COURT MARTIAL

Citation: *R. v. Honeyman*, 2018 CM 3020

Date: 20181212
Docket: 201874

General Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman M.K. Honeyman, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Honeyman pleaded guilty to the first and only charge on the charge sheet, which reads as follows:

> **"FIRST CHARGE**
> Section 129 of the *National Defence Act*
>
> **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 Court having accepted and recorded the plea of guilty in respect of this charge, now finds you guilty of it.

[3] As the military judge presiding at this General Court Martial (GCM), it is now my duty to determine the sentence.

[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] Now, about the sentence to be imposed, the prosecutor and the offender's defence counsel presented a common approach on the principle. They suggested to the Court to impose a fine, but had a different view about the amount of the fine to be imposed on the offender. The prosecution suggested an amount of $1400, while the offender's defence counsel recommended the same fine as the one imposed in the court martial of Leading Seaman Murphy, which is $150.

[6] As a matter of evidence, I was provided with a statement of circumstances which reads as follows:

"STATEMENT OF CIRCUMSTANCES OF THE OFFENCE

1. At all times material to the charges, Leading Seaman Honeyman was a member of the Regular Force serving with HMCS Winnipeg.

2. While the ship was alongside in Vancouver, British Columbia on 16 November 2017, Leading Seaman Murphy and Leading Seaman Honeyman were in the junior ranks mess after drinking hours. Leading Seaman Murphy had a Forced Entry Tool. Leading Seaman Murphy and Leading Seaman Honeyman were behind the bar for the purpose of breaking into the bar fridge.

3. Leading Seaman Murphy attempted to open the bar fridge with the Forced Entry Tool.

4. Leading Seaman Murphy and Leading Seaman Honeyman were discovered before they were able to break in to the fridge. No damage was caused to the fridge and no items were taken."

[7] I was also provided with some facts on which parties agreed and the Agreed Statement of Fact can be read as follows:

"AGREED STATEMENT OF FACT

> 1. Leading Seaman Honeyman is planning on doing a voluntary occupational transfer (VOT) to Search and Rescue Tech. The VOT to this trade only occurs in the summer each year.
>
> 2. Leading Seaman Honeyman applied for the VOT this summer but was not able to complete it due in part to this trial. He intends to apply again for next summer.
>
> 3. On 19 September 2018, Leading Seaman Honeyman noticed smoke coming from the third floor of an apartment building as he was walking by. He entered the building by the fire escape and saved an intoxicated person from inside the suite which was on fire by carrying him down the stairs. He also communicated to the other residents to evacuate. As a result of his actions he received a thank you letter from the Chief Constable of the Victoria Police."

[8] Also the offender introduced a personnel development review (PDR) for the period of March to October 2018 and four pictures of the fridge involved in the incident.

[9] The fundamental purpose of sentencing in a court martial is to ensure the maintenance of discipline and respect for the law and, from a more general perspective, the maintenance of a just, peaceful and safe society. However, the law does not allow a military court to impose a sentence that would be beyond what is required in the circumstances of the case. In other words, any sentence imposed by a Court must be adapted to the individual offender and constitute the minimum necessary intervention since moderation is the bedrock principle of the modern theory of sentencing in Canada.

[10] These objectives and sentencing principles are listed at sections 203.1 to 203.3 of the *National Defence Act* (*NDA*) and they came into force on 1 September of this year and I will decide in accordance with these objectives and principles.

[11] So this legal context implies that I have to consider some objectives which are:

> (a) to promote a habit of obedience to lawful commands and orders;
>
> (b) to maintain public trust in the Canadian Forces as a disciplined armed force;
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> (c) to denounce unlawful conduct;
>
> (d) to deter offenders and other persons from committing offences;
>
> (e) to assist in the rehabilitating offenders;

(f) to assist in reintegrating offenders into military service;

(g) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;

(h) to provide reparations for harm done to victims or to the community, and

(i) to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

[12] When imposing a sentence a military court must also take into consideration the following principles:

(a) the sentence must be proportionate to the gravity of the offence;

(b) the sentence must be proportionate to the degree of responsibility and previous character of the offender;

(c) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(d) the offender should not be deprived of liberty, if applicable in the circumstances, if less restrictive sanctions may be appropriate in the circumstances; and

(e) lastly, any sentence to be imposed by the Court should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[13] The principle of proportionality shall reconcile those different goals and make the sentence imposed on the offender proportionate to the gravity of the offence and to the degree of responsibility and previous character of the offender, as expressed at section 203.2 of the *NDA*.

