



COURT MARTIAL

Citation: *R. v. Grening*, 2018 CM 2009

Date: 20180219

Docket: 201755

Standing Court Martial

3rd Canadian Division Support Base
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Sapper Z.B. Grening, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Sapper Grening, today you admitted your guilt to two charges contrary to section 90 of the *National Defence Act (NDA)*.

FIRST CHARGE ABSENTED HIMSELF WITHOUT LEAVE

Section 90 *NDA* *Particulars:* In that he, at 0720 hours, 2 February 2017, without authority was absent from 1 Combat Engineer Regiment, Edmonton, Alberta, and remained absent until 0745 hours, 2 February 2017.

THIRD CHARGE ABSENTED HIMSELF WITHOUT LEAVE

Section 90 *NDA* *Particulars:* In that he, at 0720 hours, 17 May 2017, without authority was absent from 1 Combat Engineer Regiment, Edmonton, Alberta, and

remained absent until 0830 hours, 17 May 2017.

Joint submission

[2] 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 \$1,000.

[3] The joint submission before the court is reviewed in the context of the current Supreme Court of Canada guidance in *R. v. Anthony-Cook*, 2016 SCC 43 which says 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.”

[4] In a plea bargain, the prosecution recommends a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders, such as Sapper Grening, to begin making amends, starting rehabilitation and, in this case, regaining the trust of his superiors and the respect of his fellow soldiers.

[5] As you heard when I verified the guilty pleas earlier, by entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect. 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

[6] The prosecutor who proposes the sentence would have been in contact with the accused’s chain of command. The prosecution is aware of the needs of the military and its surrounding community and is responsible for representing those interests. Conversely, defence counsel acts exclusively in the accused’s best interest, which, in this case, ensures that the accused’s plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

Evidence

[7] In this case, the prosecutor read the Statement of Circumstances as well as an Agreed Statement of Facts (outlining the personal circumstances of the accused) and then provided the documents required at the *Queen’s Regulations and Orders for the Canadian Forces* articles 111.17 and 112.51. In addition, he provided the Court with the referral letters from both Sapper Grening’s commanding officer as well as his divisional commander. On consent, defence counsel provided an email summary from Major Elliott, the base surgeon, which outlined the significant medical events and prognosis of Sapper Grening so the Court may be aware of specific mental circumstances of the accused.

“Statement of Circumstances

1. At all relevant times, Sapper Grening was a member of the Canadian Armed Forces, Regular Force. He was posted to 1 Combat Engineer Regiment, 3rd Canadian Division Support Base Edmonton, Alberta, as a Combat Engineer.
2. Sapper Grening lived in single quarters on base in Room 308, A Wing of Building 163 at all relevant times. There is no pay phone in the building and Sapper Grening did not have a land line phone in his room. He relied on a personal cellphone.
3. The sub-units of 1 Combat Engineer Regiment routinely form up inside their respective vehicle bays for parades and physical training sessions. These are referred to simply as “bays”.
4. On 1 February 2017, Sergeant Otteson informed Sapper Grening that he was to report for physical training to Warrant Officer Ho in the 2 Troop Bay, also referred to as the 12 Field Squadron Bay at 0720 hours the next morning. Sergeant Otteson asked Sapper Grening if he had any questions about the timing and Sapper Grening said that he did not.
5. During roll call on the morning of 2 February 2017, Warrant Officer Ho noted that Sapper Grening was not present in the 12 Field Squadron Bay. He began a search for Sapper Grening within unit lines, to ensure Sapper Grening had not reported to an incorrect location. He went to the Regiment’s gym, 18 Squadron Bay, 12 Field Squadron Bay and the two main bathrooms in the hallway. When Warrant Officer Ho was unable to locate Sapper Grening, he informed Warrant Officer Ely that Sapper Grening was absent.
6. Warrant Officer Ely sent Sergeant Pelletier to look for Sapper Grening in Sapper Grening’s barracks room. Upon arriving at approximately 0745 hours, Sergeant Pelletier knocked on Sapper Grening’s door. Sapper Grening answered, fully dressed with his winter jacket on, and stated he wanted to go to the MIR. Sergeant Pelletier drove Sapper Grening to the MIR and, while en route, Sapper Grening told Sergeant Pelletier he had sent a text message to his section commander at 0657 hours indicating he would not be present for roll call as he was going to the MIR. Sapper Grening explained that his uncle was having health problems and that he wanted to go see mental health at the MIR.
7. After taking Sapper Grening to the MIR, Sergeant Pelletier returned to unit lines and asked Sergeant Otteson if he had received the text message sent by Sapper Grening prior to 0720 hours. Sergeant

Otteson confirmed he had received such a text, but it was time stamped as arriving at 0845 hours on his phone. Sapper Grening later indicated that he tried to call his section commander at the time he sent the text message, but his phone was not working properly and the call would not connect.

