



COURT MARTIAL

Citation: *R. v. Hosford*, 2018 CM 2023

Date: 20180723

Docket: 201816

Standing Court Martial

5th Canadian Division Support Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Master Bombardier J.M. Hosford, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today, Master Bombardier Hosford admitted his guilt to the fourth charge on the charge sheet. Considering that the prosecutor offered no evidence on the first, second and third charges, noting that the third charge was an alternative to the fourth charge, the Court finds him not guilty of the first and second charges, and after having accepted and recorded a plea of guilty to the fourth charge, the court orders a stay of proceedings for the third charge. The Court must now determine and pass sentence on the fourth charge which reads as follows:

“FOURTH CHARGE ABSENTED HIMSELF WITHOUT LEAVE

Section 90 of the

National Defence Act

(alternate to third

Particulars: In that he, on or about 11 December 2016, at approximately 0130 hrs, at or near Canadian Forces Base Gagetown, Oromocto,

charge)

New Brunswick was absent without authority from building H-8 and remained absent until approximately 0305 hrs on 11 December 2016.”

[2] The evidence before this Court includes a Statement of Circumstances, which reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. On 26 October 2004, MBdr Hosford enrolled in the Canadian Armed Forces (CAF) as a reservist at 3rd Field Artillery Regiment in Saint John NB as an Artillerymen. He transferred in the Regular Force on 23 April 2010. At all material times, MBdr Hosford was a member of the Regular Force, posted to 5th Canadian Division Training Centre, located on Canadian Forces Base Gagetown.

2. On 6 December 2016, MBdr Hosford was sentenced at summary trial to a fine of 500\$ and 7 days of confinement to barracks.

3. For the night of 10 to 11 December, MBdr Hosford was the only member serving a sentence of confinement to barracks in Building H-8. While conducting an inspection of Building H-8 at approximately 0200 hrs on 11 December 2016, MCpl Carrier, the Base Duty Sgt, realized that the light was on in room 113, the room assigned to members undergoing a punishment of confinement to barracks (“the defaulters’ room”), with the door locked. He and his duty driver, LS Wright, looked in the room through the window and realized that MBdr Hosford was not in the room.

4. MCpl Carrier and LS Wright proceeded to the Military police unit to notify them of the absence of MBdr Hosford from the defaulters’ room. Cpl Whitehall and Cpl Ward from the Military police went to MBdr Hosford’s residence in Oromocto and knocked on the door. MBdr Hosford was compliant with the military police and at approximately 0305 hours on 11 December 2016, agreed to return to the base with them and returned to the defaulters’ room. MBdr Hosford was not placed under arrest at this time.

5. MBdr Hosford stated that he received a phone call from a friend at approximately 0130 hrs on that night explaining that MBdr Hosford’s girlfriend was in danger and needed medical help. MBdr Hosford therefore made the decision to leave the defaulters’ room despite being confined to barracks to go help his girlfriend and brought her back to his residence. MBdr Hosford did not ask for permission to leave building H-8.

6. On 6 December 2016, MWO Boyd explained the 5 Canadian Division Support Group Standing Order section 5.4.2 “Orders for defaulters, confinement to barracks” to MBdr Hosford, which describe the restrictions and routine for members confined to barracks. MWO Boyd explained that he had to abide by the standing orders from his first reporting timing at 1800 on 6 December 2016 until the completion of the sentence. MBdr Hosford was aware of these orders and of his duty to be present in Building H-8 overnight while undergoing the punishment of confinement to barracks.”

[3] An agreed statement of facts was also entered as evidence, which reads as follows:

“AGREED STATEMENT OF FACTS

1. Master Bombardier Joe Hosford joined the Canadian Armed Forces on 26 October 2004 at 3 Field Artillery Regiment, Saint John, N.B. He spent 6 years in the reserves in the artillery before joining the regular force in April, 2010. He is currently 31 years of age.

