



COURT MARTIAL

Citation: *R. v. Olid*, 2022 CM 2010

Date: 20220623

Docket: 202154

Standing Court Martial

Canadian Forces Base Esquimalt
Victoria, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Sailor K. Olid, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Sailor Olid was originally charged with two offences for allegations contrary to section 129 of the *National Defence Act* (NDA) for conduct to the prejudice of good order and discipline. The charges related to his unauthorized travel outside the Vancouver Island area between 27 December 2020 and 4 January 2021. At the start of the trial, the prosecutor withdrew the second charge and Master Sailor Olid pleaded guilty to the first charge.

[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:

“FIRST CHARGE
Section 129
National Defence Act

CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND DISCIPLINE

Particulars: In that he, between 27 December 2020 and 4 January 2021, at or near Lake Louise, Alberta, did travel outside Vancouver Island without authorization, contrary to Commandant Temporary Memorandum #29/20 NFS(P) Christmas/New Year Leave Period Reporting Instructions dated 15 December 2020.”

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

“STATEMENT OF CIRCUMSTANCES

1. At all material times, Master Sailor Olid was a member of the Regular Force. He was posted to the Naval Fleet School (Pacific) at Canadian Forces Base Esquimalt, British Columbia. Master Sailor Olid was a Naval Combat Information Operator. He was employed as an instructor in the Operations Division.
2. On 13 March 2020, the COVID-19 pandemic was declared. A series of public health measures and restrictions were issued at the federal, provincial and local government levels. Complementary restrictions were issued with the Canadian Armed Forces through the duration of the pandemic. This situation continued throughout the material time.
3. On 15 December 2020, the Commandant of the Naval Fleet School (Pacific) (NFS(P)) issued a Commandant Temporary Memorandum #29/20 – NFS(P) Christmas/New Year Leave Period Reporting Instructions. Two significant points of this order were made. First, there was a restriction on travel off of Vancouver Island during the leave period. Such travel required the approval of the Commandant. The second was a re-iteration of the requirement to enter into a fourteen day quarantine period for those who did travel outside British Columbia.
4. Master Sailor Olid was made aware of Commandant Temporary Memorandum #29/20 and the restrictions, and acknowledged them to his chain of command.
5. On 1 December 2020, Master Sailor Olid applied for leave using a CF 100 CF Leave Request Authorization form. His requested dates of 16 December 2020 to 10 January 2021 were approved by Lieutenant-Commander W Vanderstelt, Head of Division for the Operations Division, on 2 December 2020. This was done through the Monitor Mass System. The leave pass had an additional notice added or stamped onto it, in red ink, reading “Travel off of Vancouver Island is NOT permitted without prior approval”. The address while on leave

box indicated Master Sailor Olid's home address. No other locations were indicated on the leave pass.

6. On or about 27 December 2020, Master Sailor Olid and his family traveled by car to Strathmore, Alberta, to attend the funeral of a cousin of his wife. On or about 2 January 2021, the family stopped in Lake Louise, Alberta. The family returned to Vancouver Island on 4 January 2021.
7. Upon return to Vancouver Island, Master Sailor Olid did not undertake a fourteen day isolation period.
8. On or about 11 January 2021, Petty Officer 1st Class Kingston asked Master Sailor Olid about a trip that the Master Sailor had made on Vancouver Island during the leave period. As part of that conversation, Master Sailor Olid confirmed that he had not traveled off of Vancouver Island during the leave period. He also stated that he had not traveled with or gathered with anyone outside his immediate family and his child's caregiver. This answer was made knowing he had traveled to Alberta without authorization."

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 \$1,500. Defence requested that the amount be payable in twelve monthly instalments of \$125. 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, Master Sailor Olid 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 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

[6] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under *Queen's Regulations and Orders for the Canadian Forces* (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 prosecution also had a witness who testified regarding the impact of the offence on the Naval Fleet School (Pacific) being Lieutenant- Commander (Retired) W. Vanderstelt, who had been the Head of the Operations Division at the time of the alleged offence. The Court was also provided with a character statement provided by a former supervisor of Master Sailor Olid which was entered into evidence by the defence.

