COURT MARTIAL

Citation: *R. v. Wilson*, 2003 CM 200

Date: 20030625
Docket: S200320

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and –

Corporal C.E. Wilson, Offender

Before: Colonel K.S. Carter, M.J.

SENTENCE

(Orally)

[1] Corporal Wilson, the court, having accepted and recorded your pleas of guilty to the first, second, and seventh charge on the charge sheet, the court now finds you guilty of those charges. The court has spent some time in considering the appropriate sentence in this matter and will take some time in going through its analysis and reasoning.

[2] Let me begin by thanking counsel for the evidence submitted and the submissions that they have made. As will become evident during the course of my reasons, I have taken some time to consider the particular situation in this case, and it has been quite difficult to come to what the court considers an appropriate sentence, but as I have said, I would like to thank counsel for their submissions which have been of great help to me.

[3] Corporal Wilson, the court is now at the stage of sentencing you for these offences. In determining an appropriate sentence, the court has considered the circumstances surrounding the commission of these offences; your background and your current circumstances; your testimony and that of Captain Morrison's; the submissions of counsel, both the prosecution and the defence; and the principles of sentencing.

[4] The court must and does follow certain principles in determining what an appropriate sentence is. These principles are applied not only in courts martial but also in criminal trials in Canada. They have been expressed in many ways but, in essence, they include protection of the public; punishment of the offender; deterrence, both general and specific; and reformation and rehabilitation.

[5] The protection of the public encompasses both the general public interest, which includes in the context of courts martial the protection of the interests of the Canadian Forces (CF), and the protection of individual members of the public including CF members. In the context of a court martial, the primary interest of the CF is the maintenance or restoration of discipline. Discipline is a fundamental requirement of any military force and is a prerequisite of operational efficiency.

[6] Discipline has been described as a willing and prompt obedience to lawful orders, and it has to be kept in mind that lawful orders may have a detrimental or even fatal consequence for CF members. Nevertheless, their prompt and willing compliance is of fundamental importance, not only for the success of a mission, but for the safety and well-being of other CF members.

[7] Discipline, while a group quality or characteristic, is in its final analysis, founded on personal choice. It is a personal quality, self-discipline, and this is something the CF develops, encourages, and tries to maintain in its members. This is done through training, through example, and through practice, so that compliance with lawful commands in the stressful and critical situations that CF members are put into, such as disasters, deployments, and in combat, can be relied upon. In essence, members of the CF do dangerous tasks and operate dangerous equipment and must obey the rules.

[8] The heart of discipline is not unthinking action, but rather conscious, immediate, and automatic response developed through practice, but ultimately resting on choice. If discipline in individual members fails, if it falls below an acceptable standard, then there may be recourse to counselling and other administrative measures to try and restore it. When necessary, when discipline appears to be breached, then disciplinary action may be taken in the form of summary trials or courts martial. This is done to restore discipline.

[9] Fortunately, in the Regular and Reserve force of approximately 80,000 members, there are only a thousand summary trials a year and less than 10 per cent of that number of courts martial.

[10] The principle of punishment which I have mentioned is self-explanatory. It is a consequence that society imposes for a breach of its laws. It is denunciation by society for misconduct. In some cases, though that is not the case here, a minimum punishment is imposed for the commission of certain offences.

[11] General deterrence is a principle that the sentence imposed should deter not only the offender from re-offending but also others in similar situations from engaging, for whatever reasons, in the same prohibited conduct. And the principle which applies to deter the offender personally from re-offending is called specific deterrence. That means that the sentence should deter you from re-offending, not just from committing the same offence or similar offences again, but from committing any offences again.

[12] Reform and rehabilitation, though they are the last ones that I am listing, are of vital importance. When reformation and rehabilitation appear to be viable options, then they are something which must weigh very heavily with any court in its consideration of a suitable punishment. This is because ultimately society is only protected through an individual reforming and rehabilitating him or herself. Like discipline, reformation and rehabilitation are an individual choice. Society, the CF can facilitate this choice by both positive and negative incentives, but only the individual can make the necessary choices and take the necessary action. Those then are the applicable principles.

