



COURT MARTIAL

Citation: *R. v. Holt*, 2020 CM 2013

Date: 20201026

Docket: 202049

Standing Court Martial

Cormack Armoury
Red Deer, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Sergeant N.J. Holt, Offender

Before: Commander S.M. Sukstorf, M.J.

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today Sergeant Holt pleaded guilty to one charge contrary to section 129 of the *National Defence Act (NDA)*; that is to say, conduct to the prejudice of good order and discipline. Having accepted and recorded your plea of guilty with respect to the charge, the Court must now determine and pass sentence on that charge. The charge sheet reads as follows:

“FIRST CHARGE
Section 129 of the
National Defence Act

**CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND DISCIPLINE**

Particulars: In that he, on or about 24 May 2019, at Cormack Armoury, Red Deer, Alberta, did take two boxes of rations without permission.”

[2] The Statement of Circumstances filed in Court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Sgt Holt was a Reserve Force member of the Canadian Armed Forces, serving with 41 Signal Regiment, 41 Brigade Group, 3rd Canadian Division.
2. At the time of the offence, Sgt Holt was in uniform.
3. The offence occurred at Cormack Armoury in Red Deer, Alberta, a defence establishment as defined under the *National Defence Act*.
4. On 22 May 2019, Sgt Holt removed two cases of rations from a pallet on the floor of the Cormack Armoury floor, and placed them in his personal vehicle.
5. The rations belonged to 1390 Royal Canadian Air Cadet Corp (RCACC), a lodger unit of the Cormack Armoury. Sgt Holt had no permission to remove the rations.
6. On 24 May 2019, Capt Robert, CO 1390 RCACC discovered that three cases of rations were missing from the pallet on the armoury floor and informed Capt Stuart, Admin O 1390 RCACC that they were missing.
7. Capt Stuart then spoke with Sgt Holt and MBdr Qualle about the missing rations and indicated that he would seek security footage of the armoury floor.
8. Sgt Holt retrieved the cases of rations from his vehicle and replaced them on the armoury floor. He then told Capt Stuart that he had seen two cases of rations on the armoury floor, but did not take responsibility for their removal.

9. Subsequent review of security footage revealed that Sgt Holt had taken two cases of rations belonging to 1390 RCACC and removed them from the building.
10. Sgt Holt has taken full responsibility for his conduct. In so doing, he has publically denounced his conduct and has acknowledged the effect that such conduct has on the discipline, efficiency, and morale on his unit specifically, and on the Canadian Armed Forces generally.”

Joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a fine in the amount of \$200. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.” By entering into a joint submission, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one that we all stand to protect.

[4] Thus, in exchange for making a plea, the accused must be assured of a high level of certainty that the Court will accept the joint submission. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command as well as the victims, and is aware of the needs of the military and the surrounding community and is responsible for representing those interests. The defence counsel acts exclusively in the accused’s best interests, including ensuring that the accused’s plea is a voluntary and informed choice, and unequivocally acknowledges the accused’s guilt. As members of the legal profession and accountable to their respective law societies, the Court relies heavily on their professionalism, honesty, judgement, as well as their duty to the Court.

Evidence

[5] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen’s Regulations and Orders for the Canadian Forces*. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge. The Court was also provided with a character reference from Lieutenant(N) Rodgers, 41 Combat Brigade Group (CBG) Personnel Selections Officer, as well as an Agreed Statement of Facts that sets out those facts relevant to the offender. Further, the Court benefitted from counsel’s submissions to support their joint submission on sentence where they highlighted additional relevant facts and considerations.

The offender

[6] Sergeant Holt, the offender, is twenty-nine years old. He enrolled in the Canadian Armed Forces (CAF) in January 2011 and thus far has served his country for almost ten years and, aside from the incident before the Court, he has no conduct sheet or criminal record. He is currently serving as a member of the reserve force and is serving with 41 Signal Regiment, 41 Brigade Group, 3rd Canadian Division, and has also been serving fulltime on a Class B contract as a recruiter for 41 CBG since July 2015 under the direct supervision of Lieutenant(N) Rodgers, 41 CBG Personnel Selection Officer.

