



COURT MARTIAL

Citation: *R. v. Hadley*, 2019 CM 4020

Date: 20191209

Dossier: 201934

Standing Court Martial

8 Wing Trenton
Astra, Ontario, Canada

Between:

Her Majesty the Queen

- et -

Sergeant G.A. Hadley, Offender

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

Restriction on publication: By court order pursuant to section 179 of the *National Defence Act*, this Court directs that any information obtained in relation to this trial by Standing Court Martial that could identify anyone described in these proceedings as a victim or complainant, including the person referred to as “Aviator B.”, shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Sergeant Hadley, 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 conduct to the prejudice of good order and discipline contrary to section 129 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 severe reprimand and a fine in the amount of \$3,000.

[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 and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[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 a military judge. As recognized by the Supreme Court of Canada, 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 either a trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[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] 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 formally admitted as accurate by Sergeant Hadley. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* article 112.51. The victim of this offence has also read a victim impact statement to the Court, a written copy of which was entered as an exhibit. For its part, the defence produced an Agreed Statement of Facts describing the personal situation of Sergeant Hadley before, at the time and since the offence.

[9] In addition to this evidence, the Court also benefitted from the submissions of counsel that support their 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. As a result, I can adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed in this case.

[10] The Statement of Circumstances, the Victim Impact Statement, the Agreed Statement of Facts and the information on the documents entered in exhibits reveal the following circumstances relevant to the offender and the offence.

The offence

[11] Sergeant Hadley from the 2 Air Movement Squadron (2 AMS) in Trenton was serving as Mobile Air Movements Section supervisor with the Canadian Contingent on Operation (Op) REASSURANCE deployed at an air base in Romania in January 2018. He was in charge of a number of subordinates, including Aviator B. who was deployed as a Line Crew on that same tasking. Aviator B. had been serving in the same unit but had not worked with Sergeant Hadley before.

[12] During the tasking, Sergeant Hadley displayed some unprofessional and inappropriate behaviour towards his subordinates. On 13 January 2018, Sergeant Hadley sent a message to Aviator B. over Facebook Messenger telling her that he twisted his ankle. He then sent an unsolicited photo of genitalia to Aviator B. The picture is of a penis and an ankle resting on a table, with the finger pointing towards the

ankle. Aviator B. enquired if he was okay, to which he replied he needed to rub some baby oil on it. Later that day, Sergeant Hadley sent her a photo of a pop or beer can resting over someone's crotch. In the photo, the individual is wearing what appears to be boxers. Sergeant Hadley told Aviator B. that he was icing his ankle and requested a bedtime story.

[13] Aviator B. was in disbelief when she received the photos and unsure on how to respond to Sergeant Hadley. Based on his initial message, she thought he was hurt, but was shocked at receiving such graphic photos. She did not find them funny or cool.

[14] On 28 January 2018, now back in Canada, Sergeant Hadley sent another unsolicited photo of genitalia to Aviator B. This time, the photo was an X-ray picture of two legs with a penis in between. The picture contains the caption "Went to the doctor today my knee is in bad shape."

[15] Aviator B. blocked Sergeant Hadley from Facebook. She felt embarrassed and awkward. These incidents have given her stress and she became anxious whenever the situation was brought up.

[16] In June 2018, while on a tasking in Cold Lake, Alberta, for Exercise MAPLE FLAG, several members of 2 AMS discussed previous deployments. Sergeant Hadley's inappropriate conduct during Op REASSURANCE was mentioned by participants. Aviator B. expressed that she felt very uncomfortable and would not want to be tasked with Sergeant Hadley again. A master corporal serving as team leader on the exercise was present during the discussion and reported the incidents to the chain of command. An investigation was commenced and led to charges being laid and preferred for this court martial.

[17] The victim of the conduct attributed to Sergeant Hadley very courageously provided her impact statement to the Court. She described how she never thought such an experience could happen to her as a member of the Canadian Armed Forces (CAF), thinking the organization was beyond this kind of behaviour. She described the impact the offence had on her and her husband, the feeling of guilt, the isolation she imposed on herself especially following less than supportive interactions with colleagues and the efforts she had to make not to enter into interactions with the offender at her unit. She addressed the offender to express her pain at his failures as a supervisor and the lack of respect his conduct represented to her.

The offender

[18] Sergeant Hadley is 49 years old. He joined the CAF as a reservist with the Sherbrooke Hussars in 1987. In that capacity he deployed to Cyprus in 1989 and Bosnia for a six-month tour in 1993 at a time when the mission was difficult: he experienced the death of two comrades. He transferred to the regular force in 2003 as a Traffic Technician, having worked with the transport company at Canadian Forces Base Valcartier since 2000. He deployed to Afghanistan for seven months in 2007-2008 and to Belize for two weeks in 2008.

[19] In 2009, Sergeant Hadley served with the Canadian Forces Movement Control Unit for a six-year posting during which he went on a number of deployments, including in support of the Vancouver 2010 Winter Olympics, in the north to resupply Canadian Forces Station Alert and support Op NANOOK, in the Middle East for the closure of Camp Mirage, in Tunisia and in Kuwait, in Cyprus in 2011 and 2012 and in the Philippines to assist with hurricane relief. He was posted to his current unit, 2 AMS, in 2015 followed immediately by several domestic deployments including Cold Lake, Edmonton and Halifax. In 2017, he was deployed to Kuwait for seven months. This was immediately followed by deployments to the Caribbean and then Resolute Bay. In 2018 he was deployed to Romania and then for another resupply mission to Alert.

