



## COURT MARTIAL

**Citation:** *R. v. Aziz*, 2022 CM 5015

**Date:** 20220719

**Docket:** 202167

Standing Court Martial

4th Canadian Division Support Base Petawawa  
Petawawa, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal O. Aziz, Offender**

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

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### REASONS FOR SENTENCE

#### Overview

[1] After having been found not guilty of the first charge for disobedience of a lawful command, an offence punishable under section 83 of the *National Defence Act* (*NDA*), because no evidence was presented to prove the offence, Corporal Aziz pleaded guilty to a charge of conduct to the prejudice of good order and discipline, an offence punishable under section 129 of the *NDA*, for travelling to Edmonton, Alberta, without authority. Following the Court accepting and recording the guilty plea, counsel proposed a joint submission of a severe reprimand combined with a fine in the amount of \$1,200. The issue is whether imposing the sentence jointly recommended by counsel would bring the administration of justice into disrepute or is otherwise contrary to the public interest in the circumstances of this case. For the reasons that follow, the Court finds that the joint submission is not contrary to the public interest.

[2] The charge relates to events that happened in November 2020, while Corporal Aziz was serving with 8 Mission Support Squadron, Canadian Forces Base (CFB) Trenton, when he submitted a leave request to his chain of command to travel to Edmonton from 16 to 23 November 2020. On 12 November 2020, members of his chain

of command met with him to explain that his request was denied due to rising cases of COVID-19 in Edmonton, a city being designated at the time as a COVID-19 “red zone”. He indicated that he understood that he was not to travel to Edmonton. The next day, he submitted a second request for leave for 16 to 23 November 2020 to travel to Nepean, Ontario. This leave request was approved. On 16 November 2020, he travelled by air to Edmonton. On 19 November 2020, his chain of command contacted him to ask him to send photographic proof of his stamped CF LEAVE REQUEST/AUTHORIZATION (leave pass) to confirm that he was in Nepean. As a result, the same day, Corporal Aziz flew from Edmonton to Toronto and was driven to Nepean where he had his leave pass stamped at a Canada Post location. Shortly thereafter, he submitted a photo of the stamped leave pass to his chain of command as proof that he was in Nepean. Although no evidence was adduced to explain how these incidents came to light, a charge under section 129 of the *NDA* was laid against Corporal Aziz.

**Whether imposing a severe reprimand combined with a fine in the amount of \$1,200 would bring the administration of justice into disrepute or is otherwise contrary to the public interest**

[3] The prosecution explained that the joint submission is the result of rigorous negotiation between the parties who were informed of all relevant circumstances. The chain of command was consulted and informed the prosecution that an impact statement was not required in the circumstances. The prosecution contended that the objectives of general and specific deterrence as well as denunciation should be the focus of sentencing, and identified the following aggravating factors: the breach of the relation of trust with the chain of command, and the lack of honesty and integrity demonstrated by the offender’s actions, particularly when the chain of command trusted that he was truthful when he said he understood that he was not to travel to Edmonton. Corporal Aziz’s conduct also led to a breach of public health restrictions. The prosecution highlighted the measures he took to cover up his actions, going to extreme lengths by travelling from Edmonton to Toronto and then travelling by car for several hours. Also significant is that his conduct sheet indicated that five months prior to the commission of this offence, he had been found guilty of two offences at summary trial, one of which included an absence without leave for a period of two days.

[4] The prosecution considered as mitigating that the offender pleaded guilty, that he showed genuine signs of remorse and that at the time of the commission of the offence he was dealing with mental health issues which most likely impacted his decision-making process.

[5] Defence considered that the offender expressed his intent to plead guilty early on. Additionally, he has served in the Canadian Armed Forces (CAF) for over fifteen years, service that included numerous deployments with recognition that resulted from his performance in theatre, including receiving a Chief of Defence Staff (CDS) commendation for his tour in Afghanistan. The offender committed the offence because he felt the need to be with family in Edmonton during a time where he was emotionally

vulnerable. He is also committed to the military community, providing art classes to boost morale. He has rebuilt the trust with his chain of command.

