



COURT MARTIAL

Citation: *R. v. Moulton*, 2018 CM 3018

Date : 20181127

Docket : 201853

Standing Court Martial

4th Canadian Division Support Base Petawawa
Petawawa, Ontario, Canada

Between :

Her Majesty the Queen

- and -

Bombardier K. Moulton, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Bombardier Moulton pleaded guilty to the charge of drunkenness, which reads as follows:

SECOND CHARGE	DRUNKENNESS
Section 97 NDA	

Particulars: In that he, on or about 18 Feb 18, at approximately 1945 hrs, at or near Camp Adazi, in the Republic of Latvia, was drunk and behaved in a disorderly manner.

[2] The Court, having accepted and recorded a plea of guilty in respect of this charge now finds you guilty of this offence. As the military judge presiding at this Standing Court Martial, it is now my duty to determine the sentence.

[3] 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 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.

[4] Concerning the sentence to be imposed, the prosecutor and the offender's defence counsel presented a joint submission. They recommended that the Court impose a fine in the amount of \$1,200 payable in four monthly instalments of \$300.

[5] The circumstances of the offence were presented through a Statement of Circumstances which reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all material times, Bombardier Moulton (Bdr Moulton) was a member of the Regular Force, Canadian Armed Forces, posted to 2 Royal Canadian Horse Artillery (2 RCHA) in Petawawa, Ontario. Between 18 January 2018 and 14 March 2018, Bdr Moulton was employed on Op REASSURANCE Roto 9 in Latvia as part of the Enhanced Forward Presence Battle Group (EFP BG).

2. On 18 February 2018, Bdr Moulton, along with Sergeant Roodzant (Sgt Roodzant), Master Bombardier (MBdr) Avery and MBdr Hall went for a day trip to Riga, Latvia. On this occasion, Bdr Moulton consumed alcohol in excess of the maximum daily limit of two drinks permitted by paragraph 9 of Task Force Standing Order (TFSO) 101 on alcohol consumption.

3. While the group attended a restaurant in Riga, Bdr Moulton, Sgt Roodzant and MBdr Hall consumed alcoholic beverages. After beginning to show signs of intoxication, Bdr Moulton was advised by MBdr AVERY to stop drinking, only to be overruled by Sgt Roodzant who said that it would be “on [him] as [he] was the senior NCO in the group.” MBdr Avery then informed Sgt Roodzant that he believed they had reached their limit of alcohol as per TFSO 101.

4. Bdr Moulton proceeded to continue drinking until the group departed the restaurant. While outside waiting at the bus pickup location for the bus to return to Camp Adazi, Bdr Moulton became belligerent towards MBdr Avery.

5. During the trip back to the camp, Bdr Moulton vomited in the bus. The bus driver, Cpl Gosse, told the group that Bdr Moulton needed to get off the bus. Bdr Moulton, Sgt Roodzant and MBdr Hall got off the bus at the Alfa Mall and took a taxi back to Camp Adazi.

6. Once the members arrived at Camp Adazi at around 1920 hours, they were met at the tent lines by their BSM, Master Warrant Officer (MWO) Quigley who could smell alcohol and noticed signs of intoxication. When MWO Quigley asked if they had consumed alcohol, all of them denied it and Bdr Moulton became belligerent and disrespectful towards MWO Quigley. MP assistance was later requested and Bdr Moulton was arrested and lodged into cells for the remainder of the night and released the next day with conditions.

7. In his written representations for his custody review by the Custody Review Officer on 19 February 2018, Bdr Moulton expressed regrets and apologized for his conduct, adding that it was not an indication of the kind of soldier he is and that it was a one-time incident that will never happen again.

8. On 03 February 2018, Bdr Moulton had attended a Reception, Staging and Onward Movement (RSOM) briefing where he was informed of the contents of Task Force Standing Order 101 on alcohol consumption, notably the maximum limit of two drinks per 24 hour period (paragraph 9)."

[6] An Agreed Statement of Facts was also presented and it reads as follows:

"AGREED STATEMENT OF FACTS

1. Bdr Moulton is 34 years old and enrolled Canadian Armed Forces on 12 Feb 2009. He is single.

2. Bdr Moulton is a first time offender. This Standing Court Martial constitutes his first appearance before a Military Tribunal.

3. Shortly after charges were preferred, Bdr Moulton instructed his Defence Counsel to resolve this matter efficiently and to proceed with a guilty plea. Prosecution was engaged quickly thereafter.

