



COURT MARTIAL

Citation: R. v. White, 2018 CM 4021

Date: 20181219

Docket: 201863

Standing Court Martial

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

Between:

Her Majesty the Queen

- and -

Second Lieutenant C.L. White, Offender

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Second Lieutenant White, having accepted and recorded your plea of guilty in respect of the only remaining charge on the charge sheet, the Court now finds you guilty of that charge for drunkenness, contrary to section 97 of the *National Defence Act* (NDA).

A joint submission is being proposed

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a fine of \$850.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders who are remorseful to begin making amends. The benefits of joint submissions are not limited to the accused but extend to victims, witnesses, the prosecution and the administration of justice generally; by saving time, resources and expenses which can be channelled into other matters. Joint submissions bring certainty to all participants.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as military judge. Courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following trial or a guilty plea. The sentencing usually takes place on a military establishment, in public and in the presence of members of the offender's unit, as evidenced in this case.

[6] The imposition of a sentence at court martial proceedings therefore performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] Recent legislative provisions setting out the purposes and principles of sentencing by service tribunals have come into force on 1 September 2018. Without repeating the content of these dispositions, I wish to mention that the fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

Matters considered

[8] In this case, the prosecutor read a Statement of Circumstances which was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 112.51.

[9] Defence counsel read on the record and entered as exhibit an agreed statement of facts highlighting mitigating evidence on behalf of Second Lieutenant White, including details of her personal circumstances at the time and since the offence.

[10] In addition to this evidence, the Court also benefitted from the submissions of counsel that support their joint position on sentence on the basis of the facts and considerations relevant to this case, as well as by comparison with judicial precedents in similar cases. These submissions and the evidence allow me to consider and apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

The offender and the offence

[11] Second Lieutenant White is a 29-year-old armoured officer. She joined the Canadian Armed Forces (CAF) on 28 October 2008 as a reservist. She then joined the regular force on 31 July 2009. She was employed in Ottawa where she obtained a Bachelor of Arts at the University of Ottawa in 2012. She was posted to the Royal Canadian Dragoons in Petawawa in November 2013. She is a single parent with a six-year-old son.

[12] The facts surrounding the commission of the offence in this case are disclosed in the Statement of Circumstances read by the prosecutor and formally admitted as accurate by Second Lieutenant White. These circumstances can be summarized as follows:

- (a) On 12 December 2017, the Royal Canadian Dragoons hosted a social event on Garrison Petawawa to allow both non-commissioned officers and officers of the unit to socialize in a relaxed atmosphere.
- (b) Second Lieutenant White drank multiple alcoholic beverages at the event and became quite intoxicated. She was observed spilling drinks, falling over, and slurring her speech. At one point the bar staff refused to continue serving her alcohol due to her level of intoxication.
- (c) Second Lieutenant White also made inappropriate comments of a sexual nature and struck a warrant officer in the face while drinking games were being played between unit members.

[13] Upon being notified of her conduct the following day, Second Lieutenant White indicated that she did not recall her behaviour or her comments. She was immediately remorseful and apologetic. A few weeks before the incident, she had failed a practical examination on the Armoured Troop Leader Course in Canadian Forces Base (CFB) Gagetown, as a result of anxiety symptoms. She was then returned to unit on CFB Petawawa. She has experienced adjustment disorder with anxiety while on course in CFB Gagetown and has been on a medical category since that time. This allowed her to obtain adequate medical and mental health assistance to deal with these challenges.

[14] Second Lieutenant White was placed on recorded warning for alcohol misconduct as a result of the incident of 12 December 2017 with a monitoring period of six months starting on 14 June 2018. She has not been assessed as suffering from alcohol addiction at any point before or after the incident. Shortly after charges were preferred in this case, Second Lieutenant White instructed her defence counsel to resolve this matter efficiently and to proceed with a guilty plea.

[15] Second Lieutenant White has requested a voluntary administrative release from the CAF with the support of her chain of command. She could also consider a transfer to another occupation with the CAF. As of the day of trial, she has an administrative release date set for 31 March 2019, at which point she intends to stay in the Petawawa area. She wants to take an online qualification with Algonquin College in Fitness Health Promotion with the hope of being in a position to postulate as a civilian fitness instructor working in support of CAF personnel.

Objectives of sentencing to be emphasized in this case

[16] I agree with counsel that the circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. That said, any sentence imposed should not compromise the rehabilitation of Second Lieutenant White which, on the facts presented to me, appears to be well underway.

