



COURT MARTIAL

Citation: *R. v. Cookson*, 2023 CM 2003

Date: 20230131

Docket: 202216

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

His Majesty the King

- and -

Corporal R. Cookson (retired), Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Following a trial by Standing Court Martial (SCM), I found Corporal Cookson guilty of one charge. The relevant charge reads as follows:

“SECOND CHARGE
Section 129 *National Defence Act*

**CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND DISCIPLINE**

Particulars: In that he, on or between 8 and 17 July 2019, at CFB Edmonton, did harass MCpl K. Cameron, by showing her an image of genitalia.”

[2] It now falls to me to impose a fit sentence for the offence to which I found Corporal Cookson guilty.

Joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a fine in the amount of \$2000 payable in monthly installments of \$50.

[4] The joint submission before the court is reviewed in the context of the Supreme Court of Canada (SCC) guidance in *R. v. Anthony-Cook*, 2016 SCC 43. In that decision, the SCC 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.”

Assessing the joint submission

[5] In short, while the case of *Anthony-Cook* encourages counsel to work together to resolve matters and make joint submissions, it still requires that the submission comply with the sentencing principles, which in our case, are set out within the *National Defence Act (NDA)*. Hence, it is my duty to examine the evidence considering the applicable principles and objectives set out within the sentencing regime provided for under the *NDA*.

[6] The appropriateness of a sentence is a function of the purpose and principles of sentencing set out in sections 203.1 to 203.3 of the *NDA* as applied to the facts that led to the conviction.

Facts

[7] The facts related to this charge are set out in my decision of finding delivered earlier this morning, which is published separately, see *R. v. Cookson*, 2023 CM 2002.

Evidence

[8] In this case, the prosecutor provided the documents required under *Queen's Regulations and Orders for the Canadian Forces (QR&O)* article 112.51 that were supplied by the chain of command.

[9] It takes significant courage for a victim to come forward to his or her chain of command to report conduct that has made him or her feel uncomfortable, and the Court recognizes this. The prosecution advised the Court that he consulted with the victim in this case, Master Corporal Oliver who indicated that she has nothing further to add than that which she testified to during the court martial itself.

[10] Furthermore, the Court benefitted from counsel's submissions to support their respective positions on sentence where they highlighted the facts and considerations relevant to Corporal Cookson.

[11] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of Corporal Cookson's personal circumstances, so I may impose a sentence specifically for him.

Circumstances of the offender

[12] Corporal Cookson is 32 years old. He enrolled in the Canadian Armed Forces (CAF) on 5 March 2010, at 19 years of age, fresh out of high school. He served with the CAF until 22 February 2022, a period just under 12 years. He was released from the CAF and is in receipt of a medical pension from Veterans Affairs Canada. He has a young daughter who lives in Ontario.

Purpose, objectives and principles of sentencing to be emphasized in this case

[13] When crafting a sentence, I must first consider the fundamental purpose and goals of sentencing which is to maintain the discipline, efficiency and morale of the CAF.

[14] The prosecution has emphasized that the objectives of sentencing that the Court must consider are primarily denunciation and to some respect deterrence.

Analysis

Denunciation - denounce unlawful conduct (NDA 203.1(2)(c))

[15] One of the objectives is to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct. In courts martial, the sentence represents the judicial condemnation of the sanctioned conduct to the affected CAF community. Consequently, judicial sentences should be imposed in a manner that positively enforces the communal values of all serving CAF members as expressed by the *NDA*.

Deter offenders and other persons from committing offences (NDA 203.1(2)(d))

[16] Where the purpose of the sentence is to deter others who may be inclined to engage in similar conduct, then the Court must carefully consider the sentence from an objective perspective based on the facts and the context of the offence. I must consider the gravity of the offence, the incidence of this type of offence within the military community, and the harm caused by it, with respect to the individual directly affected.

Priority of objectives

[17] Based on the facts of this case, and after considering the context of what unfolded in the incident before the court, I find that the objectives of sentencing that must be given the highest priority are general deterrence and denunciation.

Gravity of offence and degree of responsibility

[18] It is a fundamental principle of sentencing that the military judge must impose a proportionate sentence by reasonably appreciating the gravity of the offence and the degree of responsibility of the offender in the specific circumstances of the case.

[19] For a sentence to be proportionate, individualization and parity of sentences must be reconciled.

