



COURT MARTIAL

Citation: *R. v. Shtepa*, 2022 CM 4004

Date: 20220221

Docket: 202213

Standing Court Martial

Canadian Forces Leadership and Recruit School
Saint-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Acting Sub-Lieutenant O. Shtepa, Offender

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

REASONS FOR SENTENCE

Introduction

[1] Acting Sub-Lieutenant Shtepa, having accepted and recorded your plea of guilty in respect of the one charge on the charge sheet, the Court now finds you guilty of that charge for conduct to the prejudice of good order and discipline, contrary to section 129 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 sentence constituted of a reprimand and a fine of \$1,000.

[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 (SCC) 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 SCC, 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 virtual or physical 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 Acting Sub-Lieutenant Shtepa. 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, to which five documents were annexed, describing the personal situation of Acting Sub-Lieutenant Shtepa since the offence.

[10] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case, in order to

assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

[11] The Statement of Circumstances, the Agreed Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence and the offender.

The offence

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

- (a) throughout the period relevant to this matter, the offender, Acting Sub-Lieutenant Shtepa was a new member of the Canadian Armed Forces (CAF) Regular Force at the rank of naval cadet in the Naval Warfare Officer (NWO) occupation. He was posted to the Canadian Forces Leadership and Recruit School (CFLRS), Saint-Jean-sur-Richelieu, mainly to undergo training;
- (b) on 17 October 2019, the offender was removed from his Basic Military Officer Qualification (BMOQ) course as he was the subject of an investigation. He was then instructed by CFLRS staff not to contact members of his former platoon;
- (c) on two occasions in October 2019, the offender did briefly communicate with members of his platoon, who reported being uncomfortable with the situation; and
- (d) the incident which originally gave rise to the no-contact order resulted in a charge laid against the offender but the charge was not preferred for trial given an assessment to the effect that there was no reasonable prospect of conviction.

The offender

[13] Acting Sub-Lieutenant Shtepa was born in Ukraine. He immigrated to Canada in 2010 and joined the CAF in September 2019, following a lengthy recruiting process in Calgary. He was immediately sent to Saint-Jean-sur-Richelieu for BMOQ training. The incident in which he was involved in October 2019 resulted in his withdrawal from training until February 2021.

[14] Acting Sub-Lieutenant Shtepa was the subject of remedial measures as a result of his conduct. He was supported by CFLRS staff who assisted him in developing ways of avoiding contact with his former platoon, especially in the close confines of the CFLRS and its working environment. He was employed with the CFLRS at that time

and his conduct was assessed as being excellent in January 2020. He obtained his officer's commission in December 2020.

[15] Acting Sub-Lieutenant Shtepa was loaded on a BMOQ re-course in February 2021. His course report reveals that his performance was exceptional and he was assessed as having excellent potential to be successful in future training. In addition, he was chosen by his peers to be worthy of the comradeship award recognizing the contribution he made to the well-being and morale of his course mates. He graduated from BMOQ in April 2021.

[16] Since being posted to Canadian Forces Base (CFB) Esquimalt in May 2021, Acting Sub-Lieutenant Shtepa has completed NWO II in July 2021 and has since obtained a number of minor qualifications. He is currently awaiting training for the important NWO III course later this year, a situation which is normal for his military occupation in the current circumstances. The assessment of his performance in the NWO II course reveals that he was a professional and engaged student who obtained above average academic marks. He has consistently displayed a positive attitude and worked well in the team. I conclude that his training is progressing normally and the prospects of Acting Sub-Lieutenant Shtepa obtaining the required qualifications to contribute to the Royal Canadian Navy as an NWO to be excellent at this point.

[17] Acting Sub-Lieutenant Shtepa is forty-nine years old. He has a daughter and a son. He comes before the Court without a criminal record or conduct sheet. He is currently continuing training as an NWO at CFB Esquimalt. He is remorseful for his actions, states that he has learned his lesson and is intent on leading by example in the future.

