



COURT MARTIAL

Citation: *R. v. Haley*, 2023 CM 2017

Date: 20231030

Docket: 202307

Standing Court Martial

Asticou Centre Courtroom
Gatineau, Quebec, Canada

Between:

His Majesty the King

- and -

Captain(Navy) Haley, Offender

Before: Commander S.M. Sukstorf, M.J.

REASONS FOR SENTENCE

(Orally)

[1] Captain(N) Haley admitted his guilt to one charge contrary to section 90 of the *National Defence Act (NDA)* for absent without leave. The particulars of that charge read as follows:

“FIRST CHARGE

Section 90 of the
National Defence Act

**ABSENTED HIMSELF
WITHOUT LEAVE**

Particulars: In that he, on 1 March 2022, at or near Ottawa, Ontario, without authority was absent from his place of duty”.

[2] The Statement of Circumstances filed in court is reproduced to provide a full account of the circumstances of both the offence and the offender. The Statement of Circumstances reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Capt(N) Haley was a Regular Force Medical Officer in the Canadian Armed Forces, serving with the Canadian Forces Health Services Group in Ottawa.
2. On 6 October 2021, Capt(N) Haley’s new physician, Dr. Stewart, provided him with new medical employment limitations (MELs) which were to work three hours per day, two days per week, from 12 October 2021 until 22 November 2021.
3. Following the expiry of these MELs, Capt(N) Haley was scheduled for a medical appointment on 8 December 2021, however he did not attend.
4. Capt(N) Haley also failed to attend three subsequent medical appointments that were scheduled for 10 January, 7 February, and 23 February 2022.
5. In February of 2022, his commanding officer, LCol Shaw, became aware that Capt(N) Haley’s MELs had expired. She was already concerned about Capt(N) Haley’s attendance and engagement at work. She contacted Dr. Stewart on 10 February 2022 and learned of his failure to attend the previously scheduled medical appointments. She reached out to Capt(N) Haley that day by text message to let him know that she and others were worried about him; he responded rapidly that there was no need to worry.
6. On 24 February, after discovering that Capt(N) Haley had again failed to attend a scheduled medical appointment the day before, LCol Shaw contacted Capt(N) Haley by phone and ordered him to see a duty physician that day. She instructed his supervisor, BGen (then Col) Picard, to attend Capt(N) Haley’s residence and escort him to Montfort.
7. At Montfort, Capt(N) Haley was seen by Dr. Roux. Dr. Roux described Capt(N) Haley in his medical note regarding the appointment as “well oriented”, using accurate and appropriate language to describe events, and demonstrating “good insight” and a normal emotional state.
8. During the assessment, Capt(N) Haley reported having had insomnia for many months and being confused as to the time and day that morning.
9. As part of the treatment plan, Dr. Roux wrote that he believed that Capt(N) Haley needed to get his circadian rhythm back to normal and he proposed a Return to Duty (RTD) plan for Capt(N) Haley to report to work two half days a week (Tuesdays and Thursdays), in the mornings, for the following two weeks.

10. Dr. Roux, Capt(N) Haley, and BGen Picard discussed the RTD plan; it was made clear to Capt(N) Haley that he was to be present in person at 0900 hrs on Tuesday March 1, 2022 at NDHQ (Carling) and Capt(N) Haley confirmed that he understood this order.

11. Dr. Roux instructed Capt(N) Haley to take the prescription medication zopiclone for the next few days to ensure he would fall asleep.

12. On March 1, 2022 at 0900, Capt(N) Haley was absent from NDHQ (Carling). BGen Picard called him mid-morning; Capt(N) Haley answered and stated that he was just waking up.”

Joint submission

[3] Both the prosecution and defence counsel jointly recommend a fine in the amount of \$750 as the appropriate sentence.

[4] The joint submission must be considered pursuant to the guidance to trial judges from the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43. In short, a trial judge should follow the proposed sentence in a joint submission unless it would harm the administration of justice or the public interest.

[5] A plea agreement involves counsel coming together outside the courtroom to discuss their positions in a mutually beneficial way. This process allows the prosecution to recommend a sentence that the accused is willing to accept, avoiding the stress of a trial and offering a chance for a remorseful offender, such as Captain(N) Haley, to start making amends.

[6] Joint submissions also reduce the burden on the Court and benefit the prosecution by avoiding full court martial proceedings.