8. On 16 May 2017, Sapper Grening was given a timing for a unit parade of 0720 hours the next morning. On 17 May 2017, Sergeant Pelletier was taking roll call at 0715 hours for the parade, when he noted that Sapper Grening was absent. At 0719 hours, Master Corporal Bakker received a text message from Sapper Grening indicating he was attending sick parade at the MIR. At approximately 0820 hours, Sergeant Pelletier called Care Delivery Unit A (the MIR) and learned that Sapper Grening had not reported there.

9. Sergeant Pelletier and Sergeant Hubbard went to Sapper Grening's quarters. They knocked on Sapper Grening's room door. There was no answer. They knocked a second time, with extra force to ensure the knock would be heard. When there was no response, Sergeant Hubbard called the barrack warden, who came and unlocked the door. At approximately 0830 hours, Sapper Grening was found in his room."

"Agreed Statement of Facts

1. The chain of command at 1 Combat Engineer Regiment has taken several administrative actions with regard to Sapper Grening.

2. Sapper Grening was placed on Counselling and Probation on 18 January 2017 for a period of six months for conduct reasons. These related to an inability to meet his timings and for being dishonest regarding those absences. He was absent without leave during the monitoring period and was not successful completing it.

3. Sapper Grening was placed on Initial Counselling for Conduct on 24 April 2017 for a period of six months, relating to his not following administrative policies regarding moving out of single quarters and his mis-managing his personal finances.

4. Sapper Grening requested a voluntary release from the Canadian Armed Forces on 3 April 2017. His request was denied by Director Military Careers on 31 May 2017, on the basis that Sapper Grening had not yet completed a minimum of three years of service.

5. In June 2017, the Commanding Officer of 1 Combat Engineer Regiment issued a Notice of Intent to Recommend Release to Sapper Grening and initiated an Administrative Review through the Director

Military Careers Administration. On 22 January 2018, further information was requested by Director Military Careers Administration for the file. The file remains pending.

6. Sapper Grening has been on a temporary medical category, with medical employment limitations imposed on him since January 2017. Those medical employment limitations were forwarded to Director Medical Policy on 27 October 2017. A permanent medical category is expected, which may result in a medical release from the Canadian Armed Forces. However, the file remains pending.

7. Sapper Grening has a fiancée they had a baby, born in August 2017. They are expecting a second child due in August 2018. They are now living together and Sapper Grening's is the sole income in the relationship."

[8] In addition, the Court benefitted from submissions from counsel to support their joint submission on sentence highlighting the facts and considerations relevant to Sapper Grening allowing me to impose a punishment adapted specific to Sapper Grening and the offences he committed.

The offender

[9] Sapper Grening is 21 years old today. He enrolled in the Canadian Armed Forces (CAF) in July 2015 and has now served for approximately two and a half years. On the civilian side, he is a trade school graduate. He is engaged to be married, and with his fiancé, he has a young child approximately six months old and they are expecting another child in the summer of 2018. Sapper Grening previously applied for his release from the CAF, but it was denied as he had not completed his compulsory three-year period of service. However, since that time, his unit has recommended his release. Sapper Grening currently has a temporary medical category which may be changed to a permanent medical category which may lead to a medical release. Either, way, given the time period that Sapper Grening has left to serve and the current recommendations for release, it appears certain that Sapper Grening will soon be transitioning back to the civilian sector.

Objectives of sentencing to be emphasized in this case

[10] Prosecution and defence counsel emphasized that they closely considered the objectives of sentencing and recommend that the sentence address the objectives of general deterrence and denunciation. This means that the sentence should deter not only Sapper Grening from reoffending, but also deter any other CAF members who might be tempted to commit similar or comparable offences. However, in this particular case, considering the young age of the offender and the fact that he was struggling with mental health issues concurrent with these incidents, it is the court's view, that these objectives should not trump the objective of rehabilitation.

Aggravating and mitigating factors

[11] In making the joint submission, counsel advised the Court that they have taken into account all relevant aggravating and mitigating factors. The Court highlights the following aggravating factors for the record:

- (a) Excuses: on each occasion when you didn't meet your timings, you made excuses and relied upon either a faulty cell phone or attempted to mislead your chain of command. It was your responsibility to find a way to advise your chain of command appropriately and not shift the blame for your absence;
- (b) Conduct sheet: you do have a conduct sheet for similar offences where you failed to meet timings. As prosecution highlighted, one of the offences before the Court occurred just four days after you had completed a sentence of confinement to barracks for being absent without leave (AWOL); and
- (c) Administrative review: your chain of command invested in administrative measures to attempt to help you help yourself to rehabilitate. However, it was noted that during the time that you were undergoing counselling and training to help you meet your timings, you committed the offence of AWOL yet again.