[7] Apart from fulfilling full-time recruiting duties with 41 CBG, he maintains his artillery skills and ties to his home unit by participating in numerous unit exercises, including but not limited to Exercise (EX) JUPITER SNIPER PERSONAL WEAPONS TEST in 2020, EX KIEVEE LEADER in 2019, EX KIEVEE 2019 TUNDRA, EX ORNERY RAM in 2019 and EX UNIFIED GUNNER in 2018, as well as other unit activities. He has participated in two different domestic operations: Operation (OP) LENTUS in 2013 during the Alberta floods and OP PALACI in 2013 at Rogers Pass conducting avalanche control.

[8] Lieutenant(N) Rodgers confirmed that each of his fellow members of 41 CBG Recruiting holds him in high esteem. Sergeant Holt volunteers his time with the unit's 25-Pounder Restoration Project, armoury classroom renovations, and always volunteers to speak at local Veterans' Week events.

[9] Lieutenant(N) Rodgers, described the performance of Sergeant Holt as follows: "nothing short of exemplary and I have full confidence that he will continue to be an asset not only to 41 CBG Recruiting and his home unit, but also to the Canadian Armed Forces."

The purposes, objectives and principles of sentencing

[10] The fundamental purposes of sentencing in a court martial are to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and maintenance of a just, peaceful and safe society. These fundamental purposes are achieved by imposing sanctions that have one or more objectives that are delineated in the *NDA* at subsection 203.1(2).

[11] The prosecution has emphasized that, in negotiations, he and defence counsel closely considered the objectives, and on the facts of this case he submitted that the objectives considered most important are general and specific deterrence, as well as denunciation. Prosecution also stressed that they also felt that the maintenance of trust was also considered given the fact that the rations were owned by a cadet youth group.

Accounting for relevant aggravating or mitigating circumstances

[12] Also under the *NDA*, in imposing a sentence the court must increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender.

Aggravating factors

[13] After hearing the submissions of counsel, the Court highlights two aggravating factors:

- (a) Rank and position. As a sergeant, the offender was expected to act with little or no supervision and his actions on that day were not reflective of the expected conduct. Additionally in the position he holds as a recruiter, he works independently and more was expected of him.
- (b) Cadet unit affected. Although the items were returned without being asked to do so, they were taken from a cadet unit who would have limited resources.

Mitigating factors

[14] However, as counsel pointed out, there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Sergeant Holt's plea of guilty for the offence as described in the Statement of Circumstances must be given its full weight.
- (b) His guilty plea has saved the Court, counsel and the unit supporting the Court considerable time.
- (c) The offender has no conduct sheet or previous criminal record and this is the first disciplinary hearing of any type for him.
- (d) Remorse. When provided an opportunity to speak, the offender apologized to the cadet unit for his actions.
- (e) Exemplary conduct in the CAF. Sergeant Holt's supervisor acknowledged that the offender's conduct has been exemplary and Sergeant Holt has maintained the full confidence of his chain of command. This indicates to the Court that this incident was isolated and not consistent with the conduct that Sergeant Holt's chain of command has experienced and expected from him.
- (f) Potential for rehabilitation. By taking full responsibility for his conduct, Sergeant Holt has publicly denounced his conduct and has acknowledged the effect that such conduct has on the discipline, efficiency and morale of his unit specifically and the CAF in general.

Parity

[15] In terms of parity, counsel did not provide the court with any comparable case law from the court martial level given the low-level nature of the offence. However, they did provide the court with the reference of how the chain of command addressed the conduct related to the third missing box of rations where a more junior member of the unit was fined \$150 for committing the same offence.

Conclusion

[16] As the court often expresses to people who come before it when they have exercised poor judgement, we all do it; we all make really bad choices at one point in our lives and it is how we deal with our mistakes that governs our success moving forward.

[17] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, if viewed by the reasonable and informed CAF member, as well as the public at large, be viewed as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of this sentence cause the general public to lose confidence in the military justice system?

[18] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and gravity, the Court is indeed satisfied that counsel have discharged their obligation in making the joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[19] **FINDS** Sergeant Holt guilty of the first and only charge on the charge sheet for an offence contrary to section 129 of the *NDA*.

[20] **SENTENCES** Sergeant Holt to a fine in the amount of \$200, payable forthwith.

Counsel:

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

Captain M. Melbourne, Defence Counsel Services, Counsel for Sergeant N.J. Holt