### ***The public interest test***

[6] Turning to the applicable principles, the Supreme Court in *R. v. Anthony-Cook*, 2016 SCC 43, established the public interest test. This test requires that the joint submission be rejected only when it is so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. In other words, in light of the circumstances of the case and of the offender, the joint submission is either so severe, or so lenient, as the case may be, that accepting it would bring the military justice system into disrepute. Consequently, a joint submission should not be rejected lightly. This high threshold means that the sentencing judge has limited discretion when considering a fair and fit sentence, and must exhibit restraint when considering rejecting a joint submission.

[7] Guilty pleas in exchange for joint submissions are a necessary part of the administration of both criminal and military justice. When properly conducted, plea resolutions benefit not only the accused, but also the victims, witnesses, counsel, and the administration of justice generally. Accused persons who plead guilty are able to minimize the stress and legal costs associated with trials. For those who are truly remorseful, a guilty plea offers an opportunity to begin making amends. For many accused, maximizing certainty as to the outcome is critical and provides a level of comfort. Indeed, generally, accused persons will not give up their right to a trial on the merits, and all the procedural safeguards it entails, unless they have some assurance that the agreements entered into with the prosecution will be honoured. The prosecution also relies on the certainty of joint submissions to see fast and fair resolution of its cases.

[8] Furthermore, both the prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of the party they represent. Counsel have an in-depth knowledgeable about the circumstances of the offender and of the offence and the strengths and weaknesses of their respective positions. In addition to their professional and ethical obligations and accountability toward their respective client, the Court and the public in general, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest. They are, in this context, expected to have considered the sentencing principles of the military justice system, in particular the fundamental purpose of sentencing, which is to maintain the discipline, efficiency and morale of the Canadian Forces. Counsel are required to ensure that their joint submission is proportionate to the gravity of the offence and the degree of responsibility of the offender.

### ***Circumstances of the offender***

[9] Having addressed the applicable principles, the Court considered the offender's personal situation. The documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) reveal that Corporal Aziz is fifty-four years old. He is married and has three children. He enrolled in the CAF on 7 February 2007. His first deployment took place the following year. He has served overseas multiple times in his career, including Afghanistan for which he was awarded the CDS Commendation. He subsequently deployed to Lebanon, Kuwait, and Iraq, and was promoted to his current rank on 7 February 2011.

#### *Previous convictions*

[10] Corporal Aziz has a conduct sheet. On 28 May 2020, he was found guilty of having committed two offences, one of a fraudulent nature, when he submitted on 26 September 2018 a statutory declaration form claiming travel expenses knowing that the travel expense was not authorized. The second charge of absence without authority was for reporting two days late in September 2018 after being deployed on Operation IMPACT.

#### *Performance during his deployment in Iraq*

[11] However, he has generally maintained a good performance during his career and after the commission of the offence. In an email introduced as exhibit by the defence, the offender's then-supervisor, Chief Warrant Officer Robichaud, provided positive comments about Corporal Aziz's performance as a linguist during his time in Iraq between February 2018 and July 2018. Chief Warrant Officer Robichaud explained that when he was the operations master warrant officer in UNION 3, in Baghdad, he served closely with Corporal Aziz. He observed that the offender's relationship with everyone on base was outstanding. Corporal Aziz worked very long hours on many different and complex tasks during his tour. He accepted all of his tasks with a positive attitude and "produce some very nice work". Chief Warrant Officer Robichaud explained that Corporal Aziz is a caring person who does some amazing work even as he faced many different challenges during high level meetings as a linguist. He is a dedicated, passionate soldier. Chief Warrant Officer Robichaud said that he would take him on his team any day.

#### *Attitude towards the offence and efforts towards rehabilitation*

[12] In another email introduced by defence counsel, Sergeant Palmer, Electronic-Optronic (EO) In Charge, Maintenance Company, 2 Service Battalion, wrote that Corporal Aziz's work performance was adequate since September 2021 when the latter served under his supervision. Corporal Aziz volunteered for tasking and has taken a high interest in mentoring on-the-job-training craftspeople. During Exercise MAPLE RESOLVE, he started a series of art projects that assisted in enhancing overall morale. He created a Sunday routine that taught soldiers how to draw. He facilitated visits to mosques during Eid and improved the morale of the Muslim soldiers while they were

away from home during Ramadan. Sergeant Palmer also wrote that Corporal Aziz is an important member of both the EO shop and the platoon as a whole.

