



COURT MARTIAL

Citation: *R. v. Castagner*, 2020 CM 4010

Date: 20200731

Dossier: 202032

Standing Court Martial

Canadian Forces Base Trenton
Astra, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Major W.G. Castagner, offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Major Castagner, having accepted and recorded your plea of guilty in respect of the two charges on the charge sheet, the Court now finds you guilty of having quarrelled with a person subject to the Code of Service Discipline and of drunkenness, contrary to sections 86 and 97 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 reduction in rank to the rank of captain and a fine in the amount of \$3,500.

[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 Major Castagner. 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.

[9] The prosecutor also read a victim impact statement in court, a written copy of which was entered as an exhibit. This informs the Court as to the very real consequences of the offences on the victim, Major Darren Hicks.

[10] For its part, the defence produced an Agreed Statement of Facts describing the personal situation of Major Castagner before and since the offence.

[11] 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 offences committed in this case.

[12] 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 offence and the offender.

The offences

[13] Following work at around 1500 hours on 22 August 2019, Major Hicks, Major Castagner and Lieutenant-Commander Wyville attended, in uniform, the Earl of Bessborough Social House on Canadian Forces Base Trenton and were having cheerful discussions while drinking beer. About two and a half hours following their arrival at the all-rank pub, as they were drinking their third or fourth pint of beer, the discussion turned to a debate regarding the Government's immigration policies. Major Hicks and Major Castagner disagreed with one another's position and the debate became slightly heated.

[14] In his attempt to assuage the contentiousness of the debate, Major Castagner suggested Major Hicks resembled the Buddha and asked if he could "rub his head for luck". Major Hicks answered, "Do it and see what happens". Major Castagner rubbed Major Hicks' head. Major Hicks then said to Major Castagner, "if you do that again I'll fuck you up," or words to that effect. Major Castagner rubbed Major Hicks' head a second time. Major Hicks then grabbed Major Castagner by the shirt front, pulled him forward, and cocked his fist as to throw a punch. Even at this point, Lieutenant-Commander Wyville believed that they were fooling around and never expected the situation to degenerate to any form of violence.

[15] Major Castagner then grabbed a pint glass from the tabletop with his right hand and hit Major Hicks on the lower-left side of his face. The pint glass shattered causing Major Hicks three deep lacerations of respectively 16 cm, 5.5 cm and 1 cm long on the left side of his chin and other small cuts along the upper portion of his face. Major Castagner suffered a minor laceration to the palm of his right hand.

[16] While Major Hicks was now being held by the collar by Major Castagner, other patrons of the Earl of Bessborough quickly separated the two belligerents. Lieutenant-Commander Wyville assisted Major Hicks to the men's washroom to provide first aid. Major Castagner then left the Earl of Bessborough. He was arrested and taken in custody by the military police a few moments later.

[17] At approximately 1756 hours, 8 Wing Fire Services arrived on scene and proceeded to administer medical attention to Major Hicks. A few minutes later, an ambulance arrived on scene and transported Major Hicks to the Trenton Memorial Hospital, where he stayed several hours to receive medical attention. The three cuts required a total of approximately ten stitches to the inside of his wounds, and thirty-three stitches to the outside of his wound.

[18] Major Castagner was released from military police custody at around 1900 hours. He reported to work the morning following the incident.

[19] As alluded to earlier, Major Hicks, the victim of the behaviour of the offender, provided a victim impact statement which was read in court. In this statement, Major Hicks mentions that he will be constantly reminded about this incident for as long as he lives, given the significant facial scarring and nerve damage which he has suffered. The incident has had a significant impact on how he relates to others, as the violent and sudden nature of the offence has given him pause to reflect how truly safe he is in a social setting. His family was affected by witnessing his scars and treatment he went through and at times was worried about his safety as a member of the Canadian Armed Forces (CAF), even away from harm's way in Canada. Following the offence, Major Hicks has been anxious about interacting with the offender and has experienced hypervigilance as it relates to personal safety for him and his family. Despite all of the physical and emotional impacts of the offence, Major Hicks states that he harbours no ill will towards the offender.

The offender

[20] Major Castagner is a fifty-three-year-old pilot who has joined the regular force in 1988. Following basic and pilot training, he was posted to various Royal Canadian Air Force (RCAF) units where he earned praises as a dedicated and hardworking officer. During a distinguished thirty-two-year career, Major Castagner has been a strong performer who has deployed numerous times for domestic and expeditionary operations including the Balkans, the Middle East, Afghanistan and Iraq. He has experience in combat as a fighter pilot and as a joint terminal attack controller. He has held numerous leadership positions over his career, both in combat operations overseas and in Canada, where he has been appointed the acting commanding officer of many units, including the Aerospace Evaluation Test Establishment in Cold Lake, normally commanded by a colonel.

[21] Major Castagner has represented the RCAF to various multi-forum and international military bodies, including NATO and NORAD working groups and committees. He has received three commendations for his professionalism over the course of his career and has earned the confidence of senior military authorities for appointment to leadership positions. He was, at the time of the events in 2019, on the cusp of promotion to lieutenant-colonel.

[22] Following the offences on 22 August 2019, Major Castagner was placed on, and completed, two six-month iterations of counselling and probation, one for alcohol misuse and one for conduct. Despite significant professional hardship, he has maintained his leadership position at the RCAF Aerospace Warfare Centre, has continued to provide expert aerospace operations advice, and continued to advance his branches' important program of work. Major Castagner will retire from the CAF, effective next week.

[23] Through the presentation of defence counsel in submissions and in the agreed statement of facts, Major Castagner admits that his conduct on the afternoon of 22 August 2019 was unacceptable. The morning following the incident, he expressed his sincere remorse to Major Hicks and subsequently took full responsibility for his actions with his chain of command. He has voluntarily sought treatment for anger management, alcohol misuse and mental health. He continues to be under the care of a psychotherapist and has regularly attended counselling for alcohol use.

[24] Major Castagner is a first-time offender. This Standing Court Martial constitutes his first appearance before a military tribunal. He does not have any conduct sheet nor civilian criminal record. The Court understands that this appearance by Major Castagner before this court martial represents one of the last times he will be wearing his uniform as a full-time member of the CAF and the RCAF.

Seriousness of the offence

[25] The Court has considered the objective gravity of the offences in this case. Both offences of quarrels and disturbances as well as drunkenness contrary to sections 86 and 97 of the *NDA* attract a maximum punishment of imprisonment for less than two years. These are therefore objectively serious offences going to the core of the requirements to maintain discipline and efficiency in the RCAF and the CAF. Indeed, quarrels, fights and inappropriate drunken behaviour cannot be tolerated within the work and service environment as they compromise the necessary trust that must exist both between members of the CAF and between the CAF and the public if Canada is to maintain a professional and efficient military force. As observed and acknowledged by counsel during submissions, this is particularly important in a unit such as the RCAF Aerospace Warfare Centre where professional discussions are necessary to ensure the evolution and transformation of Canadian air and space power. Major Castagner acknowledges that his actions were detrimental to the collegial atmosphere required to ensure the success of his unit as they poisoned the work environment for some time.

Aggravating factors

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

- (a) first, the quarrel was violent and sudden: using a pint glass as a weapon in a fit of rage should have been recognized by the offender as likely to

cause significant injuries that are entirely disproportionate to the argument and actions going on at the time;

- (b) second, the acts of the offender had significant consequences on a colleague as well as on his family, as well as his unit; and
- (c) third, the offences were committed on a military establishment attended by personnel of all ranks by a senior officer of significant experience who would be expected to show restraint given his responsibility to provide a good example at all times.

Mitigating factors

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

- (a) first, the fact that the incident reveals a spontaneous assault with a weapon of opportunity, not a premeditated act of violence;
- (b) second, the fact that Major Castagner is a first-time offender and a strong performer over a thirty-two-year career, indicating that the incident is out of character for him;
- (c) third, the remorse expressed, the collaboration of Major Castagner with unit authorities investigating the offence, even if he initially left the scene, and his subsequent actions in voluntarily seeking treatment for anger management, alcohol misuse and mental health. These efforts seem to indicate that he is willing to learn from the incident; and
- (d) finally, Major Castagner's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is continuing to take full responsibility for his actions in this public trial in the physical presence of members of his unit and the remote presence of members of the broader military community.

Objectives of sentencing to be emphasized in this case

[28] 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. In short, it must show that misbehaviour has consequences. At the same time, the sentence proposed must not compromise the efforts invested by Major Castagner to rehabilitate himself, especially as he transitions to civilian life.

Assessing the joint submission

[29] 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.

[30] 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.

[31] 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 and the victim or victims. 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.

[32] 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.

[33] Major Castagner, at this point in my reasons for sentence, I usually try to convey to offenders how serious the offence they committed really are. I believe you have understood that. I am also confident that you are at low risk of reoffending, but if and only if you have truly identified the weakness that made you lose control of your actions in August 2019 and have taken concrete meaningful measures so that they do not lead to similar outcomes again. You are young and healthy and you can look

forward to contributing to society as a civilian starting next week. Although it is unfortunate that you should end such a successful career this way, sitting as an accused in a court martial, you can turn the page and move forward for your benefit, the benefit of your family and indeed the benefit of our society.

FOR THESE REASONS, THE COURT:

[34] **SENTENCES** Major Castagner to a reduction in rank to captain and a fine in the amount of \$3,500 payable forthwith, meaning at the first occasion a cheque can be handed to an official at the base. 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 Lieutenant-Colonel D.G.J. Martin

Captain M. Melbourne, Defence Counsel Services, Counsel for Captain W.G. Castagner