



COURT MARTIAL

Citation: *R. v. Brinton*, 2021 CM 4001

Date: 20210204

Docket: 202016

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman D.J. Brinton, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Leading Seaman Brinton, having accepted and recorded your plea of guilty in respect of the sole remaining charge on the charge sheet, the Court now finds you guilty of that charge for having sold improperly public property, contrary to paragraph 116(a) 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 severe reprimand and a fine in the amount of \$3,000.

[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 Leading Seaman Brinton. 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* (QR&O) article 112.51.

[9] For its part, the defence produced an Agreed Statement of Facts describing the personal situation of Leading Seaman Brinton before and since the offence.

[10] 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 offence committed in this case.

[11] The Statement of Circumstances, 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 offence

[12] The Statement of Circumstances reveals the following information as it pertains to the offence:

- (a) On 6 May 2019, Leading Seaman Brinton was a member of the regular force serving with Fleet Maintenance Facility (FMF) Cape Scott in Halifax, Nova Scotia;
- (b) While employed with other members of his unit in updating and categorizing inventory at the Naval Armament Depot, Leading Seaman Brinton took home a used, YELLOW JACKET®, vacuum pump, part number 93560, serial number R 325969, that had been set aside from other inventory;
- (c) Leading Seaman Brinton subsequently placed this item for sale on an internet marketplace website called, “Kijiji” with a listed sale price of \$150. The value of the item when new is estimated to be approximately \$1,500. The item was sold for \$80.00; and
- (d) The item was the public property of the Canadian Armed Forces (CAF), and Leading Seaman Brinton was not authorized to sell the item.

The offender

[13] Leading Seaman Brinton served in the CAF from March 2007 to June 2020, achieving success in numerous courses and qualifications as a marine technician in the Royal Canadian Navy (RCN). Throughout a thirteen-year career, he has been employed mainly on ships and shore establishments on the East Coast. Worthy of mention are his deployment to Europe on Operation ACTIVE ENDEAVOUR and a short deployment in Haiti to provide humanitarian assistance following damage and flooding caused by a hurricane.

[14] This deployment to Haiti in 2008, where Leading Seaman Brinton had to help in cleaning up rubble from toppled buildings, exposed him to the stress and trauma

associated with the recovery of human remains. Unfortunately, he has had to deal with mental health challenges since. Leading Seaman Brinton also injured his back while working on storing a ship alongside in the Dockyard in 2014. The failure of a crane resulted in a load falling on Leading Seaman Brinton, severely compressing his spine. Following a year of physiotherapy and nerve pain blockers, it was determined that his sciatic nerve had been permanently damaged. Despite surgery, he now suffers from permanent pain and has difficulty sitting or standing for prolonged periods.

[15] This injury has led to the release of Leading Seaman Brinton from the CAF on medical grounds in June 2020. He is now employed as a senior maintenance planner, a more administrative role that helps to accommodate his medical condition.

[16] Leading Seaman Brinton is not a first-time offender. This Standing Court Martial constitutes his second appearance before a court martial. He was found guilty in September 2013 of two charges laid under section 83 of the *NDA* of having disobeyed the lawful commands of a superior officer and was sentenced to a reprimand and a fine in the amount of \$3,000.

Seriousness of the offence

[17] The Court has considered the objective gravity of the offence in this case. The offence of having sold improperly public property, contrary to paragraph 116(a) of the *NDA*, attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence going to the core of the duty of every non-commissioned member of the CAF, as mentioned at QR&O 5.01, to ensure the proper care, and prevent the waste, of all public property. This is particularly important in a unit such as FMF Cape Scott where personnel handle a significant volume of equipment such as spare parts and maintenance supplies to ensure that the ships and other units remain ready for operations. Offences relating to improper disposal of public property include an element of breach of the faith and confidence that supervisors must necessarily have in the integrity of subordinates to properly manage assets in a large and complex public organization such as the CAF. As recognized by the Court Martial Appeal Court (CMAC) in *R. v. St-Jean*, [2000] CMAC-429, at paragraph 22, a breach of that faith undermines public respect for the CAF and the RCN as an institution.

Aggravating factors

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

- (a) First, the fact that the offence represents a violation of the most basic of general responsibilities of non-commissioned members to ensure the proper care and prevent the waste of public property provided for at QR&O 5.01, a basic responsibility which, given his age and years of service at the time of the offence, Leading Seaman Brinton should have

assimilated to realize that he could not sell public property, worn out or not; and

- (b) Second, the fact that Leading Seaman Brinton has been tried and sentenced by a court martial in 2013 for offences involving disobedience which, despite being different than the offence he is being sentenced for today, nevertheless shows a breach of the faith superiors had in him to follow direction to rest at home in accordance with sick leave granted. Despite the time that has passed, I draw a parallel between the breach of faith displayed then and the one relating to the offence in this case.

Mitigating factors

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

- (a) First, Leading Seaman Brinton's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking full responsibility for his actions in this public trial in the physical presence of members of his former unit and of members of the broader military community; and
- (b) Second, the positive service provided by Leading Seaman Brinton to the CAF and the RCN over a career spanning over thirteen years, during which he obtained an impressive range of technical qualifications and made a fair contribution at sea and ashore, at a significant cost to him, as evidenced especially by the consequences of the injury he suffered in 2014.

Objectives of sentencing to be emphasized in this case

[20] 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 the conduct 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 objective of deterrence must be emphasized as well. As highlighted by counsel for the offender, the sentence proposed must not compromise the efforts invested by Leading Seaman Brinton to rehabilitate himself, especially as he has transitioned to civilian life and employment.

Assessing the joint submission

[21] The submissions from counsel contained references to previous cases, especially *R. v. Hynes*, 2019 CM 2015, 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 the proposed sentence would bring the administration of justice into disrepute or would be otherwise contrary to the public interest.

[22] 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.

[23] 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 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.

[24] 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 nor would it otherwise be contrary to the public interest. I will, therefore, accept it.

[25] Leading Seaman Brinton, at this point in my reasons for sentence, I usually try to convey to offenders how serious the offence they committed really is. I hope you have understood that by now. I especially hope that you can turn the page and envisage a future where you are positively contributing to civilian society and your family without reoffending.

FOR THESE REASONS, THE COURT:

[26] **SENTENCES** Leading Seaman Brinton to a severe reprimand and a fine in the amount of \$3,000 payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Major M.L.P.P. Germain and Major M. Reede

Major F. D. Ferguson, Defence Counsel Services, Counsel for Leading Seaman R.D. Brinton