



COURT MARTIAL

Citation: *R. v. Bellefontaine*, 2018 CM 2021

Date: 20180717

Docket: 201809

Standing Court Martial

St-Jean Garrison
St-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Officer Cadet E.F. Bellefontaine, Offender

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

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's " <i>Use of Personal Information in Judgments and Recommended Protocol</i> ".

REASONS FOR SENTENCE

(Orally)

Introduction

- [1] Today, Officer Cadet Bellefontaine admitted his guilt to the one charge on the charge sheet namely:

“First Charge
Section 90 N.D.A.

ABSENTED HIMSELF WITHOUT LEAVE

Particulars: In that he, at or about 0530 hours, on or about 7 July 2017, at the Canadian Forces Leadership and Recruit School, Saint-Jean-Sur-Richelieu, Québec, without authority absented himself from his unit.”

[2] Having accepted and recorded a plea of guilty with respect to the charge, the Court must now determine and pass sentence. The evidence before this Court includes a Statement of Circumstances, which reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all material times, XXXX OCdt E.F. Bellefontaine was a member of Canadian Armed Forces, Regular Force, and posted to the Canadian Forces Leadership and Recruit School (CFLRS).
2. On 6 July 2017, OCdt Bellefontaine attended his graduation parade upon completion of his Basic Military Officer Qualification.
3. After his graduation parade, he left CFLRS for a free evening.
4. OCdt Bellefontaine returned to CFLRS at approximately 21:50 hrs.
5. In his way around the BBQ Pit of CFLRS, he met Avr(R) Gallant-Alain and OCdt Caldwell.
6. Following a conflict with OCdt Bellefontaine, Avr(R) Gallant-Alain reported the event to the duty staff of CFLRS at the green desk.
7. That night, the duty staff consisted of MCpl Laroque, MCpl St-Laurent, MCpl Lightfoot and WO Prud’homme.
8. In order to shed light on the event, the duty staff decided to bring Avr(R) Gallant-Alain, OCdt Caldwell and OCdt Bellefontaine into separate offices and question them.
9. At the end of the interaction between WO Prud’homme and OCdt Bellefontaine, WO Prud’homme decided to call Capt Bérard who was the Adjutant of CFLRS to inform him about the situation.
10. After this conversation, Capt Bérard called the CO of the CFLRS, LCol Bédard, to inform him of the situation and to determine what measures to take.
11. When the discussion between Capt Bérard and LCol Bédard ended, WO Prud’homme was informed that, by order of the CO, OCdt Bellefontaine was to remain in CFLRS until further notice. This decision was made as a result of the fact that there was an

ongoing investigation, and also because there were concerns that OCdt Bellefontaine would not be able to drive safely in the morning after having consumed alcohol following his graduation parade.

12. WO Prud'homme communicated this information in person to OCdt Bellefontaine to not leave CFLRS unless otherwise told by the CO.
13. OCdt Bellefontaine answered WO Prud'homme by "Yes warrant" or words to that effect.
14. The following morning, on July 7 2017, at around 0730 hrs, LS Ouellet, one of OCdt Bellefontaine's course instructors, noticed that OCdt Bellefontaine was no longer at CFLRS.
15. LS Ouellet was told by OCdt Pope that OCdt Bellefontaine left CFLRS around 0530 that morning.
16. At that moment, CFLRS staff tried to find OCdt Bellefontaine
17. Between 0900 and 0930, OCdt Bellefontaine was finally reached by phone.
18. OCdt Bellefontaine informed Sgt Billingsley that he was in Ottawa.
19. At that time, OCdt Bellefontaine received the order to go back to CFLRS, an order with which he promptly complied."

Joint submission

[3] In a joint submission, counsel recommend that the Court impose a sentence of a fine in the amount of \$800.

[4] 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."

[5] As background, a plea bargain occurs when counsel come together, 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

Officer Cadet Bellefontaine, to begin making amends, rehabilitating and moving on with his life. 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 time on more demanding cases.

