



## COURT MARTIAL

**Citation:** *R. v. Mentel*, 2023 CM 5003

**Date:** 20230425

**Docket:** 202254

Standing Court Martial

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

**Between:**

**His Majesty the King**

- and -

**Private, A.J. Mentel, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

#### **I. Introduction**

[1] Private (Pte) Mentel is facing one charge contrary to section 267 of the *Criminal Code* preferred pursuant to section 130 of the *National Defence Act (NDA)*. The particulars state that on or about 4 August 2022, at or near Canadian Forces Base (CFB) Gagetown, in committing an assault on Corporal (Cpl) Lawless, did cause bodily harm. At the trial, Pte Mentel pleaded guilty to the lesser and included offence of assault. The prosecution consented to this plea. The Court accepted and recorded the guilty plea on the assault charge. As part of the sentencing hearing, counsel proposed a joint submission, recommending that I impose a punishment of a severe reprimand with a fine in the amount of \$2,500. The Court must therefore determine if the joint submission is contrary to the public interest.

*Background*

[2] As part of the sentencing hearing, Pte Mentel admitted as true the relevant facts as they were summarized in the Statement of Circumstances, which read as follows:

“Statement of Circumstances

1. At the material time, the offender, Pte Mentel, was a member of the Regular Force, Canadian Armed Forces, and posted to CFSME at CFB Gagetown, NB. He and Cpl Lawless were roommates on base in building H-20.

2. At approximately 1830h on 03 August 2022, Cpl Lawless went with a number of friends to Griffin’s Pub in Gagetown NB. He and Pte Mentel exchanged some text messages, and they agreed to meet at Griffon’s. After some time at Griffon’s the two, along with Pte Londono Castano went to Dooly’s pool hall in Gagetown, NB. All three consumed alcohol that evening and were intoxicated. The night was friendly and without incident until the walk home.

3. They remained at Dooly’s until approximately 2330h on 03 August 2022, at which point Pte Londono Castano asked the bartender to call them a cab. Cpl Lawless also tried to contact a cab with his cell phone but was unsuccessful as his phone ran out of battery. When the bartender got through, he informed them it would take approximately 20 minutes for a cab to arrive. Instead of waiting, the three decided to walk back to the base. Pte Mentel was upset about having to walk home because he paid for a cab on their last outing, and he felt Cpl Lawless was trying to avoid spending money on a cab.

3. On the walk home, Cpl Lawless had his arm around Pte Londono Castano, helping Castano walk upright as he was highly intoxicated. He asked Pte Londono Castano for a cigarette, and Castano informed him they are in his coat pocket and he could grab one. When Cpl Lawless took the cigarette, Pte Mentel told him “You’re robbing me, you just don’t want to pay for the cab. I paid last time. Now you’re taking smokes from Castano, you need to get beat the fuck up”

4. The three continued on for a moment, when, without warning, Pte Mentel struck Cpl Lawless in the back of the head with his fist. Cpl Lawless blacked out momentarily, and when he regained consciousness, he was lying on the ground with Pte Mentel over top of him punching him multiple times. A group of persons passing by saw the attack and pulled Pte Mentel off Cpl Lawless.

5. Cpl Lawless was confused and had difficulty speaking. He ran the rest of the way back to CFB Gagetown, with Pte Mentel screaming “robber” at him as he ran. When he arrived at building H-20, Cpl Lawless went into

the room of some other CAF members as he feared Pte Mentel would find him in their room and attack him again.

6. The incident was reported by an unknown person to the base duty Sgt, who subsequently found Cpl Lawless in building H-20. Cpl Lawless told the duty Sgt he was worried Pte Mentel was going to try and kill him. Cpl Lawless was told to remain in the room of the other CAF members, then the duty Sgt called the military police. Pte Mentel was arrested at approximately 0200h on 04 August 2022, and released later that morning.

