



COURT MARTIAL

Citation: *R. v. Gauthier*, 2019 CM 2022

Date: 20190904

Docket: 201945

Standing Court Martial

Canadian Forces Base Esquimalt
British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Sergeant D.J.R. Gauthier, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sergeant Gauthier pleaded guilty to one charge contrary to section 108 of the *National Defence Act (NDA)*. Having accepted and recorded his 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 108 of the
National Defence Act

**SIGNED AN INACCURATE
CERTIFICATE IN RELATION TO AN
AIRCRAFT**

Particulars: In that he, between 4 January 2018 and 16 January, 2018, onboard HMCS CHARLOTTETOWN, did sign form CF349

certifying that aircraft CH12404 had its intermediate gear box replaced in accordance with C-12-124-AJO/MF-000 when it did not.”

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

“STATEMENT OF CIRCUMSTANCES

1. Master Corporal Dominic Gauthier (MCpl. Gauthier) enrolled in the Canadian Armed Forces (CAF) as a member of the Regular Force on 22 May 2003. On 8 June 2007, MCpl. Gauthier started acting as a Corporal and effective 30 April 2013 was promoted to MCpl.
2. From 20 November 2008 onward, MCpl. Gauthier has been trained and has worked as an Aviation Technician (AVN. Tech) in the CAF. From 8 August 2017 to 18 January 2018, MCpl Gauthier was tasked and deployed on Operation Reassurance, HMCS Charlottetown’s Air Detachment.
3. On 12 January 2018, Cpl. J.T.Dorenberg (Cpl. J.T.D.) replaced an Intermediate Gear Box (IGB) with a new one into a Sea King Helicopter, CH12404 (CH12404). Cpl. J.T.D. signed a CF349 with the Control No. DYN 784 (DYN 784) with the rectification that the IGB was replaced, “IAW C-12-124-AJO.MF-000 PG 4- 12”. MCpl. Gauthier also signed DYN 784 on 12 January 2018 as the AVN Tech. responsible for performing an independent check after maintenance on CH12404.
4. The installation procedures found in *CH124A Sea King Helicopter Transmission Systems*, Part 4, Intermediate Gear Box, Installation Procedures, found at pg. 12 (Pg. 4-12) were not accurately followed in order to install a new IGB into CH12404. MCpl. Gauthier signed an inaccurate certificate in relation to an aircraft contrary to s. 108 of the *National Defence Act*.
5. On 30 November 2018, MCpl. Gauthier was charged under the *National Defence Act*. He has accepted responsibility for the inaccuracy of the certificate in relation to CH12404. He is a professional, competent and respected AVN Tech. that wants to put this matter behind him. MCpl. Gauthier has a C.D. and 298 days at sea. On 29 May 2019, MCpl Gauthier was promoted to Sergeant.”

The joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that the Court imposes a sentence of a \$600 fine. In *R. v. Anthony-Cook*, 2016 SCC 43, the

Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.” By entering into a joint submission, 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.

[4] 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. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command as well as the victims, and is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel acts exclusively in the accused’s best interests, including ensuring that the accused’s plea is a voluntary and informed choice, and unequivocally acknowledges the accused’s guilt. As members of the legal profession and accountable to their respective law societies, the Court relies heavily on their professionalism, honesty, judgement, as well as their duty to the Court.

The 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 was introduced on consent to inform the Court of the context of the incident that led to the charge before the Court. 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] Sergeant Gauthier is 35 years old. He enrolled in the Canadian Armed Forces (CAF) on 22 May 2003 and thus far has served for 16 years. He is currently serving as an avionics technician and was promoted to his substantive rank of sergeant in May of 2019. Aside from the incident before the Court, he has served his country well and has no conduct sheet or criminal record. He has done several operational tours including 298 days at sea and is currently in possession of the Canadian Forces Decoration, the Special Service Medal – North Atlantic Treaty Organization, and the Sea Guardian Medal.

Purpose, objectives and the principles of sentencing

[7] 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 of the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one of more objectives as set out at subsection 203.1(2) of the *NDA*. The prosecution has emphasized that, in negotiations, he and defence counsel closely

considered the objectives set out therein. On the facts of this case, both prosecution and defence submit the objectives they considered most important are general deterrence as well as denunciation and rehabilitation. The court agrees with their assessment.

[8] Also under the new section 203.3 of the *NDA*, in imposing a sentence, the Court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender. After hearing the submissions of counsel, the Court agrees with defence counsel that the aggravating factors suggested by the prosecution are actually included in the particulars of the offence for which the accused is charged and should not be considered a second time as aggravating. I did note that the incident occurred in a somewhat operational environment, but that is just an observation, as the Court recognizes that the helicopter was returning home to Esquimalt and that every time a helicopter flies it is operational.

[9] However, the Court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Sergeant Gauthier's plea of guilty for the offence as described in the Statement of Circumstances must be given its full weight. He is clearly a professional and has stepped forward to publicly accept responsibility before his peers, supervisors and subordinates. His guilty plea has saved the Court, counsel and the unit supporting the Court considerable time.
- (b) First time offender. No conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for him.
- (c) Rehabilitation. The matters before the Court date back to early 2018 and, despite the charges, it is noted the member has continued to be a strong performer and the chain of command must have confidence in him because they recently promoted him to the rank of sergeant.

Parity

[10] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offences. The prosecution provided me with two summary trial cases being: Corporal Dorenberg, 443 Maritime Helicopter Squadron, conducted on 14 June 2019 and Master Warrant Officer Pare, 443 Maritime Helicopter Squadron, conducted on 6 February 2019. In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range for the type of punishment historically awarded for this type of offence.

Comments

[11] Sergeant Gauthier's guilty plea is particularly important because it reflects his level of professionalism and willingness to step forward to assume responsibility.

[12] From a safety perspective, it is imperative that there are accurate records of all maintenance work completed on aircraft and if there is a deviation in standardized procedures for any reason, it is imperative that it be noted. The cases referred to by counsel are evidence that the chain of command has been proactive and expediently addresses any deviations to protocol, which provides confidence that the maintenance program in general is operating as it should be.

[13] Further, it is noted that the sentences imposed by the chain of command are consistent with that proposed by counsel.

Conclusion

[14] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, if reviewed by the reasonable and informed CAF member, as well as the public at large, be viewed as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the military justice system?

Sentence

[15] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, 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 military justice into disrepute.

FOR THESE REASONS, THE COURT:

[16] **FINDS** Sergeant Gauthier guilty of the first and only charge on the charge sheet.

[17] **SENTENCES** the offender to a fine in the amount of \$600, payable forthwith.

Counsel:

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

Lieutenant-Commander B.G. Walden, Defence Counsel Services, Counsel for Sergeant D.J.R. Gauthier