COURT MARTIAL

Citation: *R. v. DeMontmorency*, 2023 CM 4014

Date : 20230831
Docket : 202252

Standing Court Martial

CFB Halifax Courtroom
Halifax, Nova Scotia, Canada

Between:

His Majesty the King

- and -

Master Sailor A.B. DeMontmorency, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Sailor (MS) DeMontmorency, having accepted and recorded your plea of guilty in respect of charge one on the charge sheet, the Court now finds you guilty of that charge for drunkenness, contrary to section 97 of the *National Defence Act* (*NDA*). You were found not guilty of charge two for assault as the prosecution elected not to call any evidence on that charge.

[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 reprimand and a fine in the amount of $2,000.

[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.

[4] The Supreme Court of Canada has set a high threshold to depart from joint submissions made by counsel because 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 goal of the sentencing process. I must also keep in mind the disciplinary purpose of courts martial in performing the sentencing function attributed to me as a military judge. 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 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 starting point for any sentencing decision is found at section 203.2 of the *NDA* which provides that a military judge shall impose a sentence commensurate with "the gravity of the offence and the degree of responsibility of the offender".

<u>Matters considered</u>

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by MS DeMontmorency. 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. The prosecution also produced two written statements from victims of MS DeMontmorency's behaviour.

[9] For its part, the defence produced an Agreed Statement of Facts, which provides very positive testimonials from superiors and a subordinate of MS DeMontmorency as to the kind of person he is, his contribution to the Canadian Armed Forces (CAF) and his potential for the future. As MS DeMontmorency has opted to be voluntarily released

from the service two months before sentencing, the Court also obtained details of his current occupation and plans for his future as a civilian.

[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 circumstances of the offence

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

(a) On 19 November 2021, the offender, MS DeMontmorency was participating in a course to obtain his Primary Leadership Qualification (PLQ). He attended Slackers Lounge in the evening, located at Tribute Towers on Canadian Forces Base (CFB) Halifax with some of his fellow PLQ course mates. He was already intoxicated by the time he arrived at the Lounge.

(b) While at Slackers Lounge, MS DeMontmorency made a number of inappropriate comments to MS Simpson, which included, among other things, "oh you are so beautiful" and "I want to bend you over and fuck you." The offender put his hands around her waist, and repeatedly touched her forearm, which made her very uncomfortable. She noted the offender was very intoxicated, had concerns for her safety and was escorted back to her room by a fellow course mate.

(c) MS DeMontmorency also attempted to pull MS Enga onto his lap several times, despite her resistance and verbal objections. MS Enga described the offender's actions as "touchy" and "huggy".

(d) MS DeMontmorency also repeatedly entered the personal space of Master Corporal (MCpl) Richards asking her whether she was going to have sex with a guest she had brought. She noted the offender was very intoxicated, having told her that he had consumed cannabis and alcohol prior to arriving at Slackers Lounge.

(e) Eventually, MCpl Richards called a taxi to take MS DeMontmorency home. The offender called MCpl Richards several times seeking her assistance, as the driver of the taxi refused to let him in due to his level of intoxication. He returned to Slackers Lounge where MCpl Richards gave him some water to drink.

The circumstances of the offender

[12] MS DeMontmorency is a thirty-four-year-old former Naval Combat Information Operator with the Navy, which he has served honourably from May 2011 to 1 July 2023, when he was released at his request after just over twelve years of full-time service with the regular force. He is now back to his native Ontario where he resides with his wife and three children and is undergoing studies with the University of Ottawa to qualify for civilian employment in the near future.

[13] MS DeMontmorency joined ships of the Atlantic fleet immediately after basic military and occupational qualification and served as a Naval Combat Information Operator at sea, including a deployment in the Mediterranean with Operation REASSURANCE in 2017-18. Throughout his career, MS DeMontmorency served honourably and was qualified by his superiors as a hard worker, good leader, and a compassionate, caring and thoughtful person. A subordinate described him as a role model.

[14] MS DeMontmorency has one disciplinary conviction to his record for possession of cannabis in 2013, a matter resolved at a summary trial.

Seriousness of the offence

[15] The Court has considered the objective gravity of the offence in this case. The offence in section 97 of the *NDA* attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence which recognizes the importance for CAF members to always conduct themselves appropriately.

