COURT MARTIAL

Citation: *R. v. Deveaux*, 2020 CM 5002

Date: 20200121
Docket: 201961

Standing Court Martial

LCol George Taylor Denison III Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Warrant Officer (Retired) G.A. Deveaux, Offender

Before: Commander C.J. Deschênes, M.J.

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

[1] Warrant Officer (Retired) Deveaux was charged with three counts: the first charge relates to an act of a fraudulent nature contrary to paragraph 117(f) of the *National Defence Act* (*NDA*); the second charge relates to a conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*; and finally, the third charge relates to willfully making a false entry in a document signed by him that was required for official purpose contrary to paragraph 125 (a) of the *NDA*. At the beginning of the court martial proceedings, the prosecution withdrew the first and third charges. Warrant Officer (Retired) Deveaux pled guilty to the second charge; that is, an offence of conduct to the prejudice of good order and discipline, contrary to section 129 of the *NDA*, in that he failed to inform his commanding officer of domestic events affecting pay, allowances, benefits or expenses. The Court finds Warrant Officer (Retired)

Deveaux guilty of that charge. This Court must now determine and impose a fair and fit sentence. In this regard, the prosecution and the defence have proposed a joint recommendation of a severe reprimand combined with a fine of $2,500.

[2] The circumstances of the case are described in the Statement of Circumstances and they were admitted by the offender. The Statement of Circumstances reads as follow:

"STATEMENT OF CIRCUMSTANCES

1. Warrant Officer Gordon Deveaux (WO Deveaux) enrolled in the Canadian Armed Forces (CAF) as a member of the Regular Force on 18 May 1983. For most of his career he served in various postings and assignments as an armoured soldier either as a member of the Reserve Force or in the Regular Force. On 1 March 2019 he released from the CAF as a member of the Regular Force.

2. At all material times, WO Deveaux had both knowledge and access to the Queen's Regulations and Orders, Article 26.02. Specifically he was aware that all material times he was obligated to inform his Commanding Officer (CO) in writing of changes to his family status that might affect pensions, annuities, pay, allowances, benefits, or expenses. He knew that failing to properly report this type of information in writing will cause prejudice to good order and discipline within the CAF.

3. On or around 5 September of 2014, WO Deveaux was posted to the Queen's York Rangers (QYR). On 16 January 2014, he reported to his unit and the CAF that he resided at XXXX, Toronto, Ontario. This residence is located in Post Living Differential (PLD) Zone 1 for the Toronto region in accordance with a table found within the Compensation and Benefits Instructions (CBI), Article 205.45. The PLD allowance for zone 1 is $1485.00 per month. WO Deveaux did reside in zone 1 for a period of time and was entitled to a zone 1 allowance for a period of time.

4. During his initial arrival in Toronto, WO Deveaux also started to form a spousal like relationship with L.G. following a divorce. WO Deveaux spent personal time at L.G.'s residence located at XXXX, Acton, Ontario. L.G.'s residence is located in PLD zone 4 in the Toronto region in accordance with CBI, Art. 205.45. The PLD allowance for Zone 4 is $819.00 per month. WO Deveaux still principally resided in Zone 1 as defined by CBI, Article 205.45.

5. On or around 31 May of 2015, WO Deveaux no longer primarily resided at the Zone 1 address as defined by CBI, Art. 205.45. He started to reside primarily with L.G. in Zone 4 within the Toronto region. WO Deveaux did not inform his CO or anyone at his unit of this change. He

knew that by immediately failing to inform his CO in writing of both the common-law relationship developing with L.G. and of a gradual change in his principal residence to the Acton address that he was not abiding by QR&O, Art. 26.02.

6. On or around 9 May 2018, Petty Officer 1st Class (PO1) Amanda Fields conducted an audit of WO Deveaux's pay and benefits in anticipation of his release from the CAF. PO1 Fields noticed that in WO Deveaux's CAF common law application with L.G. there was a Notice of Assessment (NOA) for the 2014 taxation year. This NOA was mailed to WO Deveaux by the Canada Revenue Agency (CRA) to L.G.'s residence in Acton or the residence in Zone 4 dated for 14 October 2015.

7. PO1 Fields contacted WO Deveaux to informally inquire about the address of the NOA. The letter from the CRA created a possible discrepancy in WO Deveaux's pay and in his personnel files without an explanation. WO Deveaux informed PO1 Fields that he had actually resided in Zone 4 with L.G. since 1 May of 2015 instead of as of 1 June of 2016. WO Deveaux did update his primary residence previously in order to account for his common-law relationship with L.G. However, again contrary to QR&O, Art. 26.02 none of the details of his common-law relationship or of his primary residence was discussed or communicated properly in writing to his CO at QYR.

