



## COURT MARTIAL

**Citation:** *R. v. Giggie*, 2023 CM 4003

**Date:** 20230131

**Docket:** 202231

Standing Court Martial

5th Canadian Division Support Base Gagetown  
Oromocto, New Brunswick, Canada

**Between:**

**His Majesty the King**

- and -

**Corporal P.D. Giggie, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Corporal Giggie, having accepted and recorded your plea of guilty in respect of the only charge on the charge sheet, the Court now finds you guilty of that charge for having used a vehicle of the Canadian Armed Forces (CAF) for an unauthorized purpose, contrary to section 112 of the *National Defence Act (NDA)*.

#### **A joint submission is being proposed**

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a fine of \$200.

[3] This recommendation severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a joint submission

only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline (CSD) and military tribunals in performing the sentencing function attributed to me as a military judge. As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence to commensurate with the gravity of the offence and the degree of responsibility of the offender.

### **Matters considered**

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Corporal Giggie. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51.

[9] The defence produced an Agreed Statement of Facts, which sheds some light on the circumstances of Corporal Giggie since the commission of the offence.

[10] In addition to this evidence, counsel made submissions to support their position on sentence, on the basis of the facts and considerations relevant to this case and of precedents in other cases, in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

**The circumstances of the offence**

[11] The Statement of Circumstances, the Agreed Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

- (a) at the time of the offence, Corporal Giggie served with 2 Service Battalion at Canadian Forces Base (CFB) Petawawa and was a qualified Mobile Support Equipment Operator (MSE Op) with a valid Department of National Defence (DND) 404 driving licence. As an MSE Op, Corporal Giggie received training on the proper use of DND vehicles - primarily during his qualification level (QL) 3 course and was considered a professional driver. Professional drivers within the DND and CAF are those whose primary occupation is the operation of mobile support equipment.
- (b) to obtain a DND 404 driving licence, members of the CAF must complete training which includes an understanding of the applicable policies. The National Defence Transport Manual, chapter 3, section 2, paragraph 1 under “Authorized Use” states:  
  
“Vehicles that are owned or rented by the crown are used solely for authorized official business and under no circumstances shall a DND vehicle be used for personal use, any unauthorized personal or private use of a DND vehicle may result in disciplinary action.”
- (c) on 16 November 2021, Corporal Giggie was assigned to pick up a CAF member from the Ottawa airport for further transport to CFB Petawawa. He was assigned DND vehicle #22762, a 15-seater Chevrolet van, for the tasking.
- (d) during the trip, Corporal Giggie decided to go to Bayshore mall in Ottawa to run personal errands while waiting to pick up the passenger. He was not provided, nor did he seek, any authorization to take the DND vehicle to Bayshore mall.
- (e) while attempting to park and to leave Bayshore mall, Corporal Giggie caused damage to the roof top, rear lights, and panel of the vehicle while attempting to clear through the parking garage’s overhanging clearance signs.

- (f) Corporal Giggie informed the dispatcher of the damage to the vehicle immediately and then informed his chain of command at the unit upon returning.

**The circumstances of the offender**

[12] The documents examined by the Court and the submissions of counsel reveal the following circumstances relevant to the offender:

- (a) Corporal Giggie grew up and attended school in the Fredericton area. After graduating from high school, he joined the CAF in March 2017 as a MSE Op;
- (b) following basic military and occupational training, he was posted to Petawawa in March 2018 where he served until his release, mainly in service battalions as a driver, with the exception of an assignment with the Royal Canadian Dragoons and a three-month deployment to Latvia in 2021;
- (c) Corporal Giggie experienced disciplinary issues in 2022, first as a result of fighting with another member in March and then for a minor transgression of dress requirements and an absence without leave for a few hours in June;
- (d) Corporal Giggie was released under Item 5(f) QR&O article 15.01 on 14 November 2022 after which he was employed in the Alberta oil fields; and
- (e) as of today, Corporal Giggie is again residing in the Fredericton area and looking for work.

