



COURT MARTIAL

Citation: *R. v. Worthman*, 2018 CM 2024

Date: 20180906

Docket: 201747

Standing Court Martial

Canadian Forces Base Trenton
Astra, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Corporal K. V. Worthman, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today, Corporal Worthman admitted her guilt to the first and second charges on the charge sheet. The Court must now determine and pass sentence on these charges which read as follows:

“FIRST CHARGE
Section 130 of the
National Defence Act

**AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL DEFENCE
ACT, THAT IS TO SAY, ASSAULT
CONTRARY TO SECTION 266 OF THE
CRIMINAL CODE**

Particulars: In that she, on or about 10 December 2016, at or near MP Flt Detachment, Trenton, Ontario did commit an assault upon Master Corporal Riddolls.

SECOND CHARGE

DRUNKENNESS

Section 97 of the

National Defence Act

Particulars: In that she, on or about 9 December 2016, at or near Lawrence Drive, Trenton, Ontario, was drunk.”

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

“STATEMENT OF CIRCUMSTANCES

1. On 9 December 2016, at approximately 2320hrs Military Police members from 21 MP Flight were contacted by the resident of 13 B Lawrence Drive, 8 Wing Trenton, Ontario who reported that an intoxicated unknown female was causing a disturbance at his house by banging on his front door.
2. Military Police members, Cpl Plante and MCpl Riddolls, arrived on scene where it was observed that Cpl Worthman (at the time known as “Cpl Dashnay”) exhibited signs of intoxication, including: noted difficulty standing; her speech was slurred and was incoherent; her clothes were dishevelled and she was missing a boot; and she had an odour of alcohol emanating from her person.
3. Cpl Worthman stated to the MP members that she had been attempting to gain entry into her own residence and it appeared that she believed that she was at 37B Regina Cres, CFB Trenton.
4. MCpl Riddolls explained that the residence she was attempting to access did not belong to her. In her interactions with MPs on the scene, Cpl Worthman became irate and verbally aggressive, and refused to identify herself. When offered to be transported to her residence by MCpl Riddolls, Cpl Worthman replied “I am at my fucking residence”, and continued to act in a generally hostile and belligerent manner towards MPs.
5. At 2331hrs, Cpl Worthman was placed under arrest for Drunkenness and Cause Disturbance. MP requested, and received, assistance from a female OPP officer, to attend the scene to conduct a search of her person. After being searched, informed of the reasons for her arrest, and cautioned, Cpl Worthman was placed in mechanical restraints and was placed into the rear of a patrol vehicle.
6. Upon arrival at the MP Detachment, located at 21 MP flight Detachment, Trenton, Ontario, Cpl Worthman actively resisted being brought into the MP detachment and stated “I’m not fucking going in

there” and struggled against the two officers who were attempting to bring her into the detachment. During this struggle, Cpl Worthman struck MCpl Riddolls in the right knee with a strike from her foot.

7. Cpl Worthman was placed in an interview room where her behaviour fluctuated between periods of calm to hostile, combative and aggressive conduct. Upon her request, Cpl Worthman was placed in contact with her workplace supervisor, following which her demeanor changed for the positive. At 0345 hrs, a medical review was conducted by the duty medical officer, who determined that Cpl Worthman was fit for cells.
8. At 1221, 10 December 2016, Cpl Worthman was brought before a Custody Release Officer and released. A member of her unit picked her up and provided her with a drive home.
9. On 21 December 2016, Cpl Worthman, attended the MP detachment and provided a written letter of apology for her actions of 9-10 December 2016.
10. On 2 March 2017, a Record of Disciplinary Proceedings in favour of Cpl Worthman (then “Dashnay”) was signed and on 28 June 2018, the Director of Military Prosecutions preferred two charges against Cpl Worthman pursuant to s.130 of the NDA, contrary to s.266 of the *Criminal Code of Canada*, and s. 97 of the *National Defence Act*.”

Joint submission

[3] In a joint submission, counsel recommend that the Court impose a sentence of 10 days detention and recommend that the Court suspend the execution of the sentence.

[4] The 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, 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 Corporal Worthman to begin, or in this case, continue 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.

