COURT MARTIAL

Citation: *R. v. McBride*, 2023 CM 4011

Date : 20230628
Docket : 202244

Standing Court Martial

Halifax Courtroom, Suite 505
Halifax, Nova Scotia, Canada

Between :

His Majesty the King

- and -

Corporal B.C.W. McBride, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Corporal (Cpl) McBride, 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 signed an inaccurate certificate in relation to an aircraft, contrary to section 108 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 recommend that I impose a fine in the amount of $600.

[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 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 proposed, 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 Cpl McBride and includes details as to his personal circumstances. 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] 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 two 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

[10] The Statement of Circumstances and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

(a) on 11 January 2022, Cpl McBride was an aviation technician serving with 12 Air Maintenance Squadron in Shearwater. He was tasked with completing a 224-day Corrosion Control Inspection on aircraft CH148812, a Cyclone helicopter.

(b) Cpl McBride signed the 224-day Corrosion Control Inspection reports certifying that he had completed the inspection without having carried out all the work and tasks associated with the inspection.

(c) Indeed, on 22 January 2022 it was discovered that there were irregularities in the inspection of Cpl McBride, such as the fact that the entire inspection was completed within forty minutes, and that he had never signed out the tools, rags, consumables, and test equipment required to complete such an inspection.

(d) According to the unit, the actions of any member certifying for airworthiness which they had not physically executed could have dire consequences to the serviceability of the aircraft and to aircraft operators. There is no alternative to ensuring the safety of the aircraft other than first performing all the steps associated with the maintenance inspection. Even one missed step, no matter the depth, could be catastrophic, and the signature on a form or certificate is a false indication that all these steps of the specific procedure were completed.

(e) The unit further indicates that the ability for a technician to certify airworthiness release of maintenance is granted after many years of training and various levels of in-depth interviews to ensure their competence and their understanding of Air Maintenance Policy. The signature constitutes the certification of the maintenance records and attests that all maintenance steps have been completed to the extent stipulated within the approved Aircraft Weapon System maintenance program. All technicians, throughout their career, are constantly prompted and tested on the importance of performing and then certifying all maintenance activities, and that they shall follow the approved maintenance program and Air Maintenance Policy.

(f) Technicians who have met the technical prerequisites are authorized to perform tasks without direct supervision and trusted to supervise

someone undergoing technical development training. At the time of the offence, Cpl McBride had met these technical prerequisites and had been trained to understand Air Maintenance Policy.

The circumstances of the offender

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

(a) Cpl McBride is now forty-five years old. He was released from the Canadian Armed Forces (CAF) on 9 January 2023 on medical grounds, just short of twenty-four years of service.

(b) Indeed, Cpl Mc Bride had joined the CAF in Ontario in April 1999, serving first in the artillery, then as a mobile support equipment operator in 2005 and finally as an aviation system technician after completion of training in 2012. Throughout the years he served mainly in Gagetown, Edmonton and Shearwater and deployed to Afghanistan in 2008.

(c) At the earliest opportunity in the court martial process, Cpl McBride agreed to take responsibility for his actions and pled guilty.

(d) Cpl McBride is limited by the disability which made him unsuitable for further military service in the aviation systems technician occupation. He is living off his pension with his spouse and three children.

Seriousness of the offence

[12] The Court has considered the objective gravity of the offence in this case. The offence in section 108 of the *NDA*, attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence which recognizes the critical importance of aircraft maintenance through certification of the accomplishment of proper and specific maintenance tasks for specific aircraft types, an essential component of any flight safety program. The onus placed on a person charged under section 108 to demonstrate that reasonable steps were taken to ensure the accuracy of a certificate or form related to an aircraft or aircraft material is an indication of Parliament's recognition of the importance of certification to ensure safety.

[13] Consequently, any offence under section 108 engages safety: the existence of the offence itself in the *NDA* is a recognition of the importance of the need to maintain and enforce the integrity of the certification process. Safety is a given consideration in any violation of section 108.

[14] I do not consider the breach in this case to be merely technical. Of course, work on aircrafts is technical in nature. However, it remains that the Statement of Circumstances reveals that Cpl McBride certified the completion of a Corrosion Control

Inspection without having carried out all the work and tasks associated with that inspection, a breach which was subsequently discovered given irregularities such as the short time spent on the task and the fact that he had not obtained the tools and test equipment required to complete such an inspection.

[15] The offence in this case is therefore more than technical and certainly not the most minor of circumstances which could sustain a charge under section 108 of the *NDA*. It is therefore entirely understandable that Cpl McBride's conduct needed to be sanctioned.

[16] 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 at 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 Cpl McBride's conduct in the military community, especially the Royal Canadian Air Force technical community, and to act as a deterrent to others who may be tempted to cut corners in aircraft maintenance tasks.

Aggravating and mitigating factors

[17] The circumstances of the offence reveal an aggravating factor in the sense that Cpl McBride was trained and qualified to perform the work assigned to him without supervision, having gained the trust of his superiors. He deserved to be allowed to perform his tasks without having someone looking over his shoulders. Yet, in acting as he did, he not only signed an inaccurate form but also breached the trust placed in him to complete his tasks as prescribed and expected from a professional technician.

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

(a) Cpl McBride's guilty plea today, which avoided the expense and energy of running a trial and demonstrated 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) Cpl McBride's collaboration with authorities at the earliest opportunity.

(c) the absence of a conduct sheet or criminal record, revealing that Cpl McBride must be considered a first-time offender.

(d) the fact that Cpl McBride has served the CAF satisfactorily for over twenty-three years in the regular force in various capacities and environments, making a significant contribution to the defence of this country and indicating that the sentence to be imposed should not compromise his potential to contribute further to society in a civilian capacity 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 court martial cases to my attention, both from 2019, relating to the same incident surrounding the replacement of an intermediate gear box on a Sea King helicopter in 2018, on board Her Majesty's Canadian Ship *Charlottetown*. Essentially, the prescribed procedures were not accurately followed as technicians used the wrong tool during the required alignment procedure. Consequently, the certificates signed upon completion of the work were inaccurate. Then-Master Corporal Gauthier and Sergeant Lundy were both sentenced to a fine in the amount of $600 in separate courts martial approximately eighteen months after the facts (*R. v. Gauthier* 2019 CM 2022 and *R. v. Lundy* 2019 CM 5005). These sentences were the result of joint submissions.

[20] Although this is a small sample, these cases show that the proposed sentence in this case, a fine in the same amount, 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 has a direct impact on the offender. The proposed fine 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] 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.

[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] Cpl McBride, 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** Cpl McBride to a fine in the amount of $600 payable forthwith.

Counsel:

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

Major A. Gélinas-Proulx, Defence Counsel Services, Counsel for Corporal B.C.W. McBride