COURT MARTIAL

Citation: *R. v. Edmonstone*, 2021 CM 4010

Date: 20211112
Docket: 202112

Standing Court Martial

3rd Canadian Division Support Base Edmonton
Edmonton, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal K. Edmonstone, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] At approximately 0620 hours on Tuesday 18 February 2020, a suspicious package was found by duty personnel unlocking the front doors of building 593 on Canadian Forces Base (CFB) Wainwright. A note was attached to the package with threatening, albeit incoherent words. Four jars containing a powdery substance, a watch, and a charging cable were also attached to the top of the package. The package was brought to the office of Warrant Officer Dorothy Schell. The building was evacuated, military police and firefighters were called. Two personnel qualified in explosive ordinance disposal (EOD) attended the scene. After examining and dismantling the package, they concluded that it was inoffensive. The "ALL CLEAR" was given and the occupants of building 593 were able to resume their duties no later than 0830 hours. Corporal Edmonstone was absent from CFB Wainwright when the package was found, having travelled to Edmonton without authorization, carrying personal belongings, passport and two cats. Following arrest for absence without leave, Corporal

Edmonstone admitted having left the package purposely designed to look like an explosive in order to get the attention of the chain of command or the military police.

[2] At the beginning of this Standing Court Martial, Corporal Edmonstone pleaded guilty to the two charges on the charge sheet, the first laid under section 130 of the *National Defence Act* (*NDA*) for mischief, contrary to section 430(3) of the *Criminal Code*, and the second for absence without leave, contrary to section 90 of the *NDA*.

[3] Having accepted the pleas and found Corporal Edmonstone guilty of both charges, it is now my duty to impose an appropriate and fair sentence, on the basis of the evidence, precedents and arguments submitted by counsel for both parties in the course of a three-day sentencing hearing.

[4] Corporal Edmonstone was released medically from the Canadian Armed Forces (CAF) on 12 April 2021, but will be designated by the rank held at that time by virtue of section 60(3) of the *NDA*. In these reasons I will refer to Corporal Edmonstone using the pronoun they/them in conformity with the wish expressed by them for a number of years, in relation to their service with the CAF.

Position of the parties

Prosecution

[5]. The prosecution submits that Corporal Edmonstone should be sentenced to imprisonment for a period of 120 days as it is the sentence most likely to contribute to the maintenance of discipline, efficiency and morale in the CAF in the circumstances of this case and of this offender.

Defence

[6] The defence submits that Corporal Edmonstone should be sentenced to a severe reprimand and a fine between $1,500 and $3,000 as it is, in the view of defence counsel, the outcome that is in the offender's best interest in their unique circumstances, especially given their mental health condition, both at the time of the offences and today.

Evidence

[7] The facts revealing the circumstances of the offence were introduced first by the prosecution through the Statement of Circumstances read by the prosecutor and accepted as accurate by the offender, as well as by the documents mandated at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) paragraph 112.51(2). An Agreed Statement of Facts was read in the record and produced as exhibit to explain the personal situation of Corporal Edmonstone since the offence. Other documents were produced by the prosecution as follows:

(a) the note left on the suspicious package on 18 February 2020;

(b) pictures from the Military Police General Occurrence report showing the suspicious package and locations where it was transported and dismantled;

(c) an exchange of e-mails providing information on programs and services available for inmates at Alberta correctional facilities;

(d) an affidavit from the Commandant of the Canadian Forces Service Prison and Detention Barracks describing the routine and services available at the military establishment; and

(e) the victim impact statement of Warrant Officer Schell, describing the impact that the offence and other challenges had on her mental health, leading to her decision to retire prematurely from the CAF.

[8] The prosecution called two witnesses: Lieutenant-Colonel Chirag Hingwala, the commanding officer of the accused unit at the time of the offences and Warrant Officer Schell, who was the supervisor of Corporal Edmonstone from September 2019 to sometime after the offences.

[9] For its part, the defence called five witnesses: Ms Deanna Edmonstone, Corporal Edmonstone's ex-wife; Corporal Mélanie Fournier, a former colleague; Dr Alice Mohr and Dr Alberto Choy who provided expert evidence on the mental health condition and prognosis pertaining to Corporal Edmonstone; Mrs. Jeananne Pleasance, Corporal Edmonstone's mother; and finally Corporal Edmonstone themselves. They provided information on the condition of Corporal Edmonstone at the time of the events relevant to the charges and since.

[10] In addition, several documents were introduced as exhibits by the defence, namely:

(a) two personal evaluations reports (PERs) of Corporal Edmonstone for fiscal years 2017-18 and 2018-19;

(b) the decision of the Director Military Careers and Administration (DMCA) on the administrative review of Corporal Edmonstone's career in the CAF, resulting in their medical release from the CAF on 12 April 2021;

(c) the curriculum vitae and three reports from Drs Mohr and Choy pertaining to Corporal Edmonstone; and

(d) medical disposition notes on Corporal Edmonstone for the period of 20 to 28 February 2020.