[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 punishments available to a court martial are set out in subsection 139(1) of the *National Defence Act (NDA)* which is found within Division 2 (Service Offences and Punishments). The punishment of detention is included at paragraph 139(1)(f).

[8] Conversely, the provisions that relate to the suspension of the execution of punishment are found in section 215 (which came into force 1 September 2018) in Division 8 of the *NDA*. Division 8 sets out the Provisions Applicable to Imprisonment and Detention. Section 215(1) of the *NDA* reads as follows:

215 (1) If an offender is sentenced to imprisonment or detention, the execution of the punishment may be suspended by the service tribunal that imposes the punishment or, if the offender's sentence is affirmed or substituted on appeal, by the Court Martial Appeal Court.

[9] As such, a court martial must avoid conflating an order for suspension of execution of a punishment of detention into a distinct form of punishment that doesn't exist within Division 2 of the *NDA*. However, in the case of a joint submission, counsel have a duty to propose well-thought-out submissions which will withstand the public interest test and I expect nothing less when it comes to their consideration and recommendation for ancillary orders that affect the punishment.

Evidence

[10] 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 (QR&O)* 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 Corporal Worthman.

[11] In addition, pursuant to the new provision QR&O 112.481, Master Corporal Riddolls prepared and read for the Court a victim impact statement. In his statement, he summarized the physical and emotional harm that both he and his family suffered as a result of a knee injury that he states flowed from the incident, as well as the uncertainty that lies ahead with respect to this injury. Notwithstanding this, he concluded his statement with: "My final concern is that the accused seek to resolve any conflicts in her life either at work or outside of work. Resources are available to assist in all facets and I

would hope that in the future she might find a better alternative of expression than assaultive behaviour.”

[12] Furthermore, the Court benefitted from counsel’s submissions to support their joint position on sentence where they highlighted the facts and considerations relevant to Corporal Worthman.

[13] Counsel’s submissions and the evidence before the Court have enabled me to be sufficiently informed of Corporal Worthman’s personal circumstances so I may adapt and impose a sentence specifically for her, taking into account the rehabilitation and progress she has made to date.

The offender

[14] Corporal Worthman is 35 years old. She enrolled in the Canadian Armed Forces (CAF) on 6 December 2007 and has served her country for almost 11 years. It is noted that Corporal Worthman has struggled for some time with various mental health issues and she sought assistance from the Base Addictions Counsellor as early as 17 December 2014, which predates the offences before the Court. Corporal Worthman permanently separated from her husband in August 2015 and they share custody of their two children, with her husband having custody every second week from Wednesday after school until Monday morning, for approximately 8 days per month.

[15] The Court noted that Corporal Worthman has already taken significant steps towards rehabilitation, having reached out and sought appropriate medical attention in the years before the incident occurred. In August 2017, Corporal Worthman was assigned a permanent medical category with medical employment limitations that place her at high risk of not meeting the requirements of universality of service. She is complying with her health care treatment and the evidence supports that she has been sober for approximately two years. She has completed the Managing Angry Moments course delivered by the Canadian Forces Health Services Group.

Purposes, objectives and principles of sentencing to be emphasized in this case

[16] The fundamental purposes of sentencing in a court martial are to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale and to contribute to respect for the law and the maintenance of a just, peaceful and safe society. In order to accomplish this, it is imperative that members be provided the best opportunities for success in reforming their conduct and shortcomings.

[17] The fundamental purposes of sentencing are achieved by imposing sanctions that have one or more of the objectives set out within the *NDA* at subsection 203.1(2). The prosecution has emphasized that in negotiations, he and defence counsel closely considered the objectives of sentencing set out therein. On the facts of this case, the prosecution and defence submit that the objectives they considered most important are

general and specific deterrence as well as denunciation. Defence counsel highlighted that, on the facts of this case, these objectives should not impair the member's ongoing rehabilitative efforts. I agree with their assessment.

