COURT MARTIAL

Citation: *R. v. Mason*, 2003 CM 480

Date: 20031008
Docket: S200348

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty The Queen

- and –

Ex-Private R. Mason, Offender

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

SENTENCE

(Orally)

[1] Ex-Private Mason, the court, having accepted and recorded your pleas of guilty to the first and the second charge on the charge sheet, to the lesser and included offences of possession, the court finds you guilty of those charges. The court is now at the stage of sentencing you for those offences.

[2] In determining an appropriate sentence, the court has considered the circumstances surrounding the commission of these offences, as well as your background and current circumstances. Specifically, the court has reviewed, carefully, your testimony, the Statement of Circumstances surrounding the offences, the admissions of the prosecution and of the defence, the documents submitted into evidence by the defence and prosecution, the submissions of counsel, and the principles of sentencing. The court must, and does, follow certain principles in determining what is an appropriate sentence. 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 generally have as their goal protection of the public and the promotion of respect for law and order.

[3] The primary principles considered by this court are: deterrence, both general and specific; punishment of the offender, reformation and rehabilitation. 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 members of the CF, from the harmful consequences of illegal activities.

[4] 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 for operational efficiency. Discipline has been described as a willing and prompt obedience to lawful orders, and it must be kept in mind that orders in the CF may have detrimental or even fatal consequences for individual members. Their prompt, willing compliance is a fundamental necessity, not only for the success of a mission, but also for the well-being of other CF members.

[5] This prompt and willing obedience is founded on a number of prerequisites, amongst which is trust that all members of the Forces will act in a lawful fashion. Also, that failure to do so will be addressed appropriately and speedily by military authorities, and that risk to the safety and well-being of members will be minimized and only those required in order to achieve the assigned mission are undertaken. Unnecessary risk to the safety and well-being of individual members adversely impacts on discipline. Discipline, while a group quality or characteristic, is, in its final analysis, founded on personal choice. It is a personal quality, self-discipline, which 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 in disasters, in deployments, with which you are familiar, and in combat can be relied upon.

[6] The heart of discipline is not unthinking action, but rather conscious, immediate, and automatic response developed through practice, but 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 and courts martial. This is done to restore discipline, and fortunately, in a Regular and Reserve Force of approximately 80,000 people, only 1,000 summary trials and less than 10 per cent of that number of courts martial are held in any year. Even when the person who has been convicted and is to be sentenced is no longer a member of the CF, their sentencing still involves a consideration of the requirement of discipline, though from only an institutional perspective as individual discipline is now a matter simply for that person.

[7] 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 reason, in the same prohibited conduct. This is connected to the previous statement and explains how being a service member at the time of the commission of the offence can continue to engage an institutional disciplinary interest, even after a member has been released. Specific deterrence means that the sentence should deter you from re-offending, not just from committing the same offence or offences again, but from committing any offences again. The principle of punishment is self-explanatory. It is the adverse consequence that society imposes for a breach of its laws. In some cases, though not here, there is a minimum punishment that is to be imposed for the commission of an offence.

[8] Reform and rehabilitation, though listed last, are of vital importance when reform and rehabilitation appear to be viable options. In that case they are something which must weigh very heavily with any court in its consideration of a suitable punishment. This is because, ultimately, society, whether that be civilian or military society, is only protected through an individual reforming and rehabilitating his- or herself. Like discipline, reformation and rehabilitation are an individual choice. Society and the CF can facilitate both discipline and reformation and rehabilitation by positive and negative incentives, but only the individual can make the necessary choices and take the necessary action. Those, then, are the applicable principles.

[9] In addition, there are other important considerations which this court must take 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 and 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, any sentence it imposes on the offender.

[10] And the court would make it clear that the fact that there have been administrative consequences that have already flowed from this incident does not mean that the court would take them into account in assessing the sentence in this particular case. As is always the case in military justice, the punishment to be imposed must be the minimum punishment required to restore discipline. The court is mindful of the provisions of section 718, 718.1, and 718.2 of the *Criminal Code* and section 10(1) of the *Controlled Drugs and Substances Act* (*CDSA*), which, while not directly applicable, set out valuable considerations.