[13] In addition, there are other important considerations which the court must and has taken into account. One is proportionality, which on the one hand argues that sentences, for similar offences, by similar offenders, committed in similar circumstances, should not be significantly different. On the other hand, proportionality requires, as does *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 112.48 that any sentence take into account, not only the nature of the offence but also the background; that is, the previous character of the convicted person. QR&O 112.48 also requires that this court take into account any direct or indirect consequences of any finding and, what is most applicable here, of any sentence it imposes on the offender.

[14] The court has also considered the provisions of section 718, 718.1, and 718.2 of the *Criminal Code* which, while not directly applicable, set out valuable considerations relating to restorative justice, and also state that all other sanctions other than imprisonment that are reasonable in the circumstances should be considered for offenders. The court has also reviewed the case of *R. v. Gladue*, a 1998 decision of the

Supreme Court of Canada, found at 133 C.C.C. (3d) 385. There, Cory and Iacobucci JJ for the court, at page 400 of the decision, set out various principles including the following:

> [36] [I]mprisonment should be the penal sanction of last resort. Prison is to be used only where no other sanction or combination of sanctions is appropriate to the offence and the offender.

and they go on to say at page 404:

> [43] Restorative sentencing goals do not usually correlate with the use of prison as a sanction.... The principle of restraint expressed in s. 718.2(*e*) will necessarily be informed by this reorientation.

[15] The court, after considering the nature of the offences, that is, mishandling of weapons, has decided the predominant principle to be applied to protect the public, to maintain a safe society, and to restore discipline is general deterrence. The court has also considered as applicable, but subordinate to this main principle, specific deterrence and rehabilitation. And in regard to specific deterrence, the court would indicate there is no evidence before it that there has been any repetition of this or any other offence committed by you, but equally, there has been no evidence before the court you have been in a similar situation; that is, with access to your service pistol since this matter has been reported.

[16] What is the evidence before the court with regard to the gravity of these offences and the circumstances surrounding their commission? In terms of evidence, there are the particulars of the charge which you, Corporal Wilson, admitted to and the statement of circumstances, which again, you admitted to. These were admissions that were made before your subsequent testimony as to your lack of recollection of events. Nevertheless, you are entitled to make those admissions and the court is entitled to rely on those admissions in finding you guilty.

[17] The court also has before it Exhibits 3 to 12. In addition, it has taken judicial notice of the Military Police Credentials Review process and Code of Conduct and the pay rates of non-commissioned members in the CF. Finally, the court has considered your testimony and the testimony of Captain Morrison.

[18] In regard to your testimony, an issue was raised by the prosecution with regard to credibility because you did not remember the incidents in question. The defence argued that as there was no benefit to you not to remember, this was simply a demonstration of your credibility rather than raising a question about it.

[19] Credibility of a witness involves a number of factors. One is the interests of the witness, and in that regard, I would say to you as is the case when an accused testifies during a trial, there is no assumption that the accused has any interest in lying, the accused is treated as having the same kind of interest as any other witness in a matter. But in addition to interest, there is ability to observe, ability to remember, powers of communication.

[20] You testified and the court has found that you did not always testify and provide straightforward answers, but, in fact, your ability to do so was approximately equal between the defence and the prosecution. So the only conclusion that the court has drawn from that is that, despite your 14 years as a military policeman, you may still not be really fully familiar with and comfortable with questioning in a court setting.

[21] You did have a detailed recollection of other areas but not of the critical areas of charges 1 and 2. With regard to charge number 3, the court's understanding is you said that that activity happened regularly so that really you did not remember the particular incident when those words were said. You did, however, remember details of the mishandling of weapons in that time frame and also before, and in that regard, I make reference to your statement about doing cycles of drawing your weapon and sighting it which began to occur apparently after a course here at CFB Shilo which was earlier than the time frame of these offences.