[6] 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

[7] 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. He has been in contact with the member's unit as well as the unit where the incident occurred. Conversely, defence counsel acts exclusively in the accused's best interest, which, in this case, ensured that the accused's guilty plea was voluntary, informed and unequivocally acknowledged 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 the prosecution and defence counsel and their duty to the court.

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.

[10] Further, the Court benefitted from counsel's submissions to support their joint position on sentence where they highlighted the facts and considerations relevant to Officer Cadet Bellefontaine.

[11] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Officer Cadet Bellefontaine's personal circumstances so I may consider any indirect consequence of the sentence, and I can adapt and impose a punishment specifically for him taking into account his youthful age and the career that lies ahead for him.

The offender

[12] Officer Cadet Bellefontaine is 22 years old. He enrolled in the Canadian Armed Forces (CAF) in June 2016, making him approximately 20 years old at the time of the incident. By all accounts, he is a youthful first offender and has no previous conduct or criminal record for the Court to consider.

[13] As noted by his counsel, Officer Cadet Bellefontaine made a mistake caused by a lack of due diligence, but he still has a promising career ahead of him.

Objectives of sentencing to be emphasized in this case

[14] The prosecution has emphasized that, in their negotiations, he and defence counsel closely considered the objectives of sentencing. On the facts of this case, both the prosecution and defence submit that the objectives they considered most important are that of general and specific deterrence as well as denunciation. 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.

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 his recommendation on sentence, the prosecution relied upon a significant number of precedents which the Court reviewed. They include *R. v. Embaye*, 2015 CM 1017, *R. v. Private Khosho*, 2005CM33 and *R v Hubick*, 2013 CM 3012. In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range based on the type of punishment historically awarded for this type of AWOL offence.

[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 this where there is evidence of 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) Officer Cadet – As an officer cadet, and a future officer in the CAF, there are high expectations placed upon you. You are expected to lead by example in not only complying with orders and regulations, but you will soon be responsible for enforcing them. For this reason, you must learn and appreciate that orders are not optional.
- (b) Clear order – It is possible that there was some confusion with what you expected on the morning in question, as you were originally scheduled to leave with your fellow graduates. However, it is clear that the Warrant Officer personally told you, that by order of the commanding officer, that you were to remain at CFLRS until you were told otherwise.

Mitigating factors

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

- (a) Guilty plea – Officer Cadet Bellefontaine’s plea of guilty for this offence, as described in the Statement of Circumstances, must be given its full weight. He shows genuine remorse and his courage in accepting responsibility cannot go unnoticed by the Court.
- (b) Previous good conduct – The Court recognizes that at the time of this incident, Officer Cadet Bellefontaine was a very youthful first-time offender, with little military training and he has no previous record for the court to consider.

[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). Discipline within the military domain is a learned habit of unquestioning adherence to rules and orders.

[22] The CAF recruits young men and women with unbridled enthusiasm and energy and values their great resourcefulness and courage. However, military discipline begins here at the CFLRS, in basic training with your leaders instilling in you the discipline required to do the work you will be tasked to do. We expect our members to follow orders and be where they need to be, when we need them to be there. Compliance with orders is paramount and not optional. If an order is not clear, you must seek clarification to ensure you understand what is expected of you.

[23] Fortunately, your statement to the court demonstrates that you recognize that you made an error. Our members are not infallible and this will not be the last mistake you make. It is how we react to the mistakes we make that will shape our success in our respective careers. As you move forward, different and greater 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.

[24] 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.

Conclusion

FOR THESE REASONS, THE COURT:

[25] **FINDS** you guilty of the charge of absence without leave, contrary to section 90 of the *National Defence Act*.

[26] **SENTENCES** you to a fine in the amount of \$800, payable in four instalments of \$200 beginning with the September 2018 pay period.

Counsel:

The Director of Military Prosecutions as represented by Major M.-A. Ferron and Captain K.D. Dusseault

Major F.D. Ferguson, Defence Counsel Services, Counsel for Officer Cadet E.F. Bellefontaine