Seriousness of the offence

[18] The Court has considered the objective gravity of the offence in this case. The offence of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*, attracts a maximum punishment of dismissal with disgrace from Her Majesty's service. It is therefore an objectively serious offence going to the core of the need to maintain a disciplined armed force.

[19] Of course, a broad range of circumstances can lead to offences under section 129. In this case I have been given little information about the circumstances of the offence and therefore will limit my observations by stating that this is a case of failure to adhere to instructions of superiors, conduct which was admittedly prejudicial to good order and discipline despite what I must conclude is a minimal impact.

Aggravating factors

[20] The prosecution submits and I agree that the circumstances of the offence and the offender in this case reveal an aggravating factor, namely the fact that Acting Sub-

Lieutenant Shtepa was at the time of the offence training to be an officer in the CAF and therefore expected to lead by example and adhere to the highest norms of conduct.

Mitigating factors

[21] The Court acknowledges the following mitigating factors:

- (a) first, Acting Sub-Lieutenant Shtepa'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 and virtual presence of members of his unit and of members of the broader military community;
- (b) second, the fact that Acting Sub-Lieutenant Shtepa is a first-time offender; and
- (c) third, the performance by Acting Sub-Lieutenant Shtepa in training following the offence, first as a student on the BMOQ course completed here at CFLRS Saint-Jean in April 2021 and, subsequently as a student on the NWO II course he successfully completed in July 2021 at Naval Fleet School Pacific.

Objectives of sentencing to be emphasized in this case

[22] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. Specifically, the sentence proposed must be sufficient not only to deter Acting Sub-Lieutenant Shtepa from reoffending, but must also denounce his conduct in the community 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, I cannot lose sight of the objective of rehabilitation; as highlighted by counsel for the offender, the sentence proposed must not compromise the efforts that have been made by Acting Sub-Lieutenant Shtepa to rehabilitate himself with his excellent performance on training courses, especially as he continues to progress through the demanding training regimen leading to the NWO qualifications.

Assessing the joint submission

[23] The submissions from counsel made no reference to previous court martial cases, reflecting, I assume, the broad range of conduct captured by a charge under section 129 of the *NDA* and the unique circumstances of this case.

[24] In any event, 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 otherwise be contrary to the public interest.

[25] 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. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender. The sentence being proposed, combining the punishments of a reprimand and a fine, is aligned with these expectations.

[26] As recognized by the SCC, trial judges must refrain from tinkering with joint submissions 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 they are 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, as they have demonstrated in this case.

[27] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. It must, therefore, be accepted.

[28] Acting Sub-Lieutenant Shtepa, I accept the submission of your counsel essentially to the effect that your conduct of October 2019 reveals a lack of judgement on the part of an otherwise promising officer. I understand language may have been a factor in misjudging the situation, but it is not an excuse. I believe your performance since the offence, especially during the BMOQ course you completed in 2021, reveals that you have learned a lesson and are determined to do much better. I hope you realize that the incident may have cost you your career and that you are grateful for having been given the opportunity to redeem yourself.

[29] You are engaged in an extremely demanding training program which hopefully will lead you to be entrusted with the charge of warships at sea. That is a huge responsibility. It is given to officers who have demonstrated that they can be trusted to exercise good judgement. You are under constant evaluation. Wrong choices or actions can jeopardize the trust people need to have in you. I am confident that you have now

learned, following the incident and these proceedings, how easily trust can be lost. Do not let that happen again in the future, you will not always have a second chance.

FOR THESE REASONS, THE COURT:

[30] **SENTENCES** Acting Sub-Lieutenant Shtepa to a reprimand and a fine in the amount of \$1,000, payable in four instalments of \$250, due on the first day of the months of March, April, May and June 2022. Should the offender be released from the CAF prior to the fine being paid in full, any unpaid amount will be due on the date of release.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Colonel D.G.J. Martin

Lieutenant(N) B. Wentzell, Defence Counsel Services, Counsel for Acting Sub-Lieutenant O. Shtepa