



COURT MARTIAL

Citation: *R. v. Gillam*, 2022 CM 2009

Date: 20220606

Docket: 202143

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer, 1st Class D.E. Gillam, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Petty Officer, 1st Class Gillam was originally charged with four offences. Today in court, pursuant to *Queen's Regulations & Orders for the Canadian Forces* (QR&O) 112.25 (d), the prosecution concurred in the acceptance of his plea of guilty to a less serious offence, an offence contrary to paragraph 117(f) of the *National Defence Act* (NDA). Petty Officer, 1st Class Gillam pleaded guilty to particulars which differ slightly from the facts alleged in the statement of particulars of the first charge. The prosecutor, with the consent of the Court, withdrew the second, third and fourth charges.

[2] Having accepted and recorded his plea of guilty with respect to the charge, the Court must now determine and pass sentence on the charge which reads as follows:

“Paragraph 117(f)
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 July 2016 and February 2020, at CFB Borden, ON, with intent to defraud, purchased items and services with Canadian Forces funds for his personal benefit, the total amount of the purchases and services not exceeding \$5000.00.”

[3] The Statement of Circumstances filed in court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. During the period material to this case, PO1 Gillam was a member of the Reserve Force on a class B contract, employed as a COATS GS NCM (MOSID 00359) at CTC Blackdown, CFB Borden until his retirement on 22 October 2020.
2. As part of his duties, PO1 Gillam was authorized to place orders for supplies at CTC Blackdown.
3. In order to purchase items, PO1 Gillam filled out a local purchase order (LPO) listing the item to be purchased, the vendor, and the estimated cost. The LPO was then countersigned.
4. An early 2020 audit of CTC Blackdown purchases involving PO1 Gillam revealed possible fraud and a complaint was filed with the military police (MP).
5. The MP investigation revealed that four items purchased by PO1 Gillam were being used for his personal benefit.
6. For each of the four items, PO1 Gillam filled out, signed then caused to be countersigned LPO paperwork that authorized the purchase of the items for the benefit of the unit.
7. On 29 September 2020 the MP executed a search warrant at PO1 Gillam’s personal residence. The MP located a television, brushcutter and a soap dispenser. Those three items were purchased for CTC Blackdown.
8. There were four items in particular used by PO1 Gillam:

- a. Hisense television. The television was authorized to be purchased for the unit's commanding officer. It was purchased by LPO for CTC Blackdown. The television was found by military police mounted on the wall in PO1 Gillam's basement. The television was purchased for \$513.00.
 - b. Stihl Brushcutter. The brushcutter was purchased by LPO for CTC Blackdown by PO1 Gillam although the unit was not responsible for lawn care on base. The brushcutter was found by military police in the shed behind PO1 Gillam's residence. The brushcutter was purchased for \$394.17.
 - c. Soap dispenser. Five wall-mounted soap dispensers were purchased by LPO for CTC Blackdown. One of the dispensers was found by military police at PO1 Gillam's residence. The soap dispenser was purchased for \$99.44.
 - d. LED light bar. A LED light bar was purchased by LPO for CTC Blackdown. It was seen installed on the personal vehicle of PO1 Gillam. It was subsequently removed from the vehicle when PO1 Gillam was questioned about it. The LED light bar was not recovered by military police. The light bar was purchased for \$129.99.
9. The total purchase price of the four items is \$1,136.60.
10. PO1 Gillam directed uniforms to be repaired by The Fitting Room Collingwood Inc., a business owned and operated by PO1 Gillam's spouse. This was meant as a temporary solution when the usual contractor was not available and authorization was sought and initially received from PO1 Gillam's supervisor MWO Ethier. The authorization was subsequently rescinded as this was contrary to Defence Administrative Orders and Directive 7021-1 and Queen's Regulations and Orders 19.39. Items were still sent by PO1 Gillam without authorization. The total value of the repair work sent to The Fitting Room Collingwood Inc. was \$2,096.15."

Joint submission

[4] 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 \$6,000 payable in twelve monthly instalments of \$500. 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.

[5] 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 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

[6] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the QR&O. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge. The Court was also provided with an Agreed Statement of Facts entered into evidence by the defence, the content of which related specifically to the individualized considerations with respect to Petty Officer, 1st Class Gillam.