[11] The sections of the *Criminal Code* relate to restorative justice and require that all other sanctions other than imprisonment, that are reasonable in the circumstances, should be considered for offenders. The section of the *CDSA* states that the fundamental purpose of sentencing for an offence under the *CDSA* is to contribute to the respect for law, the maintenance of a just, peaceful, and safe society, while at the same time encouraging rehabilitation and treatment, in appropriate circumstances, of offenders and acknowledging the harm done to the community.

[12] The court has also reviewed *R. v. Gladue*, (1999) 133 C.C.C. (3d) 385, a decision of the Supreme Court of Canada, where Cory and Iacobucci JJ., for the court, at page 400 of that decision, set out that:

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

[13] The prosecution and the defence have taken significantly different positions on what is an appropriate sentence in this particular case. The prosecution has submitted that an appropriate sentence in this case is imprisonment for a period of 60 to 120 days; that is, two to four months. The primary consideration for the court, the prosecution submits, is general deterrence, combined with a certain amount of specific deterrence. It argues that possession of controlled drugs by a member of the CF should be considered more seriously than possession of the same drugs by a civilian, and makes reference to two cases, the 1982 Court Martial Appeal Court (CMAC) decision of *R. v. MacDonald*, found at 4 Court Martial Appeal Reports 277, and the 1992 Supreme Court of Canada decision of *R. v. Généreux* found at [1992] 1 S.C.R. 259, in support of that proposition.

[14] The prosecution argued that a member of the CF is subject to a higher standard than a civilian in the same situation. The prosecution referred the court to the contents of *Canadian Forces Administrative Orders* (CFAO) 19-21, the Canadian Forces Drug Control Programme, of which the court had taken judicial notice and which states, at paragraph 5, that the policy behind no toleration of the unauthorized or illegal use of drugs by CF members is because of the implications on operational readiness, safety of members and the public security, discipline, reliability, cohesion, and morale. That CFAO, which the court would indicate seems rather dated due to its references to the *Narcotics Control Act* and the *Food and Drug Act*, refers to QR&O chapter 20, of which the court has also taken judicial notice, and which lays out, in a more up to date and comprehensive form, the CF drug control programme.

[15] Both the QR&O and the CFAO focus on a mandatory testing programme for CF members known as urinalysis, and a programme for the treatment and rehabilitation of offenders which includes medical treatment, rehabilitation, administrative action, but indicates does not preclude disciplinary action. The prosecution emphasized that the nature of one of the controlled drugs found in your possession; that is, Ecstasy, made this a more serious case as it is an amphetamine which the prosecution characterized as a "hard" drug with effects which, despite its use off duty, could have effects which impact on duty. The prosecutor also argued that the amount of the drugs in your possession, 99 grams of marijuana and 118 Ecstasy tablets, was a very large amount that put this case into the high end of the possession spectrum. The prosecution characterized the mitigation factors in this case as that there was only one entry on your conduct sheet, the fact that you have been compulsorily released from the CF, and the time taken to bring this matter to trial.

[16] The prosecutor distinguished the *Corporal McCormack* case, a 2002 court martial held in Gagetown, from your situation on the basis that Corporal McCormack was convicted of possession of only five Ecstasy pills, while you have been convicted of possession of more than 20 times that number. The prosecution also submitted, for the courts consideration, two civilian cases. In *R. v. Cooper*, a 2001 Ontario Court of Justice case, Quicklaw site [2001] O.J. No. 5073. Mr Cooper, a 23-year old man with essentially no previous record was sentenced to a 90-day intermittent sentence for possession of 3.7 grams of cocaine for the purpose of trafficking, possession of 16

Ecstasy pills, and possession of 9.5 grams of ketamine for sale and distribution. The total estimated value of the drugs being between $1,074 and $1,708.

[17] In *R. v. Akers*, another 2001 Ontario Court of Justice decision found at Quicklaw citation [2001] O.J. No. 773, the court sentenced Mr Akers, aged 27, who had pleaded guilty to possession for the purpose of trafficking while attending a rave event in Toronto for people in their early teens to their 30's, of 14 Ecstasy pills and 45 Ecstasy tablets, possession of two small bags of marijuana, and possession of $3,460 cash, all a part of which was derived directly or indirectly from trafficking in Ecstasy, to a 10-month conditional sentence and 100 hours of community service followed by two years' probation and a further 100 hours of community service and periodic blood tests to ensure he was not using non-medically prescribed drugs.