[7] In the military justice system, the advantages of joint submissions extend to the accused's unit, which is responsible for supporting both the member and the court martial.

[8] The primary benefit for all involved parties is the certainty that a joint submission offers. It is essential to recognize that by entering a plea agreement, the accused forfeits the constitutional right to be presumed innocent; therefore, ensuring the Court will accept the joint submission is crucial.

[9] To rely on joint submissions from plea agreements, the military justice system must have confidence in the fairness of the negotiations and their respect for the rights of the accused. Both prosecution and defence counsel have made it clear that the resolution process and the fine acknowledge the minimum punishment they feel is necessary to sanction the conduct before the Court.

[10] Defence counsel, acting exclusively in the accused's best interest, confirmed that Captain(N) Haley's plea was voluntary, informed, and an unequivocal acknowledgment of guilt.

[11] Both prosecution and defence counsel, as members of the legal profession accountable to their respective law societies, have a duty not to mislead the Court in their submissions. As the military judge presiding, I expect both counsel to fulfill their professional responsibilities, as they are in the best position to evaluate relevant factors, evidence, and the public interest.

Assessing the joint submission

[12] In this case, the prosecutor read a Statement of Circumstances and provided the documents required at the *Queen's Regulations and Orders for the Canadian Forces*, article 112.51, supplied by the chain of command. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incidents that led to the charges before the Court. Defence counsel also introduced an affidavit signed by Captain(N) Haley that outlines the relevant personal facts pertaining to him in order that the Court ensures that it delivers an individualized sentence specific to his circumstances. In addition, the defence provided the Court with a copy of the commendation that he earned in 2019 for his diligent work and leadership in revising the medical instruction on the administration of pregnant members. In addition, the Court was provided an update on his current performance within his role as the Chief of Staff (COS) of the Deputy-Director General Health Services (Clinical).

[13] Further, the Court benefitted from the submissions of counsel to support their joint position on sentence, highlighting the facts and considerations relevant to Captain(N) Haley.

[14] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed of any indirect consequence of the sentence so I may impose a punishment adapted specifically to Captain(N) Haley's circumstances and the offences committed.

Military impact statement (MIS)

[15] I will begin with highlighting parts of the MIS written and read out in court by Lieutenant-Colonel Shaw, who was the Commanding Officer of the Canadian Forces Health Services Headquarters for three years, from mid-July 2020 to end-June 2023. She wrote:

“4. Captain (N) Haley being absent without leave strikes the core of the *Canadian Armed Forces Ethos: Trusted to Serve* and the ethical principles, military values, and professional expectations that underline

our organization. Our *Trusted to Serve* ethos emphasizes the importance of military values, which include loyalty, integrity, and accountability:

Loyalty: It states that ‘loyalty [...] explicitly requires leaders to [...] set the best example of professionalism for others to follow.’

Integrity: It explains that ‘integrity means that our decisions and actions are consistent with established codes of conduct...’ and that ‘leaders must especially have unwavering integrity because of their personal example’s powerful effect on those around them, particularly their subordinates.’

Accountability: Finally, in terms of accountability, *Trusted to Serve* explains that ‘to protect our profession’s health and credibility, we must correct those, including superiors, that deviate from the CAF Ethos’, adding that ‘leaders may also be held accountable for the conduct... of those... under their command or supervision.’

5. When an officer in a position of authority fails to embody these values, it creates a ripple effect throughout the chain of command, eroding the trust and respect that we rely on to accomplish our mission. As an experienced member who was entrusted with significant responsibilities, Captain (N) Haley’s rank should have been synonymous with loyalty, integrity, and accountability. He had a duty to exemplify these values and to inspire others at all levels of the chain of command through his actions; however, his unauthorized absence tarnished the honour that his rank represents and weakened morale within the unit.

6. Also of significance is that Captain (N) Haley’s actions compromised the discipline that I, as the commanding officer, was entrusted to enforce. When a senior officer, who is expected to exemplify professionalism and adherence to regulations, disregards the rules by being absent without authority, it sends a detrimental message to more junior personnel. It creates a perception that the unit’s rules are somehow negotiable, or that the rules can be bent, depending on one’s rank. This perception erodes the basis of discipline built on fairness and equal accountability and breeds a sense of cynicism among junior personnel, who may question the legitimacy of the rules and wonder if there truly is a level playing field.

