



COURT MARTIAL

Citation: *R. v. Paul*, 2018 CM 4013

Date : 20180724

Docket : 201813

General Court Martial

Canadian Forces Base Shilo
Shilo, Ontario, Canada

Between :

Her Majesty the Queen

and -

Master Corporal E.W. Paul, Offender

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

Restriction on Publication: By court order, pursuant to section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, directs that any information that could identify anyone described in these proceedings as the complainants “C.M.” or “K.A.” shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Corporal Paul, having accepted and recorded your plea of guilty in respect of the only charge remaining on the charge sheet, the Court now finds you guilty of that charge under section 93 of the *National Defence Act* (NDA) for disgraceful conduct, specifically for having touched the breast of C.M., the wife of a subordinate, in the course of a holiday function at the junior ranks’ mess on Canadian Forces Base (CFB) Shilo.

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 of a Reduction in Rank to Private to meet the ends of justice in this case.

[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 by saving time, resources and expenses which can be channelled into other matters. 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 in *R. v. G  n  reux*, [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 many busy downtown

criminal justice courts. The particular requirements of sentencing at courts martial do not detract from the guidance provided by the Supreme Court on joint submissions, as laid out at paragraph 54 of *Anthony-Cook*.

Matters considered

[7] In this case, the prosecutor read a Statement of Circumstances which was entered in evidence as Exhibit 7, along with other documents provided by the prosecution as required at QR&O 112.51. The prosecution also entered an Agreed Statement of Facts as Exhibit 8 to inform the Court as to the steps taken by the Chief of the Defence Staff and other senior leaders to eliminate harmful and inappropriate sexual behaviour within the CAF, an initiative known as Operation HONOUR. Finally, the prosecutor, with consent of the defence, provided as Exhibit 9 a Victim Impact Statement highlighting the impact of the offence on C.M.

[8] The defence did not call any witnesses but instead produced its own Agreed Statement of Facts as Exhibit 10 to highlight Master Corporal Paul's personal situation, explaining his reaction in relation to the events subject of the charge, his decision to voluntarily release from the CAF effective on 10 April 2018, his difficulties with alcohol, his state of health, his personal finances, as well as his plan for the near and medium terms as he is seeking to sell his house in Brandon and move to British Columbia to attend school.

[9] In addition to this evidence, the Court also benefitted from the submissions of counsel that supported 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 similar cases. These submissions and the evidence, including the information received from the victim, allow me to be sufficiently informed to meet the requirement to consider any indirect consequence of the sentence, and impose punishment adapted to the individual offender and the offences committed.

The offence and its impact

[10] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offences as illustrated by the maximum punishment that can be imposed. Offences under section 93 of the *NDA* for disgraceful conduct are punishable by imprisonment not exceeding five years or less punishment. On that basis, disgraceful conduct is a disciplinary offence of significant gravity.

[11] The facts surrounding the commission of the offence in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Master Corporal Paul. These circumstances can be summarized as follows:

- (a) On Friday 9 December 2016, Master Corporal Paul participated in a briefing regarding Operation HONOUR. At the end of the workday in the afternoon, he attended the home of a co-worker and started drinking

significant amounts of alcohol. At the beginning of the evening, Master Corporal Paul and others made their way to the El Prado Club, the junior ranks' mess facility at Canadian Forces Base Shilo for a platoon holiday potluck function. All ranks of the platoon, including the officers and senior non-commissioned officers, as well as all spouses and guests, were invited and attending. Master Corporal Paul continued to consume alcohol and became very drunk, a situation which affected his memory of the events.

- (b) Following the formal program and meal, the attendees continued to socialize in informal groups around the facility. At approximately 2200 hours, Master Corporal Paul, displaying signs of significant intoxication, joined a group composed of a corporal, his wife C.M. and another spouse. Without warning or context to the conversation, Master Corporal Paul moved toward C.M. and, with his right hand, squeezed her left breast.
- (c) C.M. reacted angrily. Her husband became very angry and had to restrain himself. Master Corporal Paul was confronted by the other spouse to the effect that his behaviour was inappropriate and he had to apologize. Master Corporal Paul said words to the effect that he did not mean anything, poked the other spouse in the breast with his hand which she brushed away. He then left the group and joined another group, having no further contact with those involved.
- (d) C.M. was very unhappy about the incident and shortly after decided to leave the function. Her husband reported the incident to his superior, who confirmed it would be dealt with the following Monday, and departed with his wife to go home. After reflecting on the incident the following day, C.M. reported the incident to the military police on Sunday, 11 December 2016.