2. In February, 2007, MBdr Hosford deployed on Operation Athena to Afghanistan. His tasks consisted primarily of being a M777 Gun Detachment member. Following his deployment to Afghanistan, he worked a various number of class B positions until his component transfer to the regular force in 2010, where he was posted to CFB Gagetown, where he currently resides.

3. Earlier this year, MBdr Hosford was referred by the Canadian Armed Forces for a psychological assessment. On 7 March 2018, Dr. Treva Penney, PhD., L.Psych., diagnosed MBdr Hosford with a number of medical conditions.

4. Dr. Penny considered these conditions as relating in part to his deployment to Afghanistan in 2007.

5. MBdr Hosford is still awaiting a treatment plan from the Canadian Armed Forces for these conditions.

6. MBdr Hosford has recently been posted to JPSU – NB and PEI.”

Joint submission

[4] In a joint submission, counsel recommend that the Court impose a sentence of a fine in the amount of \$200.

[5] This 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 recommended in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.”

[6] As background, a plea bargain occurs when counsel come together, outside the court, to discuss their respective positions in what we call a quid pro quo manner which, in this case, also resulted in a joint recommendation on sentence to the Court. In essence, in exchange for a guilty plea, 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 Master Bombardier Hosford, to begin making amends and rehabilitating. 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. Joint submissions are vitally important to the well-being of the military justice system, as they are in civilian criminal courts, because they free up resources and allow justice participants to focus their resources on more demanding cases.

[7] As you heard when I verified 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. 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

[8] The prosecutor who proposes the sentence is aware of the needs of the military and its surrounding community and is responsible for representing those interests. She will have been in contact with the member's unit. Conversely, defence counsel acts exclusively in the accused's best interest which, in this case, ensures that the accused's guilty plea was voluntary and informed and unequivocally acknowledges his guilt.

Evidence

[9] In this case, the prosecutor read the Statement of Circumstances and then provided the documents required under *Queen's Regulations and Orders for the Canadian Forces* article 112.51 that were supplied by the chain of command. Similarly, defence read the Agreed Statement of Facts so that the Court could be informed of the facts specific to the personal circumstances of Master Bombardier Hosford.

[10] Furthermore, the Court benefitted from counsel's submissions to support their joint position on sentence where they highlighted the facts and considerations relevant to Master Bombardier Hosford.

[11] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Master Bombardier Hosford's personal circumstances so I may adapt and impose a sentence specifically for him, taking into account the rehabilitation and progress he has made to date.

The offender

[12] Master Bombardier Hosford is thirty-one years old. He enrolled on 24 October 2004 in the reserve force, transferring to the regular force in April 2010. In all, he has served his country for almost fourteen years which included a deployment in Afghanistan. In short, he has served his country well and, although he has one conviction on his conduct sheet for a similar offence, he has no criminal record or other negative considerations for the Court to weigh.

[13] As noted in the Agreed Statement of Facts, Master Bombardier Hosford has already taken significant steps towards rehabilitation, having reached out and sought appropriate medical attention, and he is focused on transitioning to the civilian sector. These efforts cannot go unnoticed by the Court.

Objectives of sentencing to be emphasized in this case

[14] The prosecution has emphasized that, in their negotiations, she and defence counsel closely considered the objectives of sentencing. In the case at hand, both the prosecution and defence submit that the objectives they considered most important are that of general and specific deterrence as well as denunciation. Defence counsel also highlighted that, on the facts of this case, these objectives should not impair the member's ongoing rehabilitative efforts. I agree with their assessment.

[15] 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. In order to accomplish this, it is imperative that members be provided the best opportunity for success in reforming their conduct and shortcomings.