Facts

The circumstances of the offence

[11] The Statement of Circumstances includes the following facts which I find are relevant to the immediate circumstances of the offence:

(a) on the morning of Friday, 14 February 2020, medical staff attended Corporal Edmonstone's house as they had failed to report to the medical inspection room (MIR) on CFB Wainwright, where they were being followed for a mental health condition. When Corporal Edmonstone reported at the MIR later that day, they were assessed by a psychologist who determined that they were stable enough to return home for the Family Day long weekend, but needed to report for reassessment at the MIR at 0730 hours on Tuesday, 18 February 2020;

(b) corporal Edmonstone did not present at the MIR on Tuesday, 18 February 2020. Nor did they report to their unit. At approximately 0815 hours, two military police members in Wainwright attended Corporal Edmonstone's residence for a welfare check, but no one was inside;

(c) the military police was advised that Corporal Edmonstone was likely travelling to Edmonton to attend the Veterans Affairs Canada office. The Edmonton military police platoon was notified and contact was made with Rogers Wireless to attempt to locate Corporal Edmonstone's cell phone. On the basis of information obtained from Rogers, two Edmonton military police members attended Lakewood Chevrolet dealership in Edmonton. Corporal Edmonstone identified themselves to them and was placed under arrest for being absent without leave. Military police members observed that Corporal Edmonstone's truck was filled with all of their personal belongings, that they had packed their passport and brought their two cats;

(d) corporal Edmonstone was detained at the guard house at 3rd Canadian Division Support Base Edmonton until released with conditions by a custody review officer at approximately 1800 hours on 18 February 2020. Corporal Edmonstone complied with the conditions, including a reporting requirement for six days each week, until they were cancelled on 1 April 2020;

(e) that same day that Corporal Edmonstone was absent without leave, 18 February 2020, at approximately 0620 hours, the duty supply technician unlocking the front doors of building 593 saw a package at the foot of the doors. There was a note on top of the package which read, as written:

> "Alcon, This Box contain evidence of Catlin Welk forcing Kane Edmonstone to sell canabis illegally. Also just so you all know the actions of Melanie Fourier Than the Resulting Response by the Canadain Forces Resulted in death of Kane Boyd Edmonstone. That sail there's 17 More of us that are goint to hunt Down & Take the Soul of those responable also if you think your safe! Your not! We Will Find a Way…"[*sic*]

(f) attached to the top of the package were four jars containing a powdery substance, a smart watch, and a charging cable attached with tape. The package appeared to be a blue Rubbermaid tote which was wrapped in tape. Underneath the package was an item resembling a cutting board, a pride flag, and a torn garbage bag. The package was placed in a new garbage bag to preserve the contents, and brought inside building 593 to Warrant Officer Schell's office in the clothing stores section;

(g) warrant Officer Schell took possession of the package shortly after 0700 hours. She decided the package was suspicious and called the duty commissionaire, who in turn alerted the military police. She also gave directions to have building 593 evacuated. The military police arrived approximately fifteen minutes later and were directed to Warrant Officer Schell's office so that they could investigate the package. The firefighters restricted access to the building and a muster point was set up outside;

(h) minutes later, two military personnel qualified in EOD attended the scene. A preliminary examination revealed that the suspicious package was made up of a Rubbermaid tote with, on top, a taped unidentified package with a watch attached as well as a jumble of wires and a note. The appearance of the package would lead a casual observer to believe the package was a real explosive device because it had a watch and wires attached to the outside and because the main container was taped up in a way that made it impossible to see inside;

(i) the package's components were taken apart by removing two glass mason-type jars and cutting the tape holding them together. A closer examination revealed that the wire jumble attached to the top of the Rubbermaid tote was not attached to anything. The watch was removed after it had been determined that it was not attached to anything and appeared to be dead. The Rubbermaid tote contained cannabis and associated paraphernalia. At about 0805 hours, the scene was declared to be safe and the "ALL CLEAR" was given no later than 0830 hours when the occupants of building 593 were able to resume their duties;

(j) on 19 February 2020, during a cautioned interview with the military police, Corporal Edmonstone said "We have one body" and "There is

seventeen of us. Only one of us can be in here at a time". Corporal Edmonstone asked if the note that "Flash" had left at building 593 the day prior had been received, explaining that "Flash" is the cheetah, one of the seventeen animal spirits that inhabit their body. They added that Kane Edmonstone had been dead for five years;

(k) Corporal Edmonstone admitted that they left a package purposely designed to look like an explosive in order to get the attention of their chain of command or the military police. When asked why "Flash" had left a wire and timer on top of the package, Corporal Edmonstone said that it was to get "your" attention because no one was listening. Agreeing that maybe it was not the right kind of attention, Corporal Edmonstone said that it was the extreme they had to go for someone to listen and understand that they hadn't felt safe for five years. It was implicit from Corporal Edmonstone's comments that they knew the package could be mistaken as an explosive;

(l) Corporal Edmonstone also stated that they had intended to make their trip to Edmonton appear as absence without leave in order to ensure that they would be arrested and placed in cells. Their reason was that one of their spirits, "Mouse", only felt safe while in cells;

(m) on Thursday, 20 February 2020, Corporal Edmonstone was overheard at the MIR waiting area stating to one of the medics words to the effect that "my plan worked", "was kind of extreme but I sure showed them" and "they may have to investigate an AWOL charge but it was worth it, I proved my point, I showed them". As a result of the appointment which followed, Dr Patterson caused Corporal Edmonstone to be admitted to the Centennial Centre for Mental Health and Brain Injury (Centennial Centre) in Ponoka, Alberta from where they were released on 28 February 2020; and

(n) the Centennial Centre found the most responsible diagnosis for Corporal Edmonstone to be marihuana induced psychosis, which resolved a few days after admission.

