



COURT MARTIAL

Citation: *R. v. Baluyot*, 2017 CM 2013

Date: 20171215

Docket: 201733

Standing Court Martial

Royal Military College of Canada
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Officer Cadet X. Baluyot, Offender

Before: Commander S.M. Sukstorf, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Today, Officer Cadet Baluyot admitted his guilt to one charge contrary to section 86 of the *National Defence Act* (NDA).

“Particulars: In that he, on or about 28 June 2015, at St-Jean-sur-Richelieu, QC, did enter into a fight with NCdt Lawrence.”

[2] The Agreed Statement of Circumstances reads as follows:

“AGREED STATEMENT OF CIRCUMSTANCES

1. At all times material to this case, OCdt Baluyot was a member of the Regular Force, Canadian Forces.

2. At the time of the incident, OCdt Baluyot, NCdt Lawrence, and OCdt Gervais were candidates on the Basic Military Officer Qualification (BMOQ) course serial #M0053E.
3. The BMOQ course was held at the Canadian Forces Leadership and Recruit School, which is located in St-Jean-sur-Richelieu, QC and it ran from 18th May to 24th July 2015.
4. As part of the course curriculum of the BMOQ course serial #M0053E, the candidates were required to conduct an exercise called “Exercise Pre-Vimy” (Ex Pre-Vimy), which was held during the period of 29th June to 3rd July 2015.
5. NCdt Lawrence first met OCdt Baluyot in the July-August 2014 timeframe during the indoctrination phase of the Regular Officer Training Plan (ROTP), which was held in St-Jean-sur-Richelieu, QC. They started a friendship during that period.
6. During the months of October to December 2014, NCdt Lawrence dated OCdt Gervais. OCdt Gervais and NCdt Lawrence subsequently broke up and sometime in March 2015, NCdt Lawrence started dating OCdt Baluyot.
7. On or about 28 June 2015, OCdt Gervais attended NCdt Lawrence’s bedroom located on the fifth floor of the Megastructure complex. OCdt Gervais was helping NCdt Lawrence pack her equipment for Ex Pre-Vimy, which was planned to start the next day.
8. At some point, NCdt Lawrence suddenly pushed OCdt Gervais into the bedroom’s closet and told him to hide in there because she had heard the voice of OCdt Baluyot. OCdt Gervais hid in the closet while NCdt Lawrence exited the bedroom to meet with OCdt Baluyot, after closing the door behind her.
9. NCdt Lawrence aimed to keep OCdt Baluyot from entering her bedroom as she was trying to hide the presence of OCdt Gervais. OCdt Baluyot managed to enter the bedroom as OCdt Gervais exited the closet and left the bedroom. OCdt Gervais went into OCdt Neill’s bedroom, which was in proximity of NCdt Lawrence’s bedroom.
10. While in NCdt Lawrence’s bedroom, OCdt Baluyot got involved in a heated verbal argument with NCdt Lawrence because he was angry that she had lied to him about hanging out with OCdt Gervais. He swore at her a few times and he hit a set of lockers with his fist.

11. After hearing noises coming from NCdt Lawrence's bedroom, OCdt Gervais went back to her bedroom and asked "if everything was okay" or words to that effect. OCdt Baluyot responded that it was. OCdt Gervais then left the bedroom. As he was walking away, he again heard noises coming from the bedroom and he turned around to go back at which point he saw NCdt Lawrence come out of the bedroom crying. She asked OCdt Gervais to leave, which he did.

12. At some point during the argument, NCdt Lawrence advanced towards OCdt Baluyot and he used his left arm to strike her away, hitting her in the upper torso area, while she was standing in front of the closet doors. She subsequently fell to the floor.

13. After the altercation, NCdt Lawrence followed OCdt Baluyot back to his bedroom. OCdt Baluyot laid on his bed while NCdt Lawrence tried to make conversation with him. OCdt Baluyot eventually started to play video games on his computer and he asked her to pack his ruck sack for the next day, which she did.