[22] You did remember in detail the self-authorized or mutually-authorized informal training. You did not remember the incidents in question, but you did admit the details and you did plead guilty. It is not a situation that is unknown that somebody does not necessarily remember the details, but nevertheless, chooses and accepts their guilt. This usually happens when a person is drunk or under the influence of illegal or prescribed drugs or due to a medical condition, that they do not remember. There does not appear to be any of those situations here, so, in essence, from the point of view of the court, there is simply an inexplicable gap.

[23] The prosecution indicated some concern with this and perhaps some frustration, and certainly, it limited cross-examination on what the prosecution may have concluded were important issues, such as whether the gun that was being pointed was loaded or not. Nevertheless, that is the prosecution's view and not the court's view.

[24] The court simply finds your lack of recollection inexplicable. What it means, in essence, is that you, by your own testimony, are in no position to explain the

circumstances or the motivation of these incidents. The court cannot conclude that they fall into the same category as other incidents which you remember.

[25] So the court, while accepting the bulk of your testimony as credible, cannot accept any speculation about these incidents. Quite simply, you cannot and you have not provided any explanation.

[26] There are three offences before the court: two offences contrary to section 87 of the *Criminal Code* and incorporated into the *National Defence Act* by section 130 and one offence contrary to section 129 of the *National Defence Act*. All involved the mishandling of weapons. It is acknowledged by both the prosecution and defence and the court agrees that the section 87 offences are the most serious; that is, they are objectively grave offences.

[27] They occurred in a period of time, approximately 18 to 19 months ago, at the military police building in CFB Shilo, Manitoba. They occurred on more than one occasion. You were at the time a military police patrol person, working your normal shifts out of that building. You are a peace officer. The firearm which was the subject of the charges was your military police service pistol that you carried on a daily basis, as a military policeman, in the course of your duties in dealing with CF members and other members of the public.

[28] There was a dispute as to whether the weapon, during the course of these charges, was loaded. In essence, there was no direct evidence on this matter before the court. The prosecution argued that based on the evidence of CFB Shilo MP Standing Order No. 25, para 4 and your testimony that you generally complied with that order, that the court could conclude that the weapon was loaded on both occasions.

[29] Your defence counsel argued that based on your testimony, that you often unloaded your weapon on shift to practice various items, such as your drawing and sighting cycles, and to engage in, what you described as informal use of force training with Corporal Poetsch that the court should conclude that the weapon was probably unloaded.

[30] QR&O 112.53 and .54 apply in this situation. A loaded weapon would be an aggravating factor which must be proven beyond a reasonable doubt by the prosecution, and the prosecution, on the evidence before the court, has failed to do this. Equally however, the defence has not established on the balance of probabilities that the weapon was not loaded. Therefore, the court, in determining a sentence, cannot take into account

either proposition. Whether the weapon was or was not loaded remains unknown. It is not an aggravating factor, and neither is it a mitigating one.

[31] Both the persons whom the weapons were pointed were work colleagues, one military, one civilian, though neither were apparently either superior or subordinate to you. In the first incident, the person at whom your weapon was pointed was unaware of this fact. In the second incident, the person was aware, but, despite words that might have been construed as threatening, apparently treated the incident in an informal manner.

[32] In the first case, the incident was reported by a person other than the person at whom the weapon was pointed. In the second and third incidents, it is not in evidence before the court who reported the incidents and when. There is no evidence before the court of any adverse impact on the individuals at whom the weapon was pointed; that is, any psychological trauma or workplace difficulties that they suffered.

[33] The incidents were apparently brought to the attention of authorities, approximately 14 months ago. An investigation ensued. As a result of the allegations, you were moved out of the military police section and employed on other non-specialized duties at CFB Shilo.

[34] At approximately the same time, your MP credentials were suspended pursuant to the policy set out in the section relating to the Military Police Code of Conduct and Credentials Review Board found at ASJ-100-004, a CF military police publication, which the court has taken judicial notice of.

