



COURT MARTIAL

Citation: *R. v. Kanaar*, 2020 CM 5009

Date: 20200721

Docket: 201969

Standing Court Martial

3rd Canadian Division Support Base Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal J.R. Kanaar, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Corporal Kanaar pleaded guilty to a charge of absence without leave. This offence is established by section 90 of the *National Defence Act (NDA)*. The Court accepted and recorded a guilty plea to this charge. The Court must now determine and impose a sentence that shall be proportional to the circumstances surrounding the commission of the offence and to the situation of the offender. In order to assist the Court in determining a fair and fit sentence, counsel for the prosecution and counsel for the defence recommended jointly that this Court impose a punishment of a reprimand and a fine in the amount of \$300.

Circumstances of the offence

[2] The Statement of Circumstances, which the offender formally admitted as true, provides details regarding the circumstances surrounding the commission of the

infraction. In summary, at all relevant times, Corporal Kanaar was a private serving with 1 Service Battalion, 3rd Canadian Division Support Base Edmonton (3 CDSB Edmonton). On 25 April 2019, he did not attend a medical appointment scheduled for 1320 hours at Care Delivery Unit B, 3 CDSB Edmonton. When he was asked why he did not attend his appointment, he answered, "I forgot about my appointment." At the first opportunity during the court martial process, Corporal Kanaar took responsibility for his conduct.

Issues

[3] The Court must now determine whether the joint submission, a reprimand with a fine of \$300, meets the public interest test.

Positions of the parties

Prosecution

[4] In presenting the joint submission, the prosecution contended that a sentence of a reprimand combined with a \$300 fine is a fit and appropriate sentence in this case. After summarizing the sentencing principles contained at section 203.1 of the *NDA*, the prosecution contended that the most important objectives to consider for this case are denunciation and general deterrence. Not only is the proposed sentence within the range of punishment, it also assists in maintaining the core goal and value of discipline, as well as the fundamental purposes of sentencing as provided for in the *NDA*. It is compliant with the fundamental sentencing principle of proportionality.

[5] In support of its position, the prosecution explained that the offender's conduct sheet, which contains previous convictions related to four offences of absence without leave, was taken into account as aggravating the sentence when deciding on the joint submission. The prosecution affirmed that the offender's action had long-lasting disciplinary and moral effects on his unit.

[6] In mitigation the prosecution mentioned that Corporal Kanaar is young. He also has medical issues. The prosecution explained that the offender took responsibility for his action in a broader sense, as Corporal Kanaar not only pleaded guilty to the charge, but he also took control of aspects of his life that interfered with his service in the Canadian Armed Forces (CAF). In fact, Corporal Kanaar made attempts to better himself by seeking medical assistance. Since this incident which forms the basis of this court martial, there were no disciplinary issues regarding Corporal Kanaar.

[7] The prosecution concluded by saying that rehabilitation is always a priority for every offender, and added that in the case at bar, specific deterrence is not an important objective because of the steps the offender took to address his disciplinary problems. Consequently, prosecution stated that the joint submission meets the public interest test.

Defence

[8] The defence explained that Corporal Kanaar has been a member of the CAF for over four years. He was promoted recently, in April 2020. He is young and has a bright career ahead of him. The defence recognized that the conduct sheet of the offender aggravates the sentence because the previous convictions pertain to similar offences. He explained that the evidence introduced as exhibit indicates that Corporal Kanaar has dealt with underlying medical issues, which are no longer present in his life. The offender did, in fact, take responsibility for his action. His guilty plea presents an important economy of efforts and resources associated with a contested trial. The guilty plea also constitutes an opportunity for the offender to move ahead with his life. Defence counsel contended that the delays in waiting for trial had a deterrent effect on Corporal Kanaar.

[9] The defence also provided details regarding Corporal Kanaar's medical issues and the steps he took to address them. Following his absence without leave, Corporal Kanaar was proactive in engaging health care providers in order to seek medical assistance. He had to take medication to address problems related to anxiety and insomnia. Although he is still dealing with a sleeping disorder, he no longer takes medication to resolve these concerns. Instead, he has imposed on himself a very strict regimen involving good sleep hygiene practices in order to alleviate his sleeping disorder, allowing to prevent any further unauthorized absence. He currently enjoys going to work, and is no longer having absenteeism issues. His unauthorized absence constitutes a lapse of judgment and he took responsibility for his forgetfulness. Defence counsel contended that Corporal Kanaar no longer has the characteristics to reoffend; he has been rehabilitated.

[10] From the defence viewpoint, the objectives of denunciation and general deterrence are met with the joint submission. The sentence would allow the offender to reinsert himself fully into his unit and in military life. From the defence counsel's perspective, the joint submission would not bring the administration of justice into disrepute.

Evidence

[11] As provided for at article 112.51 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), the prosecutor provided the Court with a Statement of Circumstances, the content of which was agreed to by the defence, as well as the documentary evidence listed at QR&O article 111.17.

[12] The defence introduced an Agreed Statement of Facts which includes additional information pertaining to the offender's situation. He also introduced an email from Sergeant Spurvey, the offender's current supervisor, sent at 4:30 p.m. on 18 June 2020, which provides useful information regarding Corporal Kanaar's tasking, performance and attitude as time progresses.

Analysis

[13] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. Subsection 203.1 (1) establishes the fundamental purposes of sentencing, which are:

(a) to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and

(b) to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

[14] Section 203.2 of the *NDA* provides for the fundamental principle of sentencing, “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”

[15] When both the prosecution and defence counsel agree on an appropriate sentence to recommend, commonly referred to as a joint submission, it is implied that these statutory sentencing principles were considered by both parties during the plea negotiation. Furthermore, counsel have an in-depth knowledge of the circumstances of the offence and defence counsel is privy to the offender’s personal situation. Joint submissions provide many benefits to the accused, the participants, the unit and the military justice system as a whole. They assist in limiting the resources normally required to support a trial by court martial. A guilty plea offers accused persons an opportunity to take responsibility for their actions and tend to show that they are indeed remorseful. The Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, in recognizing these many benefits, has established the public interest test for trial judges dealing with a joint submission. It entails that joint submissions should not be departed from by trial judges. However, if the joint submission would cause an informed and reasonable public to lose confidence in the institution of the courts or would be contrary to the public interest, only then should the sentencing judge follow certain steps before considering rejecting the recommendation. This means that I have limited sentencing discretion in this case.

[16] This Court must therefore examine the joint submission and determine if it is contrary to the public interest or whether it would cause an informed and reasonable person or 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, this Court is required to accept it even though it may have come to a different conclusion in the absence of a joint recommendation.

[17] When considering a joint submission, trial judges rely heavily on the work of the prosecution as representing the community’s interests, and the defence counsel acting in the accused’s best interest. Trial judges can rightfully assume that counsel took all relevant facts into consideration when mutually agreeing upon 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

[18] In determining whether the proposed punishment of a reprimand and a fine of \$300 meets the public interest test, I have considered the following aggravating factors. Firstly, although the objective gravity of the offence of absence without leave is towards the lower end of the scale amongst the offences created in the *NDA*, such infraction is nevertheless a contravention that goes to the very core of discipline. As stated in *R v Squires*, 2013 CM 2016, at paragraph 14:

Discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests. This is necessary because members of the Canadian Forces must promptly and willingly obey lawful orders that may potentially have very significant personal consequences, up to injury or even death. Discipline is described as a quality because ultimately, although it is something which is developed and encouraged by the Canadian Forces through instruction, training and practice, it is something that must be internalized, as it is one of the fundamental prerequisites to operational effectiveness in any armed force.

[19] In this same decision, the Court in identifying aggravating circumstances qualified the infraction of absence without leave at paragraph 15 as a violation of:

. . . [O]ne of the most important obligations of members of the Canadian Forces, to be present where they are required to be, reliably and on time. While the objective gravity of the offence under section 90 of the *National Defence Act*, which is punishable by imprisonment for less than two years, is towards the lower end of the scale amongst the offences created in the *National Defence Act*, the reality is that this offence provision is one of the key tools for maintaining discipline in the Canadian Forces at the unit level.

[20] Additionally, the previous convictions of Corporal Kanaar to four incidents of absence without leave disclosed on the conduct sheet indicate a pattern of continuing conduct in this regard.

Mitigating factors

[21] The Court also accepted counsel's submissions regarding mitigating circumstances and took the following factors into consideration:

- (a) Corporal Kanaar enrolled in the CAF on 23 March 2016. He is 24 years old and was recently promoted to corporal. He is at the beginning of his military career;
- (b) He accepted responsibility early for his actions and pleaded guilty; and
- (c) He tackled the roots of his disciplinary issue. In fact, he took decisive measures to deal with the medical issues that impacted his performance

as a soldier, as highlighted by the email from his current supervisor, Sergeant Spurvey. In his email introduced as an exhibit on consent, Corporal Kanaar's supervisor relayed in a fair and candid manner the performance deficiency the offender was having initially. He explained how he gave the offender a chance to address the concerns. He described how Corporal Kanaar went from having disciplinary issues to becoming an active and devoted member of his unit, volunteering to help others in need, proactively seeking work opportunities and enjoying his service at the unit.

Parity

[22] The Court briefly looked at precedents for similar offences to determine whether the joint submission is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The joint submission is indeed within the range of punishments thus it meets the parity principle established in the *NDA*.

Conclusion

[23] After reviewing the documentary evidence, and after a careful review of counsel's submissions, it is apparent that they considered the offender's situation when they arrived at their joint submission. They also identified and considered the relevant aggravating and mitigating factors surrounding the commission of the offence. Counsel properly addressed the applicable principles and objectives of sentencing in this case.

[24] I am, therefore, 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 counsel's position that the need for denunciation and rehabilitation are well met with the joint recommendation today.

[25] Corporal Kanaar has accepted responsibility for his actions. His attitude in taking serious steps to address his medical issues which impacted his performance, and to better himself, are to be commended. The joint recommendation gives him a chance to continue to improve and allows him to progress in his career. It is up to him to decide to pursue his endeavour to be a good soldier. Consequently, the Court finds that the joint recommendation is not contrary to the public interest and would not bring the military justice system into disrepute.

FOR THESE REASONS, THE COURT:

[26] **FINDS** Corporal Kanaar guilty of one charge under section 90 of the *NDA*.

[27] **SENTENCES** the offender to a reprimand and a fine in the amount of \$300, payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Captain C.R. Gallant

Captain M. Melbourne, Defence Counsel Services, Counsel for Corporal J.R. Kanaar