



COURT MARTIAL

Citation: *R. v. Redmond*, 2022 CM 4008

Date: 20220329

Docket: 202136

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Corporal C.L. Redmond, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] The Court accepted and recorded Corporal Redmond's plea of guilty in respect of charges 1, 2 and 3 on the charge sheet. The Court now finds Corporal Redmond guilty of these charges for selling cannabis without authorization and possessing cannabis for the purpose of selling contrary to the *Cannabis Act*, and for trafficking lysergic acid diethylamide (LSD), contrary to the *Controlled Drugs and Substances Act (CDSA)*, three offences contrary to section 130 of the *National Defence Act (NDA)*. The Court has found Corporal Redmond not guilty of charges 4 and 5 after the prosecution elected not to call any evidence on these charges as part of the resolution agreement for this case.

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 three punishments: imprisonment for a period of twenty-one days, a severe reprimand and a fine of \$4000.

[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 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 offences, 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 Corporal Redmond. 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 difficult personal situation of Corporal Redmond since the commission of the offences, especially in the period of July and August of last year when, under severe emotional stress, she attempted and nearly succeeded in ending her life. The Agreed Statement of Facts discloses the steps she has taken since and still needs to take to make a full recovery, both mentally and physically.

[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 and of precedents in other cases, 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.

The offence

[11] The Statement of Circumstances, complemented by a paragraph of the Agreed Statement of facts, reveals the following information as it pertains to the offences and the investigation:

- (a) At the material time, Corporal Redmond was a member of the regular force, posted to Canadian Forces Base (CFB) Halifax.
- (b) Between 1 July 2019 and 11 February 2020, Corporal Redmond ran a personal business selling cannabis edibles. She purchased cannabis distillate from various sources, and used it to infuse tetrahydrocannabinol (THC) into homemade goods. Her products included items such as gummies, cheesecakes, brownies and cookies.
- (c) Corporal Redmond used word of mouth and social media to promote her products. This included offering her products to Canadian Armed Forces (CAF) members in the workplace. One such colleague ended up reporting the offender's solicitation up the chain of command, which ultimately led to an investigation. By the time her operations came to a close, her customer base included over a dozen CAF members.
- (d) Corporal Redmond's operation became relatively sophisticated. She offered shipping out of area, and engaged the services of a delivery driver for local deliveries. She accepted cash and electronic funds transfer. She set up a separate PayPal account to accept payment for products and better track her finances related to the business. Deliveries occurred to both civilian locations and on defence establishments. Between the period of July 2019 and February 2020, bank records show

that Corporal Redmond received between sixty and seventy payments for cannabis products totalling between \$3500 and \$4000.

- (e) On 8 February 2020, an undercover operator made contact with Corporal Redmond and, over the next three days, arranged two purchases from her:
 - i. the first was a purchase of a cheesecake with 950 mg of THC, and gummies containing 950 mg of THC, for \$160. The operator attended Corporal Redmond's residence and paid cash, and
 - ii. the second transaction was organized through Instagram messenger over 9 and 10 February 2020. Corporal Redmond agreed to sell two orders of gummy candy with 950 mg of THC in each and one order of gummy candy with 450 mg of THC for a total of \$175. The funds were sent electronically to Corporal Redmond's PayPal account associated with the email address she created to support her product sales. The gummies were delivered to the operator via a delivery driver organized by Corporal Redmond for an additional \$10 fee.
- (f) When the operator attended Corporal Redmond's residence to pick up the first sale, Corporal Redmond clearly stated that she was aware selling cannabis products without government authorization was an illicit activity.
- (g) On 11 February 2020, a search of Corporal Redmond's residence lead to the seizure of numerous items including cannabis distillate, baking supplies used to make gummies, and cheesecakes and gummies containing THC which had been baked by Corporal Redmond.
- (h) In conducting that search, military police officers broke through the door of Corporal Redmond's residence while she was inside, a frightening and intensely stressful experience for her. Claiming not to have heard the announcement of police's arrival, Corporal Redmond was concerned that her house was being broken into by people other than law enforcement, even if a warrant permitted police to enter the residence without permission. She had to pay to have her door repaired.
- (i) On two occasions, once in August 2019, and a second time in January 2020, Corporal Redmond offered to purchase LSD, a substance listed in Schedule III of the *CDSA*, for her roommate, who was also a CAF member. The roommate accepted the offer, and either adjusted the amount of rent owing, or traded cannabis product in exchange for the LSD. These transactions were not completed on a for-profit basis.

