



COURT MARTIAL

Citation: *R. v. Hynes*, 2019 CM 2015

Date: 20190704

Docket: 201915

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman J.B. Hynes, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today Leading Seaman Hynes admitted his guilt to one offence contrary to section 116(a) of the *National Defence Act (NDA)*; that is to say, sold improperly public property. The prosecution offered no evidence with respect to the first charge, which was section 114 of the *NDA*, and the Court finds you not guilty of that charge.

[2] The Statement of Circumstances filed in Court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. Leading Seaman J.B. Hynes (LS Hynes) enrolled in the Canadian Armed Forces (CAF) as a member of the Regular Force on or about 29 July 2009. On 15 February 2012, LS Hynes was promoted to Able-

Seaman and as of 15 August 2013, he has acted in various positions as a Leading Seaman.

2. From 25 September 2015 to present, LS Hynes served as a Warehouse Technician (WRHSE Tech.) within the Supply Technician (Supply Tech.) trade with CFB Halifax. As a member of the Supply Tech. trade and as a WHRSE Tech. LS Hynes supports CAF logistic efforts to provide CAF operations with supplies and services when and where they are required.

3. On or about 16 November 2017, LS Hynes removed Naval Combat Dress (NCD) Trousers with the NATO stock number 20-0046448, size 6740 and NCD Boots with the NATO stock number 20-0066732, size 270/98 from a disposal bin without the authority to do so.

4. On or about 16 November 2017, LS Hynes in dereliction of his duties as a Supply Tech. sold Mr. Henry Phung (Mr. Phung) the NCD Boots and Trousers he took from the disposal process for \$30.00 Cdn. at CFB Halifax dockyard.

5. On or about 27 February 2018, members of the Halifax Regional Police (HRP) witnessed Mr. Phung wearing the items at the Dome Night Club. The information was reported to the Military Police (MP). On or about 15 March 2018 the items were recovered by the MP.

6. The original value of the CAF property sold by LS Hynes is \$282.47 Cdn. The NCD Trousers were valued at \$132.47 Cdn. and the NCD Boots were valued at \$150.00 Cdn. The value of the items at disposal cannot be accurately ascertained.”

[3] An Agreed Statement of Facts was also entered as an exhibit and was considered by the Court.

Joint submission

[4] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a fine in the amount of \$2,000 with \$1000 payable immediately and eight payments of \$125 over an eight-month period to capture the additional \$1,000. As defence counsel stated, the Supreme Court of Canada in the case of *R. v. Anthony-Cook*, 2016 SCC 43, clarified that a trial judge must accept the joint submission “unless the proposed sentence would bring the administration of justice into disrepute”. 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 that we take as service members, this is a right that we all stand to protect.

Evidence

[5] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Statement of Circumstances and Agreed Statement of Fact were introduced on consent to inform the Court of the context of the incident that led to the charge. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations. The prosecution and defence counsel also provided the Court with judicial precedents for comparison.

The offender

[6] Leading Seaman Hynes, the offender, is thirty years old; he has served almost ten years; he progressed relatively successfully through the ranks; he has earned two separate decorations, namely, the Article 5 NATO Medal for Operation ACTIVE ENDEAVOUR and the South-West Asia Service Medal; he has a conduct sheet that the Court is required to consider, but for reasons that defence counsel articulated in her submissions, the Court will not place significant weight on it.

[7] The Court also recognizes that this offence occurred during a very difficult time in the life of the offender.

The purpose, objectives and principles of sentencing

[8] The fundamental purposes of sentencing in a court martial are to promote the operational effectiveness of the Canadian Armed Forces (CAF) by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and maintenance of a just, peaceful and safe society. In order to accomplish this, it is imperative that members be provided the best opportunities for success in reforming their conduct and shortcomings. The fundamental purposes of sentencing are achieved by imposing sanctions that have one of more objectives as set out in the *NDA* at subsection 203.1(2).

[9] The prosecution emphasized that in negotiations, he and defence counsel considered the objectives, and he submitted that general and specific deterrence as well as denunciation are the main principles the Court should consider. Defence counsel also articulated the importance of rehabilitation in this case. The Court believes rehabilitation is very important because if we can reform an individual and get that individual back to service at a high level, in terms of the member's dedication and integrity, it is better for the institution and the CAF at large. So the Court does give significant weight in the consideration of a sentence where there has been rehabilitative progress made by an accused.

