



COURT MARTIAL

Citation: *R. v. Murphy*, 2018 CM 2028

Date: 20181003

Docket: 201842

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman M.T. Murphy, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today, Leading Seaman Murphy admitted his guilt to the first charge on the charge sheet. Having accepted and recorded a plea of guilty with respect to the first charge, the Court must now determine and pass sentence on that charge which reads as follows:

“First Charge
Section 129 N.D.A.

AN ACT TO THE PREJUDICE OF GOOD
ORDER AND DISCIPLINE

Particulars: In that he, at approximately 0020 hours, on 16 November 2017, onboard Her Majesty’s Canadian Ship WINNIPEG, alongside in Vancouver, British Columbia, attempted to

forcibly open the bar fridge of the junior ranks mess.”

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

“STATEMENT OF CIRCUMSTANCES

1. At all material times, LS Murphy was a member of the Regular Force, Canadian Armed Forces, and posted to HMCS Winnipeg.
2. While in the Port of Vancouver on 15 November 2017, LS Murphy and LS Honeyman, used a Forced Entry Tool found on the ship to attempt to open the bar fridge in the junior ranks mess after drinking hours.
3. They were caught in the act and immediately returned the Forced Entry Tool.
4. LS Murphy was acting out of character as a result of being under the influence of alcohol.
5. No items were taken from the bar fridge.
6. At the earliest opportunity following the preferral of charges, LS Murphy indicated his intention to enter a guilty plea and take full responsibility for his actions.”

Joint submission

[3] In a joint submission, counsel recommend that I impose a fine in the amount of \$150 payable immediately.

[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 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.

[6] 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. Conversely, defence counsel acts exclusively in the accused's best interest, which, in this case, ensures that the accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[7] 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

[8] 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.

[9] Furthermore, the Court benefitted from counsel's submissions to support their joint position on sentence where they highlighted the facts and considerations relevant to Leading Seaman Murphy.

[10] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Leading Seaman Murphy's personal circumstances, allowing me to consider any indirect consequence of the sentence, so I may adapt and impose a punishment specifically for him, taking into account the rehabilitation and progress he has made to date.

The offender

[11] Leading Seaman Murphy is 34 years old. He enrolled on 24 August 2011 and has served over 500 days at sea, including two operational tours earning the General Campaign Star – South-West Asia and the Article 5 NATO Medal for Operation ACTIVE ENDEAVOUR. By all accounts, he appears to have served his country well and has no previous conduct or criminal record for the Court to consider.

[12] As noted during sentencing submissions, Leading Seaman Murphy has already made significant rehabilitative efforts that cannot go unnoticed by the Court.

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

[13] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the Canadian Armed Forces (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. This is achieved by imposing sanctions that have one or more of the objectives set out within the *National Defence Act (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.

[14] On the facts of this case, both the prosecution and defence submit that the objectives they considered most important are general and specific deterrence as well as denunciation. Prosecution also noted that the member's willingness to accept responsibility and his rehabilitative efforts must also be given significant consideration. I agree with their assessment.

Accounting for relevant aggravating or mitigating circumstances

[15] In imposing a sentence, under paragraph 203.3(a) of the *NDA*, the Court shall take into consideration that the "sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender".

Aggravating factors

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

- (a) using a forcible entry tool, from the ship, for an improper purpose; and
- (b) at the time of the incident, Leading Seaman Murphy was under the influence of alcohol and he was attempting to get access to more alcohol.

Mitigating factors

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

- (a) Leading Seaman Murphy's plea of guilty for the offence, as described in the Statement of Circumstances, must be given full weight. He has displayed courage in accepting responsibility publicly before his shipmates. He showed genuine remorse for his conduct. His guilty plea has saved the Court and counsel considerable time and resources;
- (b) nothing was taken;
- (c) the incident was out of character for the accused;
- (d) his Primary Leadership Qualification was delayed for four months, consequently deferring his career progression; and
- (e) he lost his mess privileges for six months.

Parity

[18] Pursuant to paragraph 203.3(b) of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Based on previous case law and on 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 offence.

[19] Leading Seaman Murphy, before I pass sentence, I will reference what your defence counsel stated that, with your plea, you displayed courage and honour in accepting immediate responsibility. The Court notes that your public acceptance of responsibility is not easy, but it stands as an excellent example of how you have chosen to deal with this lapse of judgement. In short, the way we deal with lapses in our judgement reveals our true character; and sometimes public mistakes deliver stronger lessons than private ones. Your defence counsel commented on the fact that, in doing so, you have demonstrated positive leadership and the Court wishes you continued success in your career.

Conclusion

[20] After considering counsel's submissions in their entirety and considering all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the general population, as a breakdown in the proper functioning of the military justice system.

[21] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequence of the finding or 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. The punishment of a fine in the amount of \$150 sends a message that this type of conduct will not be tolerated in the CAF, but it also reflects your willingness to accept responsibility for your actions. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[22] **FINDS** you guilty of the first charge.

[23] **SENTENCES** you to a fine in the amount of \$150 payable immediately.

Counsel:

The Director of Military Prosecutions as represented by Major A. van der Linde

Mr D.M. Hodson, David Hodson Criminal Defence Law, 16 Lindsay Street North,
Lindsay, Ontario, Counsel for Leading Seaman M.T. Murphy