**Seriousness of the offence**

[13] The Court has considered the objective gravity of the offence in this case. The offence in section 112 of the *NDA*, attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence which addresses the need for members of a disciplined armed force to use public assets such as vehicles appropriately.

[14] Of course, a broad range of circumstances can lead to offences under section 112. The circumstances here are not the most minor as a vehicle was damaged as a result of the offence. As such, the conduct needed to be sanctioned.

**Objectives of sentencing to be emphasized in this case**

[15] I agree with the prosecution that the circumstances of this case require that the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender. In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely the maintenance of discipline, efficiency and morale of the CAF, the sentence proposed must be sufficient to denounce Corporal Giggie's conduct in the military community and to act as a deterrent to others who may be tempted to engage in a similar type of unacceptable behaviour.

[16] Although the sentence must demonstrate to Corporal Giggie that misbehaviour has consequences, the circumstances of the offender reveal the need to keep in mind the objective of rehabilitation. Indeed, the sentence must not compromise the steps Corporal Giggie needs to take to rehabilitate himself and his future potential as he starts a new life outside of the army.

**Aggravating factors**

[17] The circumstances of the offence reveal the following aggravating factors:

- (a) the offence resulted in an incident which caused damages to a DND vehicle, with the resulting impact on operations when repairs needed to be made and the vehicle was consequently unavailable;
- (b) the damage was caused in a location highly visible to the public, namely a shopping mall; and
- (c) as a trained MSE Op with three years of experience, Corporal Giggie should have known much better, which explains why the conduct needed to be the subject of formal charges dealt with in today's proceedings.

**Mitigating factors**

[18] That said, the Court acknowledges the following mitigating factors:

- (a) Corporal Giggie's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in this public trial in the presence of members of the military community;
- (b) his collaboration with authorities in indicating his intention to plead guilty at the earliest opportunity; and
- (c) the fact that Corporal Giggie has served the CAF satisfactorily for over five years in the regular force and deserves to be punished with a sentence which will not compromise his potential to contribute to society in the future.

*Assessing the joint submission*

[19] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought two courts martial cases to my attention. The most recent is the case of Master Corporal Herd, which is not yet reported, but with whom counsel are familiar. In that case, a reservist serving full-time on a class B contract was sentenced to a fine of \$200 on 21 September 2021 for having used a DND vehicle while his DND driving licence was suspended. Then there is the case of Sergeant Dagenais (*R. v. Dagenais*, 2020 CM 5004) decided on 4 February 2020. As the non-commissioned officer responsible for managing the vehicle fleet assigned to his unit, Sergeant Dagenais used a DND truck under his responsibility to move the furniture and effects of another CAF member from one residence to another, 46 kilometres apart, assisted by a subordinate. He was sentenced to a fine of \$500.

[20] Although this is a small sample of previous cases which could possibly have been enriched with data containing sentences imposed by other service tribunals, these two cases show that the proposed sentence is within the range of sentences imposed for similar conduct in the past.

[21] In any event, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[22] In determining whether that is so, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances 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 punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender. The proposed fine is aligned with these expectations. It meets the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[23] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as they are familiar with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command and victims. He or she is aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and

informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[24] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. I must, therefore, accept it.

[25] Corporal Giggie, you have demonstrated that you accept responsibility for your offence. I hope this serves as a model for others who may find themselves in similar situations in the future. As you move forward with the rest of your life away from the CAF, I believe you should reflect on what you have gone through and conclude that you do not wish to place yourself in a situation where you must face a judge again.

**FOR THESE REASONS, THE COURT:**

[26] **SENTENCES** Corporal Giggie to a fine in the amount of \$200 payable forthwith.

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**Counsel:**

The Director of Military Prosecutions as represented by Major A. Dhillon and Captain M. Elliot

Lieutenant-Colonel A.H. Bolik, Defence Counsel Services, Counsel for Corporal P.D. Giggie