



COURT MARTIAL

Citation: *R. v. Stow*, 2018 CM 3014

Date: 20180828

Docket: 201832

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman K.J.B. Stow, Offender

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Leading Seaman Stow pleaded guilty to the first charge on the charge sheet. The charge reads as follows:

“FIRST CHARGE
Section 130 NDA

AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE *NATIONAL DEFENCE
ACT*, THAT IS TO SAY, TRAFFICKING
CONTRARY TO SECTION 5(1) OF THE
*CONTROLLED DRUGS AND SUBSTANCES
ACT*

Particulars: In that he, between September 2015 and December 2016, at or near Dartmouth, Nova Scotia, did traffic in a substance held out to be a substance included in Schedule I of the

Controlled Drugs and Substances Act, to wit cocaine.”

[2] The Court accepts and records your plea of guilty in respect of the first charge and now the Court finds you guilty of this charge. Considering that all other charges were withdrawn by the prosecution, then the Court has no other charge to deal with.

[3] In the present case, the prosecutor and the offender’s defence counsel made a joint submission on sentence to be imposed by this Court. They recommended that this Court sentence you to imprisonment for a period of ten months.

[4] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of the military activity in the Canadian Armed Forces (CAF). The purpose of this system is to prevent misconduct, or in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

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

“STATEMENT OF CIRCUMSTANCES OF THE OFFENCE

1. At all times material to the charges, Leading Seaman Stow was a member of the Regular Force serving with HMCS Montreal.
2. Between September 2015 and December 2016, Leading Seaman Stow trafficked in cocaine together with Leading Seaman Smith. They trafficked in cocaine in the Halifax area, both on and off Canadian Force Base Halifax, to both civilians and military members.
3. Leading Seaman Stow would purchase the cocaine from his contact and then divide it between himself and Leading Seaman Smith for re-sale. Over this timeframe, Leading Seaman Stow and Leading Seaman Smith together trafficked approximately 200 grams of cocaine with a street value of approximately \$10,000.
4. On 11 December 2016, the military police conducted a search of Leading Seaman Stow’s residence. Leading Seaman Stow was arrested during the search. Approximately 20 grams of cocaine and various drug paraphernalia were seized during the search.
5. Leading Seaman Stow was released from custody and has been subject to the following conditions since December 2016:

- a. Remain under military authority;
- b. Remain within the confines of the Province of Nova Scotia;
- c. Abstain from communicating or associating directly or indirectly with Leading Seaman Smith;
- d. Refrain from going to 18 Danforth Rd, Halifax;
- e. Keep the peace and be of good behaviour;
- f. Not possess, unless under Canadian Forces supervision, any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance;
- g. Not use, possess or consume any non-medically prescribed, restricted or prohibited drugs;
- h. Refrain from attending any establishments whose primary purpose is the conveyance of alcohol; and
- i. Not to associate with any known criminals.

6. Leading Seaman Stow indicated his willingness to plead guilty to the charge of trafficking at the earliest opportunity. He is currently being administratively released from the Canadian Armed Forces (CAF) as a result of this offence”.

[6] Although the Court is not bound by the joint recommendation made by counsel, it is generally accepted that the sentencing judge should depart from the joint submission only when it is contrary to the public interest, as stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 at paragraph 32.

[7] The only situation where the Court would depart from the recommendation is “where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system”, as mentioned in *Anthony-Cook* at paragraph 42.

[8] In *Anthony-Cook* at paragraph 25, the Supreme Court of Canada recognized:

It is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large.

And from my perspective it would include courts martial.

[9] However, lawyers must provide to the Court a full account of the offender's situation and of the circumstances of the offence in the joint submission. Here, the Court is satisfied with the information and explanation provided by counsel. In fact, they provided sufficient detailed information for the Court to appreciate the joint submission.

[10] In this case the principles and objective of denunciation and specific and general deterrence were an integral part of counsel's discussions on the basis of the joint submission they made.

[11] Leading Seaman Stow enrolled in the CAF in May 2010 in the Navy. He went on various ships and he went through various training. In September 2015 he was posted to HMCS Montreal. At about the same time he started trafficking.

[12] Leading Seaman Stow was arrested in December 2016 for trafficking. He was released with conditions, which he has respected until now. As a matter of fact, I was told that his case is also related to the case *R. v. Smith*, 2018 CM 3001 for which I delivered a decision on sentence for different charges, involving the same set of circumstances.

[13] I would say that the suggestion made by counsel reflects the judicial approach taken on such matters in the military justice system concerning trafficking of drugs. In 1985, the Court Martial Appeal Court articulated clear reasons why involvement with drugs in the military environment must be treated as a very serious matter. In the decision of *R. v. MacEachern*, (1985) 4 C.M.A.R. 447, Addy J. said on behalf of the Court:

Because of the particularly important and perilous tasks which the military at any time, on short notice, be called upon to perform and because of the team work required in carrying out those tasks, which frequently involve the employment of highly technical and potentially dangerous instruments and weapons, there can be no doubt that military authorities are fully justified in attaching very great importance to the total elimination of the presence of and the use of any drugs in all military establishments or formations and aboard all naval vessels or aircraft. Their concern and interest in seeing that no member of the forces uses or distributes drugs and in ultimately eliminating [their] use, may be more pressing than that of civilian authorities.

[14] Also, in 2010 the Court Martial Appeal Court reiterated its approach about trafficking in drugs in the military. In *R. v. Lee*, 2010 CMAC 5, the Court said at paragraph 26 and 27:

[26] It is clear that trafficking in drugs within the military is a serious offence and that convictions usually result in carceral sentences. The main concern in determining the appropriate sentence is to deter others. As the Court stated in *Dominie v. The Queen*, 2002 CMAC 8, "general deterrence requires that the military know that they will be imprisoned if they deal in crack cocaine on military bases" (para. 5).

[27] The same concern was expressed in a case where the accused was charged with a single offence of trafficking in a small amount of cocaine (*Taylor v. The Queen*, 2008 CMAC 1). The Court upheld the Military Judge's sentence of 40 days' imprisonment. The Military Judge justified the sentence by stating that the "use of drugs and the trafficking of drugs are a direct threat to the operational efficiency of our forces and a threat to the security of our personnel and equipment" (para. 27).

[15] So, in the circumstances, I do not see the potential of any breakdown in the proper functioning of the military justice system with the suggestion made by counsel. I will then accept the joint submission made by counsel to sentence you to imprisonment for a period of ten months, considering that it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[16] Now, in accordance with section 147.1 of the *National Defence Act*, which relates to a weapons prohibition order, the Court shall consider whether it is desirable to issue such order, especially because the offence is in contravention of section 5 of the *Controlled Drugs and Substances Act*. Here, in this case, I have not seen any reason to issue such an order. I have not been presented with any evidence that is necessary in the interest of your safety or of any other person to issue it.

[17] There is no evidence that you were or you are involved with any criminal gang or that you were or you are involved in some kind of network in relation to drugs or organized crime or such things. There is no evidence at all that violence was used at the time of the commission of the offence and I do not have any indication that you used violence with any person in any kind of relationship you have with people. Therefore, I do not find necessary to issue such order and I will not do it.

FOR THESE REASONS, THE COURT:

[18] **FINDS** Leading Seaman Stow guilty of the first charge, for trafficking in cocaine, contrary to subsection 5(1) of the *Controlled Drugs and Substances Act*.

[19] **SENTENCES** you to imprisonment for a period of ten months at the North East Nova Scotia Correctional Facility, New Glasgow, Nova Scotia.

Counsel:

The Director of Military Prosecutions as represented by Major D. Kerr

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