[18] The court would indicate it would have found these cases very, very useful if the situation here was one of possession for the purpose of trafficking, but it is not. Your defence counsel made extensive submissions as well. Firstly, he pointed out that the maximum punishments set out in the *CDSA*, which can be considered an indication of the objective seriousness of the offences, shows a higher maximum punishment for possession of marijuana, five years, than that for Ecstasy, three years. Your counsel also argued that the amount of the controlled drugs in your possession was either totally irrelevant or of little importance as your convictions are for possession, not possession for the purposes of trafficking. Lieutenant-Colonel Couture submitted that if any significant weight is put on the amount of the controlled drugs in your possession, then the court, either consciously or unconsciously, would be sentencing you for possession for the purpose of trafficking, for which you have not been convicted, rather than the charge of which you have been convicted.

[19] This, he quite rightly points out to the court, is something that the court cannot and should not do. Lieutenant-Colonel Couture referred not only to the fundamental principles of justice, but also to a reference in a well-known manual on drug offences in Canada edited by McFarlane and Fraser and others, which refers, at page 2920, to a case, *R. v. Wagner*, (1994), 95 Manitoba Reports (2d) 192, a decision of the Manitoba Court of Appeal. This entry summarized that case and its decision as prohibiting a sentencing judge who is faced with a person who has been charged with possession for the purpose of trafficking, but who has pled guilty to possession, from considering the motives behind the Crown; that is, the prosecutions decision to accept a plea to the lesser and included offence, and that the court must sentence a convicted person on the possession charge and not as if the possession for the purpose of trafficking charge still stood.

[20] The court has been unable to review the entire case, but since it has indicated that this proposition is simply in keeping with the principles of fundamental justice, it does not feel it is necessary to do so. The defence distinguished the cases raised by the prosecution on various grounds in relation to the CMAC case of *R. v. MacDonald*. It stressed that this was a 21-year old case which had as its primary issue that drug possession and/or use by a CF member, whether on or off duty, had sufficient military

nexus to fit within the jurisdiction of the military justice system. The military nexus approach was effectively resolved in the mid-1990s by another decision of the CMAC.

[21] The defence argued that the goal of general deterrence has largely been achieved by the administrative consequences that have already been suffered by you, specifically your release from the CF under a 2A category release; that is, unsatisfactory conduct. The court, of course, has taken judicial notice of the contents of QR&Os in the course of applying Military Rule of Evidence 15. A review of the table to article 15.01 of QR&Os indicates a 2A unsatisfactory conduct release can result from three situations, two of which require conviction by a service tribunal, either of a serious offence or of a number of offences. A third reason requires either conviction of an offence of a serious nature by civil court or unsatisfactory civil conduct of a serious nature not related to the performance of duties, but reflecting discredit on the CF.

[22] The court can only conclude, on the evidence before it, that you, ex-Private Mason, were released for this last reason listed above. A 2A release is not a dismissal for misconduct, but rather a "service terminated" release. This, apparently, has some adverse effect, at least temporarily, on eligibility for unemployment benefits upon release. The defence also submitted that the length of time taken to bring this matter to trial should be considered as a mitigating factor. Particularly, he suggests, in light of the Supreme Court of Canada decision in *Généreux* which highlights one of the reasons for a separate system of military justice is the frequent need to act swiftly, and which, the court notes, is mentioned concurrently with the reference to the need, in some cases, to punish more severely because of the nature of the offence. And in that context, the court would point out that the reference means that an offence in a military context may be more serious than the same offence committed in a civilian context.

[23] The defence stressed that you, ex-Private Mason, once caught, sought assistance for your addiction and that you have successfully completed a residential course and nine months' follow up and remained clean, and therefore, the submission is that reform and rehabilitation has been achieved. Defence summarized the situation as one where the evidence before the court, and the view the court should take of it, is that of a basically good young man who joined the CF, had some difficulties adjusting and faced some personal emotional challenges, started using drugs, but at the same time maintained good performance as a soldier. The submissions are that there is no evidence that your drug use adversely affected your on-the-job performance.