[12] It must be noted that the Statement of Circumstances mentions that Corporal Edmonstone does not have a clear recollection of the events, but believes them to be true. In their testimony, Corporal Edmonstone stated having no recollection of the events. In fact, it is Corporal Edmonstone's evidence that they have no recollection of any event that occurred between September 2019 and a time while admitted at the Centennial Centre shortly after 20 February 2020, when marihuana induced psychosis subsided.

The circumstances of the offender

[13] Corporal Edmonstone is a thirty-five-year-old former traffic technician. At the time of the offences, they were a member of the regular force posted to the 3rd Canadian Division Support Base Detachment Wainwright, in Alberta, employed at building 593 in the Central Material Traffic Terminal section.

[14] Corporal Edmonstone served for over fifteen years in the CAF. They enrolled in Victoria in January 2006. Following recruit and trade training, Corporal Edmonstone has essentially served in Alberta, Edmonton from 2007 to 2010 and in Wainwright afterwards. Their assignment history does not reveal any overseas deployments. The evidence reveals that Corporal Edmonstone's performance was entirely satisfactory until the fall of 2019, as confirmed by his commanding officer. In fact, his PER for fiscal year 2018-19, signed in May 2019, shows evaluations of performance and potential to be mastered and outstanding respectively in all but two items and an immediate promotion recommendation. In fact, the unit received a promotion message for Corporal Edmonstone approximately one month after the offences, which required the commanding officer to voice his non-concurrence to avoid the promotion taking effect.

[15] Corporal Edmonstone's commanding officer was of the view that their behavior was no longer compatible with continued service in the CAF. He requested an administrative review of Corporal Edmonstone's career on the basis of conduct deficiencies in May 2020.

[16] By that time however, Corporal Edmonstone's medical issues had been well documented and submitted for administrative review of his capacity to remain in the CAF in April 2020. These seemingly competing reasons for considering that Corporal Edmonstone be compulsorily released from the CAF is what prompted the need for a decision from DMCA as to whether Corporal Edmonstone would be released medically under Item 3(b) or for misconduct under Item 5(f) of the Table to QR&O article 15.01. The decision letter reveals that DMCA considered that the initial reason for considering Corporal Edmonstone's release was due to military employment limitations caused by their health status. Accepting medical advice to the effect that Corporal Edmonstone was suffering from psychosis at the time of the incident, DMCA was satisfied on the balance of probability that Corporal Edmonstone's behavior was related to their medical condition. Further, DMCA concluded that a release under Item 5(f) would not be appropriate as at the time of the misconduct on 18 February 2020, Corporal Edmonstone had no control over their behavior. Consequently, DMCA ordered that Corporal Edmonstone be honourably released under Item 3(b) on 12 April 2021.

[17] DMCA's conclusion match with the evidence presented to me in the course of the sentencing hearing. It overwhelmingly demonstrates that the offences were the result of a psychotic episode in February 2020, induced by abuse of cannabis. That said, the overall circumstances of the offender are significantly more complex and spread over a significant period of time. Both Dr Choy's and Dr Mohr's reports and testimonies outlined their opinion to the effect that Corporal Edmonstone's ongoing challenges are mainly related to their struggle to deal with stress and manage a

condition of generalized anxiety disorder which Veterans Affairs Canada has recognized as resulting primarily from their service. This condition causes barriers to their re-establishment in post-service life as Corporal Edmonstone is currently struggling with day to day anxiety when they are in a public space such as a grocery store and has claimed suffering partial or full symptom anxiety attacks in relation to stressors such as military vehicles or police cars. Dr Mohr stated that under supervision and follow-up Corporal Edmonstone has been given assignments consisting in directly confronting feared situations in real life to assist in avoiding being overwhelmed. Indeed, she has observed Corporal Edmonstone in a treatment room becoming overwhelmed, shutting down and becoming mute.

[18] Dr Choy reported in his psychiatric opinion that Corporal Edmonstone has been suffering from gender dysphoria since the age of approximately five or six, a difficult condition which has caused them significant stress which they have tried to alleviate through the use of intoxicating substances such as cannabis. Dr Choy mentioned that Corporal Edmonstone has suffered in the past from depressive disorder, most notably following their separation and subsequent divorce, leading to significant use of cannabis and a first admission to the Centennial Centre in Ponoka in 2015, where Corporal Edmonstone had to be detained in the hospital for approximately a week because of suicidal ideations. This period corresponded with the time in October 2015 when Corporal Edmonstone committed the offences of drunkenness and possession of substances which appear on their conduct sheet following a trial by summary trial in May 2016. Corporal Edmonstone successfully completed a period of twelve months of counselling and probation in December 2016, but claims not having benefitted from substance abuse treatment or counselling for what Dr Choy described as an episode of substance use disorder.