[12] The Court was informed of the impact of the offence on the victim, C.M. She was shocked and confused in the immediate aftermath of having been touched. Not knowing what to do about it, she felt insecure and anxious about staying at the event. It took some time for her husband to be able to leave as he was one of the organizers of the evening. There were significant stress and concern expressed in discussions over the weekend as to whether the incident should be reported. Her husband thought she should report it, but she was stressed and afraid that people would judge her if she was to do so. Following her report to the military police, she was afraid of encountering the offender on base, being worried he could become angry or even violent if he saw her. The views from the victim demonstrate how one's disgraceful actions may have such a significant and sometimes unforeseen impact on persons affected.

The offender

[13] Master Corporal Paul is a 33-year-old material technician who, until he was released from the CAF on 10 April 2018, was employed at the 2nd Battalion of the Princess Patricia's Canadian Light Infantry here on CFB Shilo. He joined the CAF as an infantryman in the reserve force in 2001 and commenced training as a technician in the regular force in 2005. His regular force service included postings to Borden, Edmonton and Shilo, as well as two deployments to Afghanistan.

[14] Master Corporal Paul states that he does not have a recollection of most of the events that occurred on 9 December 2016, but believes the reports regarding his conduct as provided by others, which he was made aware of when he was charged in September 2017. He was shocked and dismayed that he acted in the way he did. Accepting that he acted in the manner reported, he sought to be voluntarily released in recognition that his actions were inconsistent with what is expected of a CAF member. He also ceased consuming any alcohol and, with the help of counsellors, has decided to never drink again.

[15] As for future plans, Master Corporal Paul has been accepted in Business Management studies starting in September in Burnaby, British Columbia. He intends to rent an apartment during his studies and obtain employment in maintenance management, remaining in Vancouver where he has family. However, he does not have a current source of income to cover his current expenses of approximately \$2,315.06 per month. He has used up all his available funds obtained from his severance pay, but anticipates to obtain a payout from his Canadian Forces Pension by October 2018 and student loans by September 2018. He is also hoping to sell his house in Brandon.

Aggravating factors

[16] The circumstances of the offence in this case are serious as they have to be to sustain a charge of disgraceful conduct, punishable by imprisonment of up to five years. The behaviour admitted to by the offender reveals an unacceptable assault of a perverted nature on the wife of a subordinate, in the course of a holiday military function on base. It is personal, disrespectful and highly offensive. The acts of Master Corporal Paul invaded his victim's privacy in the most intrusive way, without any form of consent. They cannot, in any fashion, be justified by the fact that he had been drinking.

[17] Specifically aggravating are first, the fact that the behaviour by Master Corporal Paul is in direct contradiction with the stated intent of the senior leadership of the CAF to eliminate harmful and inappropriate sexual behaviour, an initiative on which Master Corporal Paul had been briefed the same day. The fact that he should have known better in the circumstances constitutes an aggravation of the already disgraceful conduct that was being perpetrated, as particularized in the charge.

[18] A second aggravating factor is that the offence constitutes an assault on the wife of a colleague who was subordinate in rank to him, hence a failure in leadership expected of him given his rank.

[19] Finally, I find aggravating the consequences of Master Corporal Paul's actions. In violating the physical integrity of the wife of a fellow member of the military family, on base, in the context of a holiday gathering, he violated the trust that colleagues in arm of the CAF should have for one another. Guests attending military functions should be able to feel safe. In placing the well-being of C.M. at risk, Master Corporal Paul's actions had effects not only on her, but also on the operational effectiveness of the platoon, whose members were suddenly confronted with an incident that proved troubling for some, especially C.M.'s husband, but also required formal action. That is not in line with the positive effects that the function that took place that night should have had. Sure enough, the effects on a member of the military family in this case were deplorable, as she became reluctant to participate fully in all that military life has to offer by virtue of her fear of being confronted by Master Corporal Paul again. I certainly hope she will overcome these difficulties and be able to turn the page on this disturbing episode in her life.