[24] The view that the defence submits is that, after being caught, you sought and benefitted from medical treatment and social support, but you also lost a career you enjoyed with the CF, suffered adverse financial consequences, but nevertheless, still maintained your drug-free status. The defence stressed, again, that you have been waiting for some time for the military justice system to deal with these charges, that you are currently living at home and benefitting from the support, in a number of ways, of your family, and that you have had to put some limits on your post-release employment and social activities until this matter is resolved. Finally, the defence submits that you

are, at this time, on the cusp of potentially being able to start a new life if you are able to apply, and if you are selected for, a new, better paying job opportunity.

[25] The defence brought two cases to the attention of the court which it indicated were not necessarily on point, but showed that suspended sentences have been imposed at courts martial, even for trafficking offences. *Master Corporal Bruce* is a 2001 court martial from Kingston where there was a guilty plea to two charges of selling $30 of hashish to an undercover police officer. Master Corporal Bruce was sentenced to 60 days' imprisonment and a $750 fine. The imprisonment was suspended due, primarily it seems, to the fact that Master Corporal Bruce's common-law spouse had cancer and he was her primary care giver. It was, effectively, a joint submission from both counsel.

[26] The 2002 court martial of *Leading Seaman Dunston* in Halifax resulted in guilty pleas to trafficking in one ounce of marijuana and trafficking in steroids of a purchasing cost of $280. Both the traffickings were to an undercover police officer, and Leading Seaman Dunston was sentenced to three months' imprisonment and a severe reprimand. Again, there was a joint submission that the imprisonment should be suspended for apparently more general reasons than in the *Bruce* court martial. References were made to remorse, guilty pleas, dissolution of a marriage as a result of the incident, and successful rehabilitation.

[27] In both cases, the court views the critically different factor from this case as the joint submission on sentencing. While not entirely specific on the recommendation for an appropriate sentence, the defence suggested that, taking into account all the circumstances, which I have already reviewed, that general deterrence has largely been met by the non-sentencing consequences. And that, if the court considered a custodial sentence necessary, a minimal custodial sentence of 30 days or less, and the suspension of that sentence, would meet the needs of discipline, and that this could be accompanied by a fine with a period of time to pay. There was no suggestion as to what the appropriate amount of a fine would be.

[28] What has the court found is relevant to its considerations based on the evidence before it? In providing this summary I have combined information from the various documents and admissions made, as well as from your testimony, ex-Private Mason, on the stand. I would say that the court assessed you as a credible witness who was forthright and direct in your answers to the defence, to the prosecution, and to the court. You joined the CF on the 10th of September 1998, shortly after graduating from high school, when you were apparently about 19 years of age. You came from a supportive family background where there was a military tradition. You had been interested in the military as a career for some time. You completed recruit training and basic gunner training in Petawawa and you did very well on your basic gunner training. You served in Petawawa as a member of 2nd Battalion, Royal Canadian Horse Artillery throughout your entire four and a half years of military service. You deployed overseas on a humanitarian operation in Turkey in 1999.

[29] You had some difficulties adjusting to life in Petawawa, and it is not exactly clear why, whether it was due to distance from your family in British Columbia or some work related stressors. Nevertheless, you apparently enjoyed your work, and as the letter from Warrant Officer Moyer indicates, which covers a period from April 1999 until May 2002, you were, during that time, by his assessment, consistently reliable and an intelligent soldier who easily learned new skills and was able to apply those skills in the field. He goes on to explain, indeed, you were called upon to act in a leadership role in the field on a number of occasions, and that you impressed your Detachment Commander. Warrant Officer Moyer describes Gunner Mason, as he refers to you, as "someone who always displayed a good attitude and is one of my best soldiers and one of the top gunners in the Battery." This assessment was done with knowledge of the accusations that you faced and covered a time frame during which, from your own testimony, you were a regular user of Ecstasy.

[30] A similar picture is painted in Sergeant Turnbull's letter of, again, as he describes it, Gunner Mason, after your arrest and your treatment, while you worked at the Regimental Duty Centre waiting to find out the consequences to you of the events of 18 May 2002. On 18 May 2002, you were arrested at your apartment on base and various items were seized. The items seized from the apartment were 99 grams of marijuana and 118 tablets or pills of Ecstasy. The information on the Agreed Statement of Facts has permitted the court to make a series of calculations. In essence, the court has calculated, based on the evidence in front of it, that that means that the marijuana seized had a purchase price of between $495 and $1,485, and would provide between 200 to 400 marijuana cigarettes. The Ecstasy purchase price was between $1,770 and $2,890, and would provide 59 to 118 uses.