- (j) Possession of cannabis from illicit sources is prohibited for CAF members under DAOD 9004-1, Use of Cannabis by CAF Members.

The offender

[12] Corporal Redmond is thirty-five years old. She initially joined the primary reserve in February 2006 as a Mobile Support Equipment Operator. She joined the regular force in November 2009 as a Resource Management Support Clerk. Following her training in Borden, she served in Moose Jaw, Trenton and since 2018 in the Halifax area. She is single and has no dependants.

[13] The Agreed Statement of Facts, complemented by submissions of counsel, reveals the following facts:

- (a) During the period of July-August 2021, Corporal Redmond was suffering severe emotional stress due to multiple sources, these court proceedings being one of them.
- (b) During the evening of 25 August 2021, Corporal Redmond voluntarily consumed a mixture of various pharmaceutical and other drugs in a deliberate attempt to end her life. She was rescued and spent four days unconscious on a ventilator at the Intensive Care Unit. Corporal Redmond suffered concussion-like symptoms and cognitive impairment resulting from a lack of oxygen. She continues to have routine sessions with an occupational therapist since being released from hospital.
- (c) At the present time, Corporal Redmond has made positive steps in her recovery, but she still experiences some issues with her heart which limits her ability to perform cardiovascular exercises as she experiences breathlessness, nausea or dizziness frequently with exertion.
- (d) Corporal Redmond has been followed by a psychiatrist since her admission to hospital in August of 2021, although she has experienced multiple cancelled mental health appointments, possibly due to COVID-19, which she feels has hindered her recovery.
- (e) Military mental health services have referred Corporal Redmond to a specialty clinic in Nova Scotia for a form of cognitive behavioural therapy to assist her in managing emotions, urges, and interpersonal interactions more effectively. The treatment involves weekly group and individual therapy sessions and should be completed in May 2022.
- (f) Corporal Redmond has a family history of suicide. Given her own personal history with suicidal ideations, she is considered by her psychiatrist to be at an elevated risk of suicide beyond the general

population but not in any immediate risk which would be exacerbated by a brief period of imprisonment.

- (g) Corporal Redmond is conscious that her conviction and subsequent sentencing to a period of imprisonment will result in an administrative review that may lead to her release from the CAF. She has consequently started considering future employment outside of the CAF.

Seriousness of the offences

[14] The Court has considered the objective gravity of the offences in this case. The offences at charges 1 and 2 of selling and possession of cannabis for the purpose of selling are punishable by imprisonment for a term of not more than fourteen years under subsection 10(5) of the *Cannabis Act*. As it pertains to the third charge, subsection 5(3) of the *CDSA* provides that a person guilty of trafficking a substance included in Schedule III is liable to imprisonment for a term not exceeding ten years.

[15] The maximum sentences applicable to these offences reveal that the Court is dealing here with three objectively serious offences. That being said, as it became clear during submissions of counsel, the nature of the relatively new offences under the *Cannabis Act* is different from the possession or traffic of cannabis offences formally sanctioned under the *CDSA*. It is also different from the offence under the third charge for trafficking LSD under the *CDSA*.

[16] It is worth noting that the Court cannot attribute a punishment specifically to one offence or another, even in cases where offences differ in nature and circumstances as is the case here. For the purpose of sentencing, section 203.95 of the *NDA* provides that only one sentence can be passed applying to all offences in trials under the Code of Service Discipline. The sentence is good if any one of the offences would have justified it. Consequently, the maximum punishment the court may impose is the most severe punishment of imprisonment for a term of not more than fourteen years.

[17] Arguments were submitted to the Court, to the effect that the objective seriousness of the offences of selling and possessing cannabis for the purpose of selling has decreased compared with what the same acts attracted previously under the *CDSA*. There is indeed case law which suggest this is the case, most notably *R. v. Murphy* 2021 NLCA 3 from the Newfoundland and Labrador Court of Appeal and *R. v. Daniels* 2021 NSCC 103 by the Supreme Court of Nova Scotia. Yet, in these cases the Court was dealing with offences committed before the legalization of cannabis and charged under the *CDSA* while sentencing occurred after the *Cannabis Act* had come into effect. The challenge of sentencing an offender for an act which in the course of proceedings became governed by a different offence, attracting a lesser maximum sentence, is recognized. However, it is not the situation we have here. The acts committed by Corporal Redmond involving cannabis have been governed throughout by the provisions of the *Cannabis Act*. That legislation provides, for the offences at play in this

case, for a maximum punishment of fourteen years imprisonment. Hence, these offences are still serious criminal conduct.