4. This guilty plea is an economy of time and resources for the Military Justice System.

BDR MOULTON'S PERSONAL CIRCUMSTANCES

5. Bdr Moulton is currently posted to 2 Royal Canadian Horse Artillery (2 RCHA) in Petawawa, as a 2 I/C within D Battery.
6. Bdr Moulton is fully taking responsibility for his conduct and has quickly expressed genuine remorse to the Custody Review Officer while in detention.
7. Bdr Moulton was placed in preventive custody at 21:40 hours on 18 February 2018 and released under numerous conditions on 19 February 2018 at approximately 14:00 hours.
8. Following his arrest, Bdr Moulton remained in preventive custody for 16 hours.
9. Bdr Moulton was repatriated from OP REASSURANCE, ROTO 9, Latvia, on 14 March 2018, as a result of the allegations that led to this Court Martial.
10. At the time of the incident, Bdr Moulton was prescribed with anti-depressors medication in order to cope with symptoms of anxiety and depression.
11. Bdr Moulton's CF Health Services file shows a history of depression episodes since his enrollment with the Canadian Armed Forces."

[7] Although this 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. 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 and this includes the court martial.

[8] 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, further to some of my questions as a matter of clarification and further to what has been presented to the Court by counsel, the Court is satisfied with the information and the additional explanation provided by counsel. In fact, they provided sufficient and detailed information for the Court to appreciate the joint submission arising from their discussions in the specific context they were dealing with.

[9] In this case, the principles and objectives of denunciation and general and specific deterrence were an integral part of counsel's discussions and the basis of their joint submission and I would add that rehabilitation was also considered by counsel.

[10] Bombardier Moulton is now 34 years old. He enrolled with the CAF in February 2009 and he progressed properly within the military and reached the rank of bombardier in August 2012. He has no conduct sheet. He had no problems performing in the CAF until 18 February 2018 where he drank a bit too much and behaved in a disorderly manner which brought him to this court. Prior to this trial, during discussions in chambers with counsel, I was informed that it was your choice to be tried by court martial. So you made that choice for your own reasons. That being said, you are entitled to a fair trial and I think fair discussions arose from the circumstances. Your defence counsel is there to represent your own interests. You provided him instructions in order to resolve this matter.

[11] The prosecution gave consideration to a number of factors and decided to make a deal with your defence counsel in order to secure a conviction on one offence, because originally you were charged with two offences, one of which was withdrawn by the prosecution. They ensured that consideration was given to pre-trial detention, and repatriation because it has some impact on the offender, and it was part, at least, of the factors considered when your counsel and the prosecutor had discussions. They also had to consider the operational context, your behaviour towards authority, including how you acted towards Master Bombardier Avery and Master Warrant Officer Quigley. They were higher in rank. They advised you or tried to find out what was going on and you did not cooperate very much. This brought counsel to discuss, in that context, what would be the proper suggestion on sentence to make to this Court.

[12] They agreed that a fine of \$1,200 would be a fit and proper sentence to propose to the Court, to which you agreed and today you are looking for a resolution of this matter. Further to what I heard, I do not see anything shocking in this proposition that would put the military justice system in jeopardy. To the contrary, I think a fine is totally appropriate as a first-time offender in this context. But also, the fine is reasonable because of all the aggravating and mitigating factors that were considered by counsel.

[13] Looking at this case as a whole, I will accept the joint submission made by counsel to sentence you to a fine in the amount of \$1,200 as it is not contrary to the public interest and will not bring the administration of justice into disrepute.

[14] What I appreciate the most in this case is that this court martial is taking place in the same year as the offence occurred. These days, I do not see this very often, but I really appreciate that because it gives a real sense of what discipline is. In the same year, Bombardier Moulton has been charged, processed and he pleaded guilty to a minor charge. He made the choice to come before a court martial for his own reasons; possibly one reason being the fact that the message you are making by selecting a court martial or electing to be tried before a court martial is you want to come before somebody who has no knowledge at all of your unit or the facts of this case. And I think when such thing happens, it just proves that the system may work properly if all the actors do what they have to do, including the unit. The unit was deployed, came back and took care of the matter. You made that choice to plead guilty and you agreed with

the joint submission. In that sense, I really thank people for making it happen. It is just good for our reputation of the system.

FOR THESE REASONS, THE COURT:

[15] **FINDS** Bombardier Moulton guilty of the charge of drunkenness.

[16] **SENTENCES** Bombardier Moulton to a fine in the amount of \$1,200, payable in four monthly instalments of \$300 starting on 1 December 2018. If you are released from the CAF before the fine is paid in full, then the balance due will be fully payable at the time of your release.

Counsel:

The Director of Military Prosecutions as represented by Major S. Poitras

Major B. Tremblay, Defence Counsel Services, Counsel for Bombardier K. Moulton