[31] You testified that you usually used on the weekends and maybe, perhaps, a little in the week, and the court would stress this is not a use case. But the evidence is clear that the possession of these items were not possession for the purpose of trafficking; that is, sharing or sale. Those are not the charges you face, and that is not the evidence before the court. The court has before it your own testimony that you did use, and in particular, you did use Ecstasy, and also that you were addicted and were rehabilitated from this. The court feels that it can properly draw a reasonable inference that these items were for personal use. Given that, 200 to 400 marijuana cigarettes and 118 Ecstasy pills would seem to be six months' personal use supply if the Ecstasy was used two to four times a week and 10 to 20 marijuana cigarettes were smoked a week, or a years' personal supply if the Ecstasy was used once or twice a week and five to ten marijuana cigarettes were smoked in a week. The latter estimate seems logically more in keeping for a primarily weekend use regime.

[32] The evidence before the court is that ex-Private Mason was arrested and released on the 18th of May 2002. He was then served with documents that indicate that this matter was to proceed before the civilian criminal courts in Canada, but a few days later that paperwork was taken back from him and the matter proceeded within the military justice system. Again, relying on the evidence before the court, the court has

summarized that process. After the 18th of May 2002, the summary of events as they impacted on Private Mason are as follows:

(a) On the 18th of May 2002, there is a search and seizure. A little more than three months later, the analysis of the items seized is completed and the certificates are received by the military police investigators;

(b) On the 9th of October 2002, all the interviews and evidence collecting has been completed. This is approximately two months after the analyses have been received, and a little less than five months after the incident;

(c) On the 10th of December 2002, charges are laid. This is approximately two months after the evidence collection is completed, and a little less than seven months after the incident;

(d) On the 8th of January 2003, the commanding officer forwards charges up the chain of command. This is one month after the charges have been laid, and a little less than eight months since the incident;

(e) On the 30th of April or the 1st of May 2003, it is not entirely clear from the evidence before the court, Gunner Mason is released and becomes Mr Mason, and he is released compulsorily from the CF under an item 2A;

(f) On the 7th of May 2003, the Commander of Canadian Forces Land Area (CFLA) Central Region apparently forwards the charges to the Director of Military Prosecutions. This is some four months after the charges were forwarded to CFLA, and little less than 12 months after the incident occurred;

(g) On the 5th of August 2003, the Directorate of Military Prosecutions prefers the charges. This is approximately three months after the charges have been received, and a little less than 15 months since the incident;

(h) On the 27th of August 2003, the Acting Court Martial Administrator convenes the court martial. This is a little less than three weeks after the charges were preferred, and a little more than 15 months after the incident.

[33] The court martial is convened for the 10th of September 2003, close to 16 months after the incident. Various applications which have come before the court have resulted in a trial date of 7 October 2003, nearly 17 months after the incident. I would, in this regard, go back and stress that the admissions before the court indicate all the evidence collection was completed within five months. The remaining 12 months have been, apparently, the definitionally swift military justice system processing matters. Ex-

Private Mason's release in a little less than 12 months would seem to lead to the conclusion that the administrative process works more efficiently within the CF.

[34] The goals, as the court has indicated, of sentencing are protection of society, restoration of discipline, and respect for law and order. General deterrence is an important factor. Indeed, it is an overwhelmingly important factor if the charges are possession for the purpose of trafficking or trafficking. Here, a choice was made to accept a plea to possession. The court has convicted you of possession. The court can only, and will only, sentence on those charges. Possession charges call for a more balanced and inclusive approach. Certainly, general deterrence is important, but there must be a balance of considerations, and in particular, as has been indicated, the potential for reform and rehabilitation must be very carefully taken into account in the decision on what sentence is appropriate in any particular case.

[35] Reference has been made to the significant amounts of Ecstasy and marijuana found in your possession, and as the court has indicated, given the amounts and the various admissions before it, it certainly is a significant amount for personal use. Your counsel has pointed out that Ecstasy is not, from the point of view of maximum sentence, objectively more serious. The court has had to consider whether, in a military context, are there potential effects on the individual which are more significant? The court was asked to, and took judicial notice of a manual, Drug and Drug Abuse, 3rd Edition. The court would stress that this is no substitute for expert evidence. There are many documents authorized for use by the CF in many areas, from medical manuals to engineering manuals. The court gives only minimal weight to such evidence when it is presented in the form of the court taking judicial notice.

