



## COURT MARTIAL

**Citation:** *R. v. Breadner*, 2020 CM 4006

**Date:** 20200622

**Docket:** 201952

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 2nd Class J.T. Breadner, Offender**

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

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Petty Officer 2nd Class Breadner, 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 behaving with contempt toward a superior officer contrary to section 85 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 fine in the amount of \$200.

[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 Petty Officer 2nd Class Breadner. 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. For its part, the defence produced an Agreed Statement of Facts describing the personal situation of Petty Officer 2nd Class Breadner 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 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 offender***

[11] Petty Officer 2nd Class Breadner is a thirty-three-year-old steward in the Navy. He joined the regular force in Ontario in 2008. Following basic and trade training, he was posted to various units, mainly to West Coast ships operating out of Canadian Forces Base (CFB) Esquimalt. He has deployed at sea in the Caribbean Basin on a number of occasions. He is married and the father of two children that are respectively eight and two years old.

[12] Petty Officer 2nd Class Breadner is a first-time offender. This Standing Court Martial constitutes his first appearance before a military tribunal and he does not have any conduct sheet.

### ***The offence***

[13] On 18 April 2018, Petty Officer 2nd Class Breadner agreed to be employed as the manager of the ship's Exchange on board Her Majesty's Canadian Ship (HMCS) *Calgary*. He took charge of the non-public funds (NPF) Exchange Warehouse and related records. As Exchange Manager, he was responsible for the actual management and operation of the Exchange. These responsibilities included the custody of all stock and equipment in the Exchange, the physical security of the Exchange and its storerooms, the responsibility to inform the Logistics Officer of replenishment requirements and the liability for all shortages or loss of cash, stock, supplies or equipment entrusted to him, unless it could be established that the shortage was not due to his willfulness or negligence.

[14] On 28 August 2018, Petty Officer 2nd Class Breadner signed a document entitled Personnel Development Review, more frequently referred to as a "PDR", where he was expected, among other duties, to maintain effective control of warehouse stock, procure Exchange expense items as required and maintain effective control over Exchange stock, ensuring a high level of confidence in the probity of the operation.

[15] On 1 May 2019, Petty Officer 2nd Class Breadner was attached posted to CFB Esquimalt until a planned return to HMCS *Calgary* on 1 August 2019. On 10 May 2019, Petty Officer 2nd Class Breadner was summoned on board *Calgary* by Lieutenant(N) Rekeszki, HMCS *Calgary*'s Logistics Officer, to sign his Personnel Evaluation Report (PER) and to conduct an issue of stock for an upcoming function, the

HMCS *Calgary*'s Cowboy Up. During his PER interview, Petty Officer 2nd Class Breadner became frustrated by the absence of answers to the many questions he had regarding his position. He left to discuss these issues further with the acting Coxswain. Following that discussion, Petty Officer 2nd Class Breadner met once again with Lieutenant(N) Rekeszki at the canteen's flats. He was asked to perform his duty as the Exchange Manager by conducting an issue of stock, in the presence of Master Seaman McCulloch and Sub-Lieutenant Choi, the acting Non-Public Funds Manager.

[16] Petty Officer 2nd Class Breadner refused to comply. He said that he was removed from ship and that the Exchange stock was not his anymore. Lieutenant(N) Rekeszki understood this to mean that Petty Officer 2nd Class Breadner felt that the stock was no longer his problem. He reminded Petty Officer 2nd Class Breadner that he had signed for the stock and until a proper handover was performed, the stock was in his name and he was the only person that could conduct an issue of stock. Lieutenant(N) Rekeszki emphasized the importance of the upcoming event and tried to reassure Petty Officer 2nd Class Breadner by explaining that the keys he had handed over upon departing the ship had been under lock in his cabinet, hence the control of the stock had not been assigned or performed by anyone else since his departure.