[16] As mentioned in sentencing Sergeant Sloan in 2014 (*R. v. Sloan*, 2014 CM 4004 at para 14) “the offence of drunkenness is not aimed at sanctioning the consumption of alcohol or a drug. It is meant to address fitness for duty or behaviour that is disorderly or discredits Her Majesty's service.” In this case, the offence of drunkenness targets inappropriate behaviour, reflecting the fact that no member of the military is exempted from the obligation to show respect to everyone despite any level of intoxication. Of course, a broad range of circumstances can lead to offences under section 97, amongst the most important of these are acts of violence, including the violation of the physical integrity of others, as we have here.

[17] Indeed, in supporting living conditions of service members, the CAF provides facilities such as messes or lounges on military bases as places to relax and socialize with colleagues, an important part of military life. This is a place where members of the CAF should feel safe, not a place where anyone should feel vulnerable to have their physical integrity violated or to be insulted publicly.

[18] Two victims made a point of transmitting statements to the Court to explain how the offence affected them. They described the embarrassment they felt, their feelings of having been violated by the touching and demeaning words of the offender and the

impact of the offence. Their contribution is useful as it illustrates clearly why the conduct of MS DeMontmorency needed to be sanctioned.

[19] I therefore 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.

[20] 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 Forces," the sentence proposed must be sufficient to denounce MS DeMontmorency's conduct in the military community and to act as a deterrent to him and others who may be tempted to engage in a similar type of demeaning conduct in relation to colleagues, especially demeaning comments of a sexualized nature and violations, however minor, of their personal space and bodily integrity.

[21] At the same time the sentence must not be so severe as to cause a disproportionate impact on the offender and risk compromising his necessary rehabilitation, especially for a former member who is retraining and hoping to obtain gainful civilian employment to support a spouse and a family.

Aggravating and mitigating factors

[22] The circumstances of the offence reveal aggravating factors in that MS DeMontmorency's conduct was repetitive, targeting three colleagues, including the two who provided statements to the Court, and constituted a breach of the trust that must accompany the relationship between colleagues on course, even when relaxing after work. As an experienced member of the military, in the supervising rank of master sailor, the offender should have known better.

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

(a) MS DeMontmorency's guilty plea today, which avoided the expense and energy of running a trial, including the need for testimony of victims, and demonstrates that he is taking responsibility for his actions in public, in the presence of members of the military community;

(b) the absence of a criminal record and of a conduct sheet revealing precedents of similar misbehaviour;

(c) the positive assessments of superiors and a subordinate in the Agreed Statement of Facts, showing that the conduct of the offender on 19 November 2021 was out of character for him; and

(d) the fact that MS DeMontmorency has served the Navy satisfactorily for over twelve years in the regular Force in the most challenging of 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

[24] In the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought court martial cases to my attention, especially a number which reveal inappropriate sexualized conduct by intoxicated CAF members in leadership ranks at messes or social functions on base. I do not see the need to comment in detail on those, except to state that they were useful illustrations to indicate to the Court that the joint submission of counsel is within the range of sentences previously imposed for similar behaviour.

[25] 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.

[26] 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 reprimand and the proposed fine constitute punishments aligned with these expectations. The proposed sentence meets the objectives of denunciation and deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[27] 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 and, as stated during submissions, have taken the interests of the offender, victims, the chain of command and the broader public into consideration in arriving at their agreement on the proposed sentence. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[28] 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.

[29] MS DeMontmorency, you have demonstrated that you accept responsibility for your offence. I hope you have learned a lesson from this experience, especially as it pertains to the impact of your consumption of intoxicants on your behaviour and the need to act respectfully in relation to colleagues, especially women. This lesson is as relevant in civilian life as it was for you in the military. As you move forward with the rest of your life away from the Navy and CAF, I believe you should reflect on what you have gone through and conclude that you do not wish to place yourself in a similar situation again.

FOR THESE REASONS, THE COURT:

[30] **SENTENCES** MS DeMontmorency to a reprimand and a fine in the amount of $2,000 payable forthwith.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J. Besner and Captain G. French

Major F. Ferguson and Lieutenant(N) M. Darnley, Defence Counsel Services, Counsel for Master Sailor A.B. DeMontmorency