7. As a result of the assault, Cpl Lawless suffered from a brain concussion, as well as abrasions, bruising, and soft tissue injuries to the head and neck. For days following the incident, Cpl Lawless suffered from nausea, vomiting, headaches, dizziness, blurred vision, tingling sensation in his body, and a sensitivity to light and sound. He was placed on sick leave from 5-8 August 2022 and restricted from using screens except for essential texts to his mother. By 10 August 2022, he had shown significant improvement. From 09-21 August 2022, Cpl Lawless was on a medical employment limitations which included limited working hours and restrictions on physical activity. CAF medical professionals ceased following Cpl Lawless for injuries on 21 August 2022.

8. Pte Mentel does not recall the following facts outlined above, but not dispute them:

- a. That he told Cpl Lawless “You’re robbing me, you just don’t want to pay for the cab. I paid last time. Now you’re taking smokes from Castano, you need to get beat the fuck up”;
- b. That Cpl Lawless asked Pte Londono Castano for a cigarette, or Castano’s response, only that he saw Cpl Lawless rifling through Castano’s pocket; and
- c. That he shouted “robber” as Cpl Lawless fled.”

**II. Whether imposing a severe reprimand combined with a fine in the amount of \$2,500 would bring the administration of justice into disrepute or is otherwise contrary to the public interest**

*Position of the parties*

[3] Considering the facts he summarized in the Statement of Circumstances, counsel for the prosecution contended that specific and general deterrence as well as denunciation are the most important objectives for this case. He listed as aggravating that the victim was the offender's roommate and friend, consequently, the offender’s actions violated the trust the victim had for Pte Mentel. He also explained that the attack

came from behind, therefore the victim had no opportunity to defend himself. The assault also involved multiple blows and the victim suffered some harm that led him to have medical employment limitations for a period of two weeks.

[4] Further, the victim was superior in rank, although the prosecution recognized that rank played a less significant role because the offender and the victim were friends and roommates and were both junior non-commissioned members (NCMs). He recognized as mitigating that Pte Mentel is a first-time offender with very little military experience, as he was just beginning his indoctrination into the Canadian Armed Forces (CAF) when he was released. The prosecutor also noted that the offender expressed his intent to plead guilty at the earliest opportunity and showed remorse. Although the evidence was limited, counsel for the prosecution claimed that Pte Mentel is generally of good character.

[5] The prosecution considered as an indirect consequence of the sentence on the offender that a criminal record will result from these proceedings, which risks impacting Pte Mentel's current paid employment because his employer conducts criminal checks when hiring employees. This will affect his professional ambition to join the police force as well. As for the parity principle, the prosecution considered that there is a wide range of punishments imposed in similar circumstances.

[6] Defence counsel agreed with the mitigating and aggravating factors provided by the prosecution and clarified that Pte Mentel's actions were out of character. In fact, Pte Mentel recognized what he did was wrong. As for his service in the CAF, Pte Mentel was not ready to release and left to help his family's business. He was able to secure employment upon his release. These factors served to mitigate the sentence of Pte Mentel.

#### *Sentencing principles of the military justice system*

[7] Turning to the applicable principles a sentencing judge must follow when determining a fair and fit sentence, the Court must be guided by the sentencing principles contained in the *NDA*. As provided at section 203.1 of the *NDA*:

The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces.

[8] The fundamental purpose of sentencing shall be achieved by imposing just sanctions that have one or more of the objectives listed at subsection 203.1(2), such as deterrence, denunciation, to promote a habit of obedience to lawful commands and orders, to maintain public trust in the CAF as a disciplined armed force, or to assist in rehabilitating offenders. The objectives of the sentence are dictated by the particularity of the case and of the offender.

[9] Section 203.2 of the *NDA* provides for the fundamental principle of sentencing:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

*Public interest test*

[10] When counsel present a joint submission, the sentencing judge must apply the public interest test. The public interest 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, having regard to 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.

