



COURT MARTIAL

Citation: *R. v. Dolan*, 2023 CM 5015

Date: 20231024

Docket: 202249

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

His Majesty the King

- and -

Corporal S. Dolan, Offender

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

REASONS FOR SENTENCE

(Orally)

I. Introduction

[1] Corporal (Cpl) Dolan pled guilty to one charge under section 130 of the *National Defence Act (NDA)*, assault, contrary to section 266 of the *Criminal Code*, for an incident that would have occurred on or about 5 August 2022 at Canadian Forces Base (CFB) Edmonton, Alberta, involving a Cpl Vaughan. After I provided the offender with the explanations required by the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*, I accepted and recorded his guilty plea. At the sentencing hearing, counsel proposed a joint submission, recommending that I impose a punishment of a twenty-one-day detention, suspended. After hearing my concerns regarding the imposition of a punishment of detention on a former Canadian Armed Forces (CAF) member, defence retracted the joint submission and recommended that I impose a fine in the amount of \$2,500 payable forthwith, with or without a reprimand. The Court must therefore determine a fair and fit sentence that is proportionate to the offence and to Cpl Dolan's personal situation.

Background

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

“Statement of Circumstances

1. At all relevant times, Corporal Dolan was a Regular Force member of the Canadian Armed Forces, serving with 3rd Battalion, Princess Patricia's Canadian Light Infantry (3 PPCLI), at CFB Edmonton.
2. At 0900 on 5 August 2022 Cpl Dolan was dismissed from duty at 3 PPCLI by Cpl Vaughan because his child required medical attention. Cpl Dolan had advised Cpl Vaughan that his daughter may have had foot and mouth disease, which Cpl Vaughan remarked was very contagious.
3. At 1130 Cpl Dolan returned to 3 PPCLI unit lines and approached the work area of Cpl Vaughan. Cpl Vaughan gestured to Cpl Dolan to go home. Cpl Vaughan said “go fucking home, man. I already dismissed you,” or words to that effect.
4. Without hesitation, Cpl Dolan closed distance with Cpl Vaughan and punched him. Cpl Vaughan tried to protect his face and head and both fell to the ground as Cpl Dolan continued to hit Cpl Vaughan with his fists and knees.
5. This was witnessed by Sgt Connolly and WO Rubio, who intervened and were able to separate Cpl Dolan and Cpl Vaughan. Cpl Vaughan was taken for medical treatment but no injuries were noted or reported. Cpl Vaughan did not hit Cpl Dolan and said the assault was unexpected and unprovoked.
6. At the earliest opportunity in the court martial process, Cpl Dolan expressed remorse directly to Cpl. Vaughan on two occasions, one orally and one through a hand-written letter, and he agreed to take responsibility for his actions and plead guilty.”

[3] I was informed by the prosecution that Cpl Vaughan chose not to provide a victim impact statement.

II. The determination of an appropriate and fit sentence

Position of the parties

[4] Considering the facts summarized in the Statement of Circumstances, counsel for the prosecution contended that denunciation is the most important objective of this case. A punishment of twenty-one days' detention would meet this objective because the recommended sentence serves to denounce the commission of the infraction and to signal to other members that acting the same way would result in a severe sentence leading to the creation of a criminal record. The prosecution explained that the assault was a sudden, violent and unprovoked attack. Considering that everyone has the right to feel safe in the work environment, the fact that the assault happened in the workplace is aggravating. He further contended that although there were no injuries, the victim required a medical assessment. The prosecution also recognized and considered that Cpl Dolan apologized to Cpl Vaughan, who accepted the apology and moved on. He acknowledged that Cpl Dolan faced some challenges but has insight and seems to appreciate the seriousness of his actions. Further, Cpl Dolan pled guilty and showed remorse, and there is no record of past-violent conduct. His efforts to rehabilitate himself appear sincere. Cpl Dolan also has the support of a social worker. Finally, counsel for the prosecution contended that, should the Court find detention to be inappropriate, fairness would require that a lower punishment on the scale of sentencing be imposed.

