



COURT MARTIAL

Citation: *R. v. Manuel*, 2021 CM 2024

Date: 20211122

Docket: 202126

Standing Court Martial

Halifax Court Room Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Sailor D.A. Manuel, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today Master Seaman Manuel (now Master Sailor) pleaded guilty to one charge contrary to section 114 of the *National Defence Act (NDA)* and one charge contrary to paragraph 117(f) of the *NDA*. Having accepted and recorded his plea of guilty with respect to the charges, the Court must now determine and pass sentence on the charges. The charge sheet reads as follows:

“FIRST CHARGE
Section 114 of the
National Defence Act

**AN OFFENCE PUNISHABLE UNDER
SECTION 114 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY
STEALING WHEN ENTRUSTED, BY
REASON OF HIS EMPLOYMENT, WITH**

THE CUSTODY, CONTROL OR DISTRIBUTION OF THE THING STOLEN

Particulars: In that he, between 19 January 2019 and 05 February 2019, at Halifax, Nova Scotia, when employed as bar supervisor at the Juno Tower Officer's Mess, and so entrusted with the custody, control or distribution of the Officer's Mess daily revenues, stole \$2057.70."

"SECOND CHARGE
Section 117(f) of the
National Defence Act

AN ACT OF A FRAUDULENT NATURE NOT PARTICULARLY SPECIFIED IN SECTIONS 73 TO 128 OF THE NATIONAL DEFENCE ACT

Particulars: In that he, between 19 January 2019 and 05 February 2019, with intent to defraud, submitted three Bank of Montreal deposit slips to the mess manager, knowing the funds had not been deposited."

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

"STATEMENT OF CIRCUMSTANCES

1. At the material time, the offender, MS Manuel, was a member of the Regular Force, employed as the CFB Halifax Wardroom mess' bar supervisor.

2. In his capacity as bar supervisor, his duties included reconciling sales with funds received by the mess. Part of this process includes filling out a bank deposit slips and having them stamped by the bank, and signing off on a daily sales report sheet indicating the amount of cash deposited. Cash from nightly sales are placed in a drop box by mess bartenders, only the bar supervisor has access to the drop box. He was entrusted with the cash and expected to deposit it in the bank.

3. In JUNE 2019, the CFB Halifax Mess Manager, Ms Zwicker, notified the Military Police that after reconciling mess accounts it was identified that funds were missing from the mess.

4. On the following three occasions, and for the amounts listed, while acting as the mess supervisor MS Manuel filled out bank deposit slips and signed daily sales reports indicating funds had been deposited in the bank, when in fact he kept the money for himself:

- a. 19 January 2019, \$793.20;

- b. 03 February 2019, \$754.90; and
- c. 04 February 2019, \$509.60.

5. In total, MS Manuel stole \$2057.70. In a statement to police, MS Manuel admitted to taking the funds in order to deal with personal debt.”

Joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that the Court impose a sentence of a severe reprimand and a fine in the amount of \$5,000 payable in ten monthly instalments. 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 victim(s), 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 his 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 charges. The Court was also provided with an Agreed Statement of Facts related more specifically to Master Sailor Manuel.

[6] 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

[7] Master Sailor Manuel, the offender, is forty-two years old. He enrolled in the Canadian Armed Forces (CAF) on 2 May 2002 and thus far has served his country for almost twenty years, which includes multiple deployments, and, aside from the incident before the Court, he has no conduct sheet or criminal record. He is currently serving as

a steward and member of the regular Force with the Personnel Support Programs at Canadian Forces Base (CFB) Trenton.

The purposes, objectives and principles of sentencing

[8] 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).

[9] The prosecution has emphasized that, in negotiations, he and defence counsel closely considered the objectives, and on the facts of this case submitted that the objectives considered most important are general and specific deterrence, as well as denunciation. The Court agrees with this assessment.

Accounting for relevant aggravating or mitigating circumstances

[10] Also under section 203.3 of 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

[11] After hearing the submissions of counsel, the Court highlights the following aggravating factors:

- (a) position of trust; at the time, employed as the CFB Halifax Wardroom, bar supervisor was uniquely positioned to access cash and this access was possible without any supervision;
- (b) profits from mess bar sales are used by Canadian Forces Morale and Welfare Services to fund morale and welfare programs aimed at enhancing the well-being of CAF members and their families; and
- (c) multiple infractions; Master Sailor Manuel engaged in the theft at multiple times so it cannot be classified as a one-time error in judgement.

Mitigating factors

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

- (a) guilty plea; Master Sailor Manuel's plea of guilty for the offences 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) he engaged in voluntary repayment of the funds without hesitation;
- (d) the offender has no conduct sheet or previous criminal record and this is the first disciplinary hearing of any type for him;
- (e) lengthy service in the Canadian Armed Forces; Master Sailor Manuel has served for almost twenty years; and
- (f) potential for rehabilitation; Master Sailor Manuel has assumed full responsibility for his conduct and I am advised by counsel that the underlying circumstances that led to this incident have been appropriately addressed.

Parity

[13] Counsel provided the Court with a broad range of case law with respect to cases where members were charged with stealing while entrusted and other fraud-related cases. It is true that the range of punishments vary substantially and are often based upon the facts in every particular case.

Analysis

[14] I am generally of the view that the case law suggests that absent the direct support from their chain of command, members found guilty of a section 114 offence, depending on the circumstances, should receive either some detention or imprisonment or reduction in rank. Counsel have advised me that Master Sailor Manuel has the support of his chain of command and continues to serve in the CAF. However, I note that, aside from defence's assertions with respect to this, there is no evidence before me to support either their forgiveness of or desire to denounce this conduct. I inquired about whether an administrative review had been conducted, which ultimately garnered an unproductive response.

[15] In cases where the chain of command is supportive of the member's retention and continued service, military tribunals will often defer to its discretion as chain of command is best suited to assess the member's continued service and the positions in which they should be employed in. This is why administrative reviews are conducted. I note that the member is employed as a steward, which requires a great deal of trust in almost all of their tasks. I, therefore, leave that assessment to his chain of command.

[16] I am normally extremely reluctant to levy a harsh fine on a member who is before the Court for an offence committed while under financial distress. It seems counterproductive to do so and it was for this reason, I specifically raised this aspect with counsel. I am advised that the financial distress that was the catalyst for the offences before the Court has been resolved and the member can afford to pay the roughly \$500 per month over ten months.

Conclusion

[17] 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. The fact that Master Sailor Manuel assumed immediate responsibility and was fully cooperative with the military police in their investigation, including repayment of the money, have been swaying factors.

[18] 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?

[19] Considering all the factors, the circumstances and gravity of the offence, the consequence of the finding and the sentence recommended, 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:

[20] **FINDS** Master Sailor Manuel guilty of charges one and two on the charge sheet for offences contrary to section 114 and paragraph 117(f) of the *NDA*.

[21] **SENTENCES** Master Sailor Manuel to a severe reprimand and fine in the amount of \$5,000, payable in ten monthly instalments starting the month of January 2022.

Counsel:

The Director of Military Prosecutions as represented by Major M. Reede

Lieutenant(N) B. Wentzell, Defence Counsel Services, Counsel for Master Sailor D.A. Manuel