[11] Joint submissions provide many benefits to the accused, the participants, the unit, and the military justice system because they save both time and resources. They provide some level of certainty for the accused who would see their matter resolved more expeditiously, while saving the witnesses involved in the case, in particular the complainant, the emotional cost generally associated with their participation at trial when providing their testimony in court.

[12] When considering a joint submission, trial judges can rightfully assume that counsel were mindful of the statutory sentencing principles when agreeing on the joint submission. It is also assumed that counsel took into consideration all relevant facts when mutually agreeing upon an appropriate sentence. Counsel submissions usually provide confirmation that they did in fact consider key aspects of the case, including the existence of aggravating factors, and of the offender's personal situation. Additionally, when adduced as part of the sentencing hearing, the offender's evidence provides information that may present additional factors that were also considered during the negotiations, which would further support the joint submission.

*Analysis*

[13] In examining the joint submission, I have considered the gravity of the offence, which calls for a maximum punishment of five years' imprisonment. An assault on a brother-in-arms can have some significant impact on discipline. It may create a hostile environment and irreparably breach the trust amongst those involved, affecting morale and cohesion within the unit.

[14] In addition to the nature and objective gravity of the offence, I have considered the circumstances surrounding the commission of the offence that the Court shall take into consideration when determining whether the proposed punishment meets the public interest test.

[15] Therefore, the following aggravating factors specific to this case were taken into consideration:

- (a) the physical and emotional impacts on the victim. In his victim impact statement, Cpl Lawless wrote that he suffered a concussion following the repeated blows to his head, causing headaches and affecting his sleep. He further wrote that he felt betrayed by the offender's actions particularly because he was his roommate and he trusted him. He is now more reactive when it comes to trusting others. It is apparent that Cpl Lawless suffered harm as a result of the attack;
- (b) the assault was unprovoked and came from behind, leaving Cpl Lawless in a state of vulnerability; and
- (c) Pte Mentel continued punching Cpl Lawless while he was lying on the ground and bystanders had to pull him off Cpl Lawless.

[16] In addition to these aggravating factors, I must also account for mitigating circumstances. I considered that Pte Mentel is a first-time offender and that his actions seemed to be out of character. Additionally, he expressed his intent to plead guilty at the earliest opportunity.

*Circumstances of the offender*

[17] Having reviewed the aggravating and mitigating circumstances of this case, the Court considered Pte Mentel's personal situation. The documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* reveal that the offender is thirty-two years old. He enrolled in the CAF on 20 January 2022, and released the same year, on 2 December 2022. Although Pte Mentel had a short career in the military, it seemed that he did well; I have accepted his evidence that he was top recruit during his basic training.

[18] Pte Mentel testified to the reasons of why he released from the military. After receiving a phone call from his father, a local contractor for renovation projects, he now assists the family business with demolition and heavy lifting, without being remunerated for his work.

[19] Since January 2023, Pte Mentel is also employed with a company called Mattamy Homes, working forty-four hours a week. His tasks are to ensure that all the trades have completed their job before homeowners move in, making sure that any deficiencies are corrected and that there are no delays in the delivery of the new homes. His weekly take-home pay is \$980.

*Attitude to the offence/efforts towards rehabilitation*

[20] The offender also testified that he felt he overreacted as a result of his belief that Cpl Lawless was taking cigarettes from Pte Castano. Pte Mentel told the Court he regretted hitting Cpl Lawless and regretted drinking to excess. He has not been in a physical altercation since.

[21] The offender's future professional goals are to continue working in construction, but also to join the police force.

*Other indirect consequences*

[22] I agree with counsel that an indirect consequence of these proceedings is that Pte Mentel will now have a criminal record, with the likelihood of jeopardizing both his long and short-term professional endeavours. This aspect cannot be ignored.