[5] Agreeing with the mitigating and aggravating factors provided by the prosecution, defence counsel submitted that although the offender did not have the same privilege in life as most, he was able to overcome difficulties, such as dealing with posttraumatic stress disorder (PTSD) as a result of his deployment in Senegal. He emphasized that the conduct was out of character, and that the assault occurred at a time where the offender was plagued with physical and mental health issues. Further, Cpl Dolan had concerns with his child's health, and these issues were burdening him when the assault took place. Cpl Dolan now wants to pursue a new career; he already took positive steps for rehabilitation. Defence counsel therefore recommended that I impose a fine of \$2,500, with or without a reprimand. He contended, lastly, that while it is true that a reprimand may not have a direct impact on an offender who has been released from the CAF at the time the punishment is imposed, it does have a deterrent effect.

Sentencing principles of the military justice system

[6] 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:

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

(2) The fundamental purpose of sentencing is to be achieved by imposing just punishments that have one or more of the following objective:

- (a)** to promote a habit of obedience to lawful commands and orders;
- (b)** to maintain public trust in the Canadian Forces as a disciplined armed force;

- (c) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (d) to deter offenders and other persons from committing offences;
- (e) to assist in rehabilitating offenders;
- (f) to assist in reintegrating offenders into military service;
- (g) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
- (h) to provide reparations for harm done to victims or to the community;
and
- (i) to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

[7] When imposing a punishment, a sentencing judge must also take into consideration other sentencing principles, which include that:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances.

[8] The punishment imposed by any tribunal should constitute the minimum necessary intervention that is adequate in the circumstances. For a court martial, this means imposing a sentence composed of the minimum punishment necessary to maintain discipline, efficiency, and morale of the CAF. Ultimately, a sentence must be proportionate to the responsibility and previous character of the offender.

Analysis

[9] In my determination of an appropriate punishment, I have considered the objective gravity of the offence and the consequence of its commission. A person found guilty of an offence under section 266 of the *Criminal Code* is liable to a maximum punishment of imprisonment for five years or less. Therefore, it is a serious offence.

[10] In addition to the nature and objective gravity of the offence, I have considered the circumstances surrounding the commission of the offence. Therefore, the following aggravating factors were taken into consideration:

- (a) the assault happened at the workplace and was witnessed by other CAF members;
- (b) Cpl Dolan hit Cpl Vaughan repeatedly, and others had to intervene to separate them;
- (c) Cpl Vaughan required a medical assessment. Fortunately, he did not suffer any injuries; and
- (d) the assault was sudden and unprovoked.

[11] I must also account for mitigating circumstances. I considered that:

- (a) Cpl Dolan is a first-time offender;
- (b) at the earliest opportunity, he expressed remorse to the victim on two occasions, apologizing immediately after the incident, and through a hand-written letter. He also apologized to him a third time, in open court; and
- (c) Cpl Dolan took responsibility for his actions by pleading guilty.

Circumstances of the offender

[12] Having reviewed the aggravating and mitigating circumstances of this case, the Court considered the offender's personal situation. The documentary evidence reveals that he is thirty-five years old. He is married with two young children, both of whom have health complications.

[13] Cpl Dolan enrolled in the CAF on 28 October 2009 and released on 28 October 2016. He re-enrolled on 31 January 2017 and was medically released on 31 January 2023. During his approximately eleven years in the CAF, he deployed in Dakar, Senegal as part of the security contingent from June to October 2018 and is in possession of a Special Service Medal - Expedition.

[14] At the time of the commission of the infraction, Cpl Dolan was under a lot of stress and pressure. He had been experiencing mental and physical health problems, including chronic back pain due to a fractured spine sustained in a parachuting accident in 2017, ailments that significantly and detrimentally impacted his quality of life. A health care provider he consulted reported in their letter that in addition to severe anxiety and depression, Cpl Dolan had anger management issues and presented symptoms of PTSD. He was particularly stressed and worried for his child's medical situation at the time, which was confirmed by a letter from his spouse submitted as an exhibit.

