



## COURT MARTIAL

**Citation:** *R. v. Moser*, 2022 CM 5014

**Date:** 20220718

**Docket:** 202211

Standing Court Martial

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

**Between:**

**Her Majesty the Queen**

- and -

**Corporal R.W. Moser, Offender**

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

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### REASONS FOR SENTENCE

#### Overview

[1] Corporal Moser pleaded guilty to an offence punishable under section 114 of the *National Defence Act (NDA)* for stealing lumber that was the property of Her Majesty in right of Canada. After his guilty plea was recorded, counsel proposed a joint submission of a reprimand combined with a fine in the amount of \$2,000. 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.

[2] On the morning of 18 April 2021, the accused and two other members of 2 Service Battalion (2 Svc Bn), Corporal Farrah and Corporal Walker, served a 24-hour general duty shift for the 4 Canadian Division Support Group (4 CDSG) at the Garrison's Isolation Facility (ISOFAC) in Canadian Forces Base (CFB) Petawawa. At around 2200 hours the same day, the accused and the other two members took possession of a Department of National Defence (DND) eight-passenger van and drove to the parking lot of building J-108 to scout piles of lumber that had been purchased by the 4 CDSG to complete renovation and construction projects on the base. The three

individuals moved the seats in the rear of the van to make space for the lumber. Corporal Farrah and Corporal Walker then started loading lumber into the back of the van while the accused kept watch.

[3] At around 2230 hours, a course candidate of the rank of private observed from her nearby quarters two individuals in the back of a van and a third one loading lumber into the vehicle. After sharing what she observed with another course candidate, the two of them exited the building to get a better look at the situation, resulting in the individuals stopping their activities and whispering amongst themselves while remaining close to the van. The two privates then returned together to their quarters and were able to observe that the two individuals, later identified as Corporal Farrah and Corporal Walker, had resumed their activities. Accompanied by a petty officer 2nd class, a member of the course staff they had informed of the suspicious activities, the two privates went back to the parking lot and saw one male later identified as Corporal Farrah holding a plank while another male ran towards the front of the van. The third individual was already seated in the front of the van. The van drove away leaving Corporal Farrah behind. The petty officer 2nd class contacted the 2 Military Police Regiment Detachment Petawawa to report the incident and provided the van's licence plate number. Military Police (MP) members were immediately dispatched, located the vehicle and completed a traffic stop. Corporal Moser was identified as the passenger and Corporal Walker was identified as the driver. A total of forty-four planks and sixteen posts were found in the back of the DND vehicle, with the longest planks protruding between the two front seats. The value of the lumber is estimated at \$956.

[4] For the reasons that follow, the Court finds that the joint submission of a reprimand combined with a fine in the amount of \$2,000 is not contrary to the public interest.

**Whether imposing a reprimand combined with a fine in the amount of \$2,000 would bring the administration of justice into disrepute or is otherwise contrary to the public interest**

#### ***Positions of parties***

[5] 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 also consulted and it informed the prosecution that an impact statement was not required in the circumstances. The prosecution contended that the objectives of general deterrence and denunciation should be the focus of sentencing, and identified as aggravating: the seriousness of the offence; the breach of trust, because Corporal Moser took DND property that was left unguarded while he was on duty; that junior Canadian Armed Forces (CAF) members observed the commission of the offence; and the degree of premeditation demonstrated when taking the DND vehicle and removing its seats. Corporal Moser also had an opportunity to reflect on his actions when interrupted by the two privates, but he nevertheless continued with the

commission of the offence. The prosecution considered as mitigating that he pleaded guilty and that he is a first-time offender.

[6] Defence counsel considered the accused's early guilty plea, relative young age, six years of service in the CAF, and the fact that the public was not deprived of any property. Corporal Moser continued to perform at work after the commission of the offence. He showed remorse and, despite having a recent surgery, did not try to delay these proceedings. Defence counsel asked that the Court impose a payment plan of \$200 per month to pay the fine.

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

[7] Turning to the applicable principles, in *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court 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.

[8] 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 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, and for those who are truly remorseful, a guilty plea offers an opportunity to begin making amends. For many accused, certainty as to the outcome is paramount and provides some 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.

[9] Additionally, both the prosecution and defence counsel are well-placed to arrive at a joint submission that reflects the interests of their respective clients. Counsel have an in-depth knowledge of the circumstances of the offender, the offence, and the strengths and weaknesses of their respective positions. In addition to their professional and ethical obligations and accountability toward the party they represent, the Court and the public, 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 purposes of sentencing, which is to maintain the discipline, efficiency and morale of the

CAF. 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***

[10] In considering Corporal Moser'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 twenty-seven years old. He enrolled in the CAF on 26 July 2016 and was posted to his current unit on 11 February 2019. He was promoted corporal (acting lacking) on 6 August 2020. He has no conduct sheet. He is single and has no dependents.