[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] Master Sailor Olid, the offender, is thirty-four years old. He enrolled in the Canadian Armed Forces (CAF) in August 2011 and served his country for almost eleven years as a regular force member. He has been awarded the Operational Service Medal-Expedition and Special Service Medal-Expedition. His Member's Personnel Record Résumé indicates that he has had a very busy and active career and he is married with a child. Aside from the incident before the Court, he has no conduct sheet or criminal record.

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] The prosecution 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. The Court agrees with this assessment.

Accounting for relevant aggravating and mitigating circumstances

[11] Pursuant to 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) pandemic conditions at the time. At the time of this incident, the effects of the pandemic were both dynamic and uncertain. There were no vaccines available and the control of the virus was dependent upon the reliance of all citizens to follow the recommended safety procedures. As a member of the profession of arms, and in this particular case Master Sailor Olid placed the needs of himself before the CAF and others. In doing so, he introduced a level of risk into the school with the potential of the virus to find fertile ground and affecting the operations of the school;
- (b) rank and position. At the time, Master Sailor Olid was a junior leader filling an instructor role at the Naval Fleet School (Pacific). After being shut down for three months, the school was running above full capacity, attempting to deliver the critical early training for sailors in the Navy. The school was running two shifts per day in an attempt to catch up. As an instructor, he interacted with the most junior members of the CAF assisting in their indoctrination into a life of military service. He was required to set an example for them to follow and with his actions, he failed to do so; and
- (c) decision to cover up. Despite making the original decision to travel without authorization, he then failed to self-isolate upon his return and when he was queried about his travel, despite his earlier lapse in judgement, he attempted to mislead his chain of command thereby aggravating his actions.

Mitigating factors

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

- (a) guilty plea. Master Sailor Olid's plea of guilty for the offence as described in the Statement of Circumstances must be given its full weight. His guilty plea has saved the Court, counsel and the unit supporting the Court considerable time. When given an opportunity to speak to the court, it was clear that Master Sailor Olid is remorseful;
- (b) the offender has no conduct sheet or previous criminal record; and
- (c) letter of support regarding performance. Petty Officer 1st Class Brenda Stevens who was the Operations Room Supervisor and had Master Sailor Olid assigned to her watch from August 2015 to May 2018 on Her Majesty's Canadian Ship *Ottawa* provided positive feedback describing Master Sailor Olid as a reliable member of their team who consistently completed the tasks assigned to him to the best of his abilities and in a timely manner. Petty Officer 1st Class Stevens described Master Sailor

Olid as a very capable operator who often requested opportunities to be employed above his rank at the time. More specifically, during a particularly difficult five month deployment in 2017, she noticed he maintained a positive attitude during the most trying times. During that time, he ensured his subordinates and peers were well taken care of and he increased the morale within his section. This is important feedback as it provides the Court with assurance that he can be a positive team player.

Parity

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

[15] Counsel referred the Court to the following sentencing decisions which are not directly applicable to the case at bar, but they provide some guidance where members have disregarded rules that affect the safety of others: *R. v. MCpl P.P. Billard*, 2007 CM 4019; and *R. v. Steward*, 2013 CM 3035.

[16] There are also two other courts martial that relate to violation of pandemic restrictions which were the currently unreported case of *R. v. Barber*, as well as *R. v. Chami* 2022 CM 5002.

Conclusion

[17] 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. It is clear that you were faced with a predicament between complying with the orders expected of you while also attending to the needs of your family. The pandemic was particularly challenging for everyone, and even more so for our family members who were indirectly exposed to the additional restrictions that CAF members were required to comply with. I am hopeful that moving forward you will be able to find a more appropriate balance to ensure that you can meet all demands within the bounds of expectations. The fact that you assumed responsibility has to be given full consideration by this Court.

[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.

[19] 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:

[20] **FINDS** Master Sailor Olid guilty of the first charge contrary to section 129 of the *NDA*.

[21] **SENTENCES** you to a severe reprimand and fine in the amount of \$1,500, payable in twelve monthly instalments of \$125 commencing in the month of July 2022. In the event you are released from the Canadian Forces for any reason before the fine is paid in full, the then outstanding balance is to be paid the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J. Besner and Major G. J. Moorehead

Lieutenant-Colonel D. Berntsen, Directorate of Defence Counsel Services Counsel for Master Sailor K. Olid