



COURT MARTIAL

Citation: *R. v. Charron*, 2022 CM 5016

Date: 20220720

Docket: 202156

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant W.J. Charron, Offender

Before: Commander C.J. Deschênes, M.J.

REASONS FOR SENTENCE

Introduction

[1] Sergeant Charron pleaded guilty to a charge of stealing, an offence punishable under section 114 of the *National Defence Act (NDA)*. He stole various items with an approximate value of \$40 from Loblaws Companies Limited. Having accepted and recorded the guilty plea, I must now determine a fair and fit sentence. Defence counsel recommended that Sergeant Charron be discharged absolutely, while the prosecution asked that I impose a reprimand combined with a fine in the amount of \$200.

[2] The charge relates to events that happened on 13 July 2021 when a representative from the Loblaws grocery store in Kingston, Ontario, contacted the Military Police (MP) to report that a member in military uniform had stolen some items from the store and that the Kingston police had been called. MP members went to the Loblaws store and reviewed the security camera footage. They observed Sergeant Charron entering the store wearing his uniform with nametag, sergeant's rank, and logistics cap badge on his headdress. He was seen pushing a shopping cart containing a clear plastic bag. As he moved around the store, he was seen placing inside the bag what appeared to be foodstuffs, such as cooked chicken and cheese, as well as personal

hygiene items, such as a deodorant stick. The offender was in the store for approximately eleven minutes. He was observed taking the bag out of the shopping cart, pushing the cart to the side of an aisle and leaving the store with the bag without paying for the items. Sergeant Charron later admitted he was observed taking the items without paying for them. He also indicated he was preoccupied before entering the store and admitted that he realized not paying shortly after leaving, but made no attempt to pay because he was too embarrassed to do so.

[3] The issue before me is to determine whether directing an absolute discharge would be in the offender's best interests and not contrary to the public interest.

Whether directing an absolute discharge for stealing items of a low value would be in the accused person's best interests and not contrary to the public interest

[4] The prosecution contended that the objectives of denunciation and rehabilitation should be the focus of Sergeant Charron's sentence. The fact that the offender was in uniform during the commission of the offence was an aggravating factor. His actions undermined public trust in the Canadian Armed Forces (CAF). The prosecution further contended that a reprimand and fine in the amount of \$200 would be the minimum punishment that would meet the sentencing objectives. A monthly plan to pay the fine would be geared toward the rehabilitative aspect of the sentence. The prosecution considered the low value of the items stolen as well as the offender's guilty plea and lack of similar convictions on his conduct sheet as mitigating factors, which would place this case at the lower end of the range of punishment. The Court inquired of the prosecutor whether Loblaws Companies Limited was deemed to be a victim, and if so, whether reasonable steps have been taken to provide representatives of the company with an opportunity to prepare a statement. Following an adjournment, the prosecution informed the Court that a representative from the company had been contacted but did not wish to provide a statement in this case.

[5] The defence contended that in the criminal justice system, shoplifting is dealt with by non-punitive measures, the majority of which are not available in the military justice system. She contended that the criteria set out in the *Criminal Code* for an absolute discharge should guide this Court in this case. Sergeant Charron did not intend to steal but committed the offence once he realized he left without paying. This is evidenced by the use of a clear plastic bag, which shows that he did not try to conceal items for the purpose of stealing them. Additionally, the items stolen were essential items. The defence contended that no one else saw the offender committing the offence except for the security person at the store, therefore public trust in the CAF was not undermined. Finally, Sergeant Charron suffered several medical issues and now experiences medical conditions that impact his mobility and put into doubt his future in the CAF. An absolute discharge would be in the offender's best interest.

Sentencing principles

[6] In determining whether an absolute discharge is in the offender's best interest and not contrary to the public's interest, I must consider the fundamental purpose of sentencing, which is to maintain the discipline, efficiency and morale of the Canadian Forces. A sentence must meet one or more of the objectives listed in the *NDA*, such as to maintain public trust in the Canadian Forces as a disciplined armed force; to denounce unlawful conduct and the harm done to victims or to the community; and to assist in rehabilitating offenders. The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. This entails a consideration of the situation of the offender and the circumstances surrounding the commission of the offence, which I will now address in turn.

Circumstances of the offender

[7] In considering Sergeant Charron's personal situation, the documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) reveals that he is forty-seven years old. He is the father of a fourteen-year-old child. He enrolled in the CAF on 9 July 2001. He deployed to Afghanistan in 2008, and is the recipient of the General Campaign Star - SOUTH-WEST ASIA, the Canadian Forces decoration, as well as two commendations. Sergeant Charron was promoted to his current rank in 2012. He completed a high school diploma in 2018.

