



## COURT MARTIAL

**Citation:** *R. v. Dacey*, 2023 CM 4009

**Date:** 20230510

**Docket:** 202318

Standing Court Martial

3rd Canadian Division Support Base Edmonton  
Edmonton, Alberta, Canada

**Between:**

**His Majesty the King**

- and -

**Master Warrant Officer S.D. Dacey, Offender**

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

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Master Warrant Officer (MWO) Dacey, 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 ill-treated a subordinate, contrary to section 95 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 sentence constituted of a reprimand and a fine in the amount of \$1,000.

[3] This recommendation of counsel 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 (SCC) 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 recognize their responsibilities and 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 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 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 principles of sentencing found at section 203.2 of the *NDA* provide that a military judge shall impose a sentence 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 MWO Dacey. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *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 MWO Dacey 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 offender, the offence and its aftermaths**

[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 circumstances relevant to the offender and the offence.

[12] As it pertains to the offender, MWO Dacey first enrolled in the Canadian Armed Forces (CAF) in 1989 and has served mainly as a vehicle technician and more recently as a land equipment engineering technologist with a brief break in service in between 2015 – 2016. In his, almost thirty-three-year career in the regular force, he has been posted to several locations supporting mobile material equipment with several units in Alberta, Ontario and British Columbia. He has deployed on three occasions to Afghanistan, and the middle East. MWO Dacey rose steadily through the ranks and was promoted to his current rank in June 2020. He has no previous disciplinary issues and was introduced to the Order of Military Merit as a member.

[13] The Statement of Circumstances reveal the following as it pertains to the offence:

- (a) at the end of exercise ROUGH RIDER 2020, in Wainwright, Alberta, MWO Dacey called his subordinate warrant officers, who had supported the exercise together to thank them. A group hug was performed at the request of one of the participants. At the end of the group hug, MWO Dacey moved his hand from the shoulder of a subordinate warrant officer and touched her buttocks without her permission;
- (b) that warrant officer confronted MWO Dacey about the incident and expressed her shock and disappointment that it had occurred. After two discussions on the matter with MWO Dacey she thought that it had been dealt with and did not press the matter any further;
- (c) about a year later, in September 2021, MWO Dacey was the subject of a complaint from a sergeant who alleged that MWO Dacey placed his hand on her without her permission while in her office at Canadian Forces Base (CFB) Edmonton; and
- (d) while the warrant officer subject to the previous incident of the previous year in CFB Wainwright heard about this later incident involving a sergeant, she became concerned and decided to report the September 2020 incident to ensure that MWO Dacey's alleged misconduct was

addressed and that no other members were subjected to any possible further misconduct from him.

[14] The defence submitted a document highlighting the ideal timelines for disciplinary proceedings and an Agreed Statement of Facts to bring to the attention of the Court the administrative measures that MWO Dacey was subjected to, following the September 2021 complaint. I do not see the need to quote verbatim from the Agreed Statement of Facts, but the highlights reveal the following:

- (a) on 20 September 2021, MWO Dacey was informed of an investigation into his conduct and was removed from his position as the equipment technical quartermaster sergeant with the 1st Service Battalion based in Edmonton Alberta;
- (b) he was ordered not to speak to anyone within the battalion save and except for the commanding officer (CO), the regimental sergeant major and the officer commanding administration company;
- (c) MWO Dacey was told he should be back to work within three weeks. However, he had no significant contacts with his unit until January 2022. In those four months he began exhibiting mental health symptoms leading to evaluations and ongoing treatment for previously undiagnosed post-traumatic stress disorder;
- (d) on 21 January 2022, during a telephone discussion with his CO, MWO Dacey was informed that given his condition, he would be employed outside of his unit. He was ordered to remove his personal effects from 1 Service Battalion unit lines. He was eventually assigned to work with an Ottawa based directorate at National Defence Headquarters performing his assigned task from Edmonton;
- (e) charges were laid in this matter by the 1 Service Battalion's Regimental Sergeant Major on 10 February 2022, almost five months after MWO Dacey was informed of the investigation;
- (f) on 13 April 2022, MWO Dacey was offered a choice of mode of trial and chose a court martial. He had sporadic contact with his CO throughout the summer via text messages, but was only provided with his choice of counsel on 12 September 2022, seven months after being charged;
- (g) the request for referral was sent by the unit on 15 September 2022, to a referral authority leading to an assignment of defence counsel on 5 October 2022, and contact with counsel on the same day;

- (h) the referral was forwarded by the referral authority to the Director of Military Prosecutions on 13 October 2022, eight months after the charges were first laid;
- (i) the charges were preferred against MWO Dacey by the Director of Military Prosecutions on 3 December 2022; and
- (j) at that point, twenty months since the start of the investigation, MWO Dacey's post-traumatic stress disorder has emerged, and the stress and sense of abandonment have led to a need for medication to control his anxiety and panic attacks as well as to help him sleep. The level of stress and anxiety has also affected his spouse. MWO Dacey is currently on a temporary medical category, and it is expected that he will be released medically from the CAF in the near future.

**Seriousness of the offence**

[15] The Court has considered the gravity of the offence in this case. The offence under section 95 of the *NDA* attracts a maximum punishment of imprisonment for less than two years or less punishment. It is therefore an objectively serious offence going to the core of the need to maintain morale and efficiency of subordinates and a disciplined armed force.