[18] I do acknowledge that attitudes have changed in the population concerning cannabis. The product has been made legal and available for legal sale in stores across the country, many run by government agencies. It no longer attracts the same stigma. That being said, the *Cannabis Act* recognizes that. The applicable prohibitions contained in that legislation no longer target cannabis as an illegal product per se, but rather makes illegal a number of acts in relation to cannabis when committed outside the regulated scheme and or in relation to persons not entitled to purchase cannabis. Its purpose is to impede the activities of those who choose to deal with cannabis outside of the legal framework that has been set up, which is exactly what Corporal Redmond admits to have done here.

[19] In the circumstances of this case, especially in the context of the joint submission being proposed, the Court does not need to weigh in on the issue of whether sentencing ranges previously discussed for offences of possession of traffic under the *CDSA* are still relevant today under the *Cannabis Act*, discussions in which the British Columbia Court of Appeal engaged in the case of *R. v. Coffey*, 2020 BCCA 195 and the Ontario Court of Appeal engaged in the case of *R. v. Strong*, 2019 ONCA 15, cases which stand to an extent in contrast to the cases of *Murphy* and *Daniels* referred to earlier. This debate is better left for another day when the issue of the appropriate sentence to be imposed for violations of the *Cannabis Act* or the *CDSA* is the subject of a contested sentencing hearing.

[20] It is sufficient for me here to focus on assessing how the sentence being proposed would address the objectives of sentencing which need to be emphasized in this case in light of the three offences, involving on the one hand, cannabis and on the other, LSD. As stated, the offences are serious, especially in the military context, even with the legalization of cannabis. Indeed, even if military authorities have allowed CAF members to use cannabis for recreational or medical purposes, it has imposed a number of constraints in DAOD 9004-1, including a general rule to the effect that consumption and possession must always be in accordance with all applicable federal, provincial, territorial and municipal laws.

[21] These restrictions allow the CAF to manage and mitigate the operational risk associated with the use of an inherently impairing substance. It does more: it protects the security and disciplinary interests of the CAF in ensuring the integrity of its members who must abide by the law. This is an inherently legitimate purpose which is consistent with the existence of section 130 of the *NDA* which incorporates many civil offences in the Code of Service Discipline. As recognized by the Supreme Court of Canada in *R. v. Stillman*, 2019 SCC 40, violations of the law by members of the CAF, even off duty, is a valid concern for the military and its disciplinary system. These security and disciplinary interests are present in the circumstances of this case, where Corporal Redmond got involved with persons engaged in a pattern of illegal activities dealing with LSD and cannabis distillates and engaged other CAF members in a pattern

of illicit activity, in violation of the *Cannabis Act*, the *CDSA* and DAOD 9004-1, applicable to members of the CAF.

[22] There can be no doubt about the seriousness of her conduct and I believe the joint submission being proposed recognizes that.

Objectives of sentencing to be emphasized in this case

[23] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing Corporal Redmond. The sentence proposed must be sufficient not only to deter her from reoffending, but must also denounce her conduct in the community, acting as a deterrent to others who may be tempted to engage in the same type of behaviour.

[24] Although the sentence must show that misbehaviour has consequences, I agree with counsel to the effect that an appropriate sentence must recognize the reduced need for specific deterrence in this case. The investigation of this case, notably the forced entry in Corporal Redmond's apartment, as well as her personal situation since, have had an impact to allow her to recognize the consequences of her behaviour. It should have had a deterrent effect on her, as submitted by defence counsel.

[25] I also need to take into consideration the significant health challenges that Corporal Redmond is currently facing, especially as it pertains to her mental health, in light of the information conveyed in the Agreed Statement of Facts. Indeed, the sentence imposed must also meet the objective of rehabilitation and avoid compromising the efforts of Corporal Redmond to rehabilitate herself and become, once again, a productive member of society in any capacity in the future.