[12] The Court highlights the following mitigating factors for the record:

- (a) Guilty pleas: your pleas of guilty for the offences must be given their full weight. Although your motivation for selecting trial by court martial in light of your pending release was viewed as an attempt to avoid the consequences of your conduct, your guilty pleas today demonstrate that you now take full responsibility for your shortcomings displayed over a year ago;
- (b) Your young age: although the prosecution submitted that your young age and military experience were neutral factors, in your case, in light of your efforts invested in rehabilitating yourself, the Court sees it as a mitigating factor. It might not have been the case if you had not taken such significant steps to assume responsibility. Your comments made in exercising your right of allocution reflected genuine honesty and remorse for the conduct you previously displayed. You exhibited confidence and maturity that were most likely absent when the incidents occurred. Your words were heartfelt and properly recognized the efforts of your chain of command in both attempting to rehabilitate you as well as to discipline you;
- (c) Despite what happens with respect to your pending release, you appear to have prepared yourself for the transition to the civilian sector and you

have availed yourself of financial counselling as well as other assistance that your chain of command has offered you; and

- (d) Mental health: at the time of this rash of AWOL incidents, you were young and concurrently suffering from significant mental health problems. This does not absolve you nor excuse your conduct, but as your counsel highlighted, it does explain why you acted in such an unacceptable manner.

Conclusion

[13] 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 a breakdown in the proper functioning of the military justice system. Would it cause its stakeholders to lose confidence in the military justice system?

[14] The prosecution provided an extensive overview of case law (*R v Squires*, 2013 CM 2016; *R v Stull*, 2013 CM 2015; *R v Weir*, 2013 CM 3010; *R. v. Smith*, 2015 CM 1011; *R v Bailey*, 2013 CM 4026; *R. v. Embaye*, 2015 CM 1017) that support that the recommended joint submission is within the range deemed acceptable by courts martial.

[15] The Court considered the list of mitigating factors and more importantly the extensive progress that Sapper Grening has made to date in terms of his rehabilitation, personally, professionally and medically, in the consideration of such a sentence. The court concurs with counsel that both a reprimand and a significant fine are in order.

[16] Before I pass sentence, the Court refers to d'Auteuil MJ comments in the case of *Weir*, when he referred to the offence of AWOL:

This type of offence is about the application of the principles of responsibility and integrity. For a soldier being trustworthy and reliable at all time[sic] is more than essential for any mission and the Armed Forces whatever is the function or the role you have to perform.

[17] We recruit young men and women with unbridled enthusiasm and energy and we want them to have great resourcefulness and courage. However, we do expect them to be where they need to be, when we need them to be there. It is paramount and not optional.

[18] When our military members operate outside of our expectations, appropriate course corrections must be made and this is done with the various tools we have within the military justice system. An Armed Force depends upon the strictest discipline in order to function effectively. (see *R. v. Généreux*, [1992] 1 S.C.R. 259). Discipline does not happen overnight and there is no switch that enables us to turn it on when we deploy into operations.

[19] Discipline on the part of individual members of the CAF requires an inculcated pattern of obedience. It starts in training, in your unit, with your leaders instilling in you the discipline required to do the work we do. Your unit tried every tool it had in its tool box. I don't think there was one they didn't try. You were tried by summary trial, not once, but twice. As a sentence, you were confined to barracks once and on another occasion you were fined. In addition, you were counselled, and provided administrative measures to correct your failings and at the same time, you were provided with the full support of the medical system.

[20] Fortunately, you have taken steps to rehabilitate yourself. You are still only 21 years of age and you have your whole life ahead of you. Your words of allocution demonstrate that you recognize the effort of your chain of command and you demonstrate remorse for letting your unit, fellow troops and superiors down.

[21] As you move forward, challenges will arise. Your growing maturity and increased ability to manage your responsibilities will help you navigate the difficulties, keeping you on a steady course. You have a growing family and your maturity and responsibility will be paramount as you move forward.

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

FOR THESE REASONS, THE COURT:

[23] **ACCEPTS** your pleas of guilty;

[24] **FINDS** you guilty of the two charges of absence without leave contrary to section 90 of the *NDA*; and

[25] **SENTENCES** you to a reprimand and a fine in the amount of \$1,000 payable in eight installments of \$125 until paid in full with payments beginning in the 1 March 2018 pay period. In the event that your release is approved before the final payment is made, the remainder must be paid in full prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major G.J. Moorehead and Captain J.M. Thompson

Major A.H. Bolik and Captain G.L. Granatstein, Defence Counsel Services, Counsel for Sapper Z.B. Grening