[35] You remain today under suspension and working, as a consequence, in a non-specialized position, though your pay guide, which is in evidence before the court, when considered in light of the CF Pay and Benefits Directives show that you continue to be paid as a specialist. Consequently, the court concludes that you have not suffered any adverse financial consequences as a result of this loss of credentials, though it does not come to the same conclusion with regard to career consequences.

[36] Throughout the time frame of these offences, the evidence before the court is you are conversant with Standing Order No. 25 applicable to the Canadian Forces Base (CFB) Shilo military police which sets out the appropriate standards for military police in CFB Shilo handling small arms, which included your personal weapon, that, then of the circumstances surrounding the commission of the offence.

[37] The court, as is indicated, also has to take into account your background; that is, your previous character and your current circumstances in determining an appropriate

sentence. You are 32 years old. You have more than 15 year service in the CF, 14 of that in the Regular Force, and all of that Regular Force time as a military policeman. Your last promotion was 10 years ago. You have not been appointed as a master corporal, so in essence, there has been no rank progression in the last 10 years.

[38] The court has received and considered your Personnel Evaluation Report (PERs) from 1998 through 2003 and they still inconsistently identify you as still developing; that is, they do not recommend that you are yet ready for promotion. It is evident from both your Personnel Record Résumé and from the medals that you wear, that you have served both in Canada and deployed overseas. You do not have a conduct sheet; that is, you have a clean record from a military prospective, and the evidence before the court is you have no criminal record.

[39] With regard to your performance, Captain Morrison, who was a defence witness and who the court found to be very credible, indicated that he had directly supervised you in the time frame around 1996/97. He indicated that in his assessment of you at that time, you are knowledgeable, loyal, and innovative. The court has considered your PERs from 1998 to 2003. You were in the top three of the seven or eight corporals assessed, but given that in that time frame, you had between five and nine years of experience in the rank of corporal, that is not surprising.

[40] You are identified in all of your PERs as experienced and knowledgeable. Also, words that are repeated on more than one occasion are: dependable and dedicated. You are assessed at having normal potential to progress. Though there have been some challenges that I have noted from reviewing your PERs. In your PER 1998/99, it says:

> He must readily accept change and be positive towards such. He must give change an opportunity to prove itself before being negative towards it.

[41] That problem seems to have been rectified in your 1999/2000 PER where it says:

> "He accepts constructive criticism and learns from his mistakes which makes him highly adaptable to change."

[42] Your PER for 2001/2002 indicates again some difficulties, specifically, the reference is made to:

> "His effectiveness as a team member was, at times, limited by overt disagreement with section policies and decisions, behaviour that negatively influenced peers."

[43] And in the potential section, it says

> "Cpl Wilson readily provides unsolicited feedback on any subject, regardless of the audience."

and:

> "It is necessary that he develop a more constrained and mature posture when dealing with opposition in order to provide a good example for others to follow."

[44] Your last PER which is the PER that runs from 2002 to 2003, I note that you are still rated as developing in 10 of the 16 entries under performance; however, what is impressive is in your first assessment, at least in these PERs, of supervising, you have been assessed as meeting the standard as a supervisor. So the court takes that as a very positive indication.

[45] Your overall performance was rated as follows: that you achieved satisfactory results and that your overall performance has been observed as good, and the entry in "POTENTIAL" indicates that your career development has been slowed due to your temporary employment at this current position and medical limitations.

[46] Your personal circumstances are that you are currently separated and in the process of a divorce. Your father died in 2001, and during the time the offences were committed, you were dealing with that loss and subsequent family difficulties and expectations. Your family is all located in this area; that is, the Brandon/Shilo area. Since the beginning of this month, you have been on a six-month temporary medical category, apparently as a result of an exacerbated 1999 work-related back injury. This means you are limited in the physical activity you can undergo, and your physical fitness must be directed by a physiotherapist.