[19] Dr Choy has provided a compelling description of the challenges associated with gender dysphoria on the basis of the information obtained from Corporal Edmonstone as to their struggles with gender identity from a young age, describing the strategies of avoidance, the acceptance first of a female identity using the pronouns she/her and then the important step of coming out in 2019 as transgendered and non-binary in spite of great anxiety in finding the courage to do this. Corporal Edmonstone testified that they had encountered resistance from CAF supervisors when trying to assert their identity after coming out, especially during a tasking to Resolute Bay in the summer of 2019 when a supervisor at the rank of warrant officer, following an hour long conversation about gender identity, said the pronouns they/them would not be used in referring to Corporal Edmonstone.

[20] Although Corporal Edmonstone did not directly try to justify their excessive cannabis use by the stress suffered as a result of the resistance of the chain of command to requests they made to be recognized and addressed as non-binary. Yet, the temporal link between the episode of high stress accompanying the rejection by a representative of the chain of command and the abuse of cannabis starting in September 2019 is compelling to that effect. Dr Choy did explain the need felt by persons incapable of dealing with stress to enter into avoidance strategies, including substance abuse. Dr

Choy also agrees with the diagnosis of substance induced psychosis initially made at the Centennial Centre, pertaining to the period of time when the offences were committed. In addition, Dr Choy is of the opinion that Corporal Edmonstone suffers from attention deficit hyperactivity disorder and mild to moderate post-traumatic stress disorder.

[21] Corporal Edmonstone has expended all of their economies in the period of September 2019 to February 2020, in the course of his episode of substance abuse. Their ex-wife Deanna testified that at the initiative of her current husband, she invited Corporal Edmonstone to move in with them and the children in a small community about a thirty minute drive south-east of Wainwright. They had two girls together, aged eleven and thirteen, and a sixteen year old daughter that she brought into their marriage. Corporal Edmonstone has a good relationship with all three children and has an active role in parenting them, being the primary caregiver when it comes to meal preparations and driving them to school as well as to their sporting and cultural activities. Corporal Edmonstone contributes financially to the household as well as to its maintenance inside and out.

[22] This uncommon arrangement is currently beneficial for Corporal Edmonstone, although they are looking forward to be able to gain more autonomy as their situation will hopefully continue to improve. Dr Mohr, who follows Corporal Edmonstone weekly in therapy, confirms that significant progress has been made by them in improving their condition since February 2020. Indeed, Corporal Edmonstone has refrained from consuming cannabis since their release from the Centennial Centre on 28 February 2020 and is determined not to fall back into substance abuse to avoid the sinking feeling of having lost all recollection of a large part of their life, as they said in cross-examination. They are currently envisaging taking training to qualify as a horticultural technician, an area of activity for which they have interest and talent.

[23] Both Dr Mohr and Dr Choy have expressed the opinion that Corporal Edmonstone is not a threat for themselves and others currently and is at a low risk of re-offending. On this point, the explanations of Dr Choy in his testimony and in writing in a short report are compelling as they rest on a structured approach based on recognized methodology for assessment of twenty factors of risks. The conclusion is that the overall risk rating is low, as well as the severity of the risk and its imminence within six months. It must be said that the assessment of risk is based on the continued absence of active substance use by Corporal Edmonstone.

Analysis

The Purpose and objectives of sentencing

[24] The purpose, objectives and principles applicable to sentencing by service tribunals are found at sections 203.1 to 203.4 of the *NDA*, reproduced at QR&O article 104.14. As provided at section 203.1 of the *NDA*:

> **203.1 (1)** The fundamental purposes of sentencing 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.
>
> **(2)** The fundamental purposes shall be achieved by imposing just sanctions that have one or more of the following objectives:
>
> **(a)** to promote a habit of obedience to lawful commands and orders;
>
> **(b)** to maintain public trust in the Canadian Forces as a disciplined armed force;
>
> **(c)** to denounce unlawful conduct;
>
> **(d)** to deter offenders and other persons from committing offences;
>
> **(e)** to assist in rehabilitating offenders;
>
> **(f)** to assist in reintegrating offenders into military service;
>
> **(g)** to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
>
> **(h)** to provide reparations for harm done to victims or to the community; and
>
> **(i)** to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

[25] As can be seen, the fundamental purposes of sentencing are twofold, recognizing the dual nature of the Code of Service Discipline which, as specified by the Supreme Court of Canada (SCC), not only serves to regulate conduct that undermines discipline and integrity in the CAF, but also serves a public function by punishing specific conduct which threatens public order and welfare (*R. v. Généreux*, [1992] 1 S.C.R. 259 at page 281).

[26] Also, the objectives that a just sanction must try to achieve are mainly associated with the CAF, but also include considerations reaching outside the bounds of the military, for instance, the maintenance of public trust and acknowledgement of the harm done to victims who may belong to the larger civilian community.

Objectives to be applied in this case

[27] I agree with counsel that the circumstances of this case require that the focus be primarily placed on the objectives of denunciation and deterrence, both general and specific, in sentencing the offender.