Parity

[20] In assessing the type of sentence that is appropriate for this offender based on the facts before the Court, I must first determine the appropriate range of sentence for an offence of this type. The inquiry here is objective. The appropriate range is based on the general characteristics of the typical offence and on the assumption that the accused is a person of good character with no criminal record.

[21] The sentencing process requires military judges to closely analyze the established precedent and assess the facts of a case against the backdrop of similar facts. It is important for the maintenance of discipline in the military context that similar conduct be treated with parity.

[22] In making the joint submission, the prosecution relied upon the court martial precedent of *R. v. Malone*, 2019 CM 5004 in arguing that the fine of \$2000 is appropriate. In *Malone*, the accused sent the victim, a more junior member, three sexually explicit memes. At the first opportunity provided in the military justice process, Warrant Officer Malone fully acknowledged and took responsibility for making the above noted comments and pleaded guilty at his court martial. In so doing, he publicly denounced the conduct and demonstrated leadership by taking responsibility for his actions. He was sentenced to a reprimand and a fine in the amount of \$1500.

Accounting for relevant aggravating or mitigating circumstances

[23] Using the above range of sentence as a starting point, the second step involves adjusting the sentence upward or downward based on aggravating or mitigating factors. The judge must consider factors personal to the accused and the victim, and the actual consequences of the offence.

[24] Aggravating circumstances include, but are not restricted to, evidence establishing any of the statutory factors set out in paragraph 203.3(a) of the *NDA*.

Aggravating factors

[25] After hearing the submissions of counsel, the Court notes the following aggravating factors that should be considered:

- (a) effect on victim. Although the victim declined to provide any additional information for sentencing, her testimony during the trial revealed that she has been negatively affected as a result of this incident. She has had difficulty concentrating and has had to seek mental health assistance; and
- (b) the offence occurred in direct violation of the CAF's efforts to eradicate harmful sexualized behaviour.

Mitigating factors

[26] After hearing the submissions of counsel, the Court has determined that the following mitigating factors must be considered:

- (a) Corporal Cookson does not have a criminal record and although he does have a conduct sheet, with respect to the current sentencing process and the dates of the offences, he is to be considered a first-time offender;
- (b) length of military service. He has served honourably in the CAF for almost twelve years;
- (c) age and future. Corporal Cookson has been medically released from the CAF and is no longer serving. He is still a young man with his entire future ahead. While serving, he was awarded a Commanding Officer's Outstanding Tradesperson of the Year award and has the potential to succeed; and
- (d) employment. He is currently unemployed for reasons related to his medical release, so he is financially constrained.

Determination of sentence

[27] It is noteworthy that Corporal Cookson is currently retired, and this is a factor to be considered in the determination of a meaningful sentence. Except for imprisonment and fines, there is no direct parity to those sentences generally available in the civilian criminal justice system. Although some punishments might serve the same purpose and objectives found in criminal courts, others do not.

[28] After considering counsel's submissions in their entirety and considering all the evidence before the court, I must ask myself whether the acceptance of the proposed sentence would cause the CAF community and its members to lose confidence in the military justice system.

[29] The joint submission before the Court falls within an acceptable range of precedents provided to the Court, particularly considering the balancing of all the aggravating, and mitigating factors and does not bring the administration of justice into disrepute.

Final comments

[30] As I explained in my decision on finding, in asking Master Corporal Oliver to view your intimate photo, you crossed a boundary and betrayed the trust that was fundamental to your friendship. Despite whatever your motivation was, conduct such as this that unfolds between serving members rises to the level of harassment. If left unaddressed, this type of conduct extends beyond just you, as it inevitably leads to a breakdown of trust, loyalty and discipline of other members serving within the same unit.

[31] I appreciate and understand that you were personally suffering with your relationships at that time, and perhaps you were desperately reaching out for some positive reassurance. Master Corporal Oliver had been kind, thoughtful and supportive to you and you knew that you would get a favourable response, which you did. However, it was clear that after the incident, that trust that underpinned your friendship was breached, and she was silently suffering for simply being kind and supportive to you. There is no greater menace to the integrity of what we stand for in the CAF, than the erosion of trust between serving members. Quite frankly, as a military force, trust is necessary for our survival and must never be compromised.

FOR THESE REASONS, THE COURT:

[32] **SENTENCES** Corporal Cookson to a fine in the amount of \$2000 payable in monthly installments of \$50 starting the month of March 2023.

Counsel:

The Director of Military Prosecutions as represented by Major C.R. Gallant

Lieutenant-Commander F. Gonsalves, Defence Counsel Services counsel for the Offender, Corporal R. Cookson