[20] After the incident to which Sergeant Hadley has pleaded guilty was reported in June 2018, he remained dedicated to his duties and accepted extra shifts on short notice due to the unavailability of other supervisors. In the past, Sergeant Hadley had been praised for putting the mission first, showing up early, staying late and being one of the first to volunteer. In October 2018, Sergeant Hadley was placed on counselling and probation for shortcomings surrounding the issues before this court martial. Since early 2019, Sergeant Hadley has been underemployed due to the need to separate him from his unit. He has performed satisfactorily in several assignments outside 2 AMS, but has also been told to stay home for some periods to await reassignments. He was also chastised within his unit, for instance, receiving a medal in an office without public acknowledgement and being assessed with a mediocre performance evaluation.

[21] Sergeant Hadley has been diagnosed with post-traumatic stress disorder and depression and has been seen by mental health practitioners biweekly since 2018. He also has a number of physical ailments resulting from workplace injuries and is awaiting surgery in early 2020. He is being considered for a medical release while his unit initiated an administrative review for an administrative release under item 5f, as unsuitable for further service.

[22] Sergeant Hadley is aware that his career in the CAF is at an end. He intends to build a military surplus business. He has also begun volunteering with the Ontario Regiment RCAC Museum in Oshawa, to help him regain some sense of pride and sense of belonging, and to share his experience with and love of armoured vehicles.

Seriousness of the offence

[23] The Court has considered the objective gravity of the offence in this case. The offence of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA* attracts a maximum punishment of dismissal with disgrace from Her Majesty's service or less punishment.

Aggravating factors

[24] The circumstances of the offence and the offender in this case reveal the following aggravating factors:

- (a) First, the offence was committed by a senior non-commissioned officer responsible for the leadership of subordinates, the offence representing a breach of the trust placed in him by the chain of command and these subordinates;
- (b) Secondly, the rank difference between the offender and the victim which in this case increases the moral blameworthiness of the offender;
- (c) Third, the repeated nature of the behaviour as several pictures were sent over a period of time in January 2018;
- (d) Finally, the fact that most of the inappropriate conduct occurred on deployment outside of Canada, where the impact on the members of the team may have greater consequences on the operational effectiveness of an entire Contingent. Mutual trust, support and respect for the dignity and rights of every person are essential for success in such an environment.

Mitigating factors

[25] That said, the Court acknowledges the following mitigating factors:

- (a) First, Sergeant Hadley's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is prepared to take

responsibility for his actions in this public trial in the presence of members of his unit and of the broader military community.

- (b) Second, the personal situation of Sergeant Hadley since the time of the reporting of the offence, a period of almost 18 months.

Objectives of sentencing to be emphasized in this case

[26] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. Specifically, I believe that the sentence proposed, a severe reprimand and a fine, must be sufficient to denounce and act as a deterrent to others who may be tempted to engage in the same type of unacceptable behaviour.

Assessing the joint submission

[27] The submissions from counsel contained brief references to previous cases, which assist me in determining that the sentence being proposed is within the range of sentences imposed in similar cases in the past. 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. As stated earlier, I may depart from the joint submission of counsel only if I consider that this proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[28] In determining whether that is the case, 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. I do believe that a reasonable person aware of the circumstances of this case would expect that the offender receive a punishment which expresses disapprobation for the failure in discipline involved and has a real impact on the offender. The sentence being proposed is, in my view, aligned with these expectations.

[29] As recognized by the Supreme Court of Canada, trial judges must refrain from fidgeting with joint submissions of counsel if their benefit can be maximized. Indeed, 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 offence, 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.

[30] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I believe the sentence jointly proposed by counsel is adequate and certainly not a sentence that could bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I will, therefore, accept it.

[31] Sergeant Hadley, I wish to try to convey to you how serious the offence you have committed really is. It constitutes a breach of an important and well-known order issued to ensure that every member of the defence team benefits from a respectful, harassment-free workplace. Respect for this order is essential if this institution is to maintain the confidence of the public and by public I mean especially those who may consider a career in the CAF and will most likely look elsewhere if they come to believe that joining us will result in being harassed with inappropriate remarks and pictures. You and perhaps others might think that you had the misfortune to make a joke on someone who had no humour. That is not it. You have betrayed the trust placed in you by our institution to be a leader as well as betraying your subordinates who trusted you to ensure their welfare. This may be your first court martial; it is not mine. There are many people affected by the kind of unacceptable behaviour you have displayed towards Aviator B and others. Their lives and welfare matter. You will soon begin your life away from the military and you have many productive years ahead of you to contribute to society. Do not make the mistake of thinking that your troubles with the law today is the result of oversensitivity on the part of the CAF and its leadership. You need to reflect on what happened and decide for yourself that it should not happen again because what you have done is not acceptable anywhere and it has nothing to do with Aviator B's feelings.

FOR THESE REASONS, THE COURT:

[32] **SENTENCES** you to a severe reprimand and a fine in the amount of \$3,000, payable in six monthly instalments of \$500, the first instalment being due no later than this Friday, 13 December 2019 and the other five instalments payable on the first day of the months of January to May 2020 inclusive. 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 Major A. Dhillon and Captain A. Huyquart

Major A. Bolik, Defence Counsel Services, Counsel for Sergeant G.A. Hadley