[15] The agreed statement of facts revealed that his PTSD diagnosis was the unfortunate consequence of a traumatic event he experienced in 2018 while deployed, when he witnessed a cyclist clipped by his vehicle suffering serious injuries, and possibly death, as a result of the accident. The trauma was exacerbated by his powerlessness to provide assistance because of his obligation to follow orders forbidding him to stop. It is difficult to imagine the feeling of having to leave behind a seriously injured person to their own demise.

[16] At a very young age, Cpl Dolan experienced abuse and neglect, and witnessed acts of violence committed in his home. Drugs were rampant in his community, and he was instructed by an adult family member to use cocaine at fourteen years old. He had to fight most of his life to become the man he is today; it seemed that he has succeeded in overcoming the possible damages that could have been caused by childhood tragedies. I agree with his counsel that Cpl Dolan's accomplishments, coming from as far as he has, are remarkable. While it is true that he used violence against Cpl Vaughan, I believe that this was out of character. He was under tremendous pressure, dealing with multiple health issues and was worried about his child's health.

[17] Cpl Dolan is also experiencing financial challenges in relation to his release from the CAF that he and his wife strive to overcome. Despite these challenges, he made a donation to the Alberta Children's Hospital Foundation in December 2022 to show his gratitude for its support.

[18] Cpl Dolan found solace in physical conditioning. He has a solid and viable plan to pursue his passion as a fitness instructor, which he has already started to implement by commencing level one of the fitness instruction training. He has a supportive wife. Since moving back to Quebec, he has a great support network with extended family.

Attitude to the offence/efforts towards rehabilitation

[19] The letters provided by defence all speak to Cpl Dolan's character, in particular his resolve to contribute to society and to be a good father to his children. The evidence I have before me is that Cpl Dolan is a person who is resolved to do the right thing. I believe his remorse is genuine, particularly because he accepted full responsibility for his misconduct from the very beginning by apologizing to the victim and by pleading guilty.

[20] Cpl Dolan is attending sixteen weekly sessions in order to address his mental health issues. He has received psychosocial treatment. The evidence shows that he has taken this treatment seriously; he is punctual, motivated, and determined. He has been referred to the Operational Stress Injury Clinic in Quebec to continue with trauma treatment and has shown that he is progressing and that his situation improving. He is clearly taken decisive steps for his rehabilitation.

Parity

[21] In its determination of an appropriate sentence to impose, the Court also examined precedents for similar offences. While the determination of an appropriate sentence is not an exact science, the range of punishment established for similar offences serves as a guide for the sentencing judge to determine whether a proposed sentence is fair. In this regard, the prosecution provided three cases in support of its recommendation: *R. v. Worthman*, 2018 CM 2024, a case involving both an offence of assault and one of drunkenness that occurred in the context of an arrest by the military police. The joint submission of detention for a period of ten days was accepted and imposed. In *R. v. Snow*, 2015 CM 4003, a master corporal assaulted a corporal for whom he had developed animosity. The joint submission of detention for a period of seven days and a fine in the amount of \$1,000 was the punishment imposed. Finally, in *R. v. Misiaczyk*, 2016 CM 3018, the offender, a warrant officer, punched a corporal many times while on exercise. The corporal suffered minor facial injuries. The joint submission of detention for a period of fifteen days was imposed.

[22] I find that these cases have limited application because, in addition to the punishment being imposed following the sentencing judge's acceptance of a joint submission, the incidents described in these cases were subjectively more serious, with the victim suffering injuries, or the case involving a greater disparity of ranks between the offender and the victim. Furthermore, these punishments were imposed on serving CAF offenders. I have therefore considered other similar cases. In *R. v. Klein*, 2014 CM 4009, the offender, a lieutenant(N), was found guilty of an assault for pushing a commissionaire. A reprimand and a fine in the amount of \$1000 were imposed. In *R. v. Scott*, 2015 CM 1005, a joint submission of a severe reprimand and a fine in the amount of \$2,000 was accepted and imposed following a guilty plea for several offences, including one contrary to section 266 of the *Criminal Code*. In *R. v. Mentel*, 2023 CM 5003, Private (Pte) Mentel struck the victim in the back of the head with his fist without warning while walking home, believing that the latter was taking advantage of another peer walking with them. The victim blacked out momentarily, and when he regained consciousness, he was lying on the ground with Pte Mentel on top of him, punching him multiple times. A joint submission of a severe reprimand with a fine in the amount of \$2,500 was accepted by the Court.