Mitigating factors

[20] The Court also considered the arguments of counsel as to mitigating factors arising either from the circumstances of the offence or the offender in this case, including the following:

- (a) First and foremost, Master Corporal Paul's guilty plea, which avoided the conduct of a trial, which is usually considered as an indication that the offender is taking full responsibility for his actions, in this public trial in the presence of members of the military community. Master Corporal Paul's behaviour, in accepting that he had committed these actions early on and in concluding that he could not remain a member of the CAF in the circumstances, shows that he is clearly remorseful and taking full responsibility. He has also allowed the victim to have a voice at the sentencing hearing, thereby demonstrating his consideration of what she has had to go through as a result of his actions.
- (b) Second, the fact that Master Corporal Paul has no criminal or disciplinary record and that his behaviour was out of character for him, on the basis of the Agreed Statement of Facts at Exhibit 10, in which Master Corporal Paul states that he is attempting to remain sober with professional assistance.
- (c) Finally, Master Corporal Paul's previous service with the CAF and his plans for the future, showing that he is well underway down the road to rehabilitation and able to aim for success in making a positive contribution to Canadian society.

Objectives of sentencing to be emphasized in this case

[21] I agree with counsel that the circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. At the same time, any sentence imposed should not compromise the rehabilitation of Master Corporal Paul, which has been underway for some time.

Assessing the joint submission

[22] 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 reduction in rank. 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.

[23] 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, the threshold for departing from joint submissions is very high and any opinion I might have on an appropriate sentence is not sufficient to reject the joint submission that was made to me.

[24] The Supreme Court of Canada has required such a high threshold as it is necessary to allow all of the benefits of joint submissions 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's plea is voluntary and informed. 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.

[25] 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, including courts martial.

[26] I do believe that a reasonable person aware of the circumstances of this case would expect that the offender, guilty of disgraceful conduct, would receive a sentence that has a significant impact. It is so because the sentence needs to express disapprobation for the failure in discipline involved and have a personal impact on the offender. A sentence of reduction in rank is normally aligned with these expectations, as evidenced by decisions of courts martial in *R. v. Christensen*, 2016 CM 1026 and *R. v. Chapman*, 2016 CM 4019 that were brought to my attention. However, what concerns me in this case is the fact that the offender has been released from the CAF and consequently, his reduction in rank will not be as visible as for someone who remains in the service. I have asked counsel to explain how, in their view, that limited impact nevertheless ensures that the sentence meets the objectives of deterrence and denunciation that they have both identified as relevant in this case.

[27] The submissions of counsel on this point have convinced me that the objectives of denunciation and deterrence must be considered in tandem with the personal situation of the offender. I find that it would be improper to consider that all offenders who are released from the CAF at the time of sentencing need a sentence that carries significant personal impact, usually in the form of a fine. In this case, the evidence reveals that the offence prompted the offender to decide to release from the CAF and embark on a path to rehabilitation that resulted in a need to retrain as a civilian. That situation has had significant consequences financially. Aggravating these consequences would risk compromising rehabilitation without significant impact on the other objectives of denunciation and deterrence. I agree with counsel's submission that a reduction in rank does have some impact in retirement, especially for an offender such as Master Corporal Paul who has a significant period of service in the CAF.

[28] In conclusion, having considered this situation, as well as the circumstances of the offence and of the offender, the applicable sentencing principles and the aggravating and the mitigating factors mentioned previously, I am unable to conclude that the sentence jointly proposed by counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Court must, therefore, accept it.

[29] Master Corporal Paul, the circumstances of the charge you pleaded guilty to reveals a very troubling conduct and I hope that by now you realize the gravity of what you have done. That being said, I do accept that this episode reflects a huge mistake on your part. You will live with the consequences of your actions for some time. I trust you are well engaged in rehabilitation and have every reason to hope that you will not re-offend as you retrain to continue making a positive contribution to Canadian society in a civilian capacity.

FOR THESE REASONS, THE COURT:

[30] **SENTENCES** you to a reduction in rank to the rank of private.

Counsel:

The Director of Military Prosecutions as represented by Major G.J. Moorehead

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master
Corporal E.W. Paul