



COURT MARTIAL

Citation: *R. v. St-James*, 2019 CM 2001

Date : 20190114

Docket : 201880

Standing Court Martial

Canadian Grenadier Guards Armouries
Montreal, Quebec, Canada

Between :

Her Majesty the Queen

- and -

Corporal M.T. St-James, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

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

“First Charge
Section 97 N.D.A.

DRUNKENNESS

Particulars: In that he, on or about 28 January 2017, at or near the Royal Military College in St-Jean, Saint-Jean-Sur-Richelieu, Quebec, was drunk.”

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

“STATEMENT OF CIRCUMSTANCES

1. At all material times, Corporal St-James was a reservist of The Black Watch (Royal highland Regiment) of Canada.
2. On 28 January 2017, a broomball tournament was held at Royal Military College in St-Jean-sur-Richelieu RMC St-Jean). Pursuant to s. 60(1)c)(viii) of the National Defense Act, RMC St-Jean is a defense establishment.
3. Cpl St-James, who was not in service and in uniform that day, attended the broomball tournament and the reception following the tournament inside the Pavillon Dextraze at RMC St-Jean.
4. At some point during the evening of the tournament, Cpl St-James and Ocdt Slogget left RMC St-Jean after drinking a few beers at the mess and went to a bar downtown St-Jean. Cpl St-James drank a number of beers at this place.
5. According to Ocdt Slogget, Cpl St-James was drunk when they left the bar.
6. Just after 2257 hrs, the video surveillance system at the entrance of the Pavillon Dextraze recorded Cpl St-James, Ocdt Pover and Ocdt Slogget entering the building. The three people were heading where the winter coats were stored (the locker room). In the lock room, there were four coat racks. Each coat rack can hold two lines of coats. Some civilian coats were already hung on the racks.
7. When they entered the Pavillon Dextraze, Ocdt Pover and Ocdt Slogget were both wearing their winter coats. Cpl St-James was not wearing a coat.
8. During approximately one minute, the video surveillance system recorded Cpl St-James, along with Ocdt Pover and Ocdt Slogget, looking and touching coats stored in the locker room.
9. When Ocdt Slogget and Ocdt Pover were interviewed by the Military Police about what they were

doing at that specific time, they stated that they were helping without success Cpl St-James to locate his jacket in the coat racks by checking the tags, looking up for a specific brand name, because Cpl St-James had lost his coat somewhere during the evening.

10. After those actions, the video surveillance system recorded the three people leaving the locker room.

11. At around 2310, the video surveillance system recorded Mr Lévesque entering the Pavillon Dextraze and leaving his coat in the locker room.

12. The description of Mr Lévesque's coat is a black long coat and the brand is Pajar. It was a brand new coat and the value at the time of the purchase was approximately \$350.

13. At around 2334, the video surveillance system recorded Cpl St-James and other people entering the locker room.

14. Cpl St-James went to the exact place where Mr Lévesque left his coat and, under the influence of alcohol and in a disorderly manner, recklessly and negligently took it, put it on and left with it.

15. At around 2344, when Mr Lévesque went back to the locker room, he could not find his coat anywhere.

16. On 29 January 2017, Mr Lévesque reported the disappearance of his coat to the Military Police.

17. On 16 February 2017, Cpl St-James was identified as the principal suspect in the Military Police's investigation.

18. Despite Cpl St-James later taking specific action to find the legitimate owner of the coat, his original action had the deplorable effect of depriving Mr Lévesque of the enjoyment of his property for 23 months."

An Agreed Statement of Facts was also included and it reads as follows:

"AGREED STATEMENT OF FACTS

1. Corporal St-James is 26 years old and initially enrolled in the Canadian Armed Forces (CAF) as an Officer Cadet and student of the Royal Military College St-Jean (RMC St-Jean) from July 2013 to January 2015.
2. Corporal St-James left RMC St-Jean and later joined the CAF Army Reserve on 10 July 2015.
3. Cpl St-James is a first time offender. This Standing Court Martial constitutes his first appearance before a Military Tribunal.
4. Cpl St-James met his Defence Counsel on 28 November 2018 in preparation of his trial. At that point, Cpl St-James instructed his Defence Counsel to explore resolution avenues and to proceed with a guilty plea if a Joint Submission was reached. Prosecution was engaged quickly thereafter.
5. This guilty plea is an economy of time and resources for the Military Justice System.

CPL ST-JAMES' PERSONAL CIRCUMSTANCES

6. Cpl St-James is a Class A Reservist serving with The Black Watch (Royal Highland Regiment). He is single.
7. Cpl St-James is an active Class A Reservist as it appears from his DND-Master Pay Record Report entered as an exhibit in these proceedings.
8. Cpl St-James just returned from a 7 days Operational Exercise with his Regiment that took place in Fort Pickett (Army National Guard Maneuver Training Center), Virginia, United States, from January 5, 2019 to January 12, as part of the Reconnaissance Platoon for 34th Brigade.
9. Cpl St-James's father died on 27 November 2016, following this event, the accused increased his alcohol consumption and was going through a difficult period at the time of the incident that led to this Court Martial.
10. There are no signs of Alcohol Addiction within Cpl St-James's CF Mental Health Services file before and after this incident.