[28] Indeed, as the offences in this case involves mainly a significant threat of violence targeted directly at military authorities and indirectly, at all those working in and in the vicinity of the building where the fake bomb was placed on CFB Wainwright. Such a crime requires strong denunciation and deterrence of any disgruntled member of

the military who would consider using similar means to attract the attention of the chain of command to their plight. In addition and accessorily, the offence of absence without leave in this case is at the upper end of the subjective gravity scale given strong circumstantial evidence of intention to be away from the place of duty, either to avoid exposure to the consequences of the suspicious package or to attract the attention of the chain of command and the military police.

[29] That being said, the objective of rehabilitation is also especially important in this case. The offender has admitted guilt, an important first step on the road to rehabilitation. Corporal Edmonstone finds themselves at a critical juncture, having left the occupation that was theirs for the last fifteen years and hoping to achieve autonomy at a still relatively young age while having to overcome severe identity and mental health challenges. I have to apply the outmost care to avoid imposing a sentence which would have the effect of creating an excessive additional barrier to an offender who appears willing to invest the efforts to reach happiness and make a positive contribution to society.

[30] Having established the objectives to be pursued, it is important to discuss the principles to be considered in arriving at a just and appropriate sentence.

Main principle of sentencing: Proportionality

[31] The most important of these principles is proportionality. Section 203.2 of the *NDA* provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In conferring proportionality such a privileged position in the sentencing scheme, Parliament acknowledges the jurisprudence of the SCC which has elevated the principle of proportionality in sentencing as a fundamental principle in cases such as *R. v. Ipeelee*, 2012 SCC 13. At paragraph 37 of this case, Lebel J. explains the importance of proportionality in these words:

> Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . . Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

[32] The principle of proportionality thus obliges a judge imposing sentence to balance the gravity of the offence with the degree of responsibility of the offender. Respect for the principle of proportionality requires that the determination of a sentence by a judge, including a military judge, be a highly individualized process.

Other principles

[33] Having reviewed the circumstances directly relevant to the principle of proportionality, I now need to discuss other principles relevant to the determination of the sentence, which are listed as the paragraphs of section 203.3 of the *NDA* as follows:

> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .

A number of aggravating circumstances are listed in this section, none of them being applicable here.

> **(b)** a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

That is known as the principle of parity;

> **(c)** an offender should not be deprived of liberty by imprisonment or detention if less restrictive punishments may be appropriate in the circumstances;
>
> **(c.1)** all available punishments, other than imprisonment and detention, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders;
>
> **(d)** a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces;

Those paragraphs embody the principle of restraint, especially for Aboriginal offenders; and, finally,

> **(e)** any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[34] I will now go over these factors in light of the circumstances of this case.

Aggravating and mitigating factors

[35] As provided in the enumeration of principles of sentencing, a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating either to the offence or the offender. That being said, one aggravating or mitigating factor, in isolation, cannot operate to increase or decrease the sentence to a level that would take it outside of the range of what would be an adequate sentence. In taking these factors into consideration, the Court must keep in mind the objective gravity of the offences. The offender pleaded guilty to a charge of mischief in relation to a building, obviously of a value exceeding $5,000, an offence which attract under section 130(2)(b)(i) of the *NDA* and section 430(3)(b) of the *Criminal Code* a maximum punishment of imprisonment for ten years. It is an objectively very serious offence. The offence of absent without leave is not as serious, attracting a maximum punishment of imprisonment for less than two years.

[36] The circumstances of the offences and the offender in this case reveals in my view two aggravating factors as follows:

(a) the impact on the routine operations of building 593 on CFB Wainwright. While not constituting "substantial harm to the conduct of a military operation" as foreseen at subparagraph 203.3(a)(v) of the *NDA*, the disruption of activities in the building was not insignificant, lasting approximately ninety minutes, with the addition of the time required to inform and reassure personnel in the aftermath of the incident;

(b) the impact of people. As evident by the Victim Impact Statement offered by Warrant Officer Schell, she had every reason to believe that the package brought to her office was a real explosive device and this generated fear for her as well as for many other persons evacuated.

[37] The Court also considered the following as mitigating factors arising either from the circumstances of the offence or the offender:

(a) first, the guilty plea of the offender which avoids the expense and energy of running a trial and demonstrates that they are taking full responsibility for their actions in this public trial in the presence of members of their former unit and of members of the broader military community;

(b) the fact that it has been demonstrated by medical evidence that Corporal Edmonstone was suffering from substance induced psychosis at the time the offences were committed and consequently was not entirely in control of their actions, as recognized by DMCA. The testimony of their mother and a colleague is compelling as to the state of emotional distress and disconnection with reality that Corporal Edmonstone appeared to be in during the period associated with the offences. This significantly reduces the moral blameworthiness of the offender;

(c) the remorse expressed by Corporal Edmonstone and their recognition of the harm they have caused, as stated during their testimony, which I find to be genuine;

(d) the administrative consequences of the offences, both in terms of the short detention imposed on 18 February 2020 followed by conditions, as well as the promotion which understandably did not materialize as a result of the offence;

(e) the satisfactory conduct of Corporal Edmonstone since the offences, in respecting their conditions of release, in staying away from consumption of cannabis, but also in attending their therapy and making significant efforts to deal with their anxiety, as explained by Dr Mohr;

(f) the mental health condition of Corporal Edmonstone and the challenges it continues to impose to their rehabilitation, especially in relation to gender dysphoria and anxiety disorder, for which they have sought and obtained help. It is also a factor relevant to the unique circumstances in which they find themselves today, early in their transition to civilian life as they are trying to gain autonomy; and

(g) the contribution made by Corporal Edmonstone to the CAF over the years, as evidenced by the testimony of a former commanding officer and a colleague who explained how helpful they had been for her as she commenced her career as traffic technician. Corporal Edmonstone was selected for promotion just after the offences, a testament to the quality of their service and a demonstration of their potential to make a positive contribution to Canadian society in the future.