Aggravating factors

[17] I agree with counsel that this is not the most severe case of drunkenness. Yet it remains that the offence reflects a very poor choice on the part of Second Lieutenant White to become severely intoxicated at a unit event involving officers and non-commissioned officers in close proximity to the holiday period. Even if the event was meant to be festive, it was an official function. A junior officer, such as Second Lieutenant White would be expected to behave as an officer which implies limiting her consumption of alcohol in the presence of subordinates and avoiding behaving the way she did, especially by making remarks of a sexual nature and striking a warrant officer in the face. I acknowledge that the degree of violence offered was minimal and there were no adverse consequences on the warrant officer struck, who according to the prosecutor did not wish to provide any evidence to the Court on sentencing. It remains that participants in unit functions should not be subjected to any kind of violence, even of minor intensity. Incidents of drunkenness involving striking a subordinate are not insignificant.

Mitigating factors

[18] The Court also agrees with the representations of counsel as to significant mitigating factors in this case, including the following:

- (a) first and foremost, Second Lieutenant White's guilty plea, which avoided the expense, energy and costs of running a trial, demonstrating an offender who is taking full responsibility for her actions, in this public trial in the presence of her family and members of her unit and community;
- (b) second, the fact that Second Lieutenant White expressed remorse early on and instructed her counsel to arrive at a resolution of this matter shortly after charges were preferred;
- (c) third, the fact that Second Lieutenant White has no criminal or disciplinary record;
- (d) fourth, Second Lieutenant White's personal challenges at the time of the offence and since, regarding her anxiety issues and the difficulties this poses to continue a career as a combat arms officer in the Army; and
- (e) fifth, Second Lieutenant White's potential to make a positive contribution to society in the future, within and outside of the CAF.

Assessing the joint submission

[19] To assess the acceptability of the joint submission, the Court has considered the objective seriousness of the offence as illustrated by the maximum punishment that can be imposed. Offences under section 97 of the *NDA* are punishable by imprisonment for less than two years or less punishment.

[20] The submissions from counsel contained brief references to previous cases, which assist me in assessing the joint submission and determine if it is acceptable. I may depart from the joint submission of counsel for a fine of \$850 only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[21] The issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. Any opinion I might have on an appropriate sentence is not sufficient to reject the joint submission that was made to me.

[22] The Supreme Court of Canada has required such a high threshold as it is necessary to allow all of the benefits of joint submissions to be obtained. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offences, as with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command. He or she is aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that

justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[23] In determining whether a jointly proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system. As any judge assessing a joint submission, I have to avoid rendering a decision that causes an informed and reasonable public, including members of the CAF, to lose confidence in the institution of the courts, including courts martial.

[24] I do believe that a reasonable person aware of the circumstances of this case would expect that the offender, guilty of drunkenness at a unit function, would receive a sentence that both expresses disapprobation for the failure in discipline involved and has a personal impact. A fine of the amount proposed is aligned with these expectations.

[25] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I am unable to conclude that the sentence jointly proposed by counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

[26] Under subsection 145(2) of the *NDA*, the terms of payment of a fine are at the discretion of the service tribunal that imposes it. At the sentencing hearing, the prosecution did not object to the request made by defence as to payment of the fine in five monthly instalments of \$170, with any balance due on release from the CAF.

[27] Second Lieutenant White, the circumstances of the charge you pleaded guilty to reveal a behaviour that is unacceptable for an officer in the CAF. That said, I do accept the representations of your defence counsel to the effect that you are a good person who has made a mistake. We all make mistakes, but success is often measured as to how one reflects on and learns from mistakes. I hope the disciplinary and administrative procedures you have gone through since the events of last year have provided an opportunity to reflect so that you are now determined to move on and not let such mistakes happen again. As you wish to remain active within or with the CAF in the future, I trust you will reach your full potential and behave in a manner that respects the law and allow people to conclude that the incident of December 2017 was entirely out of character for you.

FOR THESE REASONS, THE COURT:

[28] **SENTENCES** you to a fine of \$850 payable in five monthly instalments of \$170, the first being payable no later than 15 January 2019, the following four payments

on or before the 15th of each month of February, March, April and May 2019. In the event you are released from the CAF for any reason before the fine is paid in full, then any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Captain C.R. Gallant

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Second Lieutenant
C.L.White