[14] Now I will elaborate on the relevant aggravating circumstances that should increase the sentence to be imposed by the Court:

(a) First, there is the objective seriousness of the offence. The offence for which the Court accepted and recorded a plea of guilty is related to section 129 of the *NDA*, for which the maximum punishment that can be imposed by this Court is dismissal with disgrace from Her Majesty's service or to less punishment.

The Court also has to consider the objective seriousness of the offence and I have two things:

(b) First, the breach of trust. You committed the offence on a ship you were part of after working hours. So the bar was closed and the fridge was locked. And you knew that you were in these circumstances. Despite that, you and Leading Seaman Murphy made the resolution to access the fridge for some reason. I would say breach of trust in the Canadian Forces is very important because of the nature of the job we are doing and I think you are probably aware of that. It must be reflected in a variety circumstances and I would suggest that on a ship, while you are at sea, it is more than important. If you do not know if you can rely on somebody else or if you rely on somebody else and you cannot trust it anymore, it may impact on the people, on their health, it could impact on the mission ultimately. That being said, for sure, the breach of trust in the Canadian Forces must be demonstrated by any of the military members that are part of the Canadian Forces in any circumstances, especially if you are on a ship. And for that reason, I consider this factor as an aggravating factor.

(c) The other factor that I consider as aggravating is your conduct sheet. You were convicted about a year ago for an offence laid under section 129 of the *NDA*, an act to the prejudice of good order and discipline. Which is, objectively speaking, the same offence I am dealing with today. However, the conduct described in the particulars of the charge on your conduct sheet is different than the one I am dealing with. Basically, it is more about the respect of the standing orders you were supposed to respect the standing orders and you did not. Here, it is more related, basically, to the trust that your shipmates, your supervisors, your superiors, including the commanding officer of the ship may have in you, on all time. And that is the difference between these two offences, but your conduct sheet reflects for me the fact that you expressed having some difficulty with respecting, I would say, a directive or an order from the ship. So, respecting orders, respecting the respect for the law has been expressed the first time by your conviction on the conduct sheet and today by the second conviction by the court on your plea of guilty. But I have to consider this as an aggravating factor.

[15] There is also mitigating factors that I must consider:

(a) First, there is your plea of guilty. I will discuss the timing later, but for me, you decided to accept responsibility for what you did and it also expresses some remorse for what happened. And I take it as it is. You were given an opportunity to plead once and you made the decision to plead guilty. I asked it just once and you answered that way. And I have to consider this as a mitigating factor. No trial occurred.

(b) Second, your performance and potential. According to the PDR I received, which is very recent, we are talking about the period of March

to October 2018, you are considered as a good performer and having the potential for being a leader. If I read it correctly, I understand that your direct supervisors consider the fact that you should be more acquainted with the abilities to write things, in order for you to supervise people and to, in that way, especially in the Navy, where it is the proper way to assess and take notes related to the performance of people, to make divisional notes, I think it is an indication that you were considered as having potential for being a leader and progress in your career. No matter what is your trade.

(c) Loss of Voluntary Occupation Transfer (VOT). There is also the fact, as raised by the evidence, of the loss of opportunity to be considered for the voluntary occupation transfer because of the laying of the charge and dealing with this disciplinary matter, it looks like it impacted on your ability. One of the factors, if I understand correctly, that resulted in you being obliged to present your name again for the trade you want to consider in the future.

(d) There is also your character. As far as I am concerned, the incident of 19 September 2018, which is very recent too, reflects the fact you are committed towards others. So, if there is no alcohol involved, the logic here is you are performing well, you have a good potential, you committed to others, you have potential for leadership and this action reflected on you, but also on the Canadian Forces in some ways. Okay, because of you are part of the Canadian Forces and this factor, your character, it was presented in the Agreed Statement of Fact, is sufficient for me to infer that, basically, nobody asked you to do this, what you did and I am pretty sure that many people are pleased to see people like you, reacting the way you reacted. So, it goes with the mitigating factors that I have to consider.

(e) The other thing is the seriousness of the incident described in the particulars of the charge, since Monday, I have been told by both parties that, as a matter of seriousness, this matter is at the low end of the scale. It was described in various ways to me as being minor. One of the reasons is because there was an attempt, but nothing else happened. Meaning that there is no break of anything, you did not destroy anything. Maybe it is a matter of coincidence because you were caught, but the end result is that. It is a minor incident, as described by the prosecution and your counsel.