[38] I wish to state that in limiting the list of aggravating and mitigating factors as I have done, I am not ignoring other factors suggested to me by counsel, but I am simply considering these to be neutral, in light of the evidence submitted to me. It is the case with the circumstances of the offences, such as the fact that making the suspicious package to look like a bomb required more preparations than a hoax call or that it constituted a challenge to military authority. It is also the case for the fact that Corporal Edmonstone voluntarily consumed the cannabis which caused the psychosis they suffered. Corporal Edmonstone decided to plead guilty, accepting responsibility for the offences. It seems to me that this made the voluntary aspect of the consumption irrelevant since it cannot be suggested that the psychosis was a foreseeable result of their consumption that they have somehow failed to prevent. I also wish to reiterate that for this military judge, facing a court martial is a normal consequence of the commission of an offence in a military environment, not a mitigating factor.

Parity and sentencing range

[39] The next principle to be taken into account is the principle of parity. The parties have brought a number of cases to my attention in attempting to demonstrate an appropriate range of sentences imposed in the past for similar offences and to show that their respective submissions would fit in that range. However, as both counsel have stated, there is no precedent exactly on point in comparison with the circumstances of the offence and of the offender in this case.

[40] The prosecution offered a number of civilian precedents showing that sentences for mischief have included imprisonment in the past. The case of *R. v. Conforti,* [1989] O.J. No. 3151 was suggested as being the most analogous to this case where a seventy-three-year-old offender entered the court building at Osgoode Hall in Toronto asking to speak to a judge with a fake bomb that he ultimately brandished while making threats, causing the building to be evacuated with consequent effect on court activities. The sentence of sixty days and three years' probation that was imposed shows, in my view, that imprisonment for a short period, six months or less, is within the range of sentence

imposed in the past for similar crimes, although in the upper side of that range. Indeed, many of the civilian cases submitted by the prosecution dated from the 1980s, a time when the principle of restraint in imposing custodial sentences, confirmed notably by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688, was not so widely accepted. I also note that custodial sentences are imposed for terrorism offences which are objectively more serious and tend to punish efforts to generate fear. The precedential analysis produced by the defense also shows that custodial sentences are more frequently used to punish multiple charges, including mischief, although we do have a multiple charges scenario here.

[41] For its part, the defence has shown that its suggestion of a severe reprimand and a fine is also within the range of punishments imposed in the more recent past. This is evidenced by the joint submission proposed and approved in the court martial case of *R. v. Dion*, 2019 CM 3011 dealing with mischief to a car as a result of a heated argument between two soldiers. Most importantly, a sentence of severe reprimand combined with a $3,000 fine was imposed by this military judge following a contested sentencing hearing in the difficult case of *R. v. Parent*, 2018 CM 4004 which bears some similarity to this case. Indeed, Corporal Parent had voiced a threat to colleagues during a mess function as he was upset and displeased with his supervisor and the chain of command, wanting to kill them all, especially his supervisor who should feel as much pain and suffering as possible. After a colleague had tried to calm him down, Corporal Parent advised her not to be in the vicinity of his workplace building on base the next workday as he did not want her to be caught in the crossfire given that he would attend with a rifle and shoot them "one by one". Defence counsel noted that mitigating factors in that case bear some similarities with this one, including the mental health condition of Corporal Parent at the time of the offence.

[42] Interestingly, the more recent civilian case of *R. v. Rogers*, 2020 ONCJ 288 was brought to my attention by the prosecution and commented upon by the defence. A sixty-four-year- old offender with no record had left a bomb threat on the answering machine of the London Abused Women's Centre without intent to carry on with that threat, simply to instill fear to those employed there or to a particular person who he believed he had a negative interaction with previously. The judge in that case, after carefully analyzing precedents, decided to award a suspended sentence assorted with a number of conditions, and three years' probation.

[43] In sum, I find in relation to the principle of parity that the majority of sentences for mischief in the form of a bomb scare did not involve imposition of sentences of imprisonment, unless accompanied by another offences. Yet, there is another offence involved here. Consequently, I find that the sentences proposed by the parties have been imposed before in cases which bear enough similarity to be considered within the range, although at the extreme upper and lower edges of it.

[44] In any event, even if the sentences proposed were outside the range, it would not constitute an absolute limit on my discretion as sentencing judge given that, as explained earlier, proportionality is the cardinal principle that must guide judges in

imposing a fit sentence. There will always be situations that call for a sentence outside a particular range, although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded.

The principle of restraint

[45] The principle of restraint obliges me to sentence the offender with the least severe sentence required to maintain discipline, efficiency and morale. In this case, I must consider all available punishments, paying particular attention to the circumstances of Corporal Edmonstone.