[16] Of course, a broad range of circumstances can lead to offences under section 95. The circumstances of the behaviour in this case are not insignificant as the offender has violated the bodily integrity of a subordinate during what would appear to have been a group hug to celebrate the work that was accomplished in the course of an exercise in the field.

[17] The rank of the offender brings his conduct under a specific light for the purpose of discipline. Senior members of the chain of command must exercise the outmost caution in dealing with subordinates. They are expected to understand that touching someone is appropriate only in rare circumstances and should be extremely careful in these situations not to exceed what is expected to avoid encroaching on someone's bodily integrity.

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

[18] I agree with the prosecution that the circumstances of this case require the focus to be placed on the objectives of denunciation and general deterrence in sentencing the offender. This is not a case where the specific deterrence is significant. Here the sentence proposed must be sufficient to denounce MWO Dacey'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 in relation to subordinates.

[19] Although the sentence must demonstrate that misbehaviour has consequences, the circumstances of the offender reveal the need to keep in mind the objective of rehabilitation. MWO Dacey has taken steps to rehabilitate himself and can still make a significant contribution to society as he is expected to leave the CAF shortly.

**Aggravating factors**

[20] The circumstances of the offence reveal aggravating factors which explain why the conduct needed to be the subject of formal charges. Indeed, MWO Dacey was at the time of the offence, serving as a senior non-commissioned member during an exercise in the field. In that rank and capacity, he was expected to lead by example and show the outmost care in dealing with subordinates especially in the context of physical contact. MWO Dacey's subordinate consented to a group hug, not to be touched on the buttocks. The violation of her physical integrity in that occasion was a failure of leadership and a violation of the trust she is entitled to have in her superior.

**Mitigating factors**

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

- (a) MWO Dacey'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) MWO Dacey's collaboration with authorities in indicating his intention to plead guilty at the earliest opportunity in the court martial process; and
- (c) the fact that MWO Dacey has no record and is a first-time offender who has an unblemished career of almost thirty-three years in the CAF.

**Delay**

[22] The delay in bringing this matter to trial is concerning to me. It took a long time to bring this matter from the unit which laid the charge to the authorities that have the power and duty to prosecute it, in light of the mode of trial that the offender had a right to elect under regulations. Well in excess of the guidelines provided for timelines applicable to courts martial, this delay caused stress and anxiety to MWO Dacey resulting in him being unable to render the full services that the CAF may require of him. In addition, his effective suspension from military duty between September 2021 and January 2022, apparently without compliance with the applicable regulations, caused MWO Dacey significant distress given the isolation he suffered.

[23] I do recognize the challenge of having to isolate the subject of an investigation and the challenge in supporting victims in circumstances such as these. However, there is something ironic in sentencing an offender for ill-treating his subordinates when the

treatment received by MWO Dacey from his own superiors in the period before his trial caused him so much pain. It is difficult to understand why MWO Dacey needed to be isolated from the entire military community for four months before suitable arrangements could be found which would isolate him from complainants, especially in a large location such as Garrison Edmonton.

[24] It is also difficult to accept as normal that it took five months to investigate the matter, but more importantly, why it took seven months between the moment the investigation was completed, and charges laid and the moment these charges were referred from the unit to higher authority for court martial. That delay is surprising considering the obligation at QR&O article 107.09 and section 162 of the *NDA* to deal expeditiously with charges that are laid. It is also surprising given the applicable guidelines for time to perform these tasks. The delay has been left unexplained, but it has been acknowledged by the prosecution as one of the factors that led to the suggestion of counsel for a sentence that may appear lenient in comparison with precedents for similar behaviour in the past.

[25] I must conclude that delay is a significant mitigating factor in this case. It's also an unfortunate factor because the delay here victimized a CAF member who was entitled to support even when accused of misconduct. In addition, this delay did not do anything to help victims who are normally eager to put unfortunate experiences behind them. I hope lessons will be learned from this.

### **Assessing the joint submission**

[26] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought previous courts martial cases to my attention showing that the proposed sentence fits into an acceptable range for similar cases, although no case is the same. These court martial cases show that the punishment of severe reprimands, or less frequently reprimands, combined with fines are usually imposed. Given the circumstance of this case, the precedents discussed revealed that the sentence that is suggested is within the range of sentences imposed for similar conduct in the past.

[27] 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.

[28] 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 sentence imposed is well suited to meet the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[29] 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 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.

[30] 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.

[31] MWO Dacey, at this stage I usually try to convey to offenders my views on the gravity of what they have done and the need to recognize their mistake as well as the importance of moving forward with a positive contribution to the CAF and society without reoffending. I do not believe this is necessary in your case. You have demonstrated a full understanding of your error and its consequences. Today, you have accepted responsibility as a leader which is what the victim of your behaviour wanted from this process. I hope that you will now recognize the absolute necessity of not putting yourself in a similar position in the future and that you will move forward with a positive outlook on the life ahead of you.

**FOR THESE REASONS, THE COURT:**

[32] **SENTENCES** MWO Dacey to a reprimand and a fine in the amount of \$1,000 payable forthwith.

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**Counsel:**

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

Lieutenant-Colonel A.H. Bolik, Defence Counsel Services, Counsel for MWO Dacey