[11] Two emails were introduced by the defence which explains that Corporal Moser's performance was appreciated by his supervisors. The first email to counsel, from Master Warrant Officer (Retired) Green, explains that the offender worked as one of his staff for the ISOFAC team and his performance up to and after the incident was excellent. He was counted on as a Team Leader. His responsibilities included intake and release of those who had symptoms of COVID as well as confirmed cases of COVID and those isolating for a task or course. It was an extremely demanding task imposed on Corporal Moser as he had to provide, amongst other things, feeding for those at the ISOFAC and ensure that the morale of the soldiers in the facility was to standard. He also had to ensure cleanliness of common areas. Master Warrant Officer (Retired) Green considers Corporal Moser a mature individual with leadership potential. Corporal Moser consistently updated him on any issues that he could not handle at his level. He was considered a very reliable asset to the ISOFAC team, completing his task to a high standard. Master Warrant Officer (Retired) Green writes that he is more than confident that Corporal Moser can continue to be an asset to the CAF.

[12] The second email from Warrant Officer Hepworth from the Maintenance Company, 2 Svc Bn, indicates that while serving with Corporal Moser in the past six months, the latter demonstrated an ability to react to sudden changes. He was heavily relied upon for his quantitative fitting test (QNFT) expertise. His reliability and accountability were superior during this period. Warrant Officer Hepworth also wrote that Corporal Moser is a technician who follows directions extremely well and does not question what he is tasked with.

### ***Aggravating factors***

[13] As for the circumstances surrounding the commission of the offence, I agree generally with the aggravating factors listed by the prosecution, in particular with regard to the seriousness of the offence and the breach of trust involved when taking DND property left unsecured while the offender was on duty. Further, junior CAF members observed the commission of the offence, setting a very poor example of conduct of CAF members generally. Also troubling is that there was a degree of premeditation involved; Corporal Moser was not acting alone. The commission of the offence required organization and planning: the three members arranged to take a DND

vehicle at night while on the same shift, proceeded to remove the seats of the vehicle and drove to the location of the lumber. One individual kept watch while the others loaded the lumber in the van. It was a coordinated theft. Lastly, Corporal Moser turned his back on the opportunity to stop the commission of the offence when interrupted by the presence of the two privates, choosing to pursue his plan.

### ***Mitigating factors***

[14] I also accept counsel's positions regarding the relevant mitigating factors of this case: Corporal Moser pleaded guilty, informing counsel at an early stage. He is young and is a first-time offender. Further, he maintained a good level of performance at work following the commission of the offence. Some of these mitigating circumstances do provide an indicia that he is indeed remorseful.

### ***Other impact of the proceedings***

[15] In addition, Corporal Moser will have a criminal record resulting from these proceedings. This will have a long-lasting impact on his future.

### ***Parity***

[16] In determining whether the joint submission is within the range of punishment for similar cases, the Court was informed of the decision from the Court Martial Appeal Court (CMAC), *R. v. Darrigan*, 2020 CMAC 1, and of court martial cases involving corporals stealing DND property:

- a. *R. v. Corporal D.T. Keller*, 2005 CM 07 - sentenced to a reprimand and a fine in the amount of \$1,400;
- b. *R. v. Corporal Q.A. Stevenson*, 2005 CM 13 - sentenced to a reprimand and a fine in the amount of \$1,000;
- c. *R. v. Parent*, 2019 CM 3014 - sentenced to a reprimand and a fine in the amount of \$1,400; and
- d. *R. v. MacDonald*, 2018 CM 3011 - sentenced to a severe reprimand and a fine in the amount of \$2,000.

[17] Additionally, the accomplices to Corporal Moser were tried and received similar punishments. Corporal Farrah received a sentence of a reprimand and a fine in the amount of \$1,800. A lower fine was imposed because of the existence of additional mitigating factors in the situation of Corporal Farrah. Corporal Walker was tried by summary trial and received a reprimand and a fine in the amount of \$2,000. 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] In light of the offence to which the accused pleaded guilty, and in light of the circumstances surrounding this case, the fundamental purpose of sentencing shall be achieved by imposing a sanction that has the objectives of deterring others from adopting the same conduct and to denounce unlawful conduct. The proposed punishment certainly does meet these objectives.

**Conclusion**

[19] Consequently, in reviewing the documentary evidence and considering counsel's submissions, it is apparent that they carefully assessed the relevant circumstances of this case when they arrived at their joint submission, including the aggravating and mitigating factors as well as the personal situation of the offender. In light of the evidence before me and considering the appropriate range of punishment, imposing a sentence of a reprimand combined with a fine in the amount of \$2,000 would not be contrary to the public interest and would not bring the military justice system into disrepute.

[20] Corporal Moser's actions on 18 April 2021 showed a lack of integrity that involved premeditation. He has recognized this today. His situation, in particular his young age and his guilty plea, are indicative of a rehabilitative potential.

**FOR THESE REASONS, THE COURT:**

[21] **SENTENCES** Corporal Moser to a reprimand and a fine in the amount of \$2,000. The fine is payable in monthly instalments of \$200 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 R.W. Moser