[16] One other principle I have to consider, but I am not bound by this principle only, is similar sentences for similar offenders with similar circumstances. As a matter of coincidence, in very few courts martial, a judge will face a situation where they have somebody for the same charge about the same circumstances, because I have not read the other decision concerning Leading Seaman Murphy and if I would, I would have

made it available to counsel to get their comments on it. I do not know the Statement of Circumstances presented, it was alluded to it during the previous application that I heard, but nothing was proved during that application and I did not review anything. What I understand is, the offence was the same, the rank was the same, circumstances of the incident were potentially the same, because you were both at the same time, at the same place, the only difference is that the tool was in the hands of Leading Seaman Murphy, but both of you were being the bar. So, many similarities and Leading Seaman Murphy, in the course of joint submission, was sentenced to a fine to the amount of $150 and I must consider that, it is part of things that I must consider.

[17] Now, the prosecution took the position that because of three specific factors, the Court should impose a fine to the amount of $1400, which is $1250 more than the one imposed to Leading Seaman Murphy. And they put to me the timing of the guilty plea. I would say that, in some circumstances it could be considered as a factor. But for me here, it is not and I will explain myself. I will not be long. What is different with the guilty plea of Leading Seaman Murphy is about the existence of a panel. I do not see any other difference. Okay. The cost was the same for Leading Seaman Murphy and you, the judge was here, counsel were here, but, as far as I am concerned, there was no panel involved. You made the decision or you did not elect, I do not know, but the end result is there is a general court martial. Because of the type of court martial, my understanding, it should be a factor to be considered by the Court, because panel members had to move here, they travelled, and there is a cost related to that. And it is an important cost, because we are moving eight people. However, if they arrived today, it is because of trial management, not because of timing of your guilty plea. There was supposed to be here on Monday, your counsel, a month ago, 15 October, the first time you put the application was put to the court was on 15 October. So the awareness about the fact that you intend to claim a violation of your rights was done well in advance. It does not mean that you intend to plead guilty or not guilty. You may want to challenge or you may want to put to the court a potential violation for some reason and you have the right to do this. You are not precluded of doing this. And in providing my decision, it does not impact on the fact that you are entitled to do this. As a matter of trial management, I decided that I least the arrival of panel members would be delayed by two days. It was suggested to me by counsel to delay it by three days instead of being here from Monday, they said Thursday. But I made the decision because I am managing this trial that Wednesday would be better. Because I was concerned by another factor, is the length of the trial, especially in the context where leave for Christmas is coming. I did not want panel members to be caught in the situation where they rush the decision because they want to leave and be with their family for Christmas. That was my decision, it was not your decision what day they would come. What would have been the representations by the prosecution in this matter if they would have just arrived tomorrow? Then, it would not have been a factor anymore. I do not think it works this way. Because of the type of trial chosen, we ended it, because I made the decision to delay the arrival of panel members and alternate panel members to today, I do not think timing of a guilty plea is a factor. The guilty plea is a matter of dynamics. For me, it is just a factor of dynamics. Sometimes, long in advance, an accused will inform his counsel that he intends to plead guilty, in some other instances, there is some concern

about how the trial was organized and how people behaved and you may think that there is a problem with that, because you are entitled to put it to the court. That being said, you do not have to be punished because you did it. And for me, clearly the timing of the guilty is not a factor for this court in the circumstances we are here today.

[18] The joint submission made in the circumstances of the court martial of Leading Seaman Murphy. Clearly, the matter of Leading Seaman Murphy is related to this matter and there is not much that would make circumstances that I was provided with, with the one, in fact, I have nothing to compare other what I have in the Statement of Circumstances involving Leading Seaman Murphy. So I have nothing to say that is so different what happened in court martial of Leading Seaman Murphy to say that because it happened in the context of a joint submission, circumstances are totally different than the one here. When parties, for a reason, and after a settlement come to the conclusion that $150 in the circumstances described in the context of the court martial of Leading Seaman Murphy is acceptable, because it met the objectives and principles I quoted before. If it is acceptable for the prosecution, then I have to figure why the joint submission, I am not saying that you allowed to have the exact same thing, but there is not a lot of difference between what I was told about Leading Seaman Murphy and your circumstances. Rank was the same, offence was the same, you pleaded when I asked you, the first time. You pleaded guilty. For me, it is still the same.

[19] However, the conduct sheet is a factor I have to consider. You heard me saying that it is an aggravating factor and I would agree with the prosecution that it must be put in the balance. It does not mean that because you have a conduct sheet, it makes it so different that $1250 more than $150, I have to add this amount to $150 in order to reflect that. I am not sure. I will continue my reasoning, but you understand.

