA in the Court Martial Appeal Court decision of *R. v. Larocque*, 2001 CMAC 2.

[17] Master Corporal Edmunds was performing his duties as a pharmacist technician and as second in command at the Brigade pharmacy on Canadian Forces Base Petawawa in 2011. He was responsible for the procurement of goods at the pharmacy. At that time, there was a shortage in the availability of combat gauze for units.

[18] In March 2011, Master Corporal Edmunds registered a company, under the name of Tactical First Response for which he had sole ownership and had obtained a taxation number. Tactical First Response was registered as a vendor in the electronic financial system for the CAF and a bank account was created for that company.

[19] Purchase orders were originated by the Brigade pharmacy for combat gauze, identifying the vendor as being Tactical First Response. Tactical First Response issued invoices to the Brigade pharmacy, on which appears the following things:

- (a) the signature of Master Corporal Edmunds to the effect that the goods were received;
- (b) certification pursuant to section 34 of the *Financial Administration Act* for which the signature of Captain Willox was forged or without any signature; and
- (c) the signature of Master Corporal Edmunds to the effect that the required information for payment of the invoice in the electronic financial system was entered.

[20] The information in the electronic financial system was entered by Master Corporal Edmunds for the payment of each invoice.

[21] Cheques were issued for the payment of each invoice presented by Tactical First Response and they were deposited in a bank account to the benefit of Tactical First Response. The only person authorized to proceed to any withdrawal from that account was the offender.

[22] In determining the sentence, the Court considered the following aggravating factors:

- (a) the objective seriousness of the offence. You have been found guilty by this Court of four offences laid in accordance with section 130 of the *National Defence Act* for fraud contrary to section 380 of the *Criminal Code*. This offence is punishable by imprisonment for a term not exceeding 14 years when the value of the subject matter of the offence exceeds \$5,000 and for a term not exceeding two years where the value of the subject matter of the offence does not exceed \$5,000;
- (b) the subjective seriousness of the offence. First, there is the abuse of trust. You abused the confidence of your peers and that of your superiors who were confident that you were reliable in performing your task at the pharmacy. You were entrusted by your position to deal properly with the procurement of goods. You also abused the confidence of the public in general, because this was public money you were dealing with;
- (c) secondly, there is the premeditation. It is not something that you thought about doing at the very last minute. Over a period of four months, four times, you did the exact same thing involving the exact same requirement, which discloses a real intent of planning in doing such a thing. You also took the time to set the proper things in order to proceed as things were normal;
- (d) there is also the fact that you have three different previous convictions related to crime against property over the last 20 years, which does not include the last conviction for fraud before a court martial in 2013. Clearly, you are not a first offender and it seems that you have not gotten the message yet about the commission of such a crime; and
- (e) finally, the Court must consider the total amount of the fraud, which in the circumstances is important, especially considering the short period of time during which the offence was committed.

[23] Also, there are mitigating factors that I considered:

- (a) your mental health condition and your personal medical condition which are a result of your duties performed in the military environment. Basically, in 2016, you were followed for your mental health condition. Unfortunately, no update was provided to the Court but the information

is recent enough to consider that, as of today, you still coping with such situation; and

- (b) the violation of your *Charter* rights.

[24] As mentioned, by the Chief Military Judge, Judge Dutil, in *R. v. Roche*, 2008 CM 1001, in cases of fraud committed against an employer by an employee abusing a position of trust directly related to the management or supervision of the money or material fraudulently taken, a custodial sentence is required to promote denunciation and deterrence. As he said in the same decision at paragraph 15:

Despite the decisions of the Court Martial Appeal Court in *St-Jean, Lévesque, Deg* and *Vanier*, it must be said that since the 2004 amendments to the *Criminal Code* related to the maximum sentence applicable to the offence of fraud where the subject-matter of the offence exceeds \$5000 under paragraph 380(1)(a) of the *Criminal Code*, Canada's appellate courts have generally imposed prison sentences when the fraud is significant or when it is committed against an employer, whether it took place over a longer or shorter periods.

[25] In *R. v. Boire*, 2015 CM 4010, Military Judge Pelletier made a similar observation at paragraph 18.

[26] It has been well established by the Supreme Court of Canada decision in *R. v. Gladue*, [1999] 1 S.C.R. 688, as reiterated by the Court Martial Appeal Court in its decision of *R. v. Baptista*, 2006 CMAC 1, that incarceration should be used as a sanction of last resort. The Supreme Court of Canada specified that incarceration is adequate only when any other sanction or combination of sanctions is not appropriate for the offence and the offender. This Court is of the opinion that those principles are relevant in the military justice context, taking into account the main differences between the regimes for punishment imposed by a civilian tribunal sitting in a criminal matter and the one set up in the *NDA* for service tribunals.

[27] Here, in this case, considering the nature of the offences which are criminal offences per se, the circumstances in which they were committed, the applicable sentencing principles, the aggravating and the mitigating factors mentioned above, I conclude that there is no other sanction or combination of sanctions other than incarceration that would appear as an appropriate punishment in this case, under the form of imprisonment.

[28] The question now is what should be the duration of such a sentence of imprisonment in order to protect the public and maintain discipline. I would say that a period between four to six months would have appeared to the Court as appropriate in the circumstances of this case.

[29] However, as a proper remedy to the abuse of process by the prosecution, and in order to ensure the integrity of the military justice system, I would reduce the duration of the sentence of imprisonment to 30 days. By deciding in such a way, the Court still respects the principles and goals of sentencing found at section 718 of the *Criminal*

Code, while expressing at the same time the disapproval of the prosecution's conduct in the context of a *Charter* violation.

FOR THESE REASONS, THE COURT:

[30] **SENTENCES** you to imprisonment for a period of 30 days.

Counsel:

Captain L. Langlois and Captain M.L.P.P. Germain for the Director of Military Prosecutions

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master Corporal N.S. Edmunds