RELEVANT CONTEXTUAL INFORMATION

11. Cpl St-James is the owner of a black Pajar jacket that is similar in shape and style to the one he recklessly took on the evening of the 28 January 2017, which is the property of Mr Lévesque.
12. The Pajar jacket that he owns was given to him by his father a few weeks before he passed – this jacket has a high sentimental value to the accused.
13. On the morning of the 29 January 2017, while in a temporary dormitory at RMC St-Jean, Cpl St-James realized that he was wearing a Pajar jacket that was not his property, at the same moment, he saw his own Pajar jacket on the floor, right beside his sleeping cot. The accused slept wearing the jacket that was not his property as he had no other covers for the night.
14. When Cpl St-James realized that he took property that was not his as a result of his level of intoxication and carelessness, he took meaningful actions in trying to locate the legitimate owner of the coat, without success.
15. On that morning he came back to St-Lazare, Quebec, with the Pajar jacket that was not his property, he placed that jacket in a closet and did not wear it again.
16. As a result of the Joint Submission, Cpl St-James gave back the Pajar jacket that was not his property to Cpl J-L. Morin, a Military Police with 5 MP Regiment.
17. This meeting between the accused and Cpl J-L. Morin occurred on 18 December 2018, at 1720, in Longue-Pointe, Quebec.
18. It appears that the Pajar jacket recovered by Cpl J-L. Morin, which is the property of Mr Lévesque, was damaged by Cpl St-James while it was in his illegitimate possession.
19. In this context, Cpl St-James agrees as part of this Joint Submission to make restitution to Mr Lévesque with the original value of this item, which is in this case **three hundred and fifty (360.00)** Canadian dollars, in

accordance with Section 203.9 para (a) of the *National Defence Act*.

20. Since the incident that led to this Court Martial, Cpl St-James has significantly decreased his alcohol consumption.
21. Cpl St-James applied for a Component Transfer (CT) to the Regular Force as an Infantryman with the Princess Patricia's Light Infantry (PPCLI) in September 2016, however, his file was recently placed on hold as a result of the Court Martial proceedings.
22. Cpl St-James completed his Developmental Phase II Infantry, in Valcartier, Quebec on 17 August 2018 and his qualified as a Master-Corporal.”

Joint submission

[3] In a joint submission, counsel recommend that I impose a fine in the amount of \$800, payable in two instalments of \$400 with the first payment to be made on 1 March 2019 and in addition, counsel recommend that I impose a Restitution Order directing the accused to reimburse the value of the property (the Pajar Coat) in the amount of \$360 to Mr Jean-François Lévesque.

[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, provided the receipt for a coat referred to in the Statement of Circumstances, as well as a statement from the owner of the coat 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. Defence counsel provided the Court with an Agreed Statement of Facts that is relevant to the accused.

[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 Corporal St-James.

[10] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Corporal St-James's personal circumstances, allowing me to consider any indirect consequence of the recommended sentence, so that the court imposes a punishment specifically for Corporal St-James, taking into account the rehabilitation and progress he has made to date.

The offender

[11] Corporal St-James is 26 years old. He enrolled in the Canadian Armed Forces (CAF) on 25 July 2013 and has served over five years. He is currently a rifleman with the Black Watch (Royal Highland Regiment) of Canada in the reserves. He is currently seeking a transfer to the regular force. By all accounts, he appears to have served his country very well and has no previous conduct or criminal record for the Court to consider.

[12] As noted during sentencing submissions, Corporal St-James 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 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 *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 and defence both 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, 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) Committed in training establishment – The incident occurred in a training establishment where both civilians and military were together. Mr Lévesque, a civilian, had participated in a friendly broomball tournament on the military premises, and in full trust, left his coat in the locker room. The loss of the coat caused him to lose trust and respect for the values that the Royal Military College espouses.
- (b) Loss of coat – As a result of the mix-up, Mr Lévesque lost his coat and suffered an economic loss flowing from it. He was subsequently deprived of the coat for 23 months and when it was returned, it was damaged.

Mitigating factors

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

- (a) Guilty plea and remorse - Corporal St-James is a first-time offender and his plea of guilty for the offence, as described in the Statement of Circumstances must be given full weight. He has accepted responsibility publicly for his conduct and shows genuine remorse. His guilty plea has saved the Court and counsel considerable time and resources.
- (b) Incident was out of character for the accused – The evidence and submissions before the Court suggest that the Court can infer that this was an isolated incident and a temporary lack of judgement. The accused had recently lost his father which led to a temporary increased consumption of alcohol on that evening. In short, while drunk, he took a coat that resembled his own, but was not.

- (c) Age and potential – Corporal St-James has a bright future ahead of him within the CAF. Notwithstanding the charges he faced and the pending court martial, Corporal St-James continued his military training and participation with the reserves which reflects positively on his level of commitment to both his unit and the CAF at large. He most recently completed training that qualifies him to be promoted to master corporal.

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 referred to by the prosecution (*R v Near*, 2013 CM 4018, *R. v. Master Corporal J.R.F. Bourgoin*, 2005 CM 18 and *R. v. Captain J.M. Hall*, 2007 CM 2010) 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.

Conclusion

[19] Corporal St-James, before I pass sentence, I will reference what your defence counsel stated. He said that with your plea, you displayed remorse in accepting responsibility for your conduct. With the unexpected death of your father, you persevered through a difficult time and you made a few bad choices. However, I am pleased to see that you have successfully placed your career and life back on track. Sadly, this will not be the only time you will have to overcome obstacles, but the Court acknowledges that few incidents in life will have this great of an impact on an individual. The Court notes that your public acceptance of responsibility is not easy, but it stands as an excellent example of your strong personal character. 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. The Court wishes you continued success in your career.

[20] 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 \$800 sends a message that this type of conduct will not be tolerated in the CAF, and the imposition of the restitution order 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:

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

[22] **SENTENCES** you to a fine in the amount of \$800 payable in two equal monthly instalments with the first instalment of \$400 payable on 1 March 2019 and the second instalment payable on 1 April 2019.

[23] **IMPOSES** a Restitution Order directing that you reimburse the value of the property (the Pajar Coat) in the amount of \$360 to Mr Jean-François Lévesque.

Counsel:

The Director of Military Prosecutions as represented by Major M-A. Ferron

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Corporal M.T. St-James