[36] On pages 228 to 230, the manual talks about the use of cannabis and the short-term use. Short-term use at a low to moderate dose, according to the manual, induces feelings of well-being and euphoria, disinhibition, and some impairment in abilities to perform complex motor skill tasks. Higher doses may lead to hallucinations and delusions as well as increased loss of motor skills. The manual also deals with Ecstasy at page 338 to 340, and indicates short-term use at a low to moderate level, again, produces euphoria. It may also produce blurred vision, depression, and/or anxiety attacks. There is also mention of "next day" symptoms which may include fatigue, insomnia, loss of balance, and headache. There is also discussion of short-term use at a high dosage level which can induce distortion of perception and hallucinations. Repeat high dosage long-term users, according to the manual, have reported hangovers, flashbacks, irritability, and depression. It would seem that, generally, there is some differences in isolated use cases, but not significant differences.

[37] From the perspective of the impact of one being more serious than the other on the next days' work; that is, what you referred to in your testimony, ex-Private Mason, as "army time," an isolated use does not appear to have significantly different impacts. However, long-term, high dosage use of either substance does appear to have an impact, but particularly Ecstasy has a greater potential for impact due to the references to flashback and after-effects. As the court has indicated, the amounts here, as well as your

own description of yourself as a user and being addicted to it, indicates that in this time frame we are looking at long-term, high dosage use based on the evidence. And therefore, there is the potential for significant adverse effect on the person using the drug, and that can affect the ability to do a job, again I would use your terminology, on army time. This, despite any attempt to try and keep the impact away from work.

[38] The court has considered the submission of the prosecution that the use is somehow more serious, inherently, for military people. Rather than military status, per se, the court's view is that it is the nature of the work that is done by military members which can make drug possession more serious; that is, when you are looking at a situation where you have an on-call person who potentially is dealing with dangerous material, this could be equally, outside of the military, a firefighter or paramedic or someone similar, then you have got a more serious situation. You have indicated you were, on the 18th of May 2002, on a mortar course. And certainly, although I am sure that most people would appreciate a happy and easygoing person on a mortar course, they certainly do not want someone who is unpredictable or uncoordinated. So it is not necessarily a higher standard due to status, but a standard which is commensurate with consequences which the court would apply.

[39] And the court stresses that it has accepted the evaluations, particularly the evaluation of Warrant Officer Moyer, which indicates, that before the 18th of May 2002, no significant impact was noted in your performance. So in this case it is the amount of the drugs, and what that and the testimony states about the type of usage, which is most important, rather than any evidence before the court on the specific nature of the drug. The range of punishments for possession of large quantities run the gamut up to and including incarceration. In a military context, many sentences which may be available in a civilian context are not available, and therefore the court, when it considers civilian sentences, has to try and look within the military context for what is an equivalent. The court does not have available to it conditional sentences or probation with conditions such as mandatory drug testing and others.

[40] Indeed, the punishments that are practically available for a former member of the CF who was a private are pretty limited. What the court would stress is, however, this is no reason to impose a higher sentence on such an individual. If the court is faced with a context where it would seem that the limitations on sentencing are such that it has to make a choice, then it will always make a choice for the less serious sentence.

[41] The court has considered the range proposed by the prosecution, and considers it, really, in the view of the court, a range for possession for the purpose of trafficking. And the court would say that the case law that was provided really supported this. Also the court finds the range proposed by the defence more consistent with possession, and also more consistent with the rather limited military cases in front of the court; that is, one case, *McCormack.* And that range is incarceration, suspended or not, and possibly a fine.

[42] The court has taken some time to review the civilian case law, in particular to see if it can find relevant cases relating to possession. Unfortunately, there is, really, very few cases that relate to possession as opposed to possession for the purposes of trafficking. So the court, in looking at the range, is looking at a range of incarceration, suspended or not, and possibly a fine. The aggravating factors here are the amount of both the drugs and also the potential impact of the personal use of that many drugs and mixture of drugs. The mitigating factors are, first of all, your guilty plea, though the court would accept it is more limited than an early guilty plea to all the offences, but nevertheless, it is a mitigating factor. And also, your own testimony before the court that you realize that what you did was wrong.

