COURT MARTIAL

Citation: *R. v. Coulter*, 2020 CM 5010

Date: 20200909
Docket: 202010

Standing Court Martial

8 Wing Trenton
Astra, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Private T.G. Coulter, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Private Coulter was charged for being absent without leave, an offence established by section 90 of the *National Defence Act* (*NDA*). Having accepted and recorded the guilty plea, the Court must now determine and impose a sentence proportional to the circumstances surrounding the commission of the offence and taking into consideration the offender's situation. In order to assist the Court in determining a fair and fit sentence, counsel for the prosecution and counsel for the defence are jointly recommending that this Court impose a punishment of a fine in the amount of $500.

Circumstances of the offence

[2] The offender formally admitted as true the circumstances surrounding the commission of the infraction as described in the Statement of Circumstances. In

summary, on 16 August 2019, between 700 and 730 hours, while he was serving with the Canadian Army Advanced Warfare Centre at 8 Wing, Trenton, Ontario, Private Coulter attended Support Company and told the duty non-commissioned officer that he was going to the medical inspection room (MIR). He did not report to the MIR on 16 August 2019. At the time, he was on duty status and was not authorized to be absent from his duty. Both the military police and his unit investigated in an effort to find the offender. During the unauthorized absence, the offender resided at a friend's house and used illicit drugs. He was aware that his unit and the military police were attempting to find him, but took no steps to inform his chain of command of his location or well-being. At 1730 hours on 23 August 2019, Private Coulter turned himself in to the military police personnel on duty.

Issues

[3] The Court must now determine whether the joint submission, a fine in the amount of $500, which constitutes a punishment that would be at the lower end of the spectrum for cases of similar circumstances, meets the public interest test.

Positions of the parties

Prosecution

[4] In presenting the joint submission, the prosecution contended that a sentence of a fine in the amount of $500 is a fit and appropriate sentence in this case. The prosecution affirms that this punishment is tailored to the specific circumstances surrounding the commission of the offence, and to the offender's specific situation. He contends that this punishment would ensure the offender's rehabilitation while having a denunciatory effect. Although similar cases normally called for more severe punishments such as incarceration or reduction in rank, the prosecution confirms that there are precedents where a more lenient punishment was imposed. For example, in the court martial of *R. v. Smith*, 2015 CM 1011, a fine of $1500 was imposed as well as in *R. v. Halmich*, 2015 CM 1009, the offender was sentenced to a $200 fine. The prosecution is of the view that sentencing options contained in the scale of punishments that are unique to the military service would not be suitable punishments for this offender because he has now been released.

[5] In support of this joint recommendation, the prosecution contends that the following two aggravating circumstances were considered when deciding on the joint submission: firstly, the length of the absence without leave, which lasted for over a week; secondly, the offender has garnered a conduct sheet which includes previous convictions related to four offences of absence without leave during his short military career.

[6] In mitigation the prosecution considered the young age of the offender. Private Coulter has also been released from the Canadian Armed Forces (CAF) as a result of his disciplinary issues and is currently unemployed. Furthermore, because he suffered

addiction issues, the offender completed a 50-day rehabilitation program. The prosecution explained that the offender took responsibility for his actions by instructing his counsel early to plead guilty. In fact, his guilty plea is a strong indication of remorse.

[7] The prosecution concluded that the offender's rehabilitation should be at the forefront of consideration when determining whether the joint submission meets the public interest test, and that a fine of $500 would meet this objective while having a denunciatory effect. A more severe punishment would jeopardize any chances of rehabilitation for this offender. The joint recommendation would assist him in reintegrating himself successfully into civilian life.

Defence

[8] Defence counsel is generally in agreement with the prosecution's submissions in support of the joint recommendation. He contends that punishments unique to military service, which are found in the scale of punishments, are not appropriate punishments for this case. He also agrees that the most important objective to consider when determining a sentence for this offender is rehabilitation.

[9] Defence counsel asserts that there are a number of factors that distinguishes this case from others. Firstly, the offender's release from the CAF was directly connected to the commission of the offence as a consequence that followed it, leading to him losing his main source of income. He also contends that the offender made efforts to rehabilitate himself. The guilty plea, during which the offender fully admitted the circumstances surrounding the commission of the offence, constitutes an economy of resources for the military justice system. He recognizes that there were several instances of misconduct punctuating the offender's short military career. However, the offender is afflicted with an addiction, and in this context, it took a lot of effort and courage on his part to face and address his troubles. The offender learned from this experience. In fact, there was no discussion regarding whether a contested trial should take place, as the offender indicated early that he wanted to plead guilty. Defence counsel views this as a sign of maturity, as the offender was willing to accept responsibility for his actions. He also contends that courts should send a strong message that it pays off when offenders take steps to rehabilitate themselves. In this specific case, defence counsel asks that the Court sends a message of hope to this young offender, who should be given a chance to build a future and start anew.

[10] Referring to the Supreme Court of Canada (SCC) decision, *R. v. Anthony-Cook*, 2016 SCC 43, the defence argues that this joint submission meets the public interest test, mainly because the focus should be on rehabilitation when determining a fair and fit sentence. Defence counsel referred briefly to *R. v. Lacasse*, 2015 SCC 64 and *R. v. Darrigan*, 2020 CMAC 1. From the defence viewpoint, the objective of rehabilitation is met with this joint recommendation. The sentence would allow the offender to reintegrate into civilian life. He concludes that the joint submission would not bring the administration of justice into disrepute.

Evidence

[11] The Court examined and considered the Statement of Circumstances, the content of which was agreed to by the defence, as well as the documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) and provided by the prosecution, in accordance with article 112.51 of the QR&O. The Court also considered the Agreed Statement of Facts introduced by the defence, which includes additional information pertaining to the offender's situation.

Analysis

[12] When determining a sentence, the Court must be guided by the sentencing principles contained in *NDA* subsection 203.1(1) which 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.

[13] 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.

[14] 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 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 military justice 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 SCC in *Anthony-Cook*, 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 person 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.

[15] 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.

[16] 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.

Objective gravity of the offence

[17] In determining whether the proposed punishment of a fine of $500 meets the public interest test, I have considered the gravity of the offence. 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.

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

> . . . one of the most important obligations of members of the Canadian Forces, to be present where they are required to be, reliably and on time.

Aggravating factors

[19] I have also considered the aggravating factors specific to this case:

(a) the offender has a conduct sheet that contains previous convictions to four incidents of absence without leave, which indicates a pattern of conduct in this regard;

(b) the unauthorized absence lasted over a week, period during which the offender used illicit drugs; and

(c) he knew that the military police and his unit were looking for him, but did nothing to report himself until later.

Mitigating factors

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

(a) the offender did turn himself into the military police in order to end the commission of the offence;

(b) he attended a 50-day addiction treatment rehabilitation program shortly after committing the offence, and successfully completed it;

(c) he accepted responsibility for his actions by pleading guilty before this Court and he did signal his intent to do so at the very first opportunity, dispensing with the need for a long and costly trial; and

(d) several administrative measures were imposed on him as a result of the commission of the offence culminating with his release from the CAF under item 5(f), Unsuitable for Further Service, on 23 July 2020.

The offender's situation

[21] The offender is 29 years old. He was already battling substance abuse when he enrolled in the CAF on 6 September 2017. In October 2018, he was diagnosed as being affected by polysubstance abuse disorder, in conjunction with episodes of anxiety and depression. At the time of the commission of the offence which led to this court martial, he was on a severe relapse involving intense consumption of cocaine and alcohol.

[22] However, the offender has been continuously proactive in coping with addiction problems before and after the completion of the treatment rehabilitation program. He is currently unemployed but intends to return to school in January 2021 as a full-time student.

Parity

[23] Having considered the circumstances surrounding the commission of the offence and the personal situation of the offender, 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 court reviewed the two cases submitted by the prosecution and notes that the length of the absence without leave in these two cases was much shorter. This case is very similar to *R. v. ex-Master Corporal B.J.M. Floyd, 2009 CM 1005*, where the offender was absent without leave for 12 days before he turned himself in to the military police. During this time, then-Master Corporal Floyd used cocaine. The joint submission, a

reduction in rank to private, was accepted by the presiding judge. In the more recent case of *R. v. Kanaar*, 2020 CM 5009, the offender was absent for a short period, but had previous convictions related to four absences without leave. The joint submission of a reprimand with a fine of $300 was accepted by the Court. These precedents are indicative of this joint submission being within the range of punishment, but at the lower end of the spectrum. Indeed, a more severe punishment would normally be considered, particularly with regards to an absence without leave that took place over a period of several days.

[24] Punishments unique to military service found at section 139 of the *NDA* should not be discounted for the sole reason that the offender has been released from the CAF prior to his or her court martial. In this particular case, it is the offender's situation, in particular his lifelong battle with drug addictions at a very young age that distinguishes it from the majority of cases which form the spectrum of punishments for this offence. I therefore accept counsel's submission that, in light of the addictions this offender has been battling with, which have plagued his short career in the CAF from the very beginning and led to his release, a just sanction would have for principal objective to assist in rehabilitating this offender.

Conclusion

[25] The Court reviewed the documentary evidence introduced as exhibit and considered counsel's submissions. It is apparent that they carefully assessed the offender's specific circumstances 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. In light of this offender's particular circumstances, I accept counsel's submissions that this case should be distinguished from the majority of similar cases, not only because the offender has been released from the CAF as a result of his conduct that led him here today, but most importantly, because of the addictions that he has been battling for many years. Rehabilitation is indeed the key objective in the case at bar.

[26] 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 rehabilitation is met with the joint recommendation today.

[27] The offender has accepted responsibility for his actions. His attitude in taking serious steps to address his addictions and medical issues are to be commended. I accept counsel's submissions that this Court should convey a message of hope. The offender is young. The Court wishes that he finds success in any future career so he can become an asset to our society. The joint recommendation gives him a chance to reintegrate himself into civilian life. 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:

[28] **FINDS** Private Coulter guilty of one charge under section 90 of the *NDA*.

[29] **SENTENCES** the offender to a fine in the amount of $500, payable forthwith.

Counsel:

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

Major B. Tremblay, Defence Counsel Services, Counsel for Private T.G. Coulter