[7] 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

[8] Petty Officer, 1st Class Gillam, the offender, is sixty-four years old. He enrolled in the Canadian Armed Forces (CAF) in 1979 and served his country for almost forty-one years as both a regular force member as well as a member of the reserve force. Aside from the incident before the Court, he has no conduct sheet or criminal record. He is currently retired.

The purposes, objectives and principles of sentencing

[9] 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).

[10] Defence counsel highlighted for the court that in their negotiations, counsel closely considered the objectives of sentencing, and on the facts of this case, he

submitted that the objectives most important are general and specific deterrence, as well as denunciation. He also argued that the objective of rehabilitation needed to be weighed. The Court agrees with this assessment.

Accounting for relevant aggravating and mitigating circumstances

[11] 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

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

- (a) position of trust. At the time, Petty Officer, 1st Class Gillam was employed in support of Cadet Training Centre (CTC) Blackdown and was uniquely positioned to place orders for supplies and make acquisitions on behalf of the CTC. The access he held would have been incumbent in his duties which he would have fulfilled without any supervision; and
- (b) multiple infractions. Petty Officer, 1st Class Gillam engaged in the fraud at multiple times over a period of a few years so it cannot be classified as a one-time error in judgement.

Mitigating factors

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

- (a) guilty plea. Petty Officer, 1st Class Gillam's plea of guilty for the offence 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) the offender has no conduct sheet or previous criminal record;
- (d) lengthy service in the Canadian Armed Forces. Petty Officer, 1st Class Gillam has served for almost forty-one years with no blemishes;
- (e) he is currently suffering from post-traumatic stress disorder that arose from his military service which included his involvement in the recovery of bodies following the 1998 Swissair disaster in Nova Scotia;

- (f) his volunteer service within the CAF sports programs and working as an assistant coach with the Canadian men's and women's soccer teams competing in the International Military Sports Council (CISM) competitions;
- (g) in addition to his long time dedication to military service and volunteer work within the CAF, he has been an active volunteer in coaching, acting as a sports trainer and manager of multiple sports within his local communities; and
- (h) potential for rehabilitation. Petty Officer, 1st Class Gillam has assumed full responsibility for his conduct and his counsel highlighted his personal remorse. His continued engagement in volunteering to support youth sports is an important element to his life and inevitably his ongoing rehabilitation.

Parity

[14] *NDA* paragraph 203.3(b) stipulates that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[15] Defence counsel referred the Court to the Annex set out in the *R. v. Berlasty*, 2019 CM 2020 court martial sentencing decision where that Court set out a number of precedents that are directly applicable to the case at bar.

[16] In addition, in the case of *R. v. Manuel*, 2021 CM 2024, this Court dealt with a fairly similar fact situation, where the offender engaged in fraud while he was entrusted. In that case, the offender was sentenced to a severe reprimand and a fine in the amount of \$5,000.

Any indirect consequences of the finding of guilt or the sentence should be taken into consideration

[17] Pursuant to paragraph 203.3(e) of the *NDA*, defence counsel made extensive submissions on the indirect consequences of the finding and the sentence of the charge before the Court.

[18] Counsel were very upfront in identifying that their sentence took into consideration the second order effects that a more significant fine or punishment would have on Petty Officer, 1st Class Gillam's ability to continue volunteering. He is actively involved in his community and if the Court imposed a more serious punishment, then, based on the construction of section 249.27 of the *NDA*, the same charge would constitute an offence under the *Criminal Records Act* which would have a second order effect of systematically prohibiting him from serving as a volunteer in youth sports.

[19] Based on the nature of the charge before the Court and the circumstances under which they arose, I do not feel that such a bar is necessary. More particularly, imposing such a sentence would significantly detract from the member's rehabilitation while at the same time denying the community of Petty Officer, 1st Class Gillam's very positive and generous contribution to which they can directly benefit.

Conclusion

[20] As the Court often expresses to people who come before it when they have exercised poor judgement; 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 Petty Officer, 1st Class Gillam assumed responsibility has to be given full consideration by this Court.

[21] 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.

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

[23] **FINDS** Petty Officer, 1st Class Gillam guilty of a charge contrary to paragraph 117(f) of the *NDA*.

[24] **SENTENCES** him to a severe reprimand and fine in the amount of \$6,000, payable in twelve monthly instalments of \$500 starting in the month of July 2022.

Counsel:

The Director of Military Prosecutions as represented by Major M. Reede and Captain D. Moffat

Major É. Carrier, Defence Counsel Services, Counsel for Petty Officer, 1st Class D.E. Gillam