[47] Your current financial situation is that you are a Specialist 1 pay, Level 4, Corporal 5A, which means that your gross monthly salary is $4,299 or approximately an annual salary of $51,000. You have indicated you have a number of debts, but perhaps these are ones that are not unexpected for someone at your stage in life. They include a mortgage, a car loan, another loan, credit cards debt, lawyer's fees, and divorce-related

expenses. You indicated you received some modest inheritance, but none of it is identified as cash.

[48] The court has gone through this in detail because it has, as is indicated, taken a great deal of time to try and properly craft an appropriate sentence to fit you, the offender, and these offences in this particular case.

[49] This has been complicated by the potential, and I would stress it is potential it is not actual, of administrative consequences and also legal consequences. There is, of course, a requirement that the court considers a firearms prohibition order, and if that firearms prohibition order was made and to include weapons you used in the course of your duty, it would mean that you would not be able to continue to serve effectively in the CF.

[50] The prosecution has submitted that these are serious offences and that the aggravating factors are: your military police status; your seniority in the CF; the fact that there was more than one incident; and that the conduct was, in the words of the prosecution, conduct that was undertaken in defiance of directions of your superiors.

[51] The prosecution also referred to mitigating factors, which they indicated they called other factors, and these were that you did not point your weapon at a subordinate; it was not a situation on operations; there was no indication that pointing your weapon was done in anger; you have no conduct sheet; and that, as a result of your convictions here, your pleas of guilty, there will obviously be career impacts for you.

[52] The court introduced two cases, sorry, the prosecution introduced two cases before the court, one relating to a master corporal and another to a sergeant, and indicated that the range of punishments included fines, reduction in rank, and detention. The prosecution indicated the minimum punishment here should be a reduction in rank and a significant fine, though they did not indicate how large a significant fine would be.

[53] They also indicated that it was a submission of the prosecution that there should be a three-year weapons prohibition order applied, but it should not be applicable to duty weapons. The prosecution did not explain why, given the evidence that you do not have any other weapons and given the fact that this incident—or these incidents occurred on duty, in a military context, with a military-provided weapon, why that was their recommendation.

[54] The defence agreed that the two section 87 offences were serious, and argued that the objective of this sentencing process is to protect the public. The relevant facts,

that is, the mitigating facts that the defence stressed were: first of all, your guilty plea, and this, the defence stressed, was an indication of remorse and responsibility; there was also reference to the logistical difficulties such a plea would reduce, but the most important submission and certainly the one that the court gives the greatest weight to is the concept that pleading guilty indicates that you have accepted responsibility for what you did.

[55] The defence went on to argue that there was no violence involved; that there was no indication that the weapon was loaded, though the defence also stated that that might be a neutral factor which is in fact what the court has found it to be; that you are not a superior to those that you pointed a weapon at; that is, there is not an abuse of subordinates in that sense before the court.

[56] The defence also pointed out the time taken to bring this matter to trial, which is some 14 months since the investigation commenced, and the fact that you immediately were moved out of your trade with a negative career impact. The defence also stressed that you have no conduct sheet, you have no criminal record, you have good PERs, and that the testimony of Captain Morrison should be relied upon to give a much broader picture of what you are really like.

[57] Much of the submission of the defence was about the administrative consequences that might follow from the sentence proposed by the prosecution, and in particular, a sentence of reduction in rank. The defence argued that there would be huge financial implications if you were reduced in rank, the rank of private; that is, a reduction in rank that would result in a loss of salary of a little over $1,000 a month. Currently, it is approximately one thousand and, I think, 44 dollars a month.

[58] The defence argued because of your temporary medical category, this meant that you could not re-promoted while that was in force. The defence also argued that under certain circumstances, if a series of decisions were made, you might, sometime in the future, approximately one to two years from now, be released medically with an immediate pension.

[59] The defence also argued that your plea of guilty at this court martial means a Credentials Review Board might revoke your credentials. Indeed, Captain Morrison, who was called by the defence and who thinks very highly of you from the time that you were together, indicated that even he would not feel comfortable recommending reinstatement of credentials in the circumstances that he had heard about in this courtroom.