Aggravating factors

[26] The prosecution's submission, largely agreed to by defence counsel, is to the effect that there is two aggravating factors revealed by the circumstances of the offences in this case, namely to the effect that Corporal Redmond committed the offences both in relation to CAF members and on a defence establishment. I agree with that assessment.

[27] The association of a seller or provider of drugs within the CAF population is an aggravating factor which has been recognized by Courts in the past and cannot be understated. Corporal Redmond committed the offence of selling cannabis in relation to customers who were members of the CAF and conducted her activities on a defence establishment, soliciting members of the CAF in the workplace and even having products delivered on base. The LSD traffic subject of charge 3 was also done in relation to her roommate who was a CAF member at the time.

[28] In selling and trafficking to members of the CAF, Corporal Redmond not only breached her obligation as for any other citizen to act in respect of the law, she also breached her obligation as a CAF member to support orders and regulations applicable

to her and other members of the CAF, by inducing other members to breach the provisions of the DAOD applicable to use of cannabis as well as assisting her roommate in procuring LSD in violation of the Canadian Forces Drug Control Program found at Chapter 20 of the QR&O, even if I consider the trafficking as social in nature. It is important to specify that Corporal Redmond did not act out of ignorance of specific rules applicable to the sale of cannabis: the Statement of Circumstances reveals that she knew her acts were illegal. This is not aggravating but it prevents her from benefitting from any reduced moral responsibility for her actions due to any confusion that may have arisen from the relatively recent legalization of cannabis.

Mitigating factors

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

- (a) Corporal Redmond's guilty plea today, which demonstrates that she is taking full responsibility for her actions in this public trial in the physical and virtual presence of members of her unit and of the broader military community. Even if this mitigating factor applies to every situation where a guilty plea is offered, it is particularly worthy in cases such as this one where the expense and energy of running a trial involving an undercover police operation and search warrants is significant and the consequences of admitting guilt involve deprivation of liberty due to the nature of the offence;
- (b) the fact that Corporal Redmond is a first-time offender; and
- (c) the reduced need for specific deterrence alluded to earlier, including the impact of the forceful entry in Corporal Redmond's home and her current health struggles, including the efforts she will need to make to recover from the unfortunate events of last summer. At her young age, she has many years to contribute to society and any sentence imposed should not unduly compromise her efforts to reach her full potential.

Assessing the joint submission

[30] In the context of arguments to demonstrate that their joint submission was within a range of similar sentences for similar offences and similar offenders, counsel brought a number of cases to my attention. I do not feel the need to comment them in detail. Suffice to say that the military cases of *R. v. Corporal Ballard*, 2005 CM 28, *R. v. Aviator Burrell*, 2017 CM 2010, *R. v. Private Stuart*, 2003 CM 270 and *R. v. Ordinary Seaman Boivin*, 2011 CM 4014 show that a sentence composed of imprisonment for short periods, sometimes combined with other punishment is within a range of sentence applicable for similar offences committed by offenders of a similar rank and status of Corporal Redmond.

[31] 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.

[32] 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 imprisonment, a severe reprimand and a fine, in consideration of the mitigating factors applicable in this case, especially the health challenges which Corporal Redmond is dealing with, is aligned with these expectations.

[33] As recognized by the Supreme Court of Canada, 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.

[34] Considering the circumstances of the offences and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I conclude that the sentence being jointly proposed would not bring the administration of justice into disrepute nor would otherwise be contrary to the public interest. I will, therefore accept it.

[35] Corporal Redmond, I hope your acknowledgement of guilt today reveals that you are determined to move forward and rebuild, with the hope of improving your health and become once again a productive member of society. In doing so, I hope you will look positively at your more than fifteen years of service with the CAF where you have no doubt faced and overcome many challenges, personal and professional. Hopefully this will inspire and motivate you in relation to the challenges that lie ahead for you now. I wish you well.

FOR THESE REASONS, THE COURT:

[37] **SENTENCES** Corporal Redmond to imprisonment for twenty-one days, a severe reprimand and a fine of \$4000 payable in eight installments of \$500, starting on 15 April 2022 and due on the 15th day of the months of May to November 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.

[38] The sentence was passed at 1550 hours on 29 March 2022.

Counsel:

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

Major F.D. Ferguson, Defence Counsel Services, Counsel for Corporal C.L. Redmond