14. After approximately 30 minutes, NCdt Lawrence left the room at OCdt Baluyot's request."

Joint submission

[3] In a joint submission, both the prosecution and defence counsel recommend that the court impose a sentence of a reprimand and a fine in the amount of \$1,900.

[4] The joint submission before the Court is reviewed in the context of the current Supreme Court of Canada (SCC) guidance in *R. v. Anthony-Cook*, 2016 SCC 43. In that decision, the SCC clarified that a trial judge must impose the sentence proposed in a joint submission "unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest."

[5] As background, a plea bargain occurs when counsel come together, outside the court, to discuss their respective positions in a quid pro quo manner which in this case resulted in a joint recommendation to this Court. In essence, the prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders, such as Officer Cadet Baluyot, to begin making amends. By encouraging plea deals, the burden on the Court is reduced and the prosecution benefits directly by not needing to take every matter to a full court martial.

[6] The most important gain to all participants is the certainty that a joint submission brings to the process. The accused person has a lot to lose. As you heard when I did the verification of the guilty plea earlier, by entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done

lightly. Thus, in exchange for making a plea, the accused must be assured of a high level of certainty that the Court will accept the joint submission.

Assessing the joint submission

[7] The prosecutor who proposes the sentence will have been in contact with the chain of command and, in this case, the victim. He is aware of the needs of the military and its surrounding community and is responsible for representing those interests. Defence counsel acts exclusively in the accused's best interest, including ensuring that the accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[8] As members of the legal profession and accountable to their respective law societies, the Court relies heavily on the professionalism and judgement of both counsel.

Evidence

[9] In this case, the prosecutor read the Agreed Statement of Circumstances and provided the documents required under the *Queen's Regulations and Orders for the Canadian Forces* article 112.51 supplied by Officer Cadet Baluyot's chain of command. On consent, defence counsel read, for the record, a letter of support from Warrant Officer Albino, Band Officer. In addition, counsel and Officer Cadet Baluyot consented to Naval Cadet Lawrence delivering a victim impact statement. Officer Cadet Baluyot also delivered a heartfelt and genuine apology directly to Naval Cadet Lawrence. Without a doubt, on the facts of this case, the latter two statements were the most significant, as they reinforced the importance of rehabilitation, permitting the two parties to find necessary closure.

[10] The Court also benefitted from submissions by counsel and case law precedent supporting their joint position on sentence, while highlighting the facts and considerations relevant to Officer Cadet Baluyot.

[11] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Officer Cadet Baluyot's personal circumstances so I may consider any indirect consequence of the sentence and impose a sentence adapted to him and the offence committed.

The offender

[12] Officer Cadet Baluyot is 28 years old. He enrolled in the Canadian Armed Forces (CAF) in July 2014 and he has no previous conduct or criminal record for the Court to consider. He is a fourth-year student studying computer engineering at the Royal Military College of Canada (RMC).

Objectives of sentencing to be emphasized in this case

[13] The prosecution has emphasized that in their negotiations, both he and defence counsel closely considered the objectives of sentencing. Based on the submissions of counsel, sentencing should focus on the objectives of denunciation and general deterrence. General deterrence means that the sentence should deter not only Officer Cadet Baluyot from reoffending, but also deter any other CAF members who might be tempted to commit similar or comparable offences. In addition, it was acknowledged by counsel that these sentencing objectives should not be focussed on in a way that trumps the objective of rehabilitating Officer Cadet Baluyot. The court agrees with their assessment.

[14] In making the joint submission, counsel advised the Court that they have taken into account all relevant aggravating and mitigating factors. After hearing the submissions of both counsel, the Court will highlight the relevant aggravating and mitigating factors for the record.

Aggravating factors

[15] Circumstances of the offence. The offence took place while both Officer Cadet Baluyot and Naval Cadet Lawrence were attending the Canadian Forces Leadership and Recruit School. Further, it did not go unnoticed that Officer Cadet Baluyot struck Naval Cadet Lawrence with sufficient force that she fell to the ground. The incident of fighting constituted a violation of the personal trust that Officer Cadet Baluyot had earned with Naval Cadet Lawrence. In the aftermath, the incident was further aggravated, by Officer Cadet Baluyot's cold and heartless treatment of Naval Cadet Lawrence as she desperately tried to restore their relationship. She packed his kit, helped him with assignments and tried to do whatever she could to make him happy, while he displayed heartless indifference.