[17] Lieutenant(N) Rekeszki's efforts were in vain. Petty Officer 2nd Class Breadner refused again to issue stock, stating that he could not be accountable for stock he had no access to because he was removed from the ship. Petty Officer 2nd Class Breadner was using an increasingly aggravated tone, which Sub-Lieutenant Choi described as rebellious. During the incident, the intensity of Petty Officer 2nd Class Breadner's agitation was growing while Lieutenant(N) Rekeszki remained calm. The incident ended when Lieutenant(N) Rekeszki made a copy of Petty Officer 2nd Class Breadner's PER for him and he left the canteen flats.

[18] At the time of the offence, Petty Officer 2nd Class Breadner had just been attach posted from HMCS *Calgary* and had not been on board *Calgary* since 26 April 2019. When informed of his attach posting, Petty Officer 2nd Class Breadner had given the Exchange Manager keys to Sub-Lieutenant Choi and from that time was confused about his status and responsibilities with respect to his position as Exchange Manager on HMCS *Calgary*.

[19] Charges were preferred on 18 September 2019. By the time defence counsel and the prosecutor had a discussion on the matter, Petty Officer 2nd Class Breadner had already expressed his intent to resolve this matter and to proceed with a guilty plea on the second charge. Moreover, Petty Officer 2nd Class Breadner collaborated with the Unit Disciplinary Investigation and admitted numerous facts which constitute the essential elements of the offence.

### ***Seriousness of the offence***

[20] The Court has considered the objective gravity of the offence in this case. The offence of behaving with contempt toward a superior officer contrary to section 85 of

the *NDA* attracts a maximum punishment of dismissal with disgrace from Her Majesty's service or less punishment. It is objectively a serious offence going to the core of the requirements to maintain discipline and efficiency in the Navy and the Canadian Armed Forces (CAF).

***Aggravating factors***

[21] 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 who, by virtue of his rank and experience of over twelve years in this case, is responsible to provide a good example and leading subordinates in implementing direction from higher authorities in the chain of command.
- (b) Second, the offence was committed in the presence of a subordinate at the rank of master seaman.
- (c) Finally, the offence was committed in relation to an officer at the rank of lieutenant(N), who was occupying the important position of Logistics Officer on board ship, in the presence of another officer.

***Mitigating factors***

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

- (a) First, the fact that Petty Officer 2nd Class Breadner is a first-time offender.
- (b) Second, the collaboration of Petty Officer 2nd Class Breadner with unit authorities investigating the offence and his actions in settling this matter, which seems to indicate that he has learned from the incident.
- (c) Third, Petty Officer 2nd Class Breadner's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in this public trial in the presence of members of his unit and of the broader military community.

***Objectives of sentencing to be emphasized in this case***

[23] 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 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. Even if, as admitted by both counsel, the sentence being proposed is at the lower end of the range

for similar offences, it remains that the completion of this disciplinary process and the admission of responsibility of the offender play a role in ensuring deterrence for the offender and others.

**Assessing the joint submission**

[24] The submissions from counsel contained references to a number of previous cases, which assist me in determining that the sentence being proposed is within the range of sentences imposed 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.

[25] 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 an impact on the offender. The sentence being proposed is, in my view, aligned with these expectations.

[26] 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.

[27] 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 would not bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I will, therefore, accept it.

[28] Petty Officer 2nd Class Breadner, I wish to try to convey to you how serious the offence you have committed really is. By becoming agitated and signalling to the Logistics Officer that you would not comply with his order you have breached an

important basic principle of military service, namely the obedience owed by subordinates to lawful orders of superiors. As mentioned by your counsel, I am confident that you have learned a lesson as you move on in your career. After all, you too are in a position to be the superior officer to other members and you should be in a position to appreciate the damage to discipline which may be caused by the expression of a refusal to comply with direction on ships in the presence of other members of the ship's company. I trust you have reflected on what happened, that it is out of character for you and that you have decided for yourself that it should not happen again.

**FOR THESE REASONS, THE COURT:**

[29] **SENTENCES** Petty Officer 2nd Class Breadner to a fine in the amount of \$200, payable forthwith. 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.

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**Counsel:**

The Director of Military Prosecutions as represented by Major M.-A. Ferron

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Petty Officer 2nd Class J.T. Breadner