Parity

[16] Under the principles of sentencing, the law requires that the sentence imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[17] In making her recommendation on sentence, the prosecution relied upon a significant number of precedents which the Court reviewed. They include *R. v. Balint*, 2011 CM 1012, *R. v. Corporal Dove*, 2006 CM 44 and *R. v. Corporal J.D.M Picard*, 2007 CM 3002, as well as an additional case provided by defence counsel namely *R. v. Private M. Beausejour*, 2005 CM 23. In short, the type of punishment given for this

type of offence, with similar mitigating factors, ranges from a \$200 to a \$600 fine or other minor punishment.

[18] In the military justice system, as well as under paragraph 718.2(a) of the *Criminal Code*, the principles of sentencing require that a sentence be increased or reduced to account for any aggravating or mitigating circumstances relating to the offence or the offender. Based on the balancing of these circumstances, and in a case such as the one before the court today, where there is evidence of very positive rehabilitative efforts by the offender, the court must consider this in reducing the sentence.

Aggravating Factors

[19] After hearing the submissions of counsel, the Court highlights the following aggravating factors for the record:

- (a) Under sentence for absence without leave (AWOL) – When the incident occurred, the offender was already serving a sentence for AWOL; and
- (b) Rank and experience of the accused – The member had twelve years of military experience at time of events.

Mitigating factors

[20] After hearing the submissions of counsel, the Court highlights the following mitigating factors for the record:

- (a) Guilty plea – Master Bombardier Hosford’s plea of guilty for this offence, as described in the Statement of Circumstances, must be given its full weight. In addressing the court, Master Bombardier Hosford showed genuine remorse. Further, his courage displayed in accepting responsibility cannot go unnoticed. He stated that he takes full responsibility for his actions and regrets his choices. He also stated he provided the court with the context of why he left the barracks to explain that his absence was not motivated by a lack of respect for the Canadian Armed Forces (CAF), but rather it flowed from a personal challenge he was facing in controlling his impulses. In addition, as the prosecution highlighted, his guilty plea saved the Court and counsel considerable time;
- (b) Cooperation with military authorities – When the military police showed up at his home, Master Bombardier Hosford was not confrontational and he willingly returned to the base;
- (c) Military service – He has served his country for fourteen years, including a tour in Afghanistan;

- (d) Delay – The Court noted that we are now eighteen months post offence and, for a charge of this nature, it is appropriate that this delay in disposing of the charges be considered in mitigation; and
- (e) Mental health and ongoing rehabilitation – Since the incident, Master Bombardier Hosford has been receiving help, having obtained a medical diagnosis that links his medical condition to his tour in Afghanistan. His focus on the next stage of his life is encouraging and should not be impeded with.

[21] Before I pass sentence, I want to emphasize that an Armed Force depends upon the strictest discipline in order to function effectively. (see *R. v. Généreux*, [1992] 1 S.C.R. 259)

[22] We expect our members to be where they need to be, when we need them to be there. It is paramount and not optional. The Court appreciates that upon hearing of the problems with your girlfriend you were faced with a very difficult choice. However, as I explained when I did the plea comprehension query, the offence of AWOL has few defences. In the future, members who are faced with this type of dilemma should seek the assistance of their chain of command. They are human, too and capable of empathy.

[23] Fortunately, you have taken steps to rehabilitate yourself. You are still only thirty-one years of age and you have your whole life ahead of you. Your address to the court demonstrates that you recognize your shortcomings and managing these as you move forward will assist in your success when different and greater challenges arise.

[24] Considering all of the factors, the circumstances of the offence 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.

Conclusion

[25] The punishment of a fine in the amount of \$200 sends a message that this type of conduct will not be tolerated in the CAF. However, in sentencing, it also reflects that the Court has considered the member's unique mitigating factors. As such, the recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[26] **FINDS** you guilty of the fourth charge, not guilty of the first and second charges and directs that the proceedings on the third charge be stayed.

[27] **SENTENCES** you to a fine in the amount of \$200.

Counsel:

The Director of Military Prosecutions as represented by Major M.E. Leblond

Major F.D. Ferguson, Defence Counsel Services, Counsel for Master Bombardier J.M. Hosford