Accounting for relevant aggravating or mitigating circumstances

[10] Section 203.2 of the *NDA* states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In considering the

gravity of a section 114 offence of the NDA twinned with a section 116 of the NDA, the conduct is extremely serious, normally demanding a custodial sentence. In this particular case, the Court accepts that the prosecution has assessed its case and offered no evidence for the section 114 offence.

[11] Further, section 203.3 of the *NDA*, states that in imposing a sentence, the Court shall consider a number of principles. Firstly, the Court shall reduce or increase a sentence to account for aggravating or mitigating circumstances. These include and are not restricted to evidence of statutory factors set out. The statutory factor relevant to this case is the fact that the offender abused his position of authority as a supply technician. The Court notes that Leading Seaman Hynes took the items from the disposal bin. It is imperative that the Court dispel any myth that items put in a disposal bin are free to take or give away. Under no circumstances should anybody working in supply breach the trust that has been placed upon them. Supply technicians fill an important function in the care, storage, management and distribution of materiel purchased from public funds.

Mitigating factors

[12] The Court considers the following mitigating factors:

- (a) the Court was impressed that the offender has accepted responsibility for his conduct. This must be given its full weight. Leading Seaman Hynes displayed courage in coming forward publicly to do so. The offender disclosed personal information about himself regarding a period of time in which he personally struggled. The Court appreciates that he is not asking to be excused for his conduct, but it is something that the Court considers now that he has taken significant steps to rehabilitate himself and accept responsibility. Leading Seaman Hynes showed a genuine remorse and a desire to re-earn the trust of the institution. The Court notes that he is not currently under administrative review, although it is possible that such administrative action may flow after the court martial. If the offender works very hard and takes every step possible to rebuild the required trust, he will continue his rehabilitation and place himself on a path towards success. The Court notes that on his own initiative, Leading Seaman Hynes apologized to and repaid the victim.
- (b) most importantly, the member has made significant steps in his rehabilitation and in addressing his addiction issues. The Court accepts that the accused will have to be continually mindful of and manage his addiction issues going forward.

Aggravating factors

[13] The Court considers the following aggravating factor:

- (a) the conduct before the Court was a dereliction of the offender's duty and as the Court explained, in a job such as a supply technician, trust is pivotal. In the supply trade, he was specifically entrusted to control the materiel of her Majesty. It is very important that the accused recognize the element of the trust that accompanies the authority vested in this role.

Parity

[14] The next step that I must consider with respect to sentencing is parity. Counsel provided me some case law which gives me confidence that the sentence recommended in the joint submission is within the acceptable range.

[15] Moderation. That is an important principle that has also been engrained in the process to ensure that an offender is not deprived of liberty, meaning detention or a custodial sentence, when it is not required in the circumstances and a less severe sentence may be given to maintain discipline, efficiency, and morale. Make no mistake though, if it was not for the positive rehabilitation that the accused made, the Court may have had an issue with not pronouncing a custodial sentence.

[16] Any indirect consequences of the finding of guilt or the sentence should be taken into consideration. That is why the Court enquired about administrative review. It is most often the case that an accused has lost a lot more than what is revealed in a Court martial. I trust that his career will have been set back by this, but the Court hopes that he will work with his chain of command to plan a successful career path moving forward.

[17] In conclusion, after considering counsel's submissions in their entirety and all the evidence before the Court, the fundamental question the Court must ask itself is whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system.

Conclusion

[18] Considering all the factors, the circumstances of the offence, and the offender, and the consequence of the finding, the Court is satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[19] **FINDS** Leading Seaman Hynes guilty of one charge contrary to section 116(a) of the *NDA* and not guilty with respect to section 114 of the *NDA*.

[20] **SENTENCES** Leading Seaman Hynes to a fine in the amount of \$2,000, with \$1,000 payable to the Receiver General for Canada immediately and the remaining

\$1,000 payable in instalments in the amount of \$125 per month, over the next eight months, commencing 1 August 2019.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander D.R.G. Schroeder

Major F.D. Ferguson, Defence Counsel Services, Counsel for Leading Seaman J.B. Hynes