[43] The court is treating this as a first offence because a review of your conduct sheet shows that you were convicted for items that were seized the same day, the 18th of May 2002, and therefore, from the court's perspective, we are looking here at a first offender. The court has considered the personal consequences that you have suffered as a result of your actions here. Although the loss of employment is not a sentence, it is certainly a significant consequence and you have explained just how significant for you, not only in terms of losing a career which you had a genuine interest in, but also imposing financial consequences.

[44] There is a fact of reformation, and in that regard the court would say the delay has gone to do two things that are very important. The first is to establish, definitively, the adverse administrative consequences. Frequently before the court, potential consequences are presented which may or may not happen. In your particular case, they have happened, and the delay has, apparently, allowed the administrative consequences to proceed more quickly and the court knows what they are. And secondly, it has allowed you to show that your reform and rehabilitation is long lasting; that is, it is not simply a situation where you are in the middle of it and it is up in the air whether or not you will reform and you can rehabilitate yourself. The court is convinced you have done that.

[45] Your current situation is one where you have family support and you have employment and you have potential for better employment in the near future. It is also a situation where it is fair to say that your finances are tight. The court's calculation is that, currently, given your take-home pay of $1400 a month, your fixed expenditures, if the court can put it that way, debts, car loans, insurance, and health insurance, seem to add up to approximately $1,180 a month, thereby substantiating your need to live at home, as you explained it, since you do not have enough money to do anything else. The court is looking to balance general deterrence, because it feels that is still a consideration, and rehabilitation.

[46] The court, in this case, accepts that the need for specific deterrence is met; that is, the court accepts that you, personally, have learned from the consequences and you are deterred from doing this again by both your rehabilitation, the medical treatment, and also by the consequences you have suffered and are suffering. The court is also looking at the minimum sentence that needs to be imposed, and it accepts, as I have

indicated, that the delay has served to assist in demonstrating general deterrence by making clear what the non-punitive consequences of such actions are. The court agrees, however, with the decision in *McCormack*, that possession of controlled substances, particularly in large quantities, must carry significant sentencing consequences to deter other soldiers, and that leads the court to the conclusion, that after considering all the options, that incarceration—a period of incarceration—is part of a minimum sentence that is required.

[47] In doing so the court takes into account that you have served a brief period of pretrial custody, and the normal approach, and the one that the court will adopt, is that your custody of a pretrial nature is worth, or is credited, at the rate of two to one, which essentially means that your one day—as it is written out in the exhibits—of pretrial custody counts for two days of serving custody after conviction. The court has also taken into account, and it has weighed very significantly, the potential for future employment. You are 25 years old, your career in the CF is definitively over, and you need to make some very big adjustments. To a large extent, it is unfortunate that this matter has lingered as it has so that your post-CF life is being impacted. That is not to say that, whatever happens here, there will not be lingering impacts. You are going to have a record after this which you are going to have to deal with.

[48] But the court, looking at everything, does not wish to preclude, and does not feel it is necessary to preclude your future potential employment. The court also, in looking at the amount of the drugs, feels, to some degree, the general deterrence aspect can be addressed by a fine that reflects that amount of drugs that you had in your possession.

[49] Ex-Private Mason, the court sentences you to 12 days' imprisonment and a fine in the amount of $2,500. The court has considered very carefully whether or not to suspend the sentence, and after consideration of your particular circumstances it has come to the conclusion that there is not sufficient reason, given the length of this sentence, to suspend it. This sentence is designed to allow you to be released before your potential job opportunity arises so that your rehabilitation will not be adversely affected, and also to allow you, as a civilian, to put this, as quickly as possible, behind you.

[50] With regard to the paying of the fine, the terms are that the payments shall not begin until the 30th of November 2003, and should be on the last day of the month, just to cover off the months that have 31 days, thereafter, for a period of time not to exceed 13 months. And the payments should be divided equally throughout those 13 months until the last payment which, presumably, will be whatever the balance is.

Counsel

Captain A.J. Carswell, Directorate of Military Prosecutions, Counsel for Her Majesty the Queen

Captain S.M.A. Raleigh, Directorate of Military Prosecutions, Assistant Counsel for Her Majesty the Queen

Lieutenant-Colonel J.E.D. Couture, Directorate of Defence Counsel Services, Counsel for Ex-Private R. Mason