[18] It is a fundamental principle that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. The offences before the Court are serious and it is imperative that the Court first consider the gravity of the offence. The offence of greatest concern is the assault which involved a military police officer. Courts martial have always treated assault between military members very seriously and assaults on military police even more so. I agree with the comments of my brother d'Auteuil M.J. who concluded at paragraph 14 in *R.v. Corporal K.R. McGinnis-Armstrong*, 2009 CM 3011:

Here, in this case, considering the nature of the offences, and especially the assault on a peace officer performing his duty, the circumstances they were committed, the applicable sentencing principles, including sentences imposed on similar offenders for similar offences committed in similar circumstances by military and civilian tribunals, the aggravating and the mitigating factors mentioned above, I conclude that there is no other sanction or combination of sanctions other than incarceration that would appear as the appropriate and the necessary minimum punishment in this case.

Accounting for relevant aggravating or mitigating circumstances

[19] In the military justice system, under section 203.3 of the *NDA*, in imposing a sentence, the court shall also take into consideration a number of principles relevant to the case. Firstly, under paragraph 203.3(a) of the *NDA*, in imposing a sentence, the Court shall increase or reduce its sentence to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. Aggravating circumstances include, but are not restricted to, evidence establishing any of the statutory factors set out in subparagraph 203.3(a)(i).

Aggravating Factors

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

- (a) Corporal Worthman has a conduct sheet reflecting similar offences that occurred in June 2015. Hence, there is a pattern of lack of respect for military authority that must be deterred;
- (b) Intoxication in public and resistance and assault on the military police (MP) – When it was reported that Corporal Worthman was intoxicated and pounding on a door of a home, the MPs did try to help her find her own house. She resisted their assistance and eventually her behaviour escalated into aggressive conduct towards a fellow military member and MP who was exercising his duty;

Mitigating factors

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

- (a) Guilty plea. Corporal Worthman's plea of guilty for the offences, as described in the Statement of Circumstances, must be given full weight. Further, her courage displayed in accepting responsibility, seeking assistance and help cannot go unnoticed. In addition, as the prosecution highlighted, her guilty plea saved the Court and counsel considerable time;
- (b) Letter of apology. Shortly after the incident, Corporal Worthman wrote a letter of apology to the military police;
- (c) Post-offence conduct. Mental health and ongoing rehabilitation – It was noted that prior to the incident, Corporal Worthman was already struggling and had sought help from the Base Addictions Counsellor. Since the incident, Corporal Worthman has continued to seek and receive help, attended therapy or a course which may assist her such as the Managing Angry Moments course. This was supported by a letter from Dr. Ennis. The evidence supports a lengthy period of sobriety. Her focus on improving her physical health is encouraging and should not be compromised.

Parity

[22] Secondly, pursuant to paragraph 203.3(b) of the *NDA*, the law requires that the sentence be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[23] In making the joint recommendation on sentence, both the prosecution and defence relied upon a significant number of precedents which the Court reviewed. They include *R. v. Truelove*, 2018 CM 3004, *R. v. Corporal K.R. McGinnis-Armstrong*, 2009 CM 3011 and *R v Souka*, 2011 CM 2024. 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 considering those historically awarded for this type of offence.

Moderation

[24] Also, under the principles of sentencing set out in section 203.3 of the *NDA*, an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions may be appropriate in the circumstances. Further, it states that a sentence should be the least severe sentence required to maintain discipline, efficiency and morale.

[25] Consistent with the above principles, counsel recommend that the court martial use its power pursuant to section 215 of the *NDA* to suspend the execution of the

punishment of detention. Counsel argue that, based on the exceptional progress the offender has made towards her rehabilitation, it is merited.

[26] The Court was pleased to hear that the prosecution has considered the safety and security of the victim, Master Corporal Riddolls, and discussed the impact of the suspended sentence with him.

Any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[27] Pursuant to paragraph 203.3(e), defence counsel made extensive submissions on the indirect consequences of the finding and the sentence of detention on the offender. He explained that she is a single parent who shoulders the majority of the parenting duties of two young children aged 5 and 9 years. Based on the financial information filed with the Court, she has strained financial circumstances. He also filed proof that she has already exhausted her payment in lieu of Canadian Forces severance pay and has no additional financial resources upon which she may rely. Based on the evidence before the Court, it would take her approximately three and a half months to recover from the associated financial loss that would flow from serving a period of detention. In addition, it is likely that the offender will be released from the CAF, based upon either her medical conditions or an ongoing administrative review for her misconduct.