[20] The other problem I have, is the fact that the prosecution position is based on a minimum of evidence. Basically, what I have been presented with, is what usually I get for a joint submission. There is only Statement of Circumstances, I heard no witnesses at all. And when I look at it with the minimal circumstances, the minimal evidence I am provided with, I am not sure that the approach taken by the prosecution is coherent in the circumstances of this case. Why $150 versus $1400, I find it a bit difficult. I understand that the principle is the same, it is a fine and I think that both parties agree on that, but on the amount, more than $1000 for a conduct sheet makes me wonder about why it must have such impact. It must have an impact, to what extent, I am not sure it is $1000 more in these circumstances.

[21] Accepting such suggestion made by the prosecution, for me, could send the wrong message to the person subject to the Code of Service Discipline. Basically, if you elect court martial, if you decide to be tried by GCM, involving more people and more costs, then you should be punished. And if I accept $1400, I think this is the kind of message that will be sent to all person subject to the Code of Service Discipline. These choices must not impact, it must not have consequences, otherwise it would mean nothing. You decide, if you are charged, then the law is clear. You are entitled to decide and this choice sometimes, when you decide to elect court martial, it does not mean you

have the benefit to talk to counsel and be advised. If you do, you make the decision, nobody is supposed to challenge the decision. It is a decision you made, because you think that is the best thing for you to do. And it is the same thing for any person subject to the Code of Service Discipline and if there is a preferral and you have the opportunity to choose between two types of courts martial, again usually you are represented and usually you make that choice for a reason. But being punished for that, through a sentence, I do not think it would be the proper message to send to people, it is the opposite. But it is not because of that, that I would be lenient on the sentence either, it is just that, it is not a factor for me to consider. So, it is difficult for me to accept the $1400's fine as suggested by the prosecutor without taking the wrong message could be sent. Sometimes it may happen that a court may, especially the judge, a military judge or any other judge in Canada, may come to a different result if a full trial happened, but usually, if a full trial occurred and somebody is found guilty, if the sentence appears being more severe, in some circumstances it is because the judge knows more about the circumstances of the case. Much more than what I have before me. When you plead guilty, there are some circumstances, but I understand that not everything is put, everything that people know, I do not know it. What I know is what has been put has been put before me. So I deal with that and I have enough to make a decision, but not much.

[22] So it makes me wonder, it does not, I am not challenging and I am not saying that things have been conducted in a wrong or a bad way at all, this is not what I mean, but the prosecution has a quasi-judicial role recognized by case law and the benefit of independence such as defence counsel and so as the military judge. It must be usually reflected in what they propose, it comes from the prosecution and the prosecution only. What they have to consider, there are factors, this difference just makes me wonder why it is so big as a matter of amount in these circumstances.

[23] So, in the case of Leading Seaman Murphy, I am pretty sure that denunciation and the deterrence effects have been considered as matter of objectives. And here, similar circumstances for similar offences must be considered by me. It was considered by the prosecution and defence counsel of Leading Seaman Murphy that $150 would reflect these objectives and principles, other than similar circumstances for obviously, me, what is important, and I listed a number of factors and I exposed to you why, but the breach of trust it is a very important factor in these circumstances, but also the impact it had on your career, all this matter. Also your performance and potential are very important for me to consider.

[24] As I said, the main difference between both cases, the one with Leading Seaman Murphy and yours, as far as I am concerned, with the evidence put before me, is the conduct sheet and I agree, as I said, with the prosecution that it must be reflected in the sentence. That is why I came to the conclusion that because of the existence of your conduct sheet, very recent, it must be reflected in the sentence. Considering it as not being your first conviction, the sentence that I will impose will not be administratively removed from your conduct sheet. It will not be considered as a criminal record in

accordance with the new provisions, but it will be a fine that cannot be removed from your conduct sheet after one year.

[25] So, for me, a fit and appropriate sentence that would be the least severe sentence required to maintain discipline and it would be a fine of $250.

FOR THESE REASONS, THE COURT:

[26] **FINDS** Leading Seaman Honeyman guilty of the first charge for an act to the prejudice of good order and discipline pursuant to section 129 of the *NDA*.

[27] **SENTENCES** Leading Seaman Honeyman to a fine in the amount of $250 payable immediately.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Colonel R.D. Kerr and Captain N. Thiessen

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Leading Seaman M.K. Honeyman