[46] I have no hesitation to conclude that the principle of restraint can be applied in the circumstances of this case to exclude the possibility of imposing the punishment of imprisonment for 120 days recommended by the prosecution.

[47] With respect, I find that the justification for the prosecution's position failed to sufficiently take into account the very compelling situation where the accused found themselves, both at the time of the offences and now. Indeed, that situation is quite complex, as abundantly illustrated by the evidence heard from both sides in this sentencing hearing. This is not a case which lends itself to binary and one-dimensional considerations where you have on one side the bad soldier and on the other a good victim or victims both on an individual and institutional basis.

[48] We have an offender here who is suffering from significant mental health challenges deeply rooted in a gender identity crisis dating from a young age. These mental health challenges cause just as much pain and are just as challenging as those from other sources such as operational stress injuries suffered as a result of traumatic experiences in combat. If the objective of rehabilitation is to be given any effect, I must take into consideration the obstacles that Corporal Edmonstone will face on their road to becoming once again a fully contributing member of society. That said, a proper consideration of the principles of denunciation and deterrence also requires considering the mental condition of Corporal Edmonstone at the time they committed the offences. I must keep in mind that I am denouncing the actions of someone who was not in full control at the time, due to a known mental condition. I must deter someone who has apparently learned from this extremely difficult circumstances, has gotten their life in order through abstinence and has made significant progress in relation to the most debilitating manifestation of their mental condition, namely the anxiety disorder. As it pertains to general deterrence, I do believe that a sentence has the potential to deter others even if it is reduced from what would have otherwise been a fit sentence for the crime to a fit sentence in consideration of the offender. In any event, the law requires that I take these extraordinary circumstances into account to respect the cardinal principle of proportionality.

[49] The prosecution suggests that Corporal Edmonstone must be sent to prison so that they are accountable for their actions and is seen as such by others. Yet, Corporal

Edmonstone has taken responsibility for their actions. They pleaded guilty and recognized in their testimony that they have hurt people and expressed their regrets. It is not because they are not accepting the position of the prosecution to the effect that they should go to jail for four months that they are not taking responsibility.

[50] The prosecution's presentation made no mention of the added complexity in this case stemming from the fact that the offender being sentenced has been a civilian for seven months as of today. As mentioned at the outset of this decision, the law provides that a person tried by a court martial must be deemed to have the same status and rank held immediately before ceasing to be subjected to the Code of Service Discipline. Yet, it does not mean that they must be sentenced as if they were and would continue serving in that rank. I must keep in mind that the societal interests that the sentence imposed must serve in cases of offenders who have become civilians are also those of the general civilian society. I am obliged to impose the least severe sentence necessary to maintain discipline, efficiency and morale, but in doing so, the civilian status of Corporal Edmonstone cannot be ignored both as it pertains to the types of punishments available to me in the circumstances and in the operation of the sentencing principles in deciding which of the punishment should be imposed.

[51] I have come to the conclusion that the imposition of the punishment of imprisonment, although fitting for the crime, would not fit the circumstances of the offender in their circumstances. Indeed, Corporal Edmonstone was in a psychosis at the time of the offence, hence their responsibility is reduced. They have also demonstrated a capacity to stay sober for the considerable period since the offences as well as an understanding, demonstrated in their testimony, as to why it is important. This has led to significant progresses in mental health that could very well be jeopardized should they be incarcerated, as demonstrated by the opinion expressed by both Drs Mohr and Choy. Most importantly, the behavior of Corporal Edmonstone and their progress justify the conclusion that they are at low risk of re-offending. It appears abundantly clear for me therefore that there is no necessity to separate this offender from society in the circumstances.

[52] This finding eliminates the need to consider the issue of the suspension of the carrying into effect of the punishment of imprisonment under the authority of section 215 of the *NDA*, an issue on which counsel understandably had to spend significant energy in the course of the sentencing hearing, both in the presentation of the evidence and in argument. In these circumstances, I wish to make two comments. First, I do agree with counsel that the two-step test for suspension of a custodial sentence first enunciated by d'Auteuil M.J. in *R. v. Paradis*, 2010 CM 3025, at paragraphs 74 to 89 is still valid despite the significant changes to section 215 of the *NDA* on 1 September 2018 which brought into play mandatory conditions to be imposed on an offender who benefits from the suspension of a sentence of incarceration. Secondly, I need to state that in the circumstances of this case, I would have had no hesitation to find that any period of imprisonment imposed should be suspended. In fact, it is difficult to imagine a case where the justification for the suspension of a sentence of imprisonment would be more compelling.

Choosing a fit sentence

[53] Having rejected the submission of the prosecution for a punishment of imprisonment, I must now turn to the determination of an appropriate sentence. The principle of restraint obliges me to sentence the offender with the least severe sentence required to maintain discipline, efficiency and morale. In choosing a fit sentence, I believe it is appropriate to consider first whether the suggestion of the defence to impose a severe reprimand combined with a fine would be sufficient to maintain discipline. I must ask myself whether the objectives of denunciation and deterrence, both general and specific, that I have identified as important in this case can still be met if I was to give priority to the objective of rehabilitation as requested by the defence. In arriving at that conclusion, I must consider the circumstances of the offence and of Corporal Edmonstone, including the aggravating and the mitigating factors identified previously.