[23] After a review of the precedents of punishments imposed in the past for similar offences, I find that these punishments range from a fine combined with a reprimand or a severe reprimand, to a relatively short period of detention for the most serious cases. That is sufficient to allow the Court to conclude that the proposed sentence by defence is well within the range of punishments, while the prosecution's recommended sentence is at the higher end of the spectrum.

Principles of sentencing deserving greatest emphasis

[24] Considering the offence to which the offender 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 denunciation, while ensuring

that Cpl Dolan's rehabilitation can continue. Therefore, I agree with defence counsel that a reprimand with a fine of \$2,500 payable forthwith, is a fair and fit sentence.

[25] I wish to emphasize that the fact that Cpl Dolan is no longer a CAF member is not the determining factor for me to decide that a period of detention is not appropriate in the circumstances. I simply find this recommended sentence too severe because it does not account for the offender's personal situation, which includes the steps he took, and that he continues to take, to rehabilitate himself. Cpl Dolan took responsibility for his actions. A period of incarceration might be appropriate for subjectively more serious circumstances.

[26] Nevertheless, detention is not designed to be imposed on former CAF members because in the military context, detention is a form of incarceration which has the specific objective of rehabilitation of the offender as a serving member of the CAF. In fact, "It may well be that, in most cases, detention or dismissal or other unique military punishment serve no sentencing objective on a now civilian offender. This could make the punishment inefficient and ineffective or moot", *R. v. Ayers*, 2017 CM 1012 at paragraph 18 where the military judge clarified, in considering a joint submission, that these punishments are not necessarily invalid or of no force and effect.

[27] Indeed, the purpose of detention as a military rehabilitative, not uniquely a punitive tool, is confirmed by the notes to article 104.09 of the QR&O which provides in part that:

(A) In keeping with its disciplinary nature, the punishment of detention seeks to rehabilitate service detainees, by re-instilling in them the habit of obedience in a structured, military setting, through a regime of training that emphasizes the institutional values and skills that distinguish the Canadian Forces member from other members of society. Specialized treatment and counselling programmes to deal with drug and alcohol dependencies and similar health problems will also be made available to those service detainees who require them. Once the sentence of detention has been served, the member will normally be returned to his or her unit without any lasting effect on his or her career.

[28] See also the Note (A) to QR&O article 104.04 – IMPRISONMENT FOR SHORTER TERM, which indicates that, "a member serving a sentence that includes imprisonment will in most cases be considered unfit for further military service." I also note that an order suspending a sentence of incarceration is an ancillary order, not a punishment on its own. The onus is on the offender to demonstrate that they meet the test. In this case, having found that a punishment composed of detention is too severe, I do not need to decide on the issue of suspension.

III. Conclusion

[29] Having reviewed the documentary evidence introduced as exhibits and considering counsel submissions, I find that the need for denunciation and rehabilitation are met with defence counsel's proposed sentence. A fine of \$2500, combined with a

reprimand, sends a message to serving member that engaging in a similar conduct would have both short-term and long-term consequences.

[30] In sum, reviewing the relevant facts of this case, while I do not want to minimize Cpl Dolan's actions on that day when he engaged in a violent act against a peer, I find that he was under a lot of pressure and stressors when he committed the offence. I am impressed by his resolve to better himself, and I have no doubt that he will succeed both professionally and personally. Cpl Dolan is a fighter, he is determined to contribute to Canadian society. In consideration of all the aggravating and mitigating factors and the sentencing principles, I find that imposing a punishment composed of a reprimand combined with a fine in the amount of \$2500, payable forthwith, would be a proportionate sentence to impose in the circumstances.

FOR THESE REASONS, THE COURT:

[31] **FINDS** Cpl Dolan guilty of the charge of assault.

[32] **SENTENCES** the offender to a reprimand combined with a fine in the amount of \$2500, payable forthwith.

Counsel:

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

Captain C. Da Cruz, Defence Counsel Services, counsel for Corporal S. Dolan