### ***Aggravating factors***

[13] As for the circumstances surrounding the commission of the offence, I agree that the breach of the relationship of trust with the offender's chain of command constitute an aggravating factor. Members of the offender's chain of command initially trusted that Corporal Aziz was truthful when he said he understood that he was not to travel to Edmonton after they had explained to him why his leave request to Edmonton was denied. The Court finds troubling in particular that the offender's conduct sheet viewed in the context of the charge may show indicia of a tendency to be deceitful with his chain of command. The offender's conduct not only breached the trust between him and his chain of command, but risks affecting morale, cohesion and operational effectiveness, which goes to the heart of discipline. His determination to cover up his deceit by taking another flight from Edmonton all the way to Toronto then being driven to Nepean for the sole purpose of continuing the lie also aggravates the sentence.

[14] Corporal Aziz's conduct also led to a breach of public health restrictions, travelling to a "red zone" city, and having the potential to disrupt operations of the unit upon his return.

### ***Mitigating factors***

[15] The Court also considered 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 effort, time and resources. I accept that Corporal Aziz showed genuine signs of remorse and that at the time of the commission of the offence, he was dealing with mental health issues which most likely impacted his decision-making process. In fact, the evidence shows that he had a psychological assessment done roughly a month before the incident and he was assessed as experiencing anxious and depressive symptomatology related to stressors including spousal conflict, financial stress and conflict with the chain of command in Trenton. In addition, there are indications that Corporal Aziz travelled to Edmonton to be close to family members, to seek support during this challenging period.

### ***Parity***

[16] Turning to the parity principle, the following court martial cases similar to the circumstances of this case were considered:

- a. *R. v. Olid*, 2022 CM 2010, in which a master sailor pleaded guilty to a similar offence for travelling outside of Vancouver Island without authority. The joint submission of a severe reprimand and a fine in the amount of \$1,500 was accepted and imposed; and

- b. *R. v. Chami*, 2022 CM 5002, in which a lieutenant(N) sat on a merit board when he was required to isolate. This led other board members and some of their family members to have to isolate. The joint submission of a severe reprimand and a fine in the amount of \$3,600 was accepted and imposed following the guilty plea.

[17] After a review of these precedents, the Court concludes that the joint submission is well within the range of punishment for offenders in similar situations who pleaded guilty to similar offences.

***Principles of sentencing deserving greatest emphasis***

[18] Considering the nature of the offence to which the offender pleaded guilty and considering the circumstances surrounding this case, the fundamental purpose of sentencing shall be achieved by imposing a sanction that has the objectives of deterring Corporal Aziz and deterring others from adopting the same conduct, as well as denouncing unlawful conduct.

[19] Reviewing the record and the evidence before me, and considering the applicable sentencing principles, I have to decide 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 sentence which expresses disapprobation for the failure in discipline involved and to have a personal consequence for the offender. The sentence proposed, composed of the punishments of severe reprimand and a fine in the amount of \$1,200, aligns with these expectations.

[20] Corporal Aziz is committed to the military community, providing art classes to boost morale. Since the commission of the offence, it seems that he has rebuilt trust with his chain of command. Through exemplary conduct, Corporal Aziz can maximize his chance to continue serving in the CAF and offer his skills and dedication to the institution.

**Conclusion**

[21] Consequently, in reviewing the documentary evidence and considering counsel's submissions, it is apparent that they carefully assessed the relevant circumstances of this case, including the aggravating and mitigating factors as well as the offender's personal situation, when they arrived at their joint submission. In light of the evidence before me and considering the appropriate range of punishment, imposing a sentence of a severe reprimand combined with a fine in the amount of \$1,200 would not be contrary to the public interest and would not bring the military justice system into disrepute.

**FOR THESE REASONS, THE COURT:**

[22] **SENTENCES** Corporal Aziz to a severe reprimand and a fine in the amount of \$1,200. The fine is payable with monthly instalments of \$100 beginning 15 August 2022. In the event that he is released from the Canadian Armed Forces for any reason before the fine is paid in full, the outstanding balance is to be paid the day prior to release.

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**Counsel:**

The Director of Military Prosecutions as represented by Major L. Langlois

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, Counsel for Corporal O. Aziz