[54] Having considered these factors and the objectives that the sentence I impose must meet, I have to conclude that despite Corporal Edmonstone's current situation, for which I have the outmost sympathy, I simply cannot grant a severe reprimand, even combined with a fine. Doing so would in my view reduce the signal of denunciation that the court is required to send given the violent nature of the offence and the means chosen to try to send a signal to the chain of command. The offences in this case reveal more severe circumstances than what was the case in *Parent*.

[55] Indeed, the behavior of Corporal Edmonstone is serious. They have acted in relation to their frustration and in doing so have hurt people and created fear, as evidenced by the victim impact statement of Warrant Officer Schell and recognized by the offender themselves. I believe members of the CAF would have difficulties understanding how an offender who has left a package designed to be mistaken for a bomb at the door of a building on base could walk out with such a lenient sentence in consideration of the possibilities open to the court here. The members of the military and civilian community in the CAF and DND must know that offences constituting a threat to their security and peace of mind are condemned with appropriate consequences. A severe reprimand and a fine would not, in my opinion, be consistent with these legitimate expectations. Such a sentence would therefore be inappropriate in the circumstances of the offences in this case.

[56] In my efforts to find the appropriate sentence, I must move beyond a severe reprimand and a fine in the scale of punishments available at section 139 of the *NDA* and ask myself whether the punishments higher in the scale, namely forfeiture of seniority, reduction in rank, detention and dismissal, would be adequate minimum punishments to maintain discipline. At first glance, none of these punishments appear adequate for an offender who is no longer a member of the CAF. Indeed, forfeiture of seniority would have no effect, detention is a corrective punishment intended to re-instil the habit of obedience in a structured military setting in anticipation of a return to service in a unit, reduction in rank would not be effectively carried on as the member

has been released and dismissal would entail significant uncertainty given Corporal Edmonstone medical release. This is an unfortunate yet not unusual situation. Military punishments imposed on offenders who have become civilians are sometimes symbolic, but symbolism matters in the military.

[57] I believe the imposition of a reduction in ranks in this case would carry a sufficient symbolic impact to meet the objectives of denunciation and deterrence. Indeed, rank does matter. A reduction in rank sends the signal that something significant is taken away from the offender who has shown to be deserving of that rank in the past. It does have an effect on those in the military community who see that the offence is serious and has consequences. It also has a significant effect on the offender who was promoted to corporal and then realizes that he is in effect a retired private or aviator. We also have to keep in mind that this punishment imposed in this case remains a valid precedent which can be imposed in other cases regardless of the fact that a future offender may be still serving.

[58] That being said, the punishment of reduction in rank in this case must also be accompanied by a fine so there can be a concrete impact on the offender, an impact that can be understood by the public, including in the military community. That way, the sentence can globally reach the objectives of denunciation and deterrence. In order for that effect to be met, l believe the fine must reach the upper level of the range proposed by defence counsel in submissions, namely the amount of $3,000.

Orders which may be imposed

[59] The prosecution requested that I impose an order under section 196.14 of the *NDA* for forensic DNA analysis. I do not see the requirement to impose such an order in the circumstances of this case. The legislation providing authority for ordering that a sample of DNA be taken from an offender recognises the significant invasion of privacy that the procedure entails, requiring the court to consider a number of factors and to justify its decision. In this case, given the evidence that the offender is at a low risk of reoffending, I find that the impact on privacy interest is not counterbalanced by any significant requirement to protect the public.

[60] The prosecution also requested that a prohibition order under section 147.1 of the *NDA* be made to prohibit the offender from possessing firearms for a duration of up to three years. However, it became evident during arguments that such an order had already been imposed by a judge of the Provincial Court of Alberta on 5 November 2020 for a period of five years. Consequently, I conclude that it would not be desirable for the safety of the offender and others for this Court to make an additional order.

Conclusion and disposition

[61] I have concluded that a sentenced composed of the punishments of reduction in rank to private combined with a fine of $3,000 would be sufficient to meet the interest of discipline in this case. As recognized by the SCC, the imposition of a sentence by a

judge is not an entirely precise process. Guided by the principle of proportionality, I have done my very best to exercise judgment and arrive at a sentence that constitutes the absolute minimum to meet the requirement of discipline in this case, while impeding as little as possible the rehabilitation of Corporal Edmonstone. I am confident I have been able to strike the appropriate balance.

[62] Corporal Edmonstone, I hope this sentencing hearing has offered an opportunity to reflect on what you have done wrong and convinced you to do better in the future. As you continue your efforts to rehabilitate yourself, get better and stay away from drugs, I hope you can also reflect positively on the service you have given to our country for fifteen years and in the imperfect but honest efforts that I am certain have been made by colleagues and superiors throughout the years to treat you as a worthy member of the team.

FOR THESE REASONS, THE COURT:

[63] **SENTENCES** you to a reduction in rank to the rank of private and a fine of $3,000, payable to the Receiver General for Canada in six monthly payments of $500, the first payable no later than 1 December 2021.

Counsel:

The Director of Military Prosecutions as represented by Major G.J. Moorehead, Major A.M. Orme and Lieutenant(N) E.A. Steele

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for Corporal K. Edmonstone