



COURT MARTIAL

Citation: *R. v. Gorman*, 2023 CM 4010

Date: 20230623

Docket: 202316

Standing Court Martial

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

Between:

His Majesty the King

- and -

Master Corporal J.M.P. Gorman, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Master-Corporal (MCpl) Gorman, 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) without authority, 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 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 MCpl Gorman. 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 and two documents pertaining to the recent performance of MCpl Gorman, which sheds some light on his particular circumstances before, at the time and 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 another 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) MCpl Gorman was serving as a combat engineer with the 2 Combat Engineer Regiment in Petawawa when he was assigned in 2019 to an out of trade position with the Canadian Army Advanced Warfare Centre (CAAWC), located at Canadian Forces Base (CFB) Trenton, Ontario, in that unit's transport section. The assignment developed into a three-year posting until July 2022;
- (b) on the morning of 17 June 2022, while working at the CAAWC, MCpl Gorman informed his supervisor that he had a healthcare telephone appointment at 1300 hours. He was consequently allowed to return to work later that afternoon so he could take that phone call at his home;
- (c) at around 1040 hours on 17 June 2022, MCpl Gorman took possession of a Department of National Defence (DND) vehicle, with a Canadian Forces Registration license plate #26624, from the CAAWC without asking for nor receiving authority to use this DND vehicle;
- (d) prior to 17 June 2022, there had been three reports about a DND vehicle parked at MCpl Gorman's Private Married Quarters (PMQ). On 1 April 2022, MCpl Gorman was given a verbal warning that a DND vehicle could not be parked there;
- (e) on the late morning of 17 June 2022, MCpl Gorman drove the DND vehicle approximately three kilometres to his PMQ, located in the 8 Wing Trenton PMQ area;
- (f) shortly thereafter, someone reported that a DND vehicle was parked at a PMQ residence. Two personnel from 8 Wing Trenton Mobile Support Equipment (MSE) safety, who were performing a safety patrol at Canadian Forces Base (CFB) Trenton at the time, went to investigate and found a DND vehicle parked outside of MCpl Gorman's PMQ;
- (g) they knocked on the door of the PMQ and asked MCpl Gorman why the DND vehicle was parked at his residence as it was against regulations.

MCpl Gorman informed them that his own car wasn't working. That explanation was insufficient for MSE safety personnel who removed MCpl Gorman's military driver's licence (DND 404) and issued a notice of DND MSE regulation infraction for misuse of a DND vehicle. They returned the vehicle back to MSE; and

- (h) on the afternoon of 28 June 2022, MCpl Gorman was interviewed in the course of a unit investigation by the production warrant officer (WO) at the CAAWC. He collaborated fully, providing a voluntary statement under caution in which he admitted to utilizing the DND vehicle for personal use on 17 June 2022.

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) MCpl Gorman is a 30-year-old combat engineer who joined the CAF in 2013 and, following training, served mainly in Petawawa, with the exception of his three-year posting to CFB Trenton between 2019 and 2022;
- (b) during his time with the CAAWC, MCpl Gorman was noted for his co-operation with the 8 Mission Support Squadron (MSS) transport section in Trenton, entertaining positive and professional interactions to arrange the flow of vehicles to and from maintenance as well as specialty vehicles, not hesitating to assist even with tasks outside of his own area of responsibility in order to ensure that the overall job gets done;
- (c) in the spring of 2022, MCpl Gorman's mother suffered a life-threatening accident where she lives in western Canada and the challenging situation took a toll on MCpl Gorman's own mental health; and
- (d) since returning to 2 CER in the summer of 2022, MCpl Gorman has been employed in administrative functions and as a guide, mentor and instructor at the combat engineer development period 1 (DP 1) course at CFB Gagetown and within 2 CER in Petawawa. His current chain of command indicates that MCpl Gorman is an exceptional and mature junior leader who has high potential for progression within the CAF. His supervisor states that he could not be happier to have him contribute the way he has done with junior sappers within the unit.

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 could be considered, on the one hand, as amongst the most minor as no damages were caused because of the offence. On the other hand, however, the facts indicate that MCpl Gorman failed to take advantage of several warnings to amend his conduct in relation to use of DND vehicles. As such, it is entirely understandable that his conduct needed to be sanctioned.

Objectives of sentencing to be emphasized in this case

[15] I agree with counsel to the effect 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 Canadian Armed Forces, the sentence proposed must be sufficient to denounce MCpl Gorman's conduct in the military community and to act as a deterrent to others who may be tempted to engage in similar type of unacceptable behaviour.

[16] Although the sentence must show to MCpl Gorman 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 MCpl Gorman has taken to rehabilitate himself, his current positive contribution at his unit and his future potential as a leader within the CAF.

Aggravating factors

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

- (a) the offence was committed by someone who is specifically employed in the control and management of MSE equipment, hence who is aware of the applicable rules prohibiting personal use of DND vehicle and expected to set an example in relation to these rules; and
- (b) the offence is a repetition of similar previous behaviour and represents therefore a failure to abide by warnings previously given. This explains why the conduct needed to be subject of a formal charge dealt with during today's proceedings.

Mitigating factors

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

- (a) MCpl Gorman'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 his unit and the military community;
- (b) MCpl Gorman's collaboration with authorities at the earliest opportunity; and
- (c) the fact that MCpl Gorman has served the CAF satisfactorily for almost ten years in the regular force and is currently making a significant contribution to the training of new sappers. He deserves to be punished with a sentence which will not compromise his potential to continue this kind of contribution 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 one court martial case to my attention, the recent case of *R. v. Giggie*, 2023 CM 4003. Cpl Giggie was a MSE Operator, who was assigned to pick up a CAF member from the Ottawa airport for further transport to CFB Petawawa, decided to go to Bayshore mall in Ottawa to run personal errands while waiting to pick up the passenger. Upon leaving the parking garage, he caused damage to the vehicle while attempting to clear through the overhanging clearance signs. He was sentenced on 31 January 2023 to a fine of \$200 at the joint suggestion of counsel.

[20] In the *Giggie* decision, reference is made to a similar suggestion of counsel for a fine of \$200 in the case of MCpl Herd, yet unreported, where a reservist serving full-time on Class B was sanctioned for having used a DND vehicle while his DND driving licence was suspended. There is also the case of Sergeant (Sgt) 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, Sgt 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. Again, the military judge accepted a joint submission of counsel for a fine of \$500.

[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, in combination with the fact that these proceedings by court martial took place, is aligned with these expectations. The fine meets the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[23] 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.

[24] MCpl Gorman, 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. You seem to be an important asset for your Regiment and the CAF, especially in training new sappers. As you progress in your leadership role, I am certain you will recognize your responsibilities, not only to lead by example and comply with all orders and instructions but also by holding your subordinates to account for any failure to abide by the same orders and instructions.

FOR THESE REASONS, THE COURT:

[25] **SENTENCES** MCpl Gorman to a fine in the amount of \$200 payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J. Benhaim and Lieutenant-Commander J. Besner

Major A.H. Bolik, Defence Counsel Services, Counsel for Master Corporal J. Gorman