Mitigating factors

[16] Guilty plea. With respect to mitigating factors, Officer Cadet Baluyot's plea of guilty must be given its full weight. His heartfelt apology and the concessions he made to Naval Cadet Lawrence in these proceedings reflect his genuine remorse.

[17] Court martial. The fact that Officer Cadet Baluyot had to publicly face this court martial proceeding had a deterrent effect not only on him, but also for other members of the military community who are aware of his case. After listening to the emotional impact that this incident had on Naval Cadet Lawrence, Officer Cadet Baluyot delivered directly to Naval Cadet Lawrence, a heartfelt, humbling apology admitting shame for his actions. The Court acknowledges his courage and willingness to take full responsibility for his actions. It is hoped that these proceedings have provided the necessary closure for all affected within the RMC community, including Naval Cadet Lawrence and Officer Cadet Baluyot.

[18] Previous good conduct. The Court recognizes that aside from this digression, in general, Officer Cadet Baluyot has made a positive contribution to the Canadian Armed Forces in his military career to date.

[19] Age. Officer Cadet Baluyot is a young man, aged 28 with a great deal of potential ahead of him. I hope he will view this event as a reminder that leadership is not just about telling people what to do. It requires unselfish understanding of the needs of those around us. It demands that we understand and empathize with others so that our decisions can be guided with confidence and solid judgement. As Officer Cadet Baluyot mentioned in his own words, it requires respecting those around you, but more importantly those who are closest to us. Respect is a priority and respect for others must always come before our own superficial needs.

Conclusion

[20] After considering counsel's submissions in their entirety and considering all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the proposed sentence cause the CAF community and the community at large to lose confidence in the military justice system?

[21] The fine recommended by counsel is significant and the reprimand will stand out as a blemish on the career record of Officer Cadet Baluyot, serving as a personal reminder to him of his failing towards his closest friend at that time, Naval Cadet Lawrence.

[22] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequence of the sentence, the gravity of the offence and the previous character of the offender, I am satisfied that counsel have discharged their obligation in making the joint submission.

[23] Before I pronounce sentence, I wish to thank counsel for their approach to this case. It is clear that you both understand the importance of rehabilitation and your flexibility and openness have contributed to the effectiveness of these proceedings. Further, I want to thank Naval Cadet Lawrence for her courage in speaking up in these proceedings. The Court recognizes that these proceedings have stirred emotion from this incident, dating back to 2015, but anticipates that these feelings will subside allowing you to confidently move forward. You are bright, healthy and have much to offer. As an RMC graduate myself, I can assure you that a career is not always best served via traditional routes. Success is anchored in patience, taking care of and believing in oneself, shunning self-judgement and comparison with others.

[24] Officer Cadet Baluyot, your apology was evidence of the lesson you've learned from all of this.

[25] Upon graduation, you will both become commissioned officers and will be responsible for counselling your subordinates and leading by example. Let this incident be a reminder that human frailty exists in each and every one of us, and we must always strive to rise above it. Just as engineers proudly wear their iron ring as a tangible reminder of their ethical obligations in the performance of their duties, this incident should remind you of your responsibilities as professional military officers and the priority you must always place in respecting your peers, subordinates and superiors.

FOR THESE REASONS, THE COURT:

[26] **FINDS** you guilty of the charge of fighting contrary to section 86 of the *NDA*.

[27] **SENTENCES** you to a reprimand and a \$1,900 fine payable in instalments of \$300 per month beginning 1 February 2018. In the event you are released from the CAF for any reason before the fine is paid in full, any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major L. Langlois

Major F.D. Ferguson, Defence Counsel Services, Counsel for Officer Cadet X. Baluyot