COURT MARTIAL

Citation: *R. v. Williams*, 2017 CM 4018

Date: 20171201
Docket: 201654

Standing Court Martial

Canadian Forces Station St. John's
St. John's, Newfoundland and Labrador, Canada

Between:

Her Majesty the Queen

- and -

Sergeant M.B. Williams, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sergeant Williams was found guilty of one of the three charges he faced in the course of this trial, which dealt with concerns regarding his conduct as course warrant officer for Basic Military Qualifications (BMQ) courses held in the summer of 2015, at Canadian Forces Station St. John's, St. John's, Newfoundland. Sergeant Williams was found to have harassed a subordinate, as harassment is defined by Defence Administrative Orders and Directives (DAOD) 5012-0, and was consequently found guilty of conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act* (*NDA*).

A joint submission is being proposed

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence composed of the punishments of a severe reprimand and a fine of $1,000.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. I am not obliged to go along with whatever is being proposed. However, as any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] While it is my duty to assess the acceptability of the joint submission being made, the threshold to depart from it is undeniably high as joint submissions respond to important public interest considerations. 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 who are remorseful to begin making amends. The benefits of joint submissions are not limited to the accused, but extend to victims, witnesses, the prosecution and the administration of justice generally. The most important gain to all participants is the certainty a joint submission brings, of course, to the accused, but also to the prosecution who wishes to obtain what a military prosecutor concludes is an appropriate resolution of the case in the public interest.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as military judge. As noted by the Supreme Court of Canada in *R. v. Généreux*, [1992] 1 S.C.R. 259, the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces (CAF) but serves a public function as well by punishing specific conduct which threatens public order and welfare. Courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following trial or a guilty plea. The sentencing usually takes place on a military establishment, in public, in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs a disciplinary function. Article 112.48 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the previous character of the offender. When a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered but also adequately laid out in the sentencing decision, to an extent that may not always be necessary in civilian criminal justice courts. The particular requirements of sentencing at courts martial do not detract from the guidance provided by the Supreme Court of Canada on joint submissions, as laid out at paragraph 54 of *R. v. Anthony-Cook*.

Matters considered

[7] The prosecution entered in evidence the documents required at QR&O 112.51. A statement obtained from Private Renouf, the victim of Sergeant Williams' behaviour in this case, which informs the Court as to the impact the offence had on him, was also entered as an exhibit with the consent of the defence. Finally, the prosecution also entered with consent a lengthy letter from Sergeant William's commanding officer, highlighting the challenges brought about by the disciplinary proceedings resulting from the BMQ courses that ran in the summer of 2015 and, most importantly, his views on Sergeant Williams' potential to contribute to his unit and the CAF in the future. The defence did not call any witnesses nor introduce any evidence in mitigation of sentence.

[8] In addition to the evidence, the Court also benefitted from the submissions of counsel that support their joint position on sentence on the basis of the facts and considerations relevant to this case, as well as by comparison with judicial precedents in other cases. These submissions and the evidence, including the information received from the victim, allow me to be sufficiently informed to impose a punishment adapted to the individual offender and the offence committed.

The offender

[9] Sergeant Williams is a 33-year-old Army Reservist who has joined the militia here in St. John's in February 2001. He has undergone training commensurate with increased rank and responsibilities in the CAF, mainly in training positions, most notably including over four years of continuous full-time service at what was then the Land Forces Atlantic Area (LFAA) Training Centre in Gagetown, New Brunswick between 2009 and 2013. His periods of service have been less frequent since the end of the course during which the offence was committed in 2015. Since charges were laid in July 2016, Sergeant Williams had to focus his military efforts towards the upcoming legal proceedings. As a civilian, Sergeant Williams works part-time in the security field.

[10] According to his commanding officer, Sergeant Williams was considered a solid and reliable senior non-commissioned officer (NCO). He could be relied on to participate and run training as required. Of course, the investigation and charges have brought concerns relating to Sergeant Williams' capacity to act ethically in relation to others. The commanding officer notes that recently Sergeant Williams has been working on preparing for legal proceedings but he will soon ask him to work with his unit's staff as they prepare for Sergeant Williams to resume his important senior NCO role with the 1st Battalion, The Royal Newfoundland Regiment.

The offence and its impact

[11] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offence as illustrated by the maximum punishment that can be imposed. Offences under section 129 of the *NDA* for conduct to the prejudice of

good order and discipline are punishable by dismissal with disgrace from Her Majesty's service or to less punishment.

[12] The facts surrounding the commission of the offence in this case were as found by the Court in its findings on that charge. In the summer of 2015, Private Renouf was a student on two BMQ courses held at Canadian Forces Station St. John's. He was 16 years old at the time. The BMQ Common Course ran for five weeks in June and July and was followed by a two-week BMQ Land Course in August. At the beginning of the BMQ Land Course, a decision was made to remove Private Renouf from the course. Sergeant Williams was informed of that decision as he was walking through the building, enjoying an afternoon off. He immediately attended the multi-purpose room, spoke to Private Renouf and offered him the opportunity to speak to the course before departing. The course was formed up and Private Renouf said a few words. Following that, Sergeant Williams ordered the members of the course to perform one push-up for every day that Private Renouf was granted medical restrictions during the BMQ Course and since. While push-ups were performed, Private Renouf was ordered to say "thank you" after every push-up performed by his former colleagues. At the trial, Private Renouf testified that he felt degraded and worthless as a result of that send-off from the course. The evidence of every prosecution witness present at the time was to the effect that they felt doing push-ups like this was unfair and undeserved both to them and Private Renouf. Some said they felt they had been used as tools to shame a colleague.