[28] Defence counsel argued that the rehabilitative effect flowing from the suspension of the execution of the sentence far outweighs the need for deterrence and is reinforced by the fact that while the sentence is suspended, it will not be remitted for one year, thereby holding the offender accountable for a long period of time. In short, in their respective submissions, both counsel effectively argued that the principle of deterrence should yield to support Corporal Worthman's reasonable chance of continued rehabilitation.

[29] In the Court's view, if there is a possibility that she will make enduring progress in her rehabilitation, such improvement would benefit society and the CAF more than incarcerating and I agree with their recommendation.

Consideration of weapons prohibition order

[30] Since Corporal Worthman pleaded guilty to one offence of assault, which is an act of violence, pursuant to paragraph 147.1(1)(a) of the *NDA*, this Court must consider whether it is desirable, in the interests of the safety of the person or of any other person, to make a weapons prohibition order. The Court agrees with the prosecution's position that such an order is neither desirable nor necessary for the safety of the offender or any other person and exercises its discretion not to make an order to that effect.

Explanation of the suspension order and consequences of breaching its conditions

[31] Before I pass sentence, I need to ensure that you understand the proposed order and the consequences that will flow if you fail to comply with the order or the conditions imposed.

[32] Firstly, I will explain the conditions of the order and bring your attention to the following:

- (a) *NDA, section 101.1, Failure to comply with conditions.* If you fail to comply with the order, you may be found guilty of an offence and on conviction, you could be liable to imprisonment for less than two years or to less punishment;
- (b) *NDA, subsection 215.2(1), Hearing into breach of conditions.* On application by the Director of Military Prosecutions, the Court may conduct a hearing to determine if you breached a condition imposed by the court under section 215. If this should occur, you will be provided full opportunity to make representations;
- (c) If the Court determines that you have breached a condition, the Court may:
 - i. revoke the suspension of a punishment and commit you to serve the sentence of detention; or
 - ii. vary any conditions imposed under subsection 215 (3) or section 215.1 and add or substitute other conditions as the Court sees fit.
- (d) *QR&O 113.08, Notice of application.* You may make an application to the Chief Military Judge, under section 215.1 of the *NDA*, to vary a condition of the order or to substitute another condition for such a condition; and
- (e) *QR&O 113.10, Representation of offender.* You are entitled to free legal counsel by the Director of Defence Counsel Services with respect to an application under section 215.1 of the *NDA* to vary a condition of the order or to substitute another condition. Please talk to your counsel about any concerns you may have with this suspension order, either now or in the future.

[33] Corporal Worthman, you should be congratulated on the steps you have taken to turn your life around and rehabilitate yourself. You are only 35 years of age and you have your whole life and career ahead of you. In your efforts to battle addiction, it will be a daily and lifelong struggle, but the courage you have displayed in making these first few steps is inspiring. Your sustained effort over the last two years demonstrates that you recognize the work involved and you are capable of managing your addiction.

[34] Your efforts to date have demonstrated that no matter what challenges you face, you are indeed a strong woman and if you can keep your addiction in check, you will be

well positioned to earn and enjoy many rewarding opportunities both in your career and personal life. The Court is encouraged by your fortitude as you move forward.

Conclusion

[35] The punishment of 10 days detention sends a message that this type of conduct, particularly directed towards the military police, in the exercise of their duties, will not be tolerated in the CAF.

[36] The suspension of the sentence of detention reflects significant credit that the offender has earned from her rehabilitative efforts. It is consistent with the principle of moderation and addresses the indirect consequences that would flow from the sentence.

[37] In their joint submission, counsel have appropriately weighed all the principles of sentencing as set out in section 203.3 of the *NDA* and discharged their obligations. 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:

[38] **FINDS** you, Corporal Worthman, guilty of charges 1 and 2.

[39] **SENTENCES** you to detention for a period of ten days.

[40] **SUSPENDS** the execution of the sentence and imposes the associated conditions under the *NDA*, paragraph 215(2). Those conditions will remain in force for one year when your sentence is deemed to be wholly remitted, subject to paragraph 215(4) of the *NDA*.

Counsel:

The Director of Military Prosecutions as represented by Major C. Walsh

Lieutenant Commander B.G. Walden, Defence Counsel Services, Counsel for Corporal K. V. Worthman