8. PO1 Fields informed WO Deveaux that his actions and omissions resulted in an overpayment of PLD to him. He immediately approved of a recovery of the PLD through his pay to account for the difference in allowance. $4668.02 (that was adjusted for taxes) was deducted from WO Deveaux's pay based on discussions between PO1 Fields and WO Deveaux. WO Deveaux did not receive pay for a total of 1.5 months in order to rectify the overpayment of the PLD allowance.

9. Although WO Deveaux paid back in full any debt due to the Government of Canada and the CAF, he failed in his obligations to keep his CO properly informed of domestic events affecting his pay and allowances. He specifically failed to inform his CO of changes to his principal residence and of accurate details concerning the formation of a spousal like relationship with L.G. This failure resulted in a temporary deprivation to the CAF, prejudice to discipline within his unit and the CAF."

[3] The Court must now decide whether the jointly proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

Positions of the parties

Prosecution

[4] The prosecution submits that the most important sentencing objective to consider for this case is general deterrence, but that specific deterrence should also be considered. After addressing the applicable sentencing principles, the prosecutor identified as aggravating the fact that Warrant Officer (Retired) Deveaux did not take the opportunity offered to him to inform his commanding officer of a change in a domestic event that would affect his benefits. He also argued that the offender's rank and seniority should be considered as aggravating factors, as the conduct is not one becoming of a senior non-commissioned officer. The amount that the Canadian Armed Forces (CAF) was deprived of ($4,668.02) and the impact that the commission of the offence had on the unit, which affected morale and trust within the unit, were also identified to be considered aggravating.

[5] As for mitigating circumstances, the prosecutor recognized the offender's overall successful career in the CAF, his guilty plea, his cooperation with his unit once being told of the existence of a discrepancy in his pay and personnel file, and lastly, that he provided full restitution by agreeing to a recovery of the excess amount of post-living differential (PLD) from his pay.

[6] The prosecution submitted precedents based on the offence created under paragraph 117(f) (acts of a fraudulent nature) and under section 125 (offences in relation to documents) of the *NDA*, cases establishing a range of punishment for this type of offence varying from a forfeiture of seniority to a fine on the lower end of the spectrum. He also contended that the step principle, referred to in the context of imposing a more severe punishment than the punishment Warrant Officer (Retired) Deveaux received for a previous conviction in 2012, should not apply in this case, since the other conviction is unrelated to the charge in which a guilty plea was entered. From a prosecutorial perspective, the joint submission would not bring the administration of justice into disrepute.

Defence

[7] Defence counsel agrees with the prosecution that the most important sentencing objective to consider for this case is general deterrence. In addressing the applicable sentencing principles, he enumerated as aggravating the offender's rank and seniority and the financial impact that the commission of the offence had on the CAF. In mitigation, he submits that the guilty plea, the offender's overall career in the CAF, including the awards he received, his new civilian employment and the full restitution he made, balance in favour of a more lenient sentence. From his perspective, the joint submission would not bring the administration of justice into disrepute.

Evidence

[8] In support of the joint submission, the prosecutor provided the Court with the Statement of Circumstances as well as the documentary evidence listed at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 111.17, as required at article 112.51. He also provided a document on consent titled "Unit Impact Statement at Sentencing".

[9] The defence introduced an Agreed Statement of Facts confirming the awards received by the offender throughout his military career; that he is now employed as a route manager for a company; and that he is remorseful for his misconduct.

Analysis

[10] Joint submissions are quite common and, in fact, are essential in a justice system as they allow the system to function efficiently. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada (SCC) established a test that trial judges must apply when considering a joint submission. Trial judges are not to depart from a joint submission unless the mutually agreed recommended sentence would cause an informed and reasonable public to lose confidence in the institution of the courts or unless it would be contrary to public interest. A too lenient, or too harsh, joint submission, if accepted by the Court, could bring the administration of justice into disrepute. Consequently, trial judges have limited sentencing discretion when presented with a joint submission. They cannot depart from it unless it is contrary to the public interest, or it would otherwise bring the military justice system into disrepute. Should a trial judge deem that the joint submission fails the test as established in *Anthony-Cook*, he or she is then required to apply the procedure set out by the SCC before rejecting the joint submission.