[13] The Court was informed of the impact of the offence on the victim. As stated in his testimony, Private Renouf experienced feelings of shame, fear and worthlessness during his BMQ Course as a result of Sergeant Williams' conduct, particularly on his send-off. These emotions resurface every time he is asked about the course. Private Renouf did envisage releasing from the CAF as a result.

Aggravating factors

[14] The circumstances of the offence in this case are serious given the harassment of a subordinate. I find the following circumstances to be aggravating in this case:

(a) first, the age of the victim, who, at 16 years of age, was particularly vulnerable;

(b) second, the fact that as the course warrant officer for a BMQ Course, Sergeant Williams was in a significant position of trust and authority which he abused by using his students to publicly shame someone who had just been taken off the course; and

(c) third, the significant impact of the offence on Private Renouf.

[15] Indeed, the behavior of the offender appears to have endangered the psychological integrity of Private Renouf. Conduct that places the safety, security and

health of fellow members of the CAF at risk threatens the operational effectiveness of the CAF and must be addressed.

Mitigating factors

[16] The Court also considers that the following are mitigating circumstances in this case:

(a) first, the fact that Sergeant Williams has no criminal or disciplinary record;

(b) second, I did consider the impact on Sergeant Williams of the considerable length of time it took to bring this matter to trial, during which time he has been under a cloud of suspicion and has not been able to contribute to his unit's activities as assiduously as he used to; and

(c) finally, I have considered Sergeant Williams' relatively young age, his very appreciated and generally satisfactory service with the CAF, indicative in my view of his potential to continue making a positive contribution to Canadian society, especially his unit and more generally the Army Reserve, which needs people like him.

Objectives of sentencing to be emphasized

[17] The circumstances of this case require that the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender. At the same time, any sentence imposed should not compromise the rehabilitation of Sergeant Williams, which is well underway given the time that this matter had been pending and his testimony at trial which leads me to believe that he has learned a lesson from the way Private Renouf was treated in the summer of 2015.

Assessing the joint submission

[18] The first thing I need to do in determining the appropriate sentence is to assess the joint submission and determine if it is acceptable. The prosecutor and defence counsel both recommended that this Court impose the punishment of a severe reprimand and a fine of $1,000 to meet justice requirements. I may depart from the joint submission only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[19] As a military judge, the issue for me to assess is not whether I like the sentence being jointly proposed or whether I would have come up with something better. Indeed, any opinion I might have on an appropriate sentence is not sufficient to reverse the joint submission that was made to me.

[20] The high threshold imposed on trial judges to reverse joint submissions is necessary to allow all of their benefits to be obtained. Prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offences, as with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command. He or she is aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused is informed of and agrees with submissions made as to sentence. Both counsel are bound professionally and ethically not to mislead the court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[21] In determining whether a jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, I must ask myself whether, despite the public interest considerations that support imposing it, the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system. Indeed, as any judge assessing a joint submission, I have to avoid rendering a decision that causes an informed and reasonable public, including members of the CAF, to lose confidence in the institution of the courts.

[22] I do believe that a reasonable person aware of the circumstances of this case would expect that the offender, guilty of harassing a subordinate, would receive a sentence composed of punishments that both express disapprobation for the failure in discipline involved and have a personal impact. A sentence composed of a severe reprimand and a fine is aligned with these expectations. In fact, it is the type of sentence that I would have imposed.

[23] Considering all of these factors, as well as the circumstances of the offence and of the offender, the applicable sentencing principles and the aggravating and mitigating factors mentioned previously, I conclude that the sentence jointly proposed by counsel would not bring the administration of justice into disrepute, nor would it otherwise be contrary to the public interest. The Court will, therefore, accept it.

[24] Under section 145(2) of the *NDA*, the terms of payment of a fine are in the discretion of the service tribunal that imposes it. At the sentencing hearing, the prosecution requested on behalf of both parties that the fine be payable in five monthly instalments of $200. The Court is amenable to this request.

[25] Sergeant Williams, I believe after hearing your testimony that you realize by now that your conduct in relation with the charge fell short of the high standard of conduct expected of instructors in the CAF. It is conduct that is clearly not acceptable, not only as an instructor, but also in any work environment. Yet, the most unfortunate

aspect of your conduct may be the breakdown of the respect you enjoyed from colleagues and the trust you earned from your superiors and, most importantly, the fact that your actions deprived your students and subordinates of the role model that you should have been for them as they commenced their career in the CAF. Students should be proud of those who instructed them in basic training and unfortunately, it may not be the case for many who witnessed your actions vis-à-vis Private Renouf. The Court views this episode as a display of misplaced judgement and a mistake on your part, for which you have now paid your debt to the military justice system. You appear to be well engaged on a path of rehabilitation and, most importantly, you have the support of your commanding officer to re-engage with your unit and contribute to training young members once again. Many people I see before me are not given a second chance. You are in the privileged position to be able to redeem yourself and I encourage you to take advantage of the opportunity, not only for your own good but also for the benefit of the Army Reserve which needs you. With these proceedings behind you I hope you can look forward to many more years of positive contribution to the CAF and Canadian society.

FOR THESE REASONS, THE COURT:

[26] **SENTENCES** you to a severe reprimand and a fine of $1,000 payable in five monthly installments of $200, commencing no later than 1 January 2018. In the event you are released from the CAF for any reason before the fine is paid in full, then any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major G.J. Moorehead and Captain B.E. Jalonen

Major J.L.P.L. Boutin, Defence Counsel Services, Counsel for Sergeant M.B. Williams