7. I witnessed firsthand how Captain (N) Haley’s actions bred such cynicism. One highly respected member of the unit commented to me, with a tone of disappointment, ‘Ma’am, one thing I will take with me when I go to my next unit is that the rules don’t apply to senior officers.’ I can tell you that this comment struck me deeply and still cuts today.”

The offender

[16] Captain(N) Haley is fifty-two years old. He enrolled in the Canadian Armed Forces (CAF) on 17 June 1997, having served continuously for almost twenty-six years. By all accounts, it appears that he served his country well and the Court received very positive feedback on his performance both before and after the offence before the Court. I note that during his service, he has earned a Chief of Defence Staff Commendation, a General Campaign Star – South-West Asia, a North Atlantic Treaty Organisation - Medal for Operations in the Balkans, Special Service Medal, and the Canadian Peacekeeping Service Medal. He has quickly risen through the ranks and has served his country in many different operational areas, including Afghanistan, Bosnia and serving on board ship. He is highly qualified and appears to have served wherever and whenever he was asked.

Objectives of sentencing to be emphasized in this case

[17] The prosecution has emphasized that all the objectives of sentencing were considered, but both they and defence counsel felt that those of greatest importance in addressing this incident are deterrence, both general and specific, and denunciation which, on the facts before the Court, I agree with.

[18] Ultimately, the decision before me is whether, based on the facts of this case, the sentence proposed in the joint submission is in the public interest and will not bring the administration of justice into disrepute.

Parity

[19] An important sentencing principle set out in the *NDA* at paragraph 203.3(b) stipulates that “a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances”. The prosecution and defence counsel provided the Court with several judicial precedents for comparison. They included the following:

- (a) *R. v. Guillemette-Jérôme*, 2018 CM 3017 – a fine in the amount of \$200;
- (b) *R. v. Kanaar*, 2020 CM 5009 - a fine in the amount of \$300;
- (c) *R. v. Coulter*, 2020 CM 5010 - a fine in the amount of \$500;
- (d) *R. v. Hopkie*, 2017 CM 3013 - a fine in the amount of \$500; and
- (e) *R. v. Bellefontaine*, 2018 CM 2021 - a fine in the amount of \$800.

[20] Although I note that most of the cases provided are for privates, I note that Commander Hopkie’s situation was similar to the case before me. I also note that the

highest punishment awarded for this type of offence was in the case of *Bellefontaine* which is one of the cases where I was the presiding judge.

Aggravating and mitigating factors

[21] In making the joint submission, counsel advised the Court that they had considered all relevant aggravating and mitigating factors and presented several factors for the Court's consideration. The Court considered the following aggravating factors:

- (a) rank and experience in the CAF. As a senior officer and a medical officer, Captain(N) Haley ought to have known that he had a duty to reach out when he was struggling, which he did not do soon enough; and
- (b) impact on the CAF and unit. As stated in the MIS:

“Captain (N) Haley’s absence increased the workload of others within the unit, both up and especially down the chain of command. His actions put onto question the effectiveness of the chain of command itself, including my own effectiveness as commanding officer during the period of his unauthorized absence. It is the responsibility of senior officers to ensure that the chain of command remains intact, efficient, and reliable. This unauthorized absence demonstrates a failure in this regard. It indicates a breakdown in communication and accountability at various levels, leading to consequences that extend past this specific incident”.

[22] The Court considered the following mitigating factors:

- (a) Captain(N) Haley is a first-time offender. The offender has no conduct sheet or previous criminal record. This is the first disciplinary hearing of any type for him;
- (b) his guilty plea. Based on his actions and evidence before the Court, he has assumed responsibility for his conduct. His guilty plea has helped avoid a long court martial;
- (c) the positive rehabilitation and return to work. According to Brigadier-General (BGen) Picard:

“His return coincided with a particularly challenging period characterized by important staffing shortages with the NMPA and our Senior Staff Officer (SSO) positions being vacant. Consequently, he not only fulfilled his duties as COS but also assumed some additional responsibilities and critical tasks typically handled by the NMPA and SSO Captain(N) Haley has

integrated well with the team and has become an important contributor and enabler to several strategic initiatives across the DDGHS Clinic Group”; and

- (d) potential for continued service and Executive Coaching Program. BGen Picard further states, “Capt(N) Haley will leverage the Executive Coaching Program to enhance his successful reintegration into the workplace, fostering a sustainable pace through the strengthening of his prioritization abilities and resilience.”