[11] This means that I have to examine the joint submission and determine if it is contrary to the public interest, or whether it would cause an informed and reasonable public to lose confidence in the institution of the courts. If it is not contrary to the public interest, or if it would not bring the military justice system into disrepute, I am required to accept it. The public interest test ensures that these resolution agreements are afforded a high degree of certainty. Accused persons who plead guilty promptly are able to minimize the stress and legal costs associated with trials. Additionally, a guilty plea offers accused persons an opportunity to begin making amends as it is an indication of remorse and shows that the offender is accepting responsibility for his actions.

[12] Trial judges can rightfully assume that counsel took all relevant facts into consideration when mutually agreeing on an appropriate sentence. The Statement of Circumstances that was read in court and filed as an exhibit provides the Court with the facts that guided counsel in coming to a joint submission, as it generally provides a fulsome description of the circumstances surrounding the commission of the offence, including the existence of aggravating factors.

Aggravating factors

[13] When determining whether the proposed punishment of a severe reprimand combined with a fine of $2,500 meets the test, I have considered the following aggravating circumstances:

(a) The offender's rank and seniority. By virtue of rank, non-commissioned officers have achieved a number of years in the service and they generally occupy supervisory roles; as a result, the CAF places great trust in them and expects that they would lead by example. Junior ranks look up to members of these ranks for guidance and mentorship. The offender's actions are not those expected of someone of this rank and seniority.

(b) An infraction under section 129 of the NDA covers an array of acts, conduct and negligence. In this case, the offence calls into question the integrity and honesty of the offender. His failure to inform his chain of command of his changes in a domestic event was deliberate and constituted an attempt to gain financial benefit.

(c) The CAF was deprived of a considerable sum of money.

(d) This scheme went on for some time, and it is only when he was questioned by a member of his unit about a discrepancy in his pay and personnel file that he recognized he had not informed his commanding officer of a change in his personal situation that would affect his eligibility for financial benefits.

[14] As for the impact that his conduct had on the unit, there is no doubt that it affected morale and trust within the unit, which constitutes evidence that his conduct was prejudicial to good order and discipline.

Mitigating factors

[15] The Court also accepted and took into consideration in its decision the following mitigating circumstances:

(a) The offender had a successful 37-year career in the CAF;

(b) He has deployed twice and is the recipient of the General Campaign Star – South-West Asia with bars indicating both deployments; the Canadian Forces Decoration and a Commendation from Commander Joint Task Force Afghanistan;

(c) When queried following a release audit conducted on his pay and personnel file, he admitted his misconduct;

(d) He also immediately agreed that recovery action be taken against his pay, thus allowing full restitution to commence;

(e) He pled guilty, which indicates that he has accepted responsibility for his actions; and

(f) He is now gainfully employed in a civilian position.

[16] The evidence reveals that Warrant Officer (Retired) Deveaux not only accepted responsibility for his actions, but has shown remorse the moment the audit identified the discrepancy in his pay and personnel file. This weighs heavily in favour of a more lenient sentence.

Previous conviction

[17] The Court accepts the prosecution's view that imposing a more severe punishment than the offender received previously for an unrelated offence that took place years ago would not be justified.

Parity

[18] Paragraph 203.3(b) of the *NDA* requires parity in sentencing, which means that the sentence be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The cases provided by the prosecution confirmed that their joint submission is well within the range of punishment and, therefore, meets the parity principle.

Conclusion

[19] After reviewing the documentary evidence, and after a careful review of counsel's submissions, it is apparent that they considered Warrant Officer (Retired) Deveaux's situation in arriving at their joint submission. They also identified and considered the relevant aggravating and mitigating factors surrounding the commission of the offence. Counsel addressed the applicable principles and objectives of sentencing in this case. As a result, I am satisfied that all documents introduced as exhibits provided this Court with a clear and complete picture of both the offence and the offender and I accept both counsel's position that the need for general deterrence is well met with the joint recommendation today. Therefore, I accept that this joint submission is in the public interest and that it does not bring the administration of justice into disrepute and will agree to endorse it.

FOR THESE REASONS, THE COURT:

[20] **FINDS** Warrant Officer (Retired) Deveaux guilty of the second charge of conduct to the prejudice of good order and discipline, contrary to section 129 of the *NDA*.

[21] **SENTENCES** the offender to a severe reprimand and a fine in the amount of $2,500, payable forthwith.

Counsel:

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

Major A. Gélinas-Proulx, Defence Counsel Services, Counsel for Warrant Officer (Retired) G.A. Deveaux