*Parity*

[23] Turning now to the parity principle, the Court examined precedents for similar offences to determine whether the joint submission is similar to sentences imposed on similar offenders. In this regard and in support of the joint submission, the prosecution provided the cases of *R. v. A.M.*, 2014 CM 1026; *R v Deveaux*, 2012 CM 2011; *R. v. Corporal T.D. Ennover*, 2004cm3012; *R. v. Corporal MacMullin*, 2004CM46; *R. v. Rumbolt*, 2019 CM 2028; and *R. c. Bruyère*, 2022 CM 5004. After a review of the case, I feel compelled to distinguish *Bruyère* from the case at bar. Pte Bruyère pled guilty to two offences similar to Pte Mentel's case, however the assault was committed on an intimate partner. Pte Bruyère had some mental health and addiction issues and he had made some progress for his rehabilitation. While the sentencing objectives were similar, the punishment was tailored so as to not compromise Pte Bruyère's relative fragile path to recovery. Thus, *Bruyère's* relevance in the context of the parity principle is limited.

[24] Nevertheless, after a review of the precedents I have accepted, and other applicable cases such as *R. v. Burton*, 2014 CM 2024 and *R. v. Simms*, 2016 CM 4001, the Court concludes that the joint submission corresponds to punishments imposed in the past for similar offences. That is sufficient to allow the Court to conclude that the proposed sentence is not unfit.

*Principles of sentencing deserving greatest emphasis*

[25] In light of the offence to which Pte Mentel pled 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 the offender and others from adopting the same conduct, as well as to denounce unlawful conduct.

[26] Reviewing the record and the evidence before me, and considering the applicable sentencing principles, I find that a reasonable person aware of the circumstances would expect the offender to receive a sentence which includes

punishments expressing disapprobation for the failure in discipline involved and have a personal consequence for the offender. The sentence being proposed, composed of the punishments of severe reprimand and a fine in the amount of \$2,500, is aligned with these expectations.

*Other ancillary orders*

[27] Finally, I have also considered whether this is an appropriate case for a weapons prohibition order, as stipulated under section 147.1 of the *NDA*. In this case, such an order is neither desirable nor necessary in the circumstances of this trial because the assault did not involve violence with a weapon and because Pte Mentel is a first-time offender. I will not make an order to that effect.

**III. Conclusion**

[28] Having reviewed the documentary evidence introduced as exhibits and considering counsel's submissions, it is apparent that they carefully assessed the offender's specific circumstances when they arrived at their joint submission. Since counsel identified and considered the most relevant aggravating and mitigating factors surrounding the commission of the offence, properly addressed the applicable principles and objectives of sentencing in this case, I accept counsel's position that the need for general and specific deterrence and denunciation are met with the proposed sentence.

[29] In sum, reviewing the relevant facts of this case, Pte Mentel's reaction toward Cpl Lawless, based on his belief that he was taking advantage of his friends, was violent and disproportionate; the attack was unprovoked and involved repeated punches while the victim was on the ground. It is apparent that the intoxication of the offender influenced the commission of the offence. In any event, I agree with the prosecutor that when the assault on Cpl Lawless was committed, Pte Mentel exercised a serious error in judgement that caused harm to the victim. Ultimately, the offender took full responsibility for his actions. Further, the evidence the Court received indicates that there is no reason to believe that the offender will repeat the conduct to which he pled guilty. In short, in consideration of all the aggravating and mitigating factors and the sentencing principles, the Court finds that the joint recommendation is not contrary to the public interest and would not bring the military justice system into disrepute.

**FOR THESE REASONS, THE COURT:**

[30] **FINDS** Pte Mentel not guilty of the assault causing bodily harm; however, finds him guilty of assault contrary to section 266 of the *Criminal Code*, an offence punishable under section 130 of the *NDA*.

[31] **SENTENCES** Pte Mentel to a severe reprimand and a fine in the amount of \$2,500 to be paid as soon as possible and within the next thirty days.

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**Counsel:**

The Director of Military Prosecutions as represented by Major M. Reede

Lieutenant(N) B. Wentzell, Defence Counsel Services counsel for the accused, Private  
A.J. Mentel