Final Comments

[23] Captain(N) Haley, you should be commended for publicly assuming responsibility for your incident of absence without leave (AWOL). Your willingness to do so, despite the vulnerability it entails, demonstrates a commendable sense of accountability. It is evident that this incident occurred during a time of personal struggle, a fact that has been acknowledged.

[24] However, I feel it is crucial to take a moment to explain why I am disappointed regarding the quantum of the recommended fine. It is important to be aware that a sentence imposed for the particularized conduct serves to communicate to other CAF members the specific consequences of engaging in similar conduct. We heard Lieutenant-Colonel (LCol) Shaw tell the Court that others are watching your case closely to see what happens.

[25] I have always said that sentencing is the most delicate and important part of resolving offences in the military justice system. As Perron M.J. described in *R. v. Semrau*, 2010 CM 4010, at paragraph 13, a sentence is a “form of judicial and social censure”. What this means is the sentence should express the CAF’s shared values.

[26] However, in this case, it is not really about the nominal amount of the fine, because even if I raise it, it would not be able to send the same message that my judicial comments will. They will be delivered to you and will express why I view your case as more aggravating than the other cases counsel have relied upon.

[27] While you are only facing sanction for one AWOL, the concerning issue was that prior to this incident, you repeatedly failed to attend medical appointments and seek help when it was your responsibility to do so. This pattern included missed medical appointments in December 2021, as well as in January and February 2022, prior to the intervention from your commanding officer in February.

[28] Despite grappling with significant insomnia issues, when you were awake, there is no evidence to suggest you made efforts to address the missed appointments. This situation led to your command imposing a return-to-work program, expecting you to report on 1 March 2022. I will not reiterate the concerns eloquently raised by LCol Shaw

in her MIS regarding the expectations of senior officers, but I wish to emphasize the importance of your role as a medical officer.

[29] As specialists and senior officers, we carry a dual responsibility: ensuring our personal well-being and serving the systems we are part of. Neglecting our own well-being not only hampers our professional roles but also places a burden on the systems we support. We are all human, with acknowledged vulnerabilities in our mental and physical health. However, as a medical professional, you had a heightened obligation to take extra care of yourself and address your struggles adequately.

[30] The decisions we make have a direct impact on the lives and well-being of others, regardless of the profession. It is imperative that professionals recognize that their mental and physical states significantly influence the quality and integrity of their decisions. Neglecting self-care not only jeopardizes the effectiveness of these decisions but also poses potential risks to individuals and the systems we serve.

[31] By maintaining our own physical and mental well-being, we endeavor to be in the best position to make informed, ethical, and competent decisions with a clear focus on the welfare and safety of those who depend on us. Self-care is not a luxury but a fundamental responsibility that upholds the trust and confidence others place in us.

[32] In conclusion, our behavior and actions influence the discipline, efficiency, and morale of those who rely on us. By adhering to a higher standard of personal accountability, we ensure that our decisions and actions consistently serve the best interests of the CAF and the Canadian public.

[33] Moving forward, we all need to be inspired by the feedback from BGen Picard. It is now crucial for you to recognize that your actions have eroded the trust of both your peers and colleagues within your profession. By not adhering to the expected standards, you have fallen short of the commitment and integrity required of every member.

[34] Rebuilding this trust will require consistent dedication to upholding the values and principles of your profession. It will be an ongoing process, requiring your consistent adherence to the principles of your profession and a commitment to personal growth and accountability. Your commitment to engage with an executive coach will serve you well and I wish you the best of luck in the future.

Conclusion

[35] As I mentioned above, in imposing sentences, trial judges need to be particularly vigilant in ensuring that the sentence is appropriate for the individual offender and the facts before the Court. Although I am personally disappointed with the quantum of the fine that counsel have agreed to and would have imposed a more significant fine, that is not the legal test that I must apply.

[36] The legal test is whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system. In light of the case law before me, I can not say that it will lead to a breakdown in the functioning of the military justice system, nor is it contrary to the public interest.

[37] Considering all the factors, the circumstances of the offences and of the offender, the indirect consequence of the finding and the sentence, the gravity of the offence and the previous character of the offender, I am satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[38] **FINDS** Captain(N) Haley guilty of the first and only charge on the charge sheet.

[39] **SENTENCES** him to a fine in the amount of \$750, to be paid in full within ten working days of the pronouncement of the sentence.

Counsel:

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

Lieutenant-Commander F. Gonsalves, Defence Counsel Services, counsel for Captain(N) Haley