[8] His conduct sheet is mixed. It indicates that he received recognition for his actions on 14 September 2004 when he assisted in taking control of a vehicle accident scene and provided first aid. His actions helped stabilize a potentially hazardous situation. He believes one of the commendations listed on his Member's Personal Record Resume (MPRR) was for this act but was not certain due to his memory loss. His conduct sheet also shows that he was found guilty of two offences of absences without leave that took place in 2021, and was sentenced to a fine in the amount of \$200 for the first and a reprimand for the second.

Aggravating factors

[9] Turning to the circumstances surrounding the commission of the offence, I agree generally with the prosecution that Sergeant Charron's commission of the theft while in uniform and in view of at least one store employee constitutes an aggravating factor. Further, the statement of circumstances informed the Court that the Kingston police were aware of the offence because they had been called to receive a report of the theft. I find that Sergeant Charron's conduct, even if seen by only one person, risks undermining public trust in the CAF.

Mitigating factors

[10] I accept counsel's positions regarding the relevant mitigating factors of this case: the offender pleaded guilty, informing counsel at an early stage and saving the Court, participants, and the public at large, time and resources. He has no previous

convictions for a similar offence. The low value of the items stolen also mitigates Sergeant Charron's sentence.

Parity

[11] In addition to the cases submitted by both counsel, the Court was informed of more-recent court martial precedents involving joint submissions similar to the circumstances of this case, in particular:

- a. *R. v. Parent*, 2019 CM 3014, joint submission of a reprimand and a fine in the amount of \$1,400;
- b. *R. v. Moser*, 2022 CM 5014, joint submission of a reprimand and a fine of \$2,000; and
- c. *R. v. Farrah*, 2022 CM 4009, joint submission of a reprimand and a fine in the amount of \$1,800.

[12] However, Sergeant Charron's case is significantly less serious than the precedents discussed in Court. Therefore, I must be mindful that the relevance of these cases is limited. Regardless, in *R. v. Darrigan*, 2020 CMAC 1, the Court Martial Appeal Court reminded us that a punishment must be tailored to the circumstances of the case and the situation of the offender.

Conditions to direct an absolute discharge

[13] Considering the defence's recommendation for an absolute discharge, I find that the offence to which Sergeant Charron pleaded guilty does not preclude that an absolute discharge be directed (section 203.8 of the *NDA*). Next, the Court must determine whether it is in the offender's best interest that he be discharged absolutely. The second condition precedent is that directing an absolute discharge is not contrary to the public interest.

[14] In *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450, the British Columbia Court of Appeal writes:

Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.

[15] Sergeant Charron has a conduct sheet that contains unrelated, non-criminal convictions pertaining to offences of relatively short absences from duty. Other than these convictions, the evidence shows that Sergeant Charron is of good character. His career progressed successfully; he reached the rank of sergeant and received recognition and military decorations for his service. He has also attained a personal goal, on his own initiative as a mature adult, to complete his high school degree. His situation, combined

with the circumstances surrounding the commission of the offence, provide indications that the theft was out of character. Sergeant Charron did not plan the theft; he went to the grocery store to buy necessities but forgot to pay for them. Unfortunately, after he realized his mistake, he decided to leave because he was too embarrassed to return to correct the situation.

[16] In these circumstances, I do not believe that it is necessary to enter a conviction against Sergeant Charron in order to deter him from future offences or to rehabilitate him. An entry of a conviction against Sergeant Charron may have significant adverse repercussions, particularly as it seems that his remaining time in the CAF is short because he suffers several medical conditions affecting his mobility and eyesight. In addition to his medical conditions, he has no specialized diploma that would facilitate finding employment. He has several years to offer in the workforce, and a criminal record would have a significant adverse impact with regard to his chances of securing civilian employment.

[17] The second condition precedent requires the Court to ensure that the granting of an absolute discharge is not contrary to the public interest. "Not contrary to the public interest" is a concept which includes a consideration of the need for the deterrence of others. On this note, it is regrettable that there was no evidence adduced with respect to the chain of command's view of Sergeant Charron's case and the impact that it may have had on unit discipline. That said, other than the fact that the offender committed the infraction while in uniform, the Court considered that the commission of the offence had little to no impact on unit discipline since it happened off base.

[18] In my view, the mere fact that Sergeant Charron was charged and held to account by a court martial not only denounces the conduct, but it sends a strong message of general deterrence. This must be weighed into the Court's analysis of the public interest. As such, this Court has no problem concluding that the imposition of an absolute discharge is not contrary to the public interest.

Conclusion

[19] Consequently, reviewing the record and the evidence before me, and considering the applicable sentencing principles, I find that directing an absolute discharge is in Sergeant Charron's best interest and not contrary to the public interest.

FOR THESE REASONS, THE COURT:

[20] **DIRECTS** that Sergeant Charron be discharged absolutely on the charge before the Court.

Counsel:

The Director of Military Prosecutions as represented by Captain D. Moffat

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for Sergeant
W.J. Charron