[60] If your credentials are revoked, then the defence argues that you had have to go to Career Review Board for remuster or release. In essence, the defence spent much time

arguing that the court should rely on other administrative agencies to do their job, and implicitly, the court should take into account the worst that could happen administratively in looking at the consequences of any sentence imposed.

[61] The defence also argued that no weapons prohibition order should be imposed. The defence's position is it is not mandatory, the basic issue is one of safety of the individual and others, that there was no indication of an ongoing risk, that you were not a gun enthusiast, that this was not a situation where the pointing resulted from a loss of temper, and the defence quite naturally assessed the possible consequence, the likely consequence, of a weapons prohibition order as making you unsuitable for further service in the CF.

[62] The defence also argued the case law in this matter is fluid, that there are few cases and that all are at the trial level, and that the court, therefore, had a great deal of latitude in determining the appropriate range. The defence reiterated the importance of your guilty plea and stressed that that was not the situation in the cases that the prosecution had provided. The defence made a plea for an opportunity for you to be able to redeem yourself, for the court not to close all gates to you, not to scrap your career, I believe the terminology, that he used, was.

[63] Finally, the defence argued that the court could or should not go higher than the punishment and order asked for by the prosecution. Although this was not a joint submission, but a situation where there was a decision to plead guilty to some charges and apparently a connected decision to withdraw others on the charge sheet as a result of discussions between the prosecution and defence, this was not a situation where there was a joint submission on sentence. However, the defence argued that the range of sentence that both the defence and prosecution were going to recommend was discussed between them, and the defence submitted that this was a good situation and something that should be encouraged by the courts.

[64] The final sentence recommendation that the defence made was that the minimum sentence necessary was a severe reprimand and a 3,000 to 5,000 dollar fine and no weapons prohibition order. The court has already indicated the factual finding is made regarding the offences and you, the offender. It is considered as aggravating factors: your status as a peace officer on duty; that is, on duty as an MP when the incidents occurred; the fact that there is more than one incident; that it was part of a course of conduct in which you were cavalier or careless about weapons handling, and which, as the court has indicated from your testimony, apparently began even before this time period; that is, after an earlier advance tactical pistol course taught at CFB Shilo.

[65] The court is troubled by the description that was used that, in essence, you were fooling around during your time with the service pistol, whether that be in informal training or whether it would be during your self-directed practices in the coffee room. The word that was used by yourself, Corporal Wilson, was "complacent," but the court has to say is more than that. It is more than complacency, it is recklessness.

[66] The court has also taken into account as an aggravating factor that this occurred immediately after you had received special training, instructor training, about the use of force by military police. And finally, the court has taken into account your seniority in the CF. You are a corporal, but you do have 14 year service in the Regular Force.

[67] In terms of mitigating factors, the court has taken into account your guilty plea, and as the court has indicated, that is very significant in terms of accepting responsibility. It is a situation where it is difficult for the court to really think of it as being remorseful because it is perhaps difficult to be remorseful for something which you do not remember, but it is certainly a clear indication that you have accepted responsibility for your actions, and that is the first step to rehabilitation.

[68] And as the court has already indicated, as your situation is one way, you do not remember the incidents, the defence counsel says this is not a situation where there could be an immediate, an early admission, but is one where a decision to plead guilty comes after discussion between the prosecution and the defence counsel.

[69] Another mitigating factor which is very important is this is your first offence. Finally, this was not done in anger. There was nothing before the court that indicates that this was done in an angry manner. The court has taken into account that there is an indication that you were in a stressful, personal circumstances during this time frame; that is, this was not necessarily a normal time frame for you in your personal life.

[70] And finally, the court has taken into account the length of time, and this is a mitigating factor, since the offences had been reported; that is, since theyhave been brought to the attention of authorities. It is difficult to take into account, as a mitigating factor, the amount of time that has passed simply since the offences because if they were unknown to anyone, then it is very difficult to say that anyone should have taken action, but the court can and has taken into account your situation and the time that has passed since these offences were brought to the attention of authorities.

[71] Your personal circumstances appear to be one where you have 13.5 years of good service with the CF and at least six months where you were acting in a reckless manner and disregarding safety when dealing with your service weapon. As I have

indicated, these offences are serious and particularly serious when an on-duty member of the military police.

[72] The court has spent more time than it would think it would on looking at administrative consequences, and these vary from the possible to the probable. Some of them simply flow from your conviction and not the sentence. The criminal conviction is the matter that has been referred to if you are released and if you are seeking other employment, that is going to be a problem for you. That flows from conviction regardless of the sentence.

[73] So the court has tried to go through and analyse some of these issues, and look at them in the context of the sentences that were proposed respectively by both the prosecution and the defence. The first one is of course a severe reprimand, and in that case, the issue of your current medical category, this has no impact on it, it has apparently no impact on the credentials procedure, in essence, your career as a military policeman may depend on your credentials, but that sentence does not necessarily have a direct and catastrophic impact, and more generally on your career, the severe reprimand does not have the same consequences in terms of release of having an impact on severance pay, etc.

[74] In terms of a fine, again, the medical aspect of that is there is no impact. On the credentials, the credential issue proceeds as before, and your career as a military policeman depends very much on the credentials. If the credentials review process ends up with you having your credentials revoked, then you will go on a career review board and the decision will be: should you remuster or should you be released.

[75] Reduction in rank, here there are some possible consequences on the medical side. It is not clear in the evidence before the court if your temporary medical category is actually one that is below the level that is acceptable for members of the military police, and so that has some impact because presumably, you could be repromoted if your medical category was still one that was in the range. However, what is clear is if your medical category did deteriorate or was one that led to your release and you were released at the rank of private, that, in addition to the financial consequences on a monthly basis you might suffer, that your severance pay would be impacted to the range for the court's calculation of some 3,500 to 4,000 dollars.

[76] In the issue of credentials, in essence, that process would be unaffected by the issue of reduction in rank; however, there would obviously be career implications given the testimony of Captain Morrison, that there is not a role for privates currently in the military police trade, that would mean, presumably, that if the Credentials Review Board

wished to continue to allow you, either to continue under suspension or to restore your credentials with conditions, then they would also have to look at repromoting you as a corporal, and then that, of course, would invoke the issue of what is your medical category and could you be repromoted.

[77] If on the other hand, you were released, again, you would have the severance pay issue of 3,500 to 4,000 dollars, and also there would be, though it would be quite minor, an issue of pension entitlements because of the calculation based on your best five years, and depending on when all of this might happen, that could be impacted.

[78] So the court, in calculating these various and sundry possibilities, has come to some firm and some much less firm consequences. One is a reduction in rank would result in a monthly reduction in pay of some $1,044 gross, which is, given your current pay guide, an assessment of how much of your pay you actually get, which is never quite as much as any of us anticipate, approximately 700 to 750 dollars a month net loss.

[79] The court has indicated that if you are reduced in rank, then of the medical perspective, there might be an impact on severance pay, and from a credentials point of view, there is not an impact, but from a career point of view, there could be very, very serious impacts.

[80] The court, however, has looked at the cases and looked at the situation and has concluded that given these factors, given that you are an MP on duty, that a severe reprimand and a fine is not sufficient for an on-duty pointing by a peace officer, that a severe reprimand and a fine, however large the fine, is not sufficient to deter others in a similar situation. This is very much a safety issue. Conduct like this that impacts on both the military side and the police side of your career has to be taken as something quite serious.

[81] The court, however, at the same time has to take into account your guilty plea, that is taken into account as an indication of your willingness to be responsible and to accept the consequences of your actions. The other cases before the court are not ones where people have decided to accept responsibility and to plead guilty. They are ones which involve people of somewhat higher rank, and in one case is a situation where they were actually on deployment, and I do not know whether it is a common factor here, but in these cases as well, there seem to be medical problems and people seem to be potentially in the process of release under various items.

[82] In at least one of the cases, however, there was a very significant factor that was taken into account and that was that the convicted person had already been tried by

summary trial and that had turned out subsequently to be an illegal summary trial, that had been quashed even though he had been tried and convicted and sentenced, and then he was retried again at court martial legally, and so the fact of the earlier trial and conviction was taken into account.

[83] The court has taken some time to consider other options, and this is a very unusual situation. Really, as a result of your current status, it would appear that something that is deemed to be a higher punishment has less actual impact on you, certainly in terms of administrative consequences. And in that regard, the court has looked at the issue of a short period of detention which is deemed higher but it as a situation where your rank is only taken away while you are in detention.

[84] Now the court has considered this very carefully because, as it indicated earlier, it has looked at the guidance in the *Criminal Code*, the general provisions on sentencing, and particularly, the situation as set out by the Supreme Court of Canada in *Gladue*.

[85] When the court is talking about detention, it is not talking about imprisonment, but, in essence, the deprivation of liberty feels very much the same to the person undergoing the sentence. Deprivation of liberty is perhaps a little different in the military since we have what is considered a relatively minor punishment, confinement to barracks which also limits your liberty quite effectively.

[86] But the court here has looked very carefully at what your counsel has asked it to do, and, in essence, as I have said, as the court understands it, your counsel has said in imposing what he considers to be an appropriate sentence, Do not put the career of Corporal Wilson into a box that it cannot be taken out of by other authorities with other powers who might consider that he still had a future, if not with the military police, at least with the CF. That is, as I understand it, from your counsel; it is a plea that whatever the court does, it allows some room for your career to be able to be salvaged.

[87] You would lose pay while you are in detention, but your rank would be restored when you are released. The court has looked carefully at the fact that you are on a medical category and so that may limit what can be required of you during any period of detention; that is, some of the more strenuous aspects may well be ones that medically, you could not do. But this is a very rare situation where the court, looking at the offender as well as the offences, considers that the minimum punishment, taking into account the probable or the potential indirect consequences that flow from the punishment, may well be a situation where the best opportunity to essentially give you the opportunity to restore yourself to the community; that is, the best punishment from a restorative justice

perspective in a military context, is in fact a technically higher punishment on the punishment scale than the one proposed by the prosecution.

[88] The court has looked at the *Gladue* case where it is made clear that restriction on liberty is a last resort if no other appropriate punishment exists. The court has also considered very carefully the submissions of your counsel which were perhaps not made in particular contemplation of this, but nevertheless are applicable, which is that the court should not go any higher, whether that be technically or higher taking into account all of the consequences, higher than the prosecution has suggested.

[89] The court would say that this is a situation where having considered all of the evidence and the court has heard a great deal, and all of the potential consequences, and indeed the fundamental argument of your defence counsel that you should not end up in a situation where there are no choices left, that it is convinced that, in fact, the least punishment that can be imposed when we take into account potential indirect consequences is, in fact, the higher punishment on the scale of punishments.

[90] The court does not consider that the detention needs to be for a long time because it is simply one that it thinks will make the point of general deterrence. It is hard to think of a general deterrent for a peace officer, for someone with a police status that is more effective than ending up in their own detention facility.

[91] In addition, the court feels, however, that there does has to be a fine, but is a fine that would be significantly smaller than the one that was proposed by your counsel and the court would conclude that would be probably a fine that was less than that that was described as significant by the prosecution to be combined with your reduction in rank.

[92] The court is aware that there are limits on detention that can be imposed, that can be served at local detention facilities, and so the court is going to take that into account.

[93] Corporal Wilson, the court sentences you to five days detention and a $2,000 fine. The court will further order that Corporal Wilson can pay that in 18 equal monthly payments, and if Corporal Wilson is released from the CF, the full amount that is still outstanding and due and owing, that is to be recovered from him the day before his release and I would direct the prosecution to inform the appropriate authorities, claims and pay authorities at National Defence Headquarters of this direction. This sentence was passed at 1500 hours on the 25th day of June, 2003.

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