



COURT MARTIAL

Citation: *R. v. Vanson & G.W. Winkler*, 2001 CM 09

Date : 20010322

Docket : 200101

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between :

Her Majesty the Queen

- and -

Privates M.E. Vanson & G.W. Winkler, Offenders

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

SENTENCE

(Orally)

[1] First of all, having accepted and recorded your plea of guilty to charge number 2, the Court finds you guilty of charge number 2 and directs a stay of proceedings on charge number 1.

[2] In determining the sentence, Corporal Vanson, Private Winkler, the Court has considered the circumstances surrounding the commission of the offence; the mitigating circumstances raised by the evidence in mitigation, including the representations by your counsel; testimony called on your behalf; and the applicable principles of sentencing.

[3] Those principles to be used in considering an appropriate sentence have been expressed in various ways. Generally, they relate to the protection of the public, the public includes, of course, the interests and protection of the Canadian Forces;

secondly, there is the punishment of the offender; thirdly, the deterrent effect of the punishment, not only on the offender, which is in turn specific deterrence, but also on general deterrence, that is, the deterrence of those who might be tempted to commit similar offences; and fourthly, but not least, there's the reformation and rehabilitation of the offender.

[4] The prime principle of sentencing is the protection of the public and the Court must determine if that protection would best be served by deterrence, rehabilitation, punishment or a combination of those factors.

[5] The Court has also given consideration to the factors of proportionality of the sentence in relation to the offender in the accountability of the offender for his actions. While the accused should be accountable for his actions, the sentence should not on the other hand be disproportionate in relation to the offence.

[6] The offence of assault causing bodily harm is, objectively, serious. The maximum punishment for the offence is ten-years' imprisonment, as set out in the *Criminal Code*.

[7] As for the circumstances of the offence, the assault occurred at a house party in the married quarters of Canadian Forces Base Edmonton. Corporal Vanson and Private Winkler had consumed large amounts of alcohol. There is no evidence before the Court that Corporal Vanson and Private Winkler knew Captain Bodnar's identity. Otherwise, the sentence I am about to impose would be significantly more severe.

[8] The picture portrayed by the circumstances in front of the Court is that of two very drunk, immature, aggressive people and one is tempted to insert other words in place of "people" in this case. It is most disappointing to see that members of the Canadian Forces would behave in this manner. The fact that you so quickly resort to senseless, useless violence is troublesome. The fact that the two of you, cowardly, attacked a single person is loathsome.

[9] I do not view Captain Bodnar's words or actions as provocative in the circumstances. Many people might think he was the model of restraint, given the behaviour of the two individuals he had the misfortune to encounter. Captain Bodnar was not hit about the face in a reflexive or spontaneous moment of anger by one individual. Rather, both of you assaulted him and continued the assault even as he tried to leave the area with his girlfriend. I view the continuation of the assault as an aggravating factor in this case. The photographs placed in evidence give testament that these were heavy blows. Captain Bodnar could have been very badly hurt. As it is, he now requires surgery to correct an injury to his nose inflicted by you two offenders at this point.

[10] I have reviewed the documentary evidence submitted by both counsel; the remarks on sentencing; I reviewed your service and pay situation. I note there was no evidence put forward of any financial difficulty on the part of either of you.

[11] As to you, Corporal Vanson, I see that you are just 22 years old, having served in the Canadian Forces for three and a half years. You have been described in your assessments as being a skilled performer with above average potential and you have no conduct sheet.

[12] I have carefully considered the evidence that was put forward yesterday indicating that you suffer from post-traumatic stress disorder and it is a mitigating factor to be considered. It may, to some extent, explain the way you acted that evening, but it is certainly no excuse. Your reprehensible behaviour on the night in question is not excused by this condition. You do have the ability to control your own behaviour and you must bear responsibility for your actions.

[13] Private Winkler is 23 years old, having served around four years in the Canadian Forces. Private Winkler is described in his assessments as an average soldier. There is an entry on his conduct sheet reflecting that he was convicted in civil court for one count of uttering threats and sentenced to a \$500 fine. The offence was committed in May of 1998.

[14] Over-consumption of alcohol was also a factor in the behaviour of these individuals, but that is not a factor that, in my estimation, enures to your credit in the determination of an appropriate sentence in this case.

[15] I have considered that these events occurred a year ago and these individuals have waited some time for this matter to be resolved. Moreover, I have also taken into account, and this is a clear mitigating factor, that the two accused here pleaded guilty.

[16] I have reviewed the precedent value of the cases referred to by counsel yesterday. Some of them were dated. The *Bailey* case, which defence counsel pointed to, is slightly different than what is going on here. Both victim and assailant were drinking together, as I understand the facts of the *Bailey* case. Corporal Bailey, evidently, had many years of exemplary service and had the support of his commanding officer, which is not evident in this Court, in this case before me here today. Corporal Bailey also had family and suffered from stress and his promotion to master corporal had been delayed. These are important distinctions between this case and that case.

[17] As I have said, the prime sentencing principle is the protection of the public and in this case, in my view, the principle of general deterrence should govern the sentence that will be imposed in this case, but rehabilitation must never be forgotten.

[18] I have, in determining the sentence in this case, been guided by the sentencing principles set out in the *Criminal Code*, in sections 718 through 718.2. I have also

considered the Supreme Court of Canada case of *R. v. Gladue*, [1999] 1 S.C.R. 688, where the Supreme Court makes clear, incarceration is a punishment of last resort. The Court Martial Appeal Court has echoed that message in a number of recent cases.

[19] This was a serious offence and while, as I have said, general deterrence is the prime consideration and by the sentence here imposed the public might also be protected in a manner that will not necessarily interfere with your rehabilitation. In the consideration of general deterrence, the circumstances of the offence and the particular personal circumstances of the offender must not be forgotten.

[20] Lastly, let me say directly to the two of you that the both of you have exhibited shameful behaviour. You are an embarrassment to all of us and, in my estimation, your chain of command would do well to consider whether you are the type of individuals we need in the Canadian Forces.

[21] In all of the circumstances, this Court sentences each of you to detention for a period of twenty-one days and a \$6,000 fine. The Court hereby suspends the carrying into effect of the period of detention. The fine should be payable in equal amounts over a period of thirty months. If you are released from the Canadian Forces, the fine should be payable forthwith.

Counsel:

Major D.K. Fullerton, Regional Military Prosecutor Edmonton, Counsel for Her Majesty the Queen

Major M.R. Gibson, Defence